

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Jon Leibowitz, Chairman
 William E. Kovacic
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill**

In the Matter of

**PERRIGO COMPANY,
a corporation,**

and

**PADDOCK LABORATORIES, INC.,
a corporation.**

Docket No. C-4329

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Perrigo Company of substantially all of the assets and substantially all of the liabilities of Respondent Paddock Laboratories, Inc. (collectively “Respondents”), and Respondents 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 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 that it

had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, 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 Perrigo Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan with its headquarters located at 515 Eastern Avenue, Allegan, Michigan 49010.
2. Respondent Paddock Laboratories, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota with its headquarters located at 3940 Quebec Avenue North, Minneapolis, Minnesota 55427.
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 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. “Perrigo” means Perrigo Company, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Perrigo Company, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Paddock” means Paddock Laboratories, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Paddock, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Respondents” mean Perrigo and Paddock, collectively and individually.
- D. “Watson” means Watson Pharmaceuticals, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its headquarters address at 311 Bonnie Circle, Corona, California 92880.
- E. “Commission” means the Federal Trade Commission.

- F. “Acquirer(s)” means Watson or any other Person approved by the Commission to acquire particular assets or rights that Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to the Decision and Order.
- G. “Acquisition” means the acquisition contemplated by the Purchase Agreement by and among Perrigo Company, Paddock Laboratories, Inc., Paddock Properties Limited Partnership and, solely for purposes of Section 11.15, the person set forth on Exhibit A, Dated as of January 20, 2011.
- H. “Acquisition Date” means the date the Respondents close on the Acquisition.
- I. “Closing Date” means the date on which Respondents (or a Divestiture Trustee) consummate a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey the Divestiture Products Assets and the Divestiture Products License to an Acquirer(s) pursuant to this Order.
- J. “Confidential Business Information” means information owned by, or in the possession or control of, Respondents that is not in the public domain.
- K. “Decision and Order” means the Decision and Order incorporated into and made a part of the Agreement Containing Consent Orders.
- L. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to the relevant provisions of this Order.
- M. “Monitor” means any monitor appointed pursuant to this Order or the related Decision and Order.
- N. “Orders” means this Order to Maintain Assets and the Decision and Order.
- O. “Proposed Acquirer” means Watson or any Person proposed by Respondents (or a Divestiture Trustee) to the Commission and submitted for the approval of the Commission as the Acquirer.

II.

IT IS FURTHER ORDERED that:

- A. Until Respondents complete the divestitures required by the Decision and Order, including transferring the Divestiture Products Assets and granting the Divestiture Products License(s), Respondents:
 - 1. shall take such actions as are necessary to:
 - a. maintain the full economic viability and marketability of the Divestiture Products Businesses;
 - b. minimize any risk of loss of competitive potential of the Divestiture Products Businesses;
 - c. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to the Divestiture Products Businesses;
 - d. ensure the Divestiture Products Assets are provided to the Acquirer in a

- manner without disruption, delay, or impairment of the regulatory approval processes related to any Divestiture Product;
- e. ensure the completeness of the transfer and delivery of the Divestiture Products Manufacturing Technology; and
 2. shall not sell, transfer, encumber or otherwise impair the assets required to be divested (other than in the manner prescribed in the Orders) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Divestiture Products Businesses,

provided that these obligations shall cease as to any particular Divestiture Product when Respondents have transferred to the Acquirer all assets and materials related to such product and have no further obligations regarding such product under any Contract Manufacturing Agreement.

B. Respondents shall:

1. not directly or indirectly use any Confidential Business Information related exclusively to one or more Divestiture Products other than as necessary to comply with the requirements of this Order, Respondents' obligations to the Acquirer under the terms of any Remedial Agreement, or applicable Law;
2. not directly or indirectly disclose or convey any Confidential Business Information related exclusively to one or more Divestiture Products to any Person except the Acquirer or other Persons specifically authorized by the Acquirer to receive such information; and
3. maintain the confidentiality of any Confidential Business Information related to one or more Divestiture Products with the same degree of care and protection as used to protect the Confidential Business Information of Respondents.

C. The purpose of this Order is to maintain the full economic viability, marketability and competitiveness of the Divestiture Products Businesses through the full transfer and delivery of the Divestiture Products Assets and the Divestiture Products License to an Acquirer, to minimize any risk of loss of competitive potential for the Divestiture Products Businesses, and to prevent the destruction, removal, wasting, deterioration, or impairment of any assets included in the Divestiture Products Assets or Divestiture Products Licenses, except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that

- A. Until the Closing Date, Respondents shall provide all Divestiture Product Employees with reasonable financial incentives to continue in their positions and to continue the Divestiture Products Businesses in a manner consistent with past practices and/or as may be necessary to preserve the existing marketability, viability and competitiveness of the Divestiture Products and to ensure successful execution of the pre-Acquisition plans for such Divestiture Products. Such incentives shall include a continuation of all employee benefits offer by Respondents until the Closing Date, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by Law), and additional incentives as may be necessary to prevent any diminution of the competitiveness of the Divestiture Products.
- B. Until Respondent Perrigo fully transfers and delivers to the Acquirer the Divestiture Products Assets and grants the Divestiture Products License, Respondent Perrigo shall maintain a work force at least as equivalent in size, training, and expertise to what has been associated with the Divestiture Products for the relevant Divestiture Products' last fiscal year.
- C. For a period lasting until six (6) months after the Closing Date, each Respondent shall
 1. not later than ten (10) days after written request by the Acquirer or Proposed Acquirer, or staff of the Commission, provide, to the extent permitted by Law, the Acquirer with the following information with respect to Persons employed by such Respondent:
 - a. a complete and accurate list containing the name of each Divestiture Product Employee (including former employees who were employed by Respondents within ninety (90) days of the execution date of any Remedial Agreement); and
 - b. with respect to each such employee,
 - (1) the date of hire and effective service date;
 - (2) job title or position held; and
 - (3) a specific description of the employee's responsibilities related to the relevant Divestiture Product; *provided, however*, in lieu of this description, Respondents may provide the employee's most recent performance appraisal.
 2. not interfere with the hiring or employing by the Acquirer or its Manufacturing Designee of any Divestiture Products Employees or make any counteroffer to a Divestiture Products Employee who has received a written offer of employment from an Acquirer or its Manufacturing Designee; and remove any impediments within the control of the Respondent that may deter a Divestiture Products Employee from accepting employment with an Acquirer or its Manufacturing

Designee, including, but not limited to, removing non-competition or non-disclosure provisions of employment or other contracts with a Respondent that may affect the ability or incentive of a Divestiture Products Employee to be employed by an Acquirer or its Manufacturing Designee.

3. if requested by a Divestiture Products Employee, provide such employee with any requested records concerning his or her salary and benefits, including but not limited to, his or her base salary or current wages; his or her most recent bonus paid, aggregate annual compensation for the relevant Respondents' last fiscal year and current target or guaranteed bonus (if any); any material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and copies of all employee benefit plans and summary plan descriptions (if any) applicable to such employee.
- D. For a period lasting until one (1) year after Closing Date, Respondents shall not:
1. directly or indirectly, solicit or otherwise attempt to induce any employee of the Acquirer or its Manufacturing Designee with any amount of responsibility related to a Divestiture Product ("Covered Employee") to terminate his or her employment relationship with the Acquirer or its Manufacturing Designee; or
 2. hire such Covered Employee;

provided, however, Respondents may hire any former Covered Employee whose employment has been terminated by the Acquirer or its Manufacturing Designee or who independently applies for employment with Respondents, as long as such employee was not solicited in violation of the terms of the Order; and

provided further, that Respondents may advertise for employees in newspapers, trade publications or other media not targeted specifically at Covered Employees; or hire a Covered Employee who contacts Respondents on his or her own initiative without any direct or indirect solicitation or encouragement from Respondents.

IV.

IT IS FURTHER ORDERED that:

- A. The Commission may appoint a monitor or monitors ("Monitor") to assure that Respondents expeditiously comply with all obligations and perform all responsibilities required by the Orders and the Remedial Agreements.
- B. The Commission appoints F. William Rahe as Monitor and approves the Monitor Agreement between F. William Rahe and Respondents, attached as Appendix A.
- C. The Monitor's duties and responsibilities shall include the following:
 1. The Monitor shall act in a fiduciary capacity for the benefit of the Commission;
 2. The Monitor shall have the power and authority to monitor Respondents' compliance with the Orders, and shall exercise such power and authority and

- carry out his or her duties and responsibilities in a manner consistent with the purposes of the Orders and in consultation with the Commission or its staff;
3. The Monitor shall, in his or her sole discretion, consult with Third Parties in the exercise of his or her duties under the Orders or any agreement between the Monitor and Respondents; and
 4. The Monitor shall evaluate the reports submitted to the Commission by Respondents pursuant to the Orders and the Consent Agreement, and within thirty (30) days from the date the Monitor receives a report, report in writing to the Commission concerning performance by Respondents of its obligations under the Orders.
- D. Respondents shall grant and transfer to the Monitor, and such Monitor shall have, all rights, powers, and authority necessary to carry out the Monitor's duties and responsibilities, including but not limited to the following:
1. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with the Orders;
 2. Subject to any demonstrated legally recognized privilege, Respondents shall provide the Monitor full and complete access to personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with the Orders;
 3. Respondents shall deliver to the Monitor a copy of each report submitted to the Commission pursuant to the Orders or the Consent Agreement;
 4. The Monitor shall serve, without bond or other security, at the expense of Respondent Perrigo, on such reasonable and customary terms and conditions to which the Monitor and Perrigo agree and that the Commission approves;
 5. The Monitor shall have authority to use the services of or employ, at the expense of Respondent Perrigo, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
 6. Respondents shall indemnify the Monitor and hold the Monitor harmless to the extent set forth in the Monitor Agreement executed on May 13, 2011; and
 7. Respondents may require the Monitor and each of the 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 Monitor from providing any information to the Commission or require the Monitor to report to Respondents the substance of communications to or from the Commission or the Acquirer.

- E. The Commission may, among other things, require the Monitor and each of the 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 Monitor's duties.
- F. The Monitor shall serve until Respondents fully and finally transferred Divestiture Products Assets, granted the Divestiture Products License, and fulfilled all obligations under this Order to provide assistance, and manufacture and supply the Contract Manufacture Products.
- G. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor. The Commission shall select the substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed substitute Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed substitute Monitor, Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor.
- H. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
- I. The Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

V.

IT IS FURTHER ORDERED that:

- A. Before the Closing Date, Respondents shall submit to staff of the Commission a verified written report setting forth in detail the procedures Respondents have implemented to:
 - 1. reasonably ensure that all employees and representatives who have or may be exposed to Confidential Business Information understand and are required to comply with the confidentiality obligations contained in Paragraph II.B of this Order and Paragraph II.I of the Decision and Order; and
 - 2. reasonably ensure that all employees and representatives of Respondents, including those hired during the term of the Order, understand and are required to comply with all terms of this Order that are relevant to their job duties.

In further compliance with this provision, Respondents shall provide staff of the Commission with written notice of all changes, additions and modifications to the procedures implemented, and shall include specific information detailing their efforts to comply with this paragraph in all reports of compliance required by this Order.

provided, however, that Respondent Paddock shall have no further obligations under this paragraph after the Acquisition Date.

- B. Respondents shall submit to the Commission and to the Monitor, a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with the Orders, within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until the Decision and Order becomes final, and shall submit at the same time a copy of the report to the Monitor.

Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Orders, including a full description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all Persons contacted, and shall make available to the Commission and the Monitor all written communications to and from such Persons, all internal memoranda, and all reports and recommendations concerning completing the obligations.

provided, however, that Respondent Paddock shall have no further obligations under this paragraph after the Acquisition Date.

VI.

IT IS FURTHER ORDERED that:

- A. Each Remedial Agreement shall be incorporated by reference into this Order to Maintain Assets, and made a part hereof. Further, nothing in any Remedial Agreement shall limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of an Acquirer or to reduce any obligations of Respondents under a Remedial Agreement. Respondents shall comply with the terms of each Remedial Agreement, and a breach by Respondents of any term of a Remedial Agreement shall constitute a violation of the Orders. To the extent that any term of a Remedial Agreement conflicts with a term of the Orders such that Respondents cannot fully comply with both, Respondents shall comply with the Orders.
- B. Respondents shall include in each Remedial Agreement a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of Respondents' obligations to the Acquirer pursuant to the Orders.
- C. Prior to the Closing Date, Respondents shall not modify or amend any material term of any Remedial Agreement without the prior approval of the Commission. Further, any failure to meet any material condition precedent to closing contained in any Remedial Agreement (whether waived or not) shall constitute a violation of the Orders.
- D. After the Closing Date and during the term of each Remedial Agreement, Respondents shall provide written notice to the Commission not more than five (5) days after any modification (material or otherwise) of the Remedial Agreement. Further, Respondents shall seek Commission approval of such modification (material or otherwise) within ten (10) days of filing such notification. If the Commission denies approval, the

Commission will notify Respondents and Respondents shall expeditiously rescind the modification or make such other changes as are required by the Commission.

- E. Respondents shall not seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any Remedial Agreement, or in any agreement related to any of the Divestiture Products a decision the result of which would be inconsistent with the terms of the Orders or the remedial purposes thereof.

VII.

IT IS FURTHER ORDERED that

- A. 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 any Respondents made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, such Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:
1. access, during business office hours of such 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 such Respondents related to compliance with this Order, which copying services shall be provided by such Respondents at the request of the authorized representative(s) of the Commission and at the expense of such Respondents; and
 2. to interview officers, directors, or employees of such Respondents, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate

- 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 day the related Decision and Order becomes final and effective.
- By the Commission.



Richard C. Donohue
Acting Secretary

SEAL

ISSUED: July 22, 2011