

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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FEB 12 1992

H. STUART CUNNINGHAM
UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA,
Plaintiff,

v.

WILLIAM F. FARLEY,
Defendant.

Civil Action No.

92C1071

JUDGE DUFF

MAGISTRATE JUDGE LEFKOW

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States and at the request of the Federal Trade Commission, brings this civil action to obtain monetary relief in the form of a civil penalty against the defendant named herein, and alleges as follows:

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Section 7A of the Clayton Act, 15 U.S.C. § 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("the Hart-Scott-Rodino Act" or "the Act"), to recover civil penalties for violation of the Act.
2. This Court has jurisdiction over the defendant and over the subject matter of this action pursuant to 15 U.S.C. § 18a(g) and 28 U.S.C. §§ 1331, 1337, 1345, and 1355.

3. The defendant resides and may be found in this district. Venue is properly based in this district under 28 U.S.C. §§ 1391(b) and 1395(a).

DEFENDANT WILLIAM F. FARLEY

4. William F. Farley is made the defendant herein. The defendant's business address is 233 South Wacker Drive, Chicago, Illinois 60606.

5. At all times relevant to this complaint, William F. Farley was engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 7A(a)(1) of the Act, 15 U.S.C. § 18a(a)(1).

6. At all times relevant to this complaint, William F. Farley, or entities under his control, controlled Farley Inc. within the meaning of 16 C.F.R. § 801.1(b).

7. At all times relevant to this complaint, William F. Farley was the ultimate parent entity of Farley Inc. within the meaning of 16 C.F.R. § 801.1(a)(3).

8. At all times relevant to this complaint, William F. Farley, as a result of being the ultimate parent entity of Farley Inc., had annual net sales or total assets at or above \$10,000,000.

NON-PARTY FARLEY INC.

9. Farley Inc. is a corporation organized under the laws of the State of Delaware, with its principal executive offices located at 233 South Wacker Drive, Chicago, Illinois 60606.

10. At all times relevant to this complaint, Farley Inc. directly or indirectly was engaged in the activity of manufacturing and selling hosiery and other textile products in commerce.

NON-PARTY WEST POINT-PEPPERELL, INC.

11. West Point-Pepperell, Inc. ("West Point") is a corporation organized under the laws of the State of Georgia, with its principal executive offices located at 400 West Tenth Street, West Point, Georgia 31833.

12. At all times relevant to this complaint, West Point was engaged in the activity of manufacturing and selling hosiery and other textile products in commerce.

13. At all times relevant to this complaint, West Point had annual net sales or total assets at or above \$100,000,000.

THE HART-SCOTT-RODINO ACT

14. The Hart-Scott-Rodino Act, 15 U.S.C. § 18a, requires certain acquiring persons and certain persons whose voting securities or assets are acquired (1) to file notifications with the Department of Justice and the Federal Trade Commission and (2) to observe a waiting period, before consummating certain acquisitions of voting securities or assets. 15 U.S.C. § 18a(a) and (b). The notification and waiting period are intended to

give those federal antitrust agencies prior notice of, and information about, proposed transactions. The waiting period is also intended to provide the antitrust agencies an opportunity to investigate proposed transactions and determine whether to seek an injunction to prevent transactions that may violate the antitrust laws.

15. The notification and waiting period requirements of the Act apply to direct or indirect acquisitions when the Act's size-of-person and commerce tests are met and, inter alia, as a result of such acquisition, an acquiring person would hold an aggregate total amount of the voting securities and assets of an acquired person in excess of \$15,000,000, 15 U.S.C. § 18a(a)(3), unless the acquiring person can demonstrate the applicability of one or more of the exceptions to the requirements of the Act.

16. Where an acquisition is subject to the Act, the ultimate parent entity of an acquiring person is obligated by the regulations promulgated under the Act to file premerger notification and report forms with the Federal Trade Commission and the Department of Justice and to observe the required waiting period before making the acquisition. 16 C.F.R. § 803.2.

17. Pursuant to Section 7A(g) of the Act, 15 U.S.C. § 18a(g), any person who fails to comply with any provision of the Act shall be liable to the United States for a civil penalty of not more than \$10,000 per day for each day during which that person is in violation.

VIOLATION ALLEGED

18. The allegations contained in paragraphs 5, 10, and 12 are repeated and realleged as though fully set forth herein.

19. The annual net sales or total assets of defendant William F. Farley and of non-party West Point identified in paragraphs 8 and 13 were above the thresholds established by Section 7A(a)(2) of the Act, 15 U.S.C. § 18a(a)(2).

20. On or about March 9, 1988, defendant William F. Farley directly or indirectly acquired 1,200 shares of voting securities of West Point, having an aggregate value of approximately \$35,400.

21. Defendant William F. Farley continued directly or indirectly to acquire additional voting securities of West Point during the period from March 9, 1988, through April 11, 1988.

22. Without notification to the antitrust agencies and without observing the statutory waiting period, on March 24, 1988, defendant William F. Farley directly or indirectly acquired 160,300 shares of West Point voting securities. As a result of that acquisition, defendant held an aggregate total amount of West Point voting securities in excess of \$15,000,000.

23. Defendant William F. Farley continued directly or indirectly to acquire additional voting securities of West Point during the period from March 24, 1988, through April 11, 1988.

24. Defendant William F. Farley first filed premerger notification and report forms for the acquisition of West Point on May 23, 1988. The waiting period mandated by the Act began on May 23, 1988, and pursuant to the Act expired 30 days later on June 22, 1988.

25. The acquisitions described in paragraphs 22 and 23 were subject to the notification and waiting period requirements of Section 7A(a) of the Act, 15 U.S.C. § 18a(a), and the regulations promulgated thereunder, 16 C.F.R. § 800 et seq.

26. The defendant did not comply with the notification and waiting period requirements described in paragraphs 14, 15, and 16 before making the acquisitions described in paragraphs 22 and 23.

27. Defendant William F. Farley was continuously in violation of the Act during the period of March 24, 1988, through June 22, 1988.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the defendant's purchases of voting securities during the period of March 24, 1988, through April 11, 1988, were in violation of the Act, 15 U.S.C. § 18a, and that the defendant was in violation of the Act each day of the period of March 24, 1988, through June 22, 1988;

2. That the Court order the defendant to pay to the United States the maximum civil penalty as provided by Section 7A(g)(1) of the Act, 15 U.S.C. § 18a(g)(1);

3. That the Court order such other and further relief as the Court may deem just and proper; and

4. That the Court award the plaintiff its costs of this suit.

DATED:

FOR THE PLAINTIFF UNITED STATES OF AMERICA

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