

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: William E. Kovacic, Chairman  
Pamela Jones Harbour  
Jon Leibowitz  
J. Thomas Rosch

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| In the Matter of                                     | ) |                   |
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| McCormick & Company, Incorporated,<br>a corporation. | ) | Docket No. C-4225 |
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COMPLAINT

Pursuant to the provisions of the Clayton Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“Commission”), having reason to believe that Respondent McCormick & Company, Incorporated (“McCormick”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire the Lawry’s and Adolph’s brands from Conopco, Inc., an affiliate of Unilever N.V., 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. THE PARTIES

A. Respondent McCormick

1. Respondent McCormick is a corporation organized, existing, and doing business under and by virtue the laws of the state of Maryland, with its office and principal place of business located at 18 Loveton Circle, Sparks, Maryland 21152-6000.

2. Respondent McCormick is, and at all times relevant herein has been, among other things, engaged in the manufacture, marketing, sales, and distribution of branded and private label spices, seasonings, and flavors to grocery retailers and the food industry internationally and throughout the United States. In 2006, Respondent McCormick had total worldwide net sales of all products of approximately \$2.7 billion. McCormick sells seasoned salt in the United States under the McCormick Season-All brand name.

3. Respondent McCormick is, and at all times 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.

## **B. Unilever**

4. Unilever N.V., a corporation organized under the laws of the Netherlands with its principal place of business located at Weena 455, 3013 AL Rotterdam, Netherlands, is a manufacturer of leading brands in the food, home care, and personal care industry. In 2006, Unilever N.V. had total worldwide sales of over \$49 billion.

5. Unilever United States, Inc., a subsidiary of Unilever N.V., 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 at 700 Sylvan Avenue, Englewood Cliffs, New Jersey 07632-3113. Conopco, Inc., doing business as Unilever (“Unilever”), a wholly-owned subsidiary of Unilever United States, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New York, with its principal place of business as 700 Sylvan Avenue, Englewood Cliffs, New Jersey 07632-3113. Unilever is, and at all times relevant herein has been, among other things, engaged in the manufacture, marketing, sales, and distribution of Unilever’s spices, seasonings, and flavors to grocery retailers and the food industry throughout the United States under the Lawry’s and Adolph’s brands. Unilever sells seasoned salt in the United States under the Lawry’s Seasoned Salt brand name. In 2006, Lawry’s and Adolph’s had annual sales of approximately \$150 million, primarily in the United States and Canada.

6. Unilever is, and at all times herein has been, through Unilever United States, Inc., 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.

## **II. THE PROPOSED ACQUISITION**

7. Pursuant to an Agreement and Plan of Merger dated November 13, 2007 (the “Agreement”), McCormick proposes to acquire Unilever’s Lawry’s and Adolph’s spice blends and other products for approximately \$605 million (the “Acquisition”).

## **III. THE RELEVANT MARKETS**

8. The relevant line of commerce in which to analyze the effects of the acquisition is the manufacture and sale of branded seasoned salt products. Branded seasoned salt products include any dry branded product or product formulation (not including private or store label) sold at retail, usually in glass or plastic bottles, that consist primarily of salt, contain at least two other different herbs, spices, and/or other seasonings, and are labeled or otherwise described on the container as seasoned salt. Seasoned salt is one of the most popular spice blends products.

9. The United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant line of commerce.

#### **IV. CONCENTRATION**

10. The relevant market for the manufacture and sale of branded seasoned salt products in the United States is highly concentrated as measured by the Herfindahl-Hirschman Index (“HHI”). Lawry’s dominates the market for branded seasoned salt products and McCormick is its most significant competitor. Together, they account for over almost 80% of the sales in this highly concentrated market. The proposed acquisition would entrench McCormick as the dominant supplier of branded seasoned salt products in the United States and increase concentration significantly.

#### **V. CONDITIONS OF ENTRY**

11. Entry into the relevant line of commerce would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition set forth in Paragraph 12 below. Entry into the branded seasoned salt products market would require the investment of high sunk costs to establish a brand name and provide promotional funding and advertising to support the product, which would be difficult to justify given the market structure and sales opportunities. Even if a new entrant were willing to take on such investments, it would also face the difficult task of convincing retailers to carry its products. As a result, new entry into any of these markets sufficient to achieve a significant market impact within two years is unlikely.

#### **VI. EFFECTS OF THE ACQUISITION**

12. McCormick and Unilever compete in the manufacture and sale of branded seasoned salt products in the United States. The effect of the proposed acquisition, if consummated, may be to substantially lessen competition and tend to create a monopoly in the manufacture and sale of branded seasoned salt products in the United States in 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, in the following ways, among others:

- (a) by eliminating direct competition in the manufacture and sale of branded seasoned salt products between McCormick and Unilever;
- (b) by eliminating Unilever as an important competitive constraint in the relevant market and increasing the ability of McCormick to raise prices of branded seasoned salt products unilaterally in the United States; and
- (c) by reducing McCormick’s incentives to improve service or product quality for branded seasoned salt products in the United States.

## VII. VIOLATIONS CHARGED

13. The Agreement entered into between Respondent McCormick and Unilever, pursuant to which Respondent McCormick proposes to acquire Unilever's branded seasoned salt business, as described in Paragraph 8, constitutes a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

14. The Acquisition described in Paragraph 8, 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 Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

**WHEREFORE, THE PREMISES CONSIDERED,** the Federal Trade Commission on this twenty-ninth day of July, 2008, issues its Complaint against said Respondent.

By the Commission.

Donald S. Clark  
Secretary

SEAL: