

IN THE MATTER OF

GERALD W. SCHWARTZ, 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-3828. Complaint, Sept. 17, 1998--Decision, Sept. 17, 1998*

This consent order, among other things, prohibits, for ten years, Gerald W. Schwartz and his subsidiary, Sky Chefs, Inc., from acquiring any concern that controls the Las Vegas catering operations formerly operated by Ogden Aviation Food Services without prior Commission approval. In addition, for ten years, Sky Chefs is required to provide prior notice to the Commission before it acquires its only in-flight catering competitor at any airport in the United States.

Participants

For the Commission: *Stephen Riddell, Phillip Broyles, William Baer, Charlotte Wojcik, and Jonathan Baker.*

For the respondents: *Mark Godler, Kaye, Scholer, Fierman & Hays, New York, N.Y. and Steve Palmer, Swidler & Berlin, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that Gerald W. Schwartz, through his subsidiaries, Onex Corporation, SC International Services, Inc. and Sky Chefs, Inc., entered into a letter of intent to acquire all the voting stock of Ogden Aviation Food Services, Inc. and Ogden Aviation Food Services (ALC), Inc., and that the acquisition, if consummated, would result in a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and Section 7 of the Clayton Act, 15 U.S.C. 18, 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:

A. The Respondents

1. Respondent Gerald W. Schwartz ("Schwartz") is a natural person with a principal place of business located at Onex Corporation, 161 Bay Street, Toronto, Ontario, Canada M5J 2S1.

2. Respondent Onex Corporation ("Onex"), a wholly-owned subsidiary of Gerald W. Schwartz, is a corporation organized, existing, and doing business under and by virtue of the laws of Ontario, Canada, with its office and principal place of business located at 161 Bay Street, P.O. Box 700, Toronto, Ontario, Canada M5J 2S1.

3. Respondents Schwartz and Onex are engaged in diverse businesses that include in-flight catering, chain restaurant food service, electronics manufacturing and other businesses.

4. Respondent SC International Services, Inc. ("SCIS"), is 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 524 East Lamar, Arlington, TX. SCIS is an indirect subsidiary of Onex.

5. Respondent Sky Chefs, Inc. ("Sky Chefs"), is 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 524 East Lamar, Arlington, TX. Sky Chefs is a wholly-owned subsidiary of SCIS.

6. Respondent Sky Chefs has in-flight catering kitchens situated throughout the United States and the world. In 1997, Sky Chef's worldwide catering kitchens posted sales of approximately \$1.3 billion. Its 1997 revenue from its U.S. catering operations was over \$1 billion to which its Las Vegas catering kitchen contributed \$12.9 million.

7. At all times relevant herein, respondent Schwartz has been and is now engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, 15 U.S.C. 12, and is a natural person whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

8. At all times relevant herein, respondents Onex, SCIS and Sky Chefs have been and are now engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, 15 U.S.C. 12, and are corporations whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

B. Ogden

9. Ogden is engaged in diverse businesses, including entertainment, energy and aviation support services. Ogden Aviation Food Services, a wholly-owned indirect subsidiary of Ogden Corporation, provides in-flight catering services to airlines. In 1997, Ogden posted sales of \$164 million from its catering activities in the United States, of which \$9.1 million were from its Las Vegas, Nevada, catering kitchen.

C. The Proposed Acquisition

10. On March 6, 1998, Mr. Schwartz, through his indirect subsidiary Sky Chefs, signed a Letter of Intent, whereby Sky Chefs proposed to acquire all of the voting stock of Ogden Aviation Food Services, Inc. ("proposed acquisition"). The proposed acquisition included Ogden's entire United States airline catering business and eight catering kitchens. One of these catering kitchens was located at the McCarran International Airport, Las Vegas, Nevada.

11. After being advised by Commission staff of potential competitive issues and concerns in connection with the proposed acquisition of all of Ogden's in-flight catering business and kitchens, respondents and Ogden modified their original proposal to exclude Ogden's Las Vegas in-flight catering business and kitchen. Under the modified agreement, SCIS would acquire the remainder of Ogden's catering business and kitchens.

12. On May 22, 1998, Ogden entered into an agreement to sell the Las Vegas in-flight catering business and kitchen to Dobbs International Services, Inc.

D. Trade and Commerce

13. The relevant product market in which to analyze the effects of Sky Chefs' proposed acquisition of Ogden's airline catering kitchens is the sale of in-flight catering services to airlines.

14. As used herein, in-flight catering services includes the preparation of meals, stocking of beverage carts, delivery of meals and carts to the aircraft, the loading of the galley, the unloading of incoming carts, utensils and trash, and cleaning and storage of carts and utensils.

15. The relevant geographic market in which to analyze the effects of Sky Chef's proposed acquisition is the McCarran International Airport, Las Vegas, Nevada.

16. Entry into the relevant market would not be timely, likely, or sufficient to prevent anticompetitive effects for the following reasons, among others. Entry requires a significant investment of several million dollars. A substantial portion of the investment would not be recoverable if the entrant failed to achieve the minimum viable scale of operation. It would be very difficult for an entrant in airline catering at McCarran Airport to reach a viable scale of operation. To be viable, an entrant would need to capture a large share of the catering business in this market, and some of that business is committed to the incumbents through multiple year contracts.

E. Market Structure

17. Ogden has an in-flight catering kitchen located at McCarran International Airport in Las Vegas, Nevada, that provides in-flight catering services to airlines at McCarran.

18. Sky Chefs has an in-flight catering kitchen located at McCarran International Airport in Las Vegas, Nevada, that provides in-flight catering services to airlines at McCarran.

19. The market for in-flight catering at McCarran International Airport is highly concentrated. Sky Chefs and Ogden are the only two firms that sell in-flight catering services to airlines departing or landing at Las Vegas' McCarran Airport. The acquisition, as originally proposed, would leave Sky Chefs with a monopoly of in-flight catering services at McCarran Airport. The proposed acquisition, as modified, would result in no change in market concentration.

F. Effects of the Proposed Acquisition

20. The proposed acquisition, as originally proposed and if consummated, would likely have led to a substantial lessening of competition in the McCarran Airport in-flight catering market in the following ways, among others:

- a. By eliminating direct competition between Sky Chefs and Ogden; and
- b. By increasing the likelihood that Sky Chefs would unilaterally exercise market power;

each of which would increase the likelihood that the price of in-flight catering services would increase and the quality of in-flight catering services would decline.

G. Violations Charged

21. The acquisition of the voting stock of the Ogden entities that operate in-flight catering kitchens by Sky Chefs, if consummated as originally proposed, would have violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition of the voting securities of Ogden Aviation Food Services, Inc., and Odgen Aviation Food Services (ALC), Inc., by Gerald W. Schwartz, through his subsidiaries, Onex Corporation, SC International Services, Inc. and Sky Chefs, Inc., (collectively "respondents"), and it now appearing that respondents, having been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; and

Respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents 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 respondents 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 respondents have violated the said Acts, and that 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, 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. Respondent Sky Chefs, Inc., is 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 524 East Lamar, Arlington, TX.

2. Respondent SC International Services, Inc., is 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 524 East Lamar, Arlington, TX.

3. Respondent Onex Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of Ontario, Canada, with its office and principal place of business located at 161 Bay Street, P.O. Box 700, Toronto, Ontario M5J 2S1.

4. Respondent Gerald W. Schwartz, is a natural person with a principal place of business located at Onex Corporation, 161 Bay Street, Toronto, Ontario, Canada M5J 2S1.

5. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, 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. “*Respondents*” means Sky Chefs, Inc. (“Sky Chefs”), SC International Services, Inc. (“SCIS”), Onex Corporation (“Onex”), and Gerald W. Schwartz (“Mr. Schwartz”), their directors, officers, employees, agents and representatives, predecessors, successors, and assigns; their subsidiaries, divisions, groups and affiliates controlled by Sky Chefs, SCIS, Onex, or Mr. Schwartz, and the respective directors, officers, employees, agents and representatives, successors and assigns of each.

B. “*Ogden*” means Ogden Corporation, a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with a principal place of business located at Two Pennsylvania Plaza, New York, New York.

C. "*Proposed Acquisition*" means the proposed acquisition by Sky Chefs of all of the voting securities of Ogden Aviation Food Services, Inc. and Ogden Aviation Food Services (ALC), Inc., pursuant to a Letter of Intent, dated March 6, 1998.

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

E. "*Retained Airline Catering Kitchen*" means the airline catering kitchen owned by Ogden in the vicinity of the McCarran International Airport in Las Vegas, Nevada, which the respondents, pursuant to the "Stock Purchase Agreement Among SC International Services, Inc., Ogden Corporation and Ogden Entertainment, Inc.," dated May 1, 1998, and the "Amendment to Stock Purchase Agreement," dated May 7, 1998, no longer propose to acquire.

F. "*Single Competing Airline Catering Business*" means an airline catering business, owned by a person other than the respondents, located on or near an airport in the United States at which respondents own or operate the only other airline catering business, excluding any airline catering businesses that collectively account for no more than 1 % of the annual catering revenue realized at that airport.

II.

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

A. Acquire more than 1% of the stock, share capital, equity or other interest in any concern, corporate or non-corporate, that owns, controls or otherwise has an interest in the Retained Airline Catering Kitchen; or

B. Acquire the Retained Airline Catering Kitchen or any assets thereof.

III.

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

A. Acquire more than 1% (or, for investment purposes, 5%) of the stock, share capital, equity or other interest in any concern, corporate or non-corporate, that owns, controls or otherwise has an interest in any Single Competing Airline Catering Business in the United States; or

B. Acquire any Single Competing Airline Catering Business in the United States.

Said prior 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 (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 CFR 803.20), respondents shall not consummate the transaction until twenty (20) days after substantially complying with such request for additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

Provided, however, that prior notification shall not be required by paragraph III of this order for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

IV.

It is further ordered, That one (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at other times as the Commission may require, respondents shall file a verified written report with the Commission setting forth in detail the manner and

form in which they have complied and are complying with paragraphs II and III of this order.

V.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request and reasonable notice, respondents shall permit any duly authorized representative of the Commission:

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

B. Upon five (5) days' notice to the respondents, and without restraint or interference, to interview officers, directors, employees, agents or independent contractors of the respondents, who may have counsel present.

VI.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the respondents 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 respondents that may affect compliance obligations arising out of this order.

VII.

It is further ordered, That this order shall terminate on September 17, 2008.

IN THE MATTER OF

TRENDMARK, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3829. Complaint, Sept. 23, 1998--Decision, Sept. 23, 1998*

This consent order prohibits, among other things, the Tennessee-based corporation and its owners from making claims about the health benefits, performance or efficacy of its weight-loss products, called Neuro-Thin and Lipo-Thin, or any food, drug or device without competent and reliable scientific substantiation. The consent order also prohibits the respondents from misrepresenting the existence, result, or interpretation of any test, study, or research, and requires a disclosure concerning the testimonials and endorsements for the products.

Participants

For the Commission: *Ronald Waldman and Michael Bloom.*

For the respondents: *Regina Morrison, Hodges & Hodges,*
Memphis, TN.

COMPLAINT

The Federal Trade Commission, having reason to believe that TrendMark Inc., a corporation, William McCormack, and E. Robert Gates, individually and as officers of the corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent TrendMark Inc. ("TrendMark") is a Tennessee corporation with its principal office or place of business at 3665 South Perkins, Suite 8, Memphis, TN.

2. Respondent William McCormack is an owner and officer of respondent TrendMark. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of TrendMark, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of TrendMark.

3. Respondent E. Robert Gates is an owner and officer of respondent TrendMark. Individually or in concert with others, he