

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. 82 Civ. 5020
)	
v.)	Filed: October 5, 1982
)	
AMERICAN BRANDS, INC.,)	
)	
Defendant.)	
_____)	

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)-(h), the United States of America files this Competitive Impact Statement in connection with the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE OF THE PROCEEDING

On August 2, 1982, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, 15 U.S.C. § 25, challenging the acquisition of Ofrex Group, Ltd. ("Ofrex") by American Brands, Inc. ("American Brands"), through the latter's subsidiary, Gallaher, Ltd. ("Gallaher"), as a violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that the effect of the acquisition may be substantially to lessen competition or to tend to create a monopoly in the production and sale of home and office staplers in the United States.

The United States and American Brands have stipulated that the proposed Final Judgment may be entered after compliance

with the Antitrust Procedures and Penalties Act. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Judgment, and to punish violations of the proposed Judgment.

II

EVENTS GIVING RISE TO THE ALLEGED VIOLATION

On or about August 19, 1981, American Brands acquired, through Gallaher, a controlling interest in Ofrex and had, by November 17, 1981, acquired approximately 99% of the outstanding shares of Ofrex for approximately \$75 million.

Home and office staplers are used primarily to fasten paper together and include full-strip and half-strip desk top staplers, plier or hand-held staplers, heavy-duty staplers and mini staplers. American Brands manufactures and sells home and office staplers in the United States through the Swingline Co. and Ace Fastener Co. divisions (hereinafter "Swingline" and "Ace", respectively) of its wholly-owned subsidiary, Swingline Inc. American Brands is the dominant producer of home and office staplers in the U.S. market. In 1980, Swingline and Ace had combined sales of home and office staplers in the United States of approximately \$31 million and together accounted for approximately 67% of the market.

Ofrex, a British corporation, distributes a full line of office supplies in the United Kingdom and manufactures a number of products, including home and office staplers, in the United Kingdom. Ofrex is the dominant producer of home and office staplers in the United Kingdom and is the fourth largest seller of such staplers in the U.S. market. In 1980, Ofrex had sales

of home and office staplers in the United States of approximately \$2.8 million and accounted for approximately 6% of the market.

American Brands and Ofrex are direct competitors in the production, and in the sale in the United States, of home and office staplers. The combined market share of American Brands and Ofrex is approximately 73%. The home and office stapler market is a highly concentrated one; the four largest firms accounted for approximately 89% of total sales in 1980.

Based upon the foregoing facts, the Complaint alleges that the effect of the acquisition may be substantially to lessen competition or to tend to create a monopoly in the production and sale of home and office staplers in the United States in violation of Section 7 of the Clayton Act.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and American Brands have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The proposed Judgment constitutes no admission by either party as to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the proposed Judgment is conditioned upon a determination by the Court that the proposed Judgment is in the public interest.

The terms of the proposed Judgment require that American Brands divest, within one year of the date of entry of the Final Judgment, all of its direct and indirect ownership in and control over Ace. The proposed Judgment defines Ace to include all assets carried on American Brands' books as belonging to Ace, as well as other assets used primarily by or in connection with Ace's operations. The divestiture must be accomplished in such a way as to ensure reasonably that Ace can be operated by

the purchaser as a viable, ongoing business engaged in the manufacture and sale of home and office staplers in the United States. In the event American Brands has not divested Ace within the required time period, the Court shall, on application of either party, appoint a trustee to effect the divestiture. The trustee shall divest Ace at whatever price and terms are obtainable.

The proposed Final Judgment requires American Brands to submit periodic reports to the plaintiff describing the steps that it has taken to comply with the Judgment. American Brands or the trustee, if there is one, must also give plaintiff notice of any proposed divestiture prior to the closing date of the sale of Ace so as to allow the plaintiff time to object to the proposal. Upon timely objection by the plaintiff, the proposed divestiture shall not be consummated unless approved by the Court.

Until divestiture of Ace is accomplished, the proposed Final Judgment requires American Brands to maintain Ace as a viable, ongoing business, to continue normal business operations under the "Ace" name and to refrain from taking any action that will have the effect of reducing the scope of Ace's manufacturing or sales operations or its product line from that existing at the time the Complaint in this action was filed, unless it obtains the prior approval of the plaintiff.

Swingline currently produces some stapler parts and some staples for Ace. The proposed Final Judgment requires American Brands, upon request of the purchaser, to enter into a contract to continue to supply Ace with these stapler parts and staples for a reasonable period of time, as specified in the Judgment. The sales price and the terms and conditions of sale shall be established on the same basis as the stapler parts and staples were transferred to Ace as of July 1, 1982. American Brands must also give the purchaser an option to purchase dies used to

produce the stapler parts and must furnish, at no charge, designs, tapes, know how, technology and other information concerning the manufacture of these dies. The proposed Judgment also requires American Brands to make available qualified technical personnel, at cost, to assist Ace in producing staples.

The proposed Judgment enjoins American Brands for a period of ten years from acquiring any equity interest in assets used in the manufacture of home and office staplers without the consent of plaintiff or, failing such consent, the approval of the Court. The proposed Judgment also provides means for determining American Brands' compliance with the terms of the Judgment.

IV

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the defendant.

V

PROCEDURES AVAILABLE FOR MODIFICATION

OF THE PROPOSED FINAL JUDGMENT

The United States and defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and

Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Judgment is in the public interest.

The Act provides a period of at least sixty (60) days preceding the effective date of the proposed Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

Charles S. Stark, Chief
Foreign Commerce Section
Antitrust Division (Main-7115)
U.S. Department of Justice
Washington, D.C. 20530

VI

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The primary relief sought by the Complaint in this action was divestiture by American Brands of "appropriate stock, assets, or both, as will restore competition in the production and sale of home and office staplers that has been eliminated or lessened as a result of the acquisition." Divestiture of Ofrex or Ofrex's stapler business, and divestiture of all or a portion of American Brands' domestic stapler business were alternatives that the United States considered might meet this objective. The proposed Final Judgment fully achieves the objective sought by the United States, and is preferable to proceeding to a trial on the merits.

With its greater sales and domestic production facilities, Ace is likely to be as great or greater a competitive factor in the market as was Ofrex. Divestiture of Ace will reduce concentration in the home and office staplers market to a lower level than existed prior to American Brands' acquisition of Ofrex. In 1980 Ace's sales of home and office staplers in the United States were about \$5 million, compared to Ofrex's sales of home and office staplers of about \$2.8 million. Ace is the number two seller of home and office staplers in the United States, while Ofrex is the number four seller. Ace has its own sales force in the United States; Ofrex relies primarily on sales representatives. Ace has an established brand name and has been in the home and office staplers business for many years. Moreover, Ace's production facilities are located in the United States, unlike those of Ofrex. Ace's total sales in 1980 were approximately \$10 million, as compared to Ofrex's sales in the United States of about \$4 million. Ace has earned a profit in every year since at least 1969.

Litigation of this case would be lengthy and expensive. Even if the United States were to prevail after a trial on the merits, the Court may order American Brands to sell Ace, rather than Ofrex, because Ace should be a sufficient replacement for Ofrex as a competitor in the United States home and office staplers market.

Under the circumstances, the United States believes that the proposed Final Judgment is in the public interest.

Although most provisions of the proposed Judgment were revised and refined in the course of negotiations, no substantially different relief in kind was actually considered by the United States during the negotiations.

VII. DETERMINATIVE DOCUMENTS

There are no materials or documents which the United States considered determinative in formulating this proposed Final

Judgment. Therefore, none are being filed along with this
Competitive Impact Statement.

Respectfully submitted,


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Dated: