

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,
6th St. & Pa. Ave., N.W.
Washington, D.C. 20580,

Plaintiff,

vs.

Civil Action No.

MCCORMICK & COMPANY, INC.,
11350 McCormick Road
Hunt Valley, Maryland 21031,

UB FOODS U.S., INC.
677 Larch Avenue
Elmhurst, Illinois 60126, and

SPECIALTY BRANDS, INC.
222 Sutter Street
San Francisco, California 94108,

Defendants.

COMPLAINT FOR DECLARATORY RELIEF AND ORDER
PURSUANT TO SECTION 7A OF THE CLAYTON ACT

The Federal Trade Commission ("Commission"), by its undersigned attorneys, seeks a temporary restraining order, injunction, and order pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a. The Commission asks the Court to enjoin the acquisition by defendant McCormick & Company, Inc. ("McCormick") of any of the assets, share capital, or voting securities of Specialty Brands, Inc., ("Specialty"), a wholly owned subsidiary of U.B. Foods U.S., Inc., itself a subsidiary of United Biscuit (Holdings) plc until both McCormick and Specialty have complied with the premerger notification reporting requirements set forth in Section 7A of the Clayton Act.

Jurisdiction and Venue

1. This is a statutory cause of action against parties who transact business in the District of Columbia. This Court has jurisdiction over the defendants and over the subject matter of this action pursuant to Section 7A(g)(2) of the Clayton Act, 15 U.S.C. 18a(g)(2), and 28 U.S.C. 1331, 1337, 1345.

2. Venue is proper pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(c).

The Parties

3. The Commission is an administrative agency of the United States government with its principal offices at Sixth Street and Pennsylvania Avenue, NW., Washington, D.C. 20580. The Commission is charged, inter alia, with administering the premerger notification and waiting period requirements of Section 7A of the Clayton Act, and enforcing Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the FTC Act, 15 U.S.C. 45, by preventing acquisitions that may substantially lessen competition in any line of commerce in any section of the country.

4. McCormick is a corporation incorporated in the State of Maryland with its principal offices in Hunt Valley, Maryland. McCormick is the leading manufacturing marketer, and distributor of spices, herbs, and extracts in the United States. McCormick also produces foil-packed seasoning mixes and specialty foods and seasonings, and has two nonfood businesses; packaging and a real estate investment company. McCormick is unique among spice companies in that it competes at all levels of the food industry,

including retail food stores. In 1987 McCormick had sales of \$975 million in its food and packaging operations.

5. Specialty is a subsidiary of UB Foods U.S., itself a subsidiary of United Biscuits (Holdings). Specialty has its principal place of business in San Francisco, California. United Biscuits (Holdings) plc is incorporated in the United Kingdom; its headquarters are in Edinburgh, Scotland. Like McCormick, Specialty is engaged in the business of producing and selling specialty food items, including a line of gourmet spices, to retail grocery and other stores. In 1987 Specialty had total revenues of approximately \$135 million, of which \$33 million were attributable to Specialty's spice business, Spice Islands, and assets of \$123 million. In 1987 UB Foods U.S. had revenues of \$780 million.

The Cause of Action

6. McCormick has agreed to purchase all of the voting securities of Specialty, after certain assets belonging to Specialty, consisting of Specialty's olive and salad dressing business, have been sold to Campbell Soup Co. The sale to Campbell has already taken place; thus, what McCormick is to acquire consists of Specialty Brand's Spice Islands (gourmet spices) and Taste of Americana (blended seasonings) business. The transaction is valued at \$56 million.

7. Section 7A(a) of the Clayton Act requires persons with more than \$10 million in total assets to file premerger notification reports with the Commission before acquiring,

directly or indirectly, more than \$15 million in securities or assets of any person with total assets or annual net sales of \$100 million. Section 7A(b) further provides that upon filing a premerger notification report, a party wishing to make an acquisition must delay consummating the transaction for at least 30 days (15 in the case of a cash tender offer) in order to give the Commission an opportunity to review the transaction and determine whether to investigate the transaction further or challenge it.

8. Section 7A(e) further provides that, during the 30 day waiting period, the Commission may request additional information or documentary material relevant to the proposed transaction. The effect of making such a request for additional information is to extend the waiting period for consummation of the acquisition until 20 days (10 days in the case of a cash tender offer) after the date on which the Commission receives a complete response to its request for additional information. A complete response is one that either (a) sets forth all the information and provides all the documentary material required to be submitted pursuant to the request, or (b) in the event a person is unable to provide a complete response, a detailed statement of reasons for non-compliance in accordance with 16 C.F.R. § 803.3. Section 7A(e)(2) further provides that if a proper submission is made under that section, the twenty-day waiting period extension begins, although it may be further extended by a United States district court on application by the Commission pursuant to Section 7A(g)(2), if

either party has not substantially complied with the request for additional information.

9. Pursuant to Section 7A and the regulations thereunder, 16 C.F.R. § 801.1 et seq., McCormick and Specialty filed premerger notifications with the Commission on January 13, 1988. On February 2, 1988, pursuant to verbal requests from the FTC staff, McCormick provided the FTC with further documentary information.

10. On February 11, 1988, the Commission, pursuant to Section 7A(e)(1) of the Clayton Act and 16 C.F.R. § 803.20, issued requests for additional information and documentary material relevant to the proposed acquisition.

11. On March 7, 1988, McCormick and Specialty Brands had submitted responses to the Commission's requests for additional information. The responses were incomplete and neither McCormick nor Specialty provided the Commission with a statement of reasons for noncompliance as required by Section 7A(e) and 16 C.F.R. § 803.3.

12. FTC staff met with McCormick's counsel on February 23, 1988 to discuss modifications to the Second Request. McCormick's counsel was unable to answer many questions about the company's corporate structure but agreed to provide an organization chart and other information so that the FTC might eliminate many employees' files from the requested search. The FTC modified the Request by letter the following day, noting again the agreement to work together to further narrow the required search.

The Request was further modified by the FTC's letter of March 7 after the staff had reviewed some information that was requested during telephone conversations with McCormick. In those conversations, as well as in conversations after March 7, the FTC staff repeatedly reminded McCormick of the need for them to provide the information necessary to modify the required search.

13. On March 7, McCormick submitted some documents responsive to the Request. McCormick was notified of various deficiencies in its response, all primarily a result of an inadequate file search. These deficiencies made the submissions incomplete under 16 C.F.R. 803.10(c)(2). Again, McCormick was urged to provide the information necessary to modify the Request. McCormick did not concede that it was not in compliance with the Request, and a formal deficiency notice was issued to the company on March 22. The FTC again encouraged McCormick to provide the FTC with information about the corporation that would enable us to narrow the Request and on March 28, counsel for McCormick and the Commission met to do so.

14. Commission counsel agreed to exclude from the search virtually all of the employees McCormick asked to exclude. That modification was confirmed by letter on April 7, 1988. That letter excluded a long (almost five pages, single spaced) list of McCormick subsidiaries, divisions, and officers from the required search. The individuals who were not excluded were almost exclusively those that McCormick did not ask to be excluded and about whom no information was provided. Shortly after the

meeting, McCormick called Commission counsel and asked that five additional employees be excluded from the search. That request was granted and confirmed by letter from Commission counsel.

15. On April 8, McCormick submitted some documents responsive to the Request. It did not provide the required list of the files that had been searched; however, it did provide a list of the files from which document had been produced. It was clear that no documents had been produced from a number of individuals whose files clearly could be expected to have responsive documents. On April 21, McCormick confirmed that the files of those individuals had not been searched.

16. McCormick again took the position that it was in compliance with the Request, and a second formal deficiency notice was issued to the company on April 21. That notice included examples of the various corporate officers whose files were not searched, including the company's various sales managers, its senior brand manager for spices and extracts, its private label manager, and one of the three members of the acquisition transition group. These files are very likely to contain documents vital to the Commission's analysis of the proposed acquisition.

17. McCormick has stated that its response was not deficient and that the 20 day waiting period began on April 8, 1988, and that, absent a court order, McCormick and Specialty are free to consummate the transaction at any time after April 28, 1988.

18. In fact, by failing to supply the requisite additional information McCormick has not complied with the premerger notification requirements set out in Section 7A(e)(2) of the Clayton Act and 16 C.F.R. § 803.10(c)(2). The statutory 20-day waiting period has not begun, and will not begin, unless and until McCormick substantially complies with the Commission's request for additional information by providing complete responses as mandated by Section 7A(e)(2) and 16 C.F.R. § 803.10(c)(2).

19. Specialty Brands did not seek to modify the Request prior to submitting some responsive documents on March 4. Specialty's counsel told FTC staff that his client prepared the March 4 response based on instructions from McCormick's counsel as to what documents should be produced. The FTC staff informed Specialty of numerous deficiencies in its response, and discussed with Specialty various items in the Request that Specialty wished to modify. The Request issued to Specialty was modified by letters of March 21 and 22. Because Specialty acknowledged that its response was incomplete, no formal deficiency notice was issued to that company.

20. Specialty submitted additional documents responsive to the Request on March 31, April 11, and April 18. Throughout that time period, FTC staff spoke with Specialty's counsel on several occasions. After the April 11 submission, Specialty's counsel was informed that the only remaining deficiency was the omission of the files of the investment banker it retained to arrange the

acquisition of the company. Specialty delivered those documents, as well as a few other documents it had neglected to provide earlier, to the FTC on April 18. The documents consisted of approximately 250 pages and contained such information as alternative purchasers for the company and the investment banker's analyses of the instant acquisition, including such areas as market definition and barriers to entry into the market. Shortly after those documents were submitted, Specialty provided the required notarized certification attesting that its response was complete and accurate as of April 18. Specialty has been notified by the Commission that it is deemed to have complied with the Request as of that date. Specialty now contends that it was in substantial compliance before April 8, and that it is therefore free to consummate the transaction at any time after April 28, 1988.

21. Section 7A(g)(2) of the Clayton Act provides that if any person fails substantially to comply with the notification requirement or with any request for the submission of additional information or documentary material pursuant to Section 7A(e)(1), a United States district court, upon application of the Commission, "shall extend the waiting period ... until there has been substantial compliance." Section 7A(g)(2) further provides that, upon application, the district court "may order compliance" and "may grant such other equitable relief as the court in its discretion determines necessary or appropriate."

22. Unless enjoined by this Court, McCormick and Specialty plan to consummate the transaction as early as April 29, 1988. Accordingly, a temporary restraining order and an injunction enjoining consummation are necessary to ensure compliance with the requirements of Section 7A of the Clayton Act and to give the Commission and its staff the time provided by Congress for evaluation of the proposed acquisition.

WHEREFORE, the Commission prays for an order:

1. Declaring that defendants have failed to comply with the reporting requirements of Section 7A(e)(2) of the Clayton Act, and that the 20-day waiting period will not begin until each has complied with the Act;

2. Enjoining McCormick from acquiring, directly or indirectly, any assets, share capital, or securities of Specialty until McCormick has complied with the requirements of Section 7A(e)(2) of the Clayton Act and complied with the 20-day statutory waiting period that begins to run on the date of both parties' compliance with the requirements of Section 7A of the Clayton Act; and

3. Awarding such other relief as this Court shall deem just and appropriate.

Respectfully submitted,

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