

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

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In the Matter of)
)
RITE AID CORPORATION,)
a corporation;)
)
and)
)
THE JEAN COUTU GROUP (PJC), INC.,)
a corporation.)
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Docket No. C-4191

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Rite Aid Corporation (“Rite Aid”) of 100 percent of the common and preferred shares of The Jean Coutu Group USA, Inc. from Respondent The Jean Coutu Group (PJC), Inc. (“Jean Coutu”), and Jean Coutu’s proposed acquisition of 30 percent of the common stock of Rite Aid pursuant to the Stock Purchase Agreement between Rite Aid and Jean Coutu, hereinafter referred to collectively as “Respondents,” and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondents 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents 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 Respondents 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 Rite Aid is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 30 Hunter Lane, Camp Hill, Pennsylvania 17011.
2. Respondent Jean Coutu is a corporation organized, existing, and doing business under and by virtue of the laws of the Province of Quebec, with its office and principal place of business located at 530 Beriault Street, Longueuil, Quebec, Canada J4G1S8.
3. The 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 to Maintain Assets, the definitions used in the Consent Agreement and the attached Decision and Order shall apply. In addition, “Drug Store to be Maintained” means any Retail Drug Store business identified as a part of the Assets To Be Divested.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall maintain the viability, marketability, and competitiveness of the Assets To Be Divested, and shall not cause the wasting or deterioration of the Assets To Be Divested, nor shall they cause the Assets To Be Divested to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber or otherwise impair the viability, marketability or competitiveness of the Assets To Be Divested. Respondents shall comply with the terms of this Paragraph until such time as Respondents have divested the Assets To Be Divested pursuant to the terms of the attached Decision and Order. Respondents shall conduct or cause to be conducted the business of the Assets To Be Divested in the regular and ordinary course and in accordance with past practice (including regular repair and maintenance efforts) and shall use reasonable best efforts to preserve the existing relationships with suppliers, customers, third-party payors, employees, and others having business relations with the Assets To Be Divested in the ordinary course of business and in accordance with past practice.

- B. Respondents shall not terminate the operation of any Drug Store To Be Maintained. Respondents shall continue to maintain the inventory of each Drug Store To Be Maintained at levels and selections (*e.g.*, stock-keeping units) consistent with those maintained by such Respondent(s) at such Drug Store in the ordinary course of business consistent with past practice. Respondents shall use best efforts to keep the organization and properties of each Drug Store To Be Maintained intact, including current business operations, physical facilities, working conditions, and a work force of equivalent size, training, and expertise associated with the Drug Store. Included in the above obligations, Respondents shall, without limitation:
1. maintain operations and departments, and not reduce hours, at each Drug Store To Be Maintained;
 2. not transfer inventory from any Drug Store To Be Maintained, other than in the ordinary course of business consistent with past practice;
 3. continue to offer those customers who receive pharmacy services at each Drug Store To Be Maintained the same type and quality of pharmacy services that are offered at the Proposed Respondents' Retail Drug Stores that are not subject to the Decision and Order's divestiture provisions;
 4. make any payment required to be paid under any contract or lease when due, and otherwise pay all liabilities and satisfy all obligations associated with any Drug Store To Be Maintained, in each case in a manner consistent with past practice;
 5. maintain the books and records (including prescription records) of each Drug Store To Be Maintained in the regular course of business and in accordance with past practice;
 6. not display any signs or conduct any advertising (*e.g.*, direct mailing, point-of-purchase coupons) that indicates that any Respondent is moving its operations at a Drug Store To Be Maintained to another location, or that indicates a Drug Store To Be Maintained will close;
 7. not conduct any "going out of business," "close-out," "liquidation," or similar sales or promotions at or relating to any Drug Store To Be Maintained; and
 8. not change or modify in any material respect the existing advertising practices, programs and policies for any Drug Store To Be Maintained, other than changes in the ordinary course of business consistent with past practice for Drug Stores of the Respondents not being closed or relocated.

III.

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 Respondents have fully complied

with Paragraph II. of the Decision and Order (*i.e.*, have assigned, licensed, divested, transferred, delivered, terminated, or otherwise conveyed all relevant assets or rights to the Commission-approved Acquirer in a manner that fully satisfies the requirements of the Decision and Order), Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order to Maintain Assets and the 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 Respondents pursuant to Paragraph VI. of the Decision and Order.

IV.

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

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

V.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents made to their principal United States offices or headquarters address, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of Respondents 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 Respondent related to compliance with this Order, which copying services shall be provided by Respondents at the request of the authorized representative(s) of the Commission; and
- B. to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

VI.

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

A. Three (3) business 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. With respect to each Drug Store To Be Maintained, the day after Respondents' completion of the divestiture of Assets to Be Divested related to such Retail Drug Store, as described in and required by the attached Decision and Order.

Provided, however, that if the Commission, pursuant to Paragraph II.A. or II.B. of the Decision and Order, requires the Respondents to rescind any or all of the divestitures contemplated by the Purchaser Agreement, then, upon rescission, the requirements of this Order shall again be in effect with respect to the relevant Assets To Be Divested until the day after Respondents' completion of the divestiture(s) of the relevant Assets To Be Divested, as described in and required by the attached Decision and Order.

By the Commission.

Donald S. Clark
Secretary

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ISSUED: June 1, 2007