

Set Aside Order

120 F.T.C.

IN THE MATTER OF

MANNESMANN, A.G.

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-3378. Consent Order, Mar. 24, 1992--Set Aside Order, Oct. 11, 1995*

This order reopens a 1992 consent order--which required Mannesmann to divest the Buschman Co. and to obtain, for 10 years, Commission approval prior to acquiring any business that manufactures and sells certain conveyor systems--and sets aside the consent order pursuant to the Commission's Prior Approval Policy Statement. The order cites the availability of the premerger notification and waiting period requirements, and noted that under the Policy Statement, the Commission presumes that the public interest requires setting aside the prior approval requirement in paragraph V of the order.

ORDER SETTING ASIDE ORDER

On June 29, 1995, Mannesmann, A.G. ("Mannesmann"), filed its Petition To Reopen and Vacate or Modify Consent Order ("Petition") in this matter. Mannesmann asks that the Commission reopen and modify the 1992 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 Mannesmann in its Petition requests that the Commission reopen and set aside the order in Docket No. C-3378 or, in the alternative, reopen and modify the order by deleting the requirement in paragraph V that Mannesmann seek prior Commission approval for certain acquisitions. 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 premerger notification and waiting period requirements of Section 7A of the Clayton Act, 15

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

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, the Commission said, "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 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 V of the order in Docket No. C-3378 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 C-3378 and set aside the order.²

² Mannesmann completed the divestiture required by the order in 1992; and the only remaining obligation under the order is the prior approval requirement in paragraph V and the attendant reporting requirements.

Accordingly, It is hereby ordered, That this matter be, and it hereby is, reopened, and that the Commission's order issued on March 24, 1992, be, and it hereby is, set aside as of the effective date of this order.

IN THE MATTER OF

THE COUNCIL OF FASHION DESIGNERS OF AMERICA, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3621. Complaint, Oct. 17, 1995--Decision, Oct. 17, 1995.

This consent order prohibits, among other things, a New York corporation and a trade association of fashion designers from entering into, organizing, implementing or continuing any agreement to fix the price, terms or conditions of compensation for modeling or modeling agency services, and requires the respondents to send a letter, along with the Commission's complaint and order, to all members and officers of the organizations, as well as the specified modeling agencies and designer.

Appearances

For the Commission: *Michael E. Antalics, Karen Mills and William Baer.*

For the respondents: *Jack Hassid, Swerdlin & Hassid, New York, N.Y.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, Title 15, U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents named in the caption hereof have violated and are violating the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent The Council of Fashion Designers of America (hereinafter "CFDA"), a trade association of fashion designers, is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1412

Broadway, New York, New York. CFDA engages in activities in substantial part for the profit of its members.

PAR. 2. Respondent 7th on Sixth, Inc. (hereinafter "7th on Sixth") is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1412 Broadway, New York, New York. 7th on Sixth engages in activities in substantial part for the profit of its members.

PAR. 3. The acts and practices of respondents, including those herein alleged, are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 4. Except to the extent that competition has been restrained as alleged herein, members of CFDA and the members of 7th on Sixth have been, and are now, in competition among themselves and with others as purchasers of model and modeling agency services.

PAR. 5. On or about February 1, 1991, CFDA met and discussed a proposal of one of its members that CFDA should hire an Executive Director who could, among other things, address on their collective behalf the issue of prices paid for model services. On several occasions from February 1, 1991 to date, respondents discussed their desire to reduce competition among themselves for the services of models in order to achieve a reduction in the rates paid for the services of models.

PAR. 6. On or about July 14, 1993, CFDA met and formed, funded and facilitated 7th on Sixth, Inc. CFDA voted that its Executive Director should act as Executive Director of 7th on Sixth while in the employ of CFDA. A legitimate purpose of 7th on Sixth was to produce centralized fashion shows twice a year in New York City in Bryant Park. 7th on Sixth solicited bids from suppliers of various services necessary for the production of the fashion shows: sites, architectural design, production, tents, runway assembly, lighting design and installation, and security. 7th on Sixth selected suppliers, and contracted with them. 7th on Sixth resold the package of services that it had purchased from suppliers to designers interested in using 7th on Sixth venues for their shows, for a set fee that varied only depending on the particular venue chosen. 7th on Sixth did not solicit bids for the purchase of modeling services, did not purchase modeling services, and did not resell modeling services to designers.

PAR. 7. At the July 14, 1993 CFDA meeting, two members of the Board of Directors stated that they wanted to call a special meeting for designers with the heads of all the major modeling agencies to discuss models' fees in connection with the 7th on Sixth fashion shows.

PAR. 8. On or about September 1, 1993, the Executive Director of 7th on Sixth invited fashion designers interested in participating in the 7th on Sixth fashion shows to a meeting on September 14, 1993 to discuss, among other things, an agreement on modeling fees.

PAR. 9. On or about September 14, 1993, designers who were members of respondent CFDA and were interested in participating in the 7th on Sixth fashion shows and staff and counsel for respondents met to discuss various issues relating to the 7th on Sixth fashion shows, including modeling fees. During this meeting, respondents agreed not to compete for modeling services and agreed to determine modeling fees collectively, rather than allow prices to be determined in a competitive market. The Executive Director of CFDA and 7th on Sixth, on behalf of respondents, then invited the major modeling agencies to meet with representatives of the fashion designers the next day to present their collective position on fees.

PAR. 10. On or about September 15, 1993, respondents and their counsel met with representatives of the major modeling agencies. Respondents: (a) demanded that the modeling agencies agree to prices collectively determined by respondents, and (b) threatened to hire models through a collectively organized "open call" procedure which would have the effect of bypassing the modeling agencies and the models they represented. As a result of this threat, the agencies agreed to consider whether they should accommodate the respondents' collective demands.

PAR. 11. Respondents invited the modeling agencies to meet with respondents again on September 22, 1993, to hear whether the modeling agencies had decided to succumb to respondents' collective demands. On or about September 22, 1993, respondents and their counsel met again with representatives of the major modeling agencies. Upon hearing that the modeling agencies were not prepared to acquiesce to the respondents' collective demands, respondents repeated their collective demand regarding prices, and their threat to proceed with a collectively organized "open call." Confronted by this threat, the agencies agreed to negotiate with respondents.

PAR. 12. Between September 22, 1993 and October 12, 1993, respondents continued to press their demands regarding prices. During this time, respondents and their counsel continued to plan for an industry-wide open call so that designers could collectively refuse to deal with models and modeling agencies that refused to acquiesce to their demand regarding prices.

PAR. 13. In early October, 1993, the modeling agencies capitulated and agreed to the modeling fee proposal for the 7th on Sixth fashion shows made to them by respondents. On October 12, 1993, 7th on Sixth memorialized the final agreement on prices and other terms of compensation for modeling services in a letter sent to fashion designers and modeling agencies. Later in October 1993, 7th on Sixth issued a press release in which it claimed credit for reaching an agreement on prices.

PAR. 14. The respondents' agreement as to prices paid for model and model agency services was not ancillary to the legitimate purposes of creating centralized fashion shows, and respondents did not purchase modeling services jointly.

PAR. 15. By engaging in the acts and practices described in paragraph five and paragraphs seven through fourteen, respondents have acted as a combination of their members or conspiracy among their members to eliminate competition among themselves in order to fix prices.

PAR. 16. The acts and practices of the respondents, as herein alleged, have had the purpose or effect, or the tendency and capacity, to restrain competition unreasonably and to injure consumers in the following ways, among others:

- A. Restraining competition among purchasers of modeling and modeling agency services;
- B. Fixing or stabilizing the prices that are paid to models and modeling agencies; and
- C. Depriving consumers of access to a competitively determined price and quality of modeling and modeling agency services.

PAR. 17. The combination or conspiracy and the acts and practices of respondents, as herein alleged, constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The violation or the effects thereof,

as herein alleged, are continuing and will continue or recur in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, 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 Act, and that a 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 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 The Council of Fashion Designers of America (hereinafter "CFDA"), a trade association of fashion designers, is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1412 Broadway, New York, New York. CFDA engages in activities in substantial part for the profit of its members.

2. Respondent 7th on Sixth, Inc. (hereinafter "7th on Sixth") is a not-for-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its

office and principal place of business located at 1412 Broadway, New York, New York. 7th on Sixth engages in activities in substantial part for the profit of its members.

3. 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 the Council of Fashion Designers of America and 7th on Sixth, Inc.;

B. "*Person*" means any individual, partnership, association, company, or corporation;

C. "*CFDA*" means the Council of Fashion Designers of America, its directors, trustees, officers, members, representatives, committees, subcommittees, boards, divisions, agents, employees, successors and assigns;

D. "*7th on Sixth*" means 7th on Sixth, Inc., its directors, trustees, officers, members, representatives, committees, subcommittees, boards, divisions, agents, employees, successors and assigns.

II.

It is further ordered, That respondents CFDA and 7th on Sixth, directly or indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, forthwith cease and desist from entering into, attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, or continuing or attempting to continue, any combination, agreement, or understanding, express or implied, for the purpose or with the effect of:

