

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

<p style="text-align: center;">In the Matter of</p> <p style="text-align: center;">JARDEN CORPORATION, a corporation, and</p> <p style="text-align: center;">K2 Inc., a corporation.</p>	<p>)</p>	<p>Docket No. C-4196</p>
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ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Jarden Corporation ("Jarden") of Respondent K2 Inc. (“K2”), hereinafter referred to 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 Jarden is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its offices and principal place of business located at 555 Theodore Fremd Avenue, Suite B-302, Rye, NY 10580.
2. Respondent K2 is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its offices and principal place of business located at 5818 El Camino Real, Carlsbad, CA 92008.
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 proposed Decision and Order (and when made final, the Decision and Order), shall apply.

II.

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

- A. Respondents shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of the assets and business associated with the Divestiture Assets, to minimize any risk of loss of competitive potential for the business associated with the Divestiture Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divestiture Assets except for ordinary wear and tear. Respondents shall not sell, transfer, encumber or otherwise impair the full economic viability, marketability or competitiveness of the Divestiture Assets.

B. Respondents shall maintain the operations of the Divestiture Assets in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the Divestiture Assets) and/or as may be necessary to preserve the marketability, viability, and competitiveness of each of the Divested Fishing Line Products associated with the Divestiture Assets and shall use their best efforts to preserve the existing relationships with the following: suppliers; vendors; distributors; customers; employees; and others having business relations with the Divestiture Assets. Respondents' responsibilities shall include, but are not limited to, the following:

1. providing the Divestiture Assets with sufficient working capital to operate the Divestiture Assets at least at current rates of operation, to meet all capital calls with respect to the Divestiture Assets and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the Divestiture Assets;
2. continuing, at least at their scheduled pace, any additional expenditures for the Divestiture Assets authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all research, development, and marketing expenditures;
3. provide such resources as may be necessary to respond to competition against the Divested Fishing Line Products associated with the Divestiture Assets and/or to prevent any diminution in retail sales of such Products during and after the Acquisition and prior to divestiture;
4. provide such resources as may be necessary to maintain the competitive strength and positioning of the Divested Fishing Line Products associated with the Divestiture Assets at all retail accounts;
5. making available for use by the Divestiture Assets funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the Divestiture Assets;
6. providing the Divestiture Assets with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of the Divestiture Assets; and
7. providing such support services to the Divestiture Assets as were being provided to these businesses by Respondents as of the date the Consent Agreement was signed by Respondents.

C. Respondents shall maintain a work force at least as equivalent in size, training, and expertise to what has been associated with the Divestiture Assets for the relevant Divested Fishing Line Product's most recent pre-Acquisition marketing plan.

D. Respondents shall, until the Divestiture Date, provide all Divestiture Assets Core Employees with reasonable financial incentives to continue in their positions and to market and promote the Divestiture Assets consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Divestiture Assets and to ensure successful execution of the pre-Acquisition marketing plans related to the Divestiture Assets. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondents until the Divestiture Date has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law). In addition to the foregoing, Respondents shall provide to each Divestiture Assets Key Employee who accepts employment with the Commission-approved Acquirer, an incentive equal to twenty-five (25) percent of such employee's base annual salary to be paid upon the employee's completion of one (1) year of employment with the Commission-approved Acquirer;

provided, however, that nothing in this Order requires or shall be construed to require the Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of Divestiture Assets Key Employees (other than those conditions contained in this Order) in connection with the Acquisition or prevents the Respondents from continuing the employment of the Divestiture Assets Key Employees in connection with the Acquisition.

E. During the Employee Access Period, Respondents shall not interfere with the hiring or employing by the Commission-approved Acquirer of Divestiture Assets Key Employees, and remove any impediments within the control of Respondents that may deter these employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any noncompete or nondisclosure provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by the Commission-approved Acquirer. In addition, Respondents shall not make any counteroffer to a Divestiture Assets Key Employee who receives a written offer of employment from the Commission-approved Acquirer;

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

provided further that if the Respondents notify the Commission-approved Acquirer in writing of their desire to make an offer of employment to a particular Divestiture Assets 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 Respondents may make an offer of employment to that employee.

F. Pending divestiture of the relevant Divestiture Assets, Respondents shall:

1. not use, directly or indirectly, any Confidential Business Information related to the research, development, manufacturing, marketing, or sale of the Divestiture Assets other than as necessary to comply with the requirements of this Order or the Decision and Order;
2. not disclose or convey any Confidential Business Information, directly or indirectly, to any person except the Commission-approved Acquirer; and
3. not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information related to the research, development, manufacturing, marketing or sale of the Divestiture Assets.

G. Not later than five (5) days after the Acquisition Date, or the date on which this Order to Maintain Assets becomes final, whichever is earlier, Respondents shall provide written or electronic notification of the restrictions on the use of the Confidential Business Information by Respondents' personnel to all of Respondents' employees who:

1. are, or were, directly involved in the research, development, manufacturing, distribution, sale or marketing of the Divestiture Assets;
2. are directly involved in the research, development, manufacturing, distribution, sale or marketing of Respondents' Fishing Line products; and
3. may have Confidential Business Information.

Respondents shall provide such notification (in a form similar to that attached as Appendix B. to this Order to Maintain Assets) by e-mail with return receipt requested or by whatever manner or form of transmission as will assure receipt and acknowledgment by Respondents' employees, and keep a file of such receipts for one (1) year after the relevant Divestiture Date. Respondents shall maintain complete records of all such agreements at Respondents' corporate headquarters, and provide an officer's certification to the Commission stating that such acknowledgment program has been implemented and is being complied with. Respondents shall provide the Commission-approved Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel relating to the Divestiture Assets.

H. Respondents shall adhere to and abide by the Divestiture Assets Supply Agreement, Transition Services Agreement and the Respondent Run-Off Licenses ("Agreements"). These Agreements shall not vary or contradict, or be construed to vary or contradict, the terms of the related Decision and Order and this Order to Maintain Assets ("Orders"), it being understood that nothing in the Orders shall be construed to reduce any obligations of Respondents 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 Divestiture Assets, to minimize any risk of loss of competitive potential for the business associated with the Divestiture Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divestiture Assets except for ordinary wear and tear.

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 their obligations to divest the Divestiture Assets as required by Paragraphs II. and III. of the related Decision and Order in this matter, 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 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 Respondents pursuant to Paragraph V. of the Decision and Order.

IV.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) Days prior to any proposed (1) dissolution of the Respondents, (2) acquisition, merger or consolidation of Respondents, or (3) any other change in the Respondents that may affect compliance obligations arising out of the order, including, but not limited to, assignment, the creation or dissolution of subsidiaries, or any other change in Respondents.

V.

IT IS FURTHER ORDERED that, for the purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States offices, Respondents shall permit any duly authorized representatives of the Commission:

- A. Access, during 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 Respondents relating to compliance with this Order to Maintain Assets; and
- B. Upon five (5) Days notice to Respondents and without restraint or interference from

Respondents, 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) 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 Divestiture Assets, as required by and described in the Decision and Order, has been completed and Respondents notify 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 is terminated.

By the Commission.

C. Landis Plummer
Acting Secretary

SEAL

ISSUED: August 8, 2007

**PUBLIC
APPENDIX A
TO THE ORDER TO MAINTAIN ASSETS
AGREEMENT CONTAINING CONSENT ORDERS
AND
PROPOSED DECISION AND ORDER**

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

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

Jarden Corporation (“Jarden”) and K2 Inc. (“K2”), hereinafter referred to as “Respondents,” have 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 the acquisition of K2 by Jarden. That Consent Agreement includes two orders: the Decision and Order and the Order to Maintain Assets.

The Decision and Order requires the divestiture of assets relating to Cajun Line®, Omniflex®, Outcast®, and Supreme™ monofilament fishing line products. These assets are hereinafter referred to as the “Divestiture Assets.” Both the Decision and Order and the Order to Maintain Assets require Respondents to commit that no Confidential Business Information relating to the Divestiture Assets will be disclosed to or used by any employee of the combined entity formed by the acquisition of a controlling interest in K2 by Jarden (“Combined Entity”). In particular, this is to protect such information from being used in any way for the research, development, sale or manufacture of any product that competes or may compete with any product that is marketed by the Respondents after the proposed acquisition. The Decision and Order also requires the complete divestiture of ALL documents (including electronically stored material) that contain Confidential Business Information related to the Divestiture Assets. Accordingly, no employee of the Combined Entity may maintain copies of documents containing such information, except as otherwise required by law.

Under the Decision and Order, the Respondents are required to divest the Divestiture Assets to W.C. Bradley/Zebco (“Zebco”). Until a complete divestiture of all of the Divestiture Assets occurs, the requirements of the second order – the Order to Maintain Assets – are in place to ensure the continued marketability, viability and competitive vigor of the Divestiture Assets and to ensure that no confidential business information related to the Divestiture Assets is communicated to the employees of Jarden.

You are receiving this notice because you are one or more of the following: (i) an employee with work responsibilities related to the Divestiture Assets; (ii) an employee for Jarden, or the Combined Entity, who has work responsibilities in some way related to products that compete or may compete with the Divestiture Assets; or (iii) an employee, former employee, contractor, or former contractor of K2 who might have Confidential Business Information in your possession related to Divestiture Assets.

All Confidential Business Information related to the Divestiture Assets must be retained and maintained by the persons involved in the operation of that business on a confidential basis, and such persons must not provide, discuss, exchange, circulate, or otherwise disclose any such information to or with any other person whose employment involves responsibilities unrelated to

the Divestiture Assets (such as persons with job responsibilities related to Jarden or K2 products that compete or may compete with the Divestiture Assets). In addition, any person who possesses such Confidential Business Information related to the Divestiture Assets and who becomes involved in the Combined Entity's business related to any product that competes or may compete with the Divestiture Assets must not provide, discuss, exchange, circulate, or otherwise disclose any such information to or with any other person whose employment relates to such businesses. Finally, any K2 employee, former employee, contractor, or former contractor, with documents that contain information that he or she believes might be considered Confidential Business Information related to Divestiture Assets and who has not received specific instructions as to how the documents in his or her possession should be disposed of should contact the contact person identified at the end of this notice.

Furthermore, the Decision and Order places restrictions upon the functions that certain employees of K2 can perform for the Combined Entity until two years (2) from the date of the divestiture of all of the Divestiture Assets.

Any violation of the Decision and Order or the Order to Maintain Assets may subject Jarden, K2, or the Combined Entity 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 [insert name and title].

ACKNOWLEDGMENT

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