

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,)	Docket No. C-4225
a corporation.)	
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_____)	

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by McCormick & Company, Incorporated ("McCormick"), hereinafter "Respondent," of the Lawry's and Adolph's brands from Conopco, Inc., an indirect subsidiary of Unilever N.V. ("Unilever"), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present 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 Orders ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent 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 to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent McCormick is a corporation organized, existing and doing business under and by virtue of the laws of the state of Maryland, with its office and principal place of business located at 18 Loveton Circle, Sparks, MD 21152-6000.
2. The Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions, and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Decision and Order” means the:
 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance and service of a final Decision and Order by the Commission; and
 2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission.
- B. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets.
- C. “Orders” means the Decision and Order and this Order to Maintain Assets.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final:

- A. Until the Closing Date for the divestiture of the Season-All Assets, Respondent shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of the Season-All Assets, to minimize any risk of loss of competitive potential for the Season-All Business associated with the Season-All Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Season-All

Assets except for ordinary wear and tear; *provided, however*, that nothing herein shall relieve Respondent of its obligation to comply fully with the terms and provisions of any Season-All Transitional Agreements. Respondent shall not sell, transfer, encumber or otherwise impair the full economic viability, marketability or competitiveness of the Season-All Assets.

- B. Until the Closing Date for the divestiture of the Season-All Assets, Respondent shall maintain the operations of the Season-All Assets in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance) and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Season-All Assets, and shall use its best efforts to preserve the existing relationships with customers, employees, suppliers, vendors, distributors, and others having business relations with the Season-All Assets. Respondent's responsibilities shall include, as applicable, but are not limited to, the following:
1. providing the Season-All Brand Products with sufficient working capital to ensure the Season-All Business continues to operate at least at current rates of operation, to meet all capital calls with respect to the Season-All Brand Products and to carry on, at least at their scheduled pace, all supply chain, manufacturing, sales and merchandising support, customer service and support, promotional activities and other business plans for the Season-All Brand Products;
 2. continuing, at least at their scheduled pace, any additional expenditures for the Season-All Assets authorized prior to the date the Consent Agreement was signed by Respondent including, but not limited to, all research, development, sales and marketing expenditures;
 3. providing such resources as may be necessary to respond to competition against the Season-All Brand Products and/or to prevent any diminution in retail sales of the Season-All Brand Products during and after the Acquisition and prior to the Closing Date;
 4. providing such resources as may be necessary to maintain the competitive strength and positioning of the Season-All Brand Products associated with the Season-All Assets at all customer accounts;
 5. making available funds sufficient to perform all routine and other maintenance as may be necessary to, and all replacements of, the Season-All Assets;
 6. providing the Season-All Assets with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of the Season-All Assets; and

7. providing such support services to the Season-All Brand Products as were being provided to the Season-All Business by Respondent as of the date the Consent Agreement was signed by Respondent.
- C. Until the Closing Date for the divestiture of the Season-All Assets, Respondent shall maintain a work force at least as equivalent in size, training, and expertise to what has been associated with the Season-All Brand Products pursuant to the most recent pre-Acquisition marketing plans.
- D. Until the Closing Date for the divestiture of the Season-All Assets, Respondent shall provide all Season-All Brand Products Key Employees with reasonable financial incentives to continue in their positions and to market and promote the Season-All Brand Products consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Season-All Assets and to promote successful execution of the pre-Acquisition marketing plans related to the Season-All Brand Products. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondent until the Closing Date has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to prevent any diminution of the competitiveness of the relevant Season-All Brand Products.
- E. During the Employee Access Period, Respondent shall not interfere with the hiring or employing by the Commission-approved Acquirer of the Season-All Brand Products Key Employees, and shall remove any impediments within the control of Respondent that may deter these employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any noncompete provisions of employment or other contracts with Respondent that would affect the ability or incentive of those individuals to be employed by the Commission-approved Acquirer. In addition, Respondent shall not make any counteroffer to a Season-All Brand Products Key Employee who receives a written offer of employment from the Commission-approved Acquirer;

provided, however, that this Paragraph E. shall not prohibit the Respondent from making offers of employment to or employing any Season-All Brand Products Key Employee during the Employee Access Period if the Commission-approved Acquirer has notified the Respondent in writing that the Commission-approved Acquirer does not intend to make an offer of employment to that employee;

provided further that, if the Respondent notifies the Commission-approved Acquirer in writing of its desire to make an offer of employment to a particular Season-All Brand Products Key Employee and the Commission-approved Acquirer does not make an offer of employment to that employee within twenty (20) Days of the date the Commission-approved Acquirer receives such notice, the Respondent may make an offer of employment to that employee.

F. Pending divestiture of the Season-All Assets, Respondent shall:

1. not use, directly or indirectly, any Season-All Confidential Business Information related to the research, development, manufacture, marketing, commercialization, importation, exportation, cost, pricing, promotion, supply, sales, sales support or use of the Season-All Brand Products other than as necessary to comply with: (a) the requirements of the Orders; (b) Respondent's obligations to the Commission-approved Acquirer under the terms of any Divestiture Agreement related to the Season-All Assets; or (c) applicable law(s);
2. not disclose or convey, directly or indirectly, any Season-All Confidential Business Information to any Person except the Commission-approved Acquirer other than as necessary to comply with: (a) the requirements of the Orders; (b) Respondent's obligations to the Commission-approved Acquirer under the terms of any Divestiture Agreement related to the Season-All Assets; or (c) applicable law(s);
3. not disclose or convey, directly or indirectly, any Season-All Confidential Business Information related to the research, development, manufacture, marketing, commercialization, importation, exportation, cost, pricing, promotion, supply, sales, sales support or use of the Season-All Brand Products to Respondent's employees associated with McCormick's Branded Seasoned Salt Products and related business other than as necessary to comply with: (a) the requirements of the Orders; (b) Respondent's obligations to the Commission-approved Acquirer under the terms of any Divestiture Agreement related to the Season-All Assets; or (c) applicable law(s); and
4. institute procedures and requirements to ensure that employees identified above:
 - a. do not provide, disclose or otherwise make available, directly or indirectly, any Season-All Confidential Business Information in contravention of this Order to Maintain Assets; and
 - b. do not solicit, access or use any Season-All Confidential Business Information in contravention of this Order to Maintain Assets.

G. Not later than five (5) days after the date this Order to Maintain Assets becomes final, Respondent shall provide all of Respondent's employees and other personnel who may have Season-All Confidential Business Information with written or electronic notification (in a form similar to that attached as Appendix A to this Order to Maintain Assets), with return receipt requested, of the restrictions on the use of such information by Respondent's personnel. Respondent shall keep such receipts (or an electronic file of such receipts) for one (1) year after the Closing Date. Respondent shall provide a copy of the form of such notification to the Commission-approved Acquirer and the Commission. Respondent shall also obtain from each employee covered by this Paragraph G an agreement to abide by the

applicable restrictions. Respondent shall maintain complete records of all such agreements at Respondent's corporate headquarters and shall provide an officer's certification to the Commission stating that such acknowledgment program has been implemented and is being complied with. Respondent shall monitor the implementation by its employees and other personnel of all applicable restrictions, and take corrective actions for the failure of such employees and personnel to comply with such restrictions or to furnish the written agreements and acknowledgments required by this Order to Maintain Assets.

- H. Respondent shall adhere to and abide by the Season-All Transitional Agreements. These Agreements shall not vary or contradict, or be construed to vary or contradict, the terms of the Orders, it being understood that nothing in the Orders shall be construed to reduce any obligations of Respondent under such Agreement(s), which are incorporated by reference into this Order to Maintain Assets and made a part hereof.
- I. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the business associated with the Season-All Assets, to minimize any risk of loss of competitive potential for the business associated with the Season-All Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Season-All Assets, except for ordinary wear and tear, pending divestiture of the Season-All Assets to a Commission-approved Acquirer.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent signs the Consent Agreement in this matter, the Commission may appoint an Interim Monitor to assure that Respondent expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Orders and the Divestiture Agreement.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Interim Monitor, Respondent shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondent's compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.

- D. If an Interim Monitor is appointed pursuant to this Paragraph, Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:
1. The Interim Monitor shall have the power and authority to monitor Respondent's compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with Commission staff;
 2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission;
 3. The Interim Monitor shall serve until the later of:
 - a. the completion by Respondent (or a Divestiture Trustee) of the divestiture of all Season-All Assets in a manner that satisfies the requirements of the Orders; or
 - b. the completion by Respondent of its obligations under the Orders pertaining to the Interim Monitor's service;

provided, however, that the Commission may extend or modify the period of the Interim Monitor's service as may be necessary or appropriate to accomplish the purposes of this Order to Maintain Assets.
- E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondent's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request related to Respondent's compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant Season-All Assets. Respondent shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondent's compliance with the Orders.
- F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
- G. Respondent shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or

defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.

- H. Respondent shall report to the Interim Monitor in accordance with the requirements of this Order to Maintain Assets and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondent and any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under the Orders or the Divestiture Agreement. Within one (1) month from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Orders.
- I. Respondent may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- J. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
- L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

IV.

IT IS FURTHER ORDERED that, within thirty (30) Days after the date this Order to Maintain Assets becomes final, and every thirty (30) Days thereafter until Respondent has fully complied with its obligations to divest the Season-All Assets as required by Paragraphs II. A-E, G and III. of the related Decision and Order in this matter, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order to Maintain Assets and the related Decision and Order; *provided, however*, that, after the Decision and Order in this matter becomes final, the reports due under this Order to Maintain Assets may be consolidated with, and

submitted to the Commission at the same time as, the reports required to be submitted by Respondent pursuant to Paragraph VI. of the Decision and Order.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of Respondent;
- B. any proposed acquisition, merger or consolidation of Respondent; or
- C. any other change in the Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

- A. access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and
- B. to interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

- A. Three (3) Days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

- B. The day after the divestiture of the Season-All Assets, as required by and described in the Decision and Order, has been completed and Respondent notifies the Commission that all related assignments, conveyances, deliveries, grants, licenses, transactions, transfers and other transitions are complete, or the Commission otherwise directs that this Order to Maintain Assets be terminated.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: July 29, 2008

**PUBLIC
APPENDIX A
TO THE ORDER TO MAINTAIN ASSETS**

**NOTICE OF FTC ORDERS AND REQUIREMENT TO MAINTAIN
CONFIDENTIALITY**

McCormick & Company, Incorporated (“McCormick”), sometimes referred to as “Respondent,” has entered into an Agreement Containing Consent Orders (“Consent Agreement”) with the Federal Trade Commission (“FTC”) providing for divestiture of certain assets and other relief in connection with McCormick’s acquisition of the Lawry’s and Adolph’s brands from Unilever N.V. (the “acquisition”). That Consent Agreement includes two orders: the Decision and Order and the Order to Maintain Assets (“Orders”). Both Orders are attached to this notice.

The Decision and Order requires McCormick to divest the Season-All® line of branded seasoned salt products. This line is hereinafter referred to as the “Season-All Business.” Both the Decision and Order and the Order to Maintain Assets require McCormick to restrict its use of “Season-All Confidential Business Information”, which is any information exclusively related to the research, development, manufacturing, marketing or sale of the Season-All Brand Products. When documents or data contain information related to Season-All and other products and topics, only the portion of the document or data related to Season-All is Confidential Business Information. Public information about Season-All or information McCormick lawfully receives about Season-All from a third party is not Confidential Business Information. Complete definitions of all capitalized terms in this notice can be found in Section I of the attached Decision and Order.

The Orders require McCormick to commit that, except in limited circumstances, no Season-All Confidential Business Information will be disclosed to or used by any employee who works for McCormick after the acquisition of the Lawry’s and Adolph’s branded products, including the Lawry’s branded seasoned salt products. In particular, this is to protect Season-All Confidential Business Information from being used in any way for the development, manufacture, promotion, marketing or sale of any branded season salt product that is manufactured, marketed or sold by McCormick after the acquisition. The Decision and Order also requires McCormick to provide the buyer all the Season-All Assets with documents or portions of documents (including electronically stored material) that contain Season-All Confidential Business Information.

Under the Decision and Order, McCormick is required to divest the Season-All Assets to Morton International, Inc. (“Morton”). Until a complete divestiture of all of the Season-All Assets occurs, the requirements of the second order – the Order to Maintain Assets – are in place to maintain the continued marketability, viability and competitive vigor of the Season-All Assets, and to ensure that no Season-All Confidential Business Information is communicated to anyone

other than Morton personnel or representatives, except to comply with the Orders, McCormick's agreement with Morton, or applicable laws.

You are receiving this notice because you are a McCormick employee who is or was directly involved in the research, development, manufacturing, distribution, sale, or marketing of the Season-All Brand Products and may have Season-All Confidential Business Information.

Except as permitted under the Orders, you must keep all Season-All Confidential Business Information confidential and must not provide, discuss, exchange, circulate, or otherwise disclose any Season-All Confidential Business to or with any other person whose job responsibilities relate to McCormick's Branded Season Salt Products. Finally, if you have documents that might contain Season-All Confidential Business Information and you have not received specific instructions as to how these documents should be delivered to Morton, you should contact Geoff Carpenter, Associate General Counsel.

The Decision and Order also restricts the functions that certain employees of McCormick can perform for the Respondent until January 1, 2009.

Any violation of the Decision and Order or the Order to Maintain Assets may subject McCormick to civil penalties and other relief as provided by law. If you have any questions regarding the contents of this notice, the confidentiality of information, the Decision and Order or the Order to Maintain Assets, you should contact Geoff Carpenter, Associate General Counsel.

ACKNOWLEDGMENT

I, _____ (print name), hereby acknowledge that I have read the above notification and agree to abide by its provisions.