

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright

_____)
In the Matter of)
)
Graco, Inc.,)
a corporation.) Docket No. C-4399
)
_____)

DECISION AND ORDER
[Redacted Public Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the acquisition by Respondent Graco Inc. (hereinafter referred to as “Respondent” or “Graco”) of Gusmer Corporation and GlasCraft, Inc., and of certain acts and practices of Respondent, and Respondent 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 Respondent 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

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent 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 Respondent 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 Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and having accepted the executed Consent Agreement and placed 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 makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Graco Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Minnesota, with its office and principal place of business located at 88-11th Avenue Northeast, Minneapolis, Minnesota 55413.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Graco” or “Respondent” means Graco Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Graco, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Graco includes, but is not limited to, Graco Minnesota Inc.
- B. “Commission” means the Federal Trade Commission.
- C. “PMC” means PMC Global, Inc., 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 12243 Branford Street, Sun Valley, California 91352; and the joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by PMC Global, Inc., including, but not limited to, PMC Inc., Moehs Iberica S.L., and Gama Machinery USA, Inc. d/b/a Polyurethane Machinery Corporation or Polymac.
- D. “Antitrust Compliance Program” means a program (including, but not limited to, an effective in-person or web-based antitrust training program) to ensure compliance with this Order and with the Antitrust Laws, as required by Paragraph IV of this Order.
- E. “Antitrust Laws” means the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, the Sherman Act, 15 U.S.C. § 1 *et seq.*, and the Clayton Act, 15 U.S.C. § 12 *et seq.*
- F. “Delivery Services” means all terms and services associated with Respondent delivering FSE Products to a specified location to or on behalf of a Distributor or other Person. Delivery Services include, but are not limited to:
 1. Delivery of FSE Products via air, truck, or common carrier, delivery directly to the Distributor or to a FSE Customer’s place of business or job site; and,
 2. The timely scheduling of deliveries.
- G. “Discriminatory Manner” means to transact business with one Distributor in a manner:
 1. That is different from the manner of transacting business with one or more similarly-situated Distributors; or,

2. That is other than in accordance with the terms and conditions Generally Available and applied to similarly-situated Distributors.
- H. “Distribute” or “Distribution” means the taking of possession (whether by wholesale purchase, lease, consignment, or other methods) of FSE Products from a manufacturer for the primary purpose of transferring or conveying such FSE Products to end users or other resellers by resale, lease, or other methods that are in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act.
- I. “Distributor” means a Person that Distributes, that Graco has reason to believe intends to Distribute, or that engages in the Distribution of, Graco’s or another manufacturer’s FSE Products in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act. Distributor does not include a Person that is a Graco Competitor or a Person that supplies Graco with manufacturing inputs, but only to the extent that such Person is acting in such capacity.
- J. “Effective Date” means the date on which Graco executes and enters into the Graco/PMC Agreements with PMC.
- K. “Exclusivity” or “Exclusive” means any requirement, term, or condition, whether formal or informal, direct or indirect, by the Respondent, that has the purpose or effect that:
1. A Distributor research, develop, manufacture, Distribute, produce, market, purchase, sell, lease, or license, Graco’s FSE Products to the exclusion, in whole or in part, of any FSE Products from Graco Competitors; or
 2. A Distributor be restrained from, refrain from, or limit its research, development, manufacture, production, Distribution, marketing, promotion, sales, leasing, purchasing, or licensing of any FSE Product from a Graco Competitor.
- L. “Favorable” means more economically advantageous Price Terms, Delivery Services, Product Support, or other terms and conditions than Respondent makes Generally Available to similarly-situated Distributors.
- M. “Field” means both “Restricted Field” and “Open Field” as those terms are defined in the Graco/PMC License.
- N. “FSE Customer” means any Person that purchases, licenses, or leases FSE Products primarily for use in such Person’s trade, profession, or business, or for resale.
- O. “FSE Products” means any and all equipment, components, parts, replacement parts, and all other property related to the initial sale, and operation and maintenance over the useful life, of equipment that is manufactured for use by contractors for the application of sprayed or poured polyurethane foam or polyurea coatings.
- P. “Generally Available” means the typical or standard terms and conditions that Respondent offers or provides to Distributors:
1. That have revenues, a number or training level of employees, distribution of FSE Products over geographic areas equivalent in geographic size or total population, or other characteristics, that fall within equivalent categories or ranges of values;

2. That are classified or designated the same by Respondent; or,
 3. That have characteristics relevant to assessing Distributors' potential future unit sales of, or future revenue generated from, Respondent's FSE Products that fall within an equivalent category or range of values.
- Q. "Graco Competitors" means any Person (other than Respondent) who manufactures FSE Products for sale (directly or through Distributors) to FSE Customers.
- R. "Graco/PMC Agreements" mean the Graco/PMC Settlement Agreement and the Graco/PMC License.
- S. "Graco/PMC License" means the license between Graco Inc., Graco Minnesota Inc., and Gama Machinery USA, Inc. d/b/a Polyurethane Machinery Corporation or Polymac, to be executed in accordance with Section II.A of this Order, an unexecuted version of which is attached hereto as Appendix B.
- T. "Graco/PMC Settlement Agreement" means that certain agreement between Graco Inc., Graco Minnesota Inc., PMC Global, Inc., PMC, Inc., Moehs Iberica S.L., Gama Machinery USA, Inc. d/b/a Polyurethane Machinery Corporation or Polymac, and Denis S. Commette, to be executed in accordance with Section II.A of this Order, an unexecuted version of which is attached hereto as Appendix A.
- U. "Intellectual Property" means all intellectual property owned or licensed (as licensor or licensee) by Respondent in which Respondent has a proprietary interest, and all associated rights thereto, including all of the following in any jurisdiction throughout the world: (i) all Patents; (ii) all trade secrets, know-how, and confidential or proprietary information (including ideas, research and development, formulas, compositions, manufacturing and production processes and techniques, technical data and information, blue prints, designs, drawings, specifications, protocols, quality control information, customer and supplier lists, pricing and cost information, business and marketing plans and proposals, and all other data, technology, and plans); (iii) all brand names, commercial names, trade names, "doing business as" (d/b/a) names, registered and unregistered trademarks, trade dress, logos, slogans, service marks, internet website content and internet domain names, together with all translations, adaptations, derivations, and combinations thereof, and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith; (iv) all copyrightable works, all registered and unregistered copyrights in both published works and unpublished works, and all applications, registrations and renewals in connection therewith; (v) all computer software (including source code, executable code, data, databases and related documentation); (vi) all advertising and promotional materials; and (vii) all rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation, or breach of any of the foregoing.
- V. "Less Favorable" means less economically advantageous Price Terms, Delivery Services, Product Support, or other terms and conditions than Respondent makes Generally Available to similarly-situated Distributors.
- W. "Order Date" means the date upon which this Order becomes final.

- X. “Patent(s)” means all patents, patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case existing as of the Effective Date, and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, restorations, extensions and reexaminations thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for patents and registrations thereto.
- Y. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or governmental entity, and any subsidiaries, divisions, groups or affiliates thereof.
- Z. “PMC Releasees” means PMC, Distributors of PMC’s FSE Products, and FSE Customers that purchase, license, or lease PMC’s FSE Products.
- AA. “Price Term” means the wholesale price, resale price, purchase price, rebate, discount, price list, credit term, or any other term defining, setting forth, or relating to the money or compensation paid by or received by a Distributor in connection with the purchase, lease, consignment, or other means or method of or for obtaining FSE Products from Respondent.
- BB. “Product Support” means any service of FSE Products, assistance to FSE Products Distributors or FSE Customers, training provided to FSE Products Distributors or FSE Customers on the use or maintenance of FSE Products, visits to FSE Customers (whether related to the marketing, sales, use or service of FSE Products), warranty terms or the performance of warranty terms, or other support related to the research, development, manufacture, production, Distribution, marketing, promotion, lease, sale, purchase, or licensing of any FSE Product.

II.

IT IS FURTHER ORDERED that:

- A. Not later than ten (10) days after the Order Date, Respondent shall execute and enter into the Graco/PMC Agreements with PMC. The Graco/PMC Agreements are incorporated by reference into this Order and made a part hereof.
- B. Once both Respondent and PMC have executed and entered into the Graco/PMC Agreements, Respondent shall comply with all terms of the Graco/PMC Agreements, and any breach by Respondent of any term of the Graco/PMC Agreements shall constitute a violation of this Order. If any term of the Graco/PMC Agreements varies from the terms of this Order (“Order Term”), then to the extent Respondent cannot fully comply with both terms, the Order Term shall determine Respondent’s obligations under this Order.
- C. Respondent shall not modify or amend any of the terms of the Graco/PMC Agreements without the prior approval of the Commission, except as otherwise provided in Rule

2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5). Notwithstanding any paragraph, section, or other provision of the Graco/PMC Agreements, any modification of the Graco/PMC Agreements without the prior approval of the Commission, or as otherwise provided in Rule 2.41(f)(5), shall constitute a failure to comply with this Order.

D. Respondent shall not:

1. join, or file, prosecute or maintain any suit, in law or equity, against any PMC Releasee alleging that the research, development, manufacture, use, import, export, distribution, sale or lease or offer for sale of PMC's FSE Products in the Field on or prior to the Effective Date infringe any Intellectual Property owned or licensed by Respondent as of the Effective Date;
2. assign, transfer or license any Intellectual Property in the Field owned or licensed by Respondent as of the Effective Date unless the assignee, transferee, or licensee agrees in writing to provide a covenant not to sue the PMC Releasees that is at least as protective as the prohibitions in Paragraph II.D.1. above, as a condition of such assignment, transfer or license; and
3. actively induce, assist or participate in any suit, legal or other action or proceeding against any one or more of the PMC Releasees alleging that the research, development, manufacture, use, import, export, distribution, sale or lease or offer for sale of PMC's FSE Products in the Field on or prior to the Effective Date infringe any third party rights licensed to Respondent as of the Effective Date as to which Respondent does not control the right of prosecution of any suit, legal or other action.

III.

IT IS FURTHER ORDERED that Respondent, acting directly or indirectly, or through any corporate or other device, in connection with the actual or potential research, development, manufacturing, marketing, lease, or sale of FSE Products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from the following acts and practices:

- A. Respondent shall cease and desist from inviting, entering into, implementing, continuing, enforcing, or attempting thereto, any condition, policy, practice, agreement, or understanding that has the purpose or effect of achieving Exclusivity with a Distributor, including, but not limited to:
1. Conditioning availability or terms of the research, development, manufacturing, marketing, lease, sale, or service of FSE Products on Exclusivity;
 2. Conditioning availability or terms of Price Terms, Delivery Services, Product Support, or other terms and conditions on Exclusivity;

3. Providing or offering to provide Favorable Price Terms, Delivery Services, Product Support, or other terms and conditions to a Distributor because the Distributor agrees to Exclusivity;
4. Providing or offering to provide Less Favorable Price Terms, Delivery Services, Product Support, or other terms and conditions to a Distributor because the Distributor fails or refuses to agree to Exclusivity;
5. Urging, inducing, coercing, threatening, or pressuring, or attempting thereto, a Distributor to refuse to research, develop, manufacture, market, lease, sell, or service FSE Products manufactured by a Graco Competitor; and,
6. Requiring Distributors to make annual purchases, or maintain inventory levels, of Graco's FSE Products in an amount greater than is necessary based on market conditions or other objective factors (such as sales forecasts or historic purchasing or demand levels) in order for Distributors to sell and service FSE Products to and for FSE Customers on a commercially reasonable and timely basis.

Provided, however, that:

- a. Respondent may offer to provide or provide to Distributors special (one-time) purchase terms, discounts, marketing assistance, Price Terms, Delivery Services, or Product Support.
- b. Respondent may enter into written agreements or understandings with a Distributor providing for Exclusivity with respect to both Respondent and a Distributor regarding the research, development, manufacturing, marketing, sale or lease of FSE Products developed jointly by Respondent and the Distributor, the development of which resulted from a contribution of significant capital, Intellectual Property rights, labor, or other things of value by both Respondent and the Distributor.
- c. Respondent may require its Distributors to make annual purchases of Graco's FSE Products in stated amounts and to maintain inventory of Graco's FSE Products at stated levels in order to qualify for various Price Terms.

Provided further, however, that such purchase requirements for such discounts for calendar year 2013, or such part thereof that may be covered by this Order, for a Distributor in the "Advanced" category shall be no more than \$450,000 of Respondent's FSE Products, and for a Distributor in the "Specialized" category shall be no more than \$100,000 of Respondent's FSE Products, which amounts will include in either case one demonstration model of Respondent's FSE Products. Such inventory requirements for discounts for calendar year 2013, or such part thereof that may be covered by this Order, for a Distributor in the "Advanced" category shall be no more than \$45,000 of Respondent's FSE Products, and for a Distributor in the "Specialized" category shall be no more than

\$10,000 of Respondent's FSE Products, excluding in either case the value on one demonstration model of Respondent's FSE Products. Such purchase and inventory requirements for such discounts in calendar years 2014, and thereafter, shall be determined by increasing the purchase or inventory amounts actually required in accordance with this Order in the immediately preceding calendar year by not more than 5%.

- d. It shall not by itself constitute prohibited Exclusivity if a Distributor, acting unilaterally and without an agreement with or invitation from Respondent, chooses to carry the FSE Products of Respondent on an exclusive basis, or to give preference to the FSE Products of Respondent.

B. Respondent shall not discriminate against, penalize, or otherwise retaliate against any FSE Products because such Distributor researches, develops, markets, leases, sells, or otherwise deals in (or negotiates, intends to, or proposes or announces an intention to research, develop, market, lease, sell, or otherwise deal in) FSE Products manufactured by a Graco Competitor, or otherwise refuses to enter into or continue any condition, agreement, contract, understanding or other requirement of Exclusivity. Examples of prohibited retaliation include, but are not limited to:

1. Terminating, suspending, reducing, or delaying, or threatening or proposing thereto, purchases or sales of FSE Products;
2. Auditing or reviewing the books and records of a Distributor to determine the revenue from or unit sales of purchases, sales, leases, or other Distribution of FSE Products manufactured by Graco Competitors;
3. Withdrawing or modifying, or threatening or proposing thereto, Favorable Delivery Services, Price Terms, Product Support or other terms and conditions;
4. Providing, or threatening or proposing thereto, Less Favorable Delivery Services, Price Terms, Product Support, or other terms and conditions;
5. Withholding from a Distributor FSE Products newly developed or introduced by Respondent;
6. Dealing with Distributors in a Discriminatory Manner;
7. Withholding or conditioning in a Discriminatory Manner Respondent's consent to permit a Distributor: (a) to resell FSE Products to Persons who research, develop, market, lease, sell or otherwise deal in FSE Products manufactured by a Graco Competitor; or, (b) to sell FSE Products outside certain geographic areas or territories (including, but not limited to, areas designated as Primary Trading Areas in Respondent's contracts) to Persons who research, develop, market, lease, sell or otherwise deal in FSE Products manufactured by a Graco Competitor;

Provided, however, it shall not by itself constitute prohibited retaliation if Respondent, not acting in a Discriminatory Manner:

- a. Changes the status of a Distributor because the Distributor fails to meet written objective standards including, but not limited to, sales levels, completion of training or customer service certification, or the like;
- b. Requires Distributors to receive specialized technical training or satisfy other qualification requirements to receive one or more of Respondent's FSE Products with respect to which specialize training or other qualification requirements reasonably are required;
- c. Imposes commercially reasonable and objective requirements (including, but not limited to, payment history and creditworthiness) for credit and payment arrangements;
- d. Prohibits Distributors from reselling one or more of Respondent's FSE Products to other Distributors of FSE Products where the relevant FSE Products reasonably require specialized training or other qualification requirements that the purchasing Distributor does not have;
- e. Establishes or seeks to establish new Distributors to meet actual or potential customer demand for Respondent's FSE Products; and,
- f. Offers promotional programs or other Product Support that are Generally Available to similar Distributors who meet objective written qualifications.

C. Within thirty (30) days after the Order Date, Respondent shall waive, without penalty to or financial cost from the Distributor, and shall no longer enforce any condition, requirement, policy, agreement, contract, or understanding with any Distributor that is inconsistent with the terms of this Order. Examples of provisions that shall be waived and not enforced include, but are not limited to:

1. Any provision in any agreement between Graco and a Distributor that calls for the Distributor to inform Graco, in whatever manner, of the non-Graco FSE Products that are being marketed or sold by the Distributor;
2. Any provision in any agreement between Graco and a Distributor that requires a Distributor to obtain consent from Graco in advance of any sale of FSE Products by that Distributor to any other Person.

Provided, however, Respondent shall not be prohibited from requiring a Distributor to provide reasonable notice to Respondent prior to such Distributor making an initial sale of FSE Products to any FSE Customer that Distributor has reason to believe will make a regular practice of reselling such FSE Products. Such notice shall only include the name and address of the FSE Customer. In addition, Respondent shall not be prohibited from requiring a Distributor to provide to Respondent, no more than once in any calendar year, the name and address of all its FSE Customers that such Distributor has reason to believe make a regular practice of reselling FSE Products as of the time of such notice. If after diligent inquiry, Respondent finds that any such FSE Customer does not meet written objective standards for reselling its FSE Products, it may require such Distributor to stop selling FSE Products to that FSE Customer for resale; so long as such directive is not otherwise in violation of the Order. Respondent's directive to its Distributor shall include a statement of the objective standard(s) that such FSE Customer fails to satisfy. A copy of Respondent's directive shall be provided to the FSE Customer in question, and be included in Respondent's annual compliance report to the Commission.

3. Any inventory or annual purchase requirements that fail to comply with Paragraph III.A.6.
- D. Within thirty (30) days after the Order Date, Graco shall deliver written confirmation of all waivers required by Paragraph III.C. of this Order to all applicable Distributors, and shall negotiate and offer to execute contract amendments with such Distributors to modify, without penalty or financial cost, all contracts so that all contract terms comply with the terms of this Order.
- E. Respondent shall, within thirty (30) days after the Order Date, mail a copy of this Order and Appendix C to this Order (with Appendix C affixed as the first page) by first class mail to:
1. Each of its officers and directors; and,
 2. Each Distributor that has purchased any one or more of Graco's FSE Products from Respondent within twelve (12) months prior to the Order Date.

IV.

IT IS FURTHER ORDERED that Respondent shall design, maintain, and operate an Antitrust Compliance Program to assure compliance with this Order and with the Antitrust Laws. This program shall include, but not be limited to:

- A. Respondent's designation of an officer or director to supervise personally the design, maintenance, and operation of this program, and to be available on an ongoing basis to respond to any questions by employees of Respondent;

- B. Distribution of a copy of this Order and Appendix D to this Order (with Appendix D affixed as the first page) to all officers and directors, and to its employees in the United States whose duties relate primarily to marketing and sales of FSE Products:
 - 1. Within thirty (30) days after the Order Date; and,
 - 2. Annually within thirty (30) days of the anniversary of the Order Date until the Order terminates;
- C. Annual training on the requirements of this Order and the Antitrust Laws for Respondent's officers and directors, and its employees in the United States whose duties relate primarily to marketing and sales of FSE Products; and,
- D. The retention of documents and records sufficient to record Respondent's compliance with its obligations under this Paragraph IV of this Order.

V.

IT IS FURTHER ORDERED that:

- A. Respondent shall not, without providing advance written notification to the Commission in the manner described in Paragraph V.B., and without complying with the terms of the waiting period described in Paragraph V.C., acquire, directly or indirectly, any stock, share capital, equity, or other interest in or assets (but not including FSE Products offered for sale to Distributors) of any Person, corporate or non-corporate, that Graco has reason to believe researches, develops, manufactures, markets, sells, leases or licenses FSE Products in the United States, or has done so within six (6) months prior to the acquisition.
- B. The advance written notification provided by Respondent shall include:
 - 1. A description of the acquisition and any executed letter agreement, letter of intent, purchase and sale agreement, stock acquisition agreement, or other contract or agreement between Respondent and the Person describing or effecting the proposed acquisition;
 - 2. All documents that would be responsive to Items 4(c) and 4(d) of the Premerger Notification and Report Form (or any successor Items in the Form) under the Hart-Scott-Rodino Premerger Notification Act, Section 7A of the Clayton Act, 15 U.S.C. § 18a, and Rules, 16 C.F.R. § 801-803, relating to the proposed acquisition;
 - 3. Gross annual revenues of FSE Products of the Person and of Respondent in the United States;
 - 4. The name and address of the ten largest customers of the Person and of Respondent;
 - 5. The total number of FSE Customers of the Person and of Respondent; and,

6. A description in reasonable detail of the FSE Products sold and services offered by the Person in which or from whom Respondent proposes to acquire equity or assets, as well as the geographic areas in which such products and services are sold and offered for sale.

Provided, however, that prior notification shall not be required by this Paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

- C. Respondent shall provide the advance written notification at least thirty (30) days prior to consummating the transaction that is the subject of the notification (hereinafter the “First Waiting Period”). If, within the First Waiting Period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent shall not consummate the transaction until thirty (30) days after submitting all of the additional information and documentary information (hereinafter the “Second Waiting Period”). Early termination of the First Waiting Period and the Second Waiting Period may be requested and, where appropriate, granted by a letter from the Commission’s Bureau of Competition.
- D. Respondent shall provide the Commission with no fewer than thirty (30) days’ notice prior to filing any lawsuit, arbitration proceeding, or mediation proceeding against any Distributor or FSE Customer alleging in whole or in part that such Person has:
 1. Breached or violated any provision of the Graco/PMC License or the Graco/PMC Settlement Agreement; or,
 2. Has infringed any of Respondent’s rights in or to any Intellectual Property:
 - a. Related to the research, manufacture, marketing, sale, lease or use of FSE Products (including, but not limited to, trade secrets and Patents licensed to PMC pursuant to the Graco/PMC License); or,
 - b. Within the scope of Paragraph II.D. of this Order.
- E. Respondent’s notice pursuant to Paragraph V.D. of this Order shall include the name and address of each party to the lawsuit, arbitration proceeding, or mediation proceeding, a brief description of the claims of each party, and a copy of each complaint or answer filed by each party to the lawsuit, arbitration proceeding, or mediation.

VI.

IT IS FURTHER ORDERED that

- A. Within sixty (60) days after the Order Date, and on the first annual anniversary of the Order Date, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. For the period covered by this report, the report shall include, but not be limited to:
 - 1. The name, title, business address, e-mail address, and business phone number of the officer or director designated by Respondent to design, maintain, and operate Respondent's Antitrust Compliance Program; and
 - 2. The name, title, and business address of each Person to whom Respondent distributed a copy the Order and Appendix, pursuant to Section IV(B) of this Order, and the date and manner of distribution to each.
- B. On the first anniversary of the Order Date, and thereafter on the annual anniversary until this Order terminates, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order.

VII.

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

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

VIII.

IT IS FURTHER ORDERED that 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 Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Respondent 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 Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and,
- B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on April 17, 2023.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: April 17, 2013

**Non-Public Appendix A
Graco/PMC Settlement Agreement**

[Redacted From the Public Record Version, But Incorporated By Reference]

**Non-Public Appendix B
Graco/PMC License Agreement**

[Redacted From the Public Record Version, But Incorporated By Reference]

Appendix C

[Graco letterhead]

To our customers and business partners:

The Federal Trade Commission (“FTC”) has been investigating whether two acquisitions by Graco Inc. (“Graco”) in the U.S. market for spray foam equipment, as well as certain other terms of our distributor agreements, violated federal antitrust laws.

Graco does not believe that its past or present practices violate any state or federal laws. However, to end the investigation quickly and to obtain clear guidelines from the FTC relating to Graco’s future marketing efforts, Graco has reached a consent agreement with the FTC pursuant to which the FTC can issue and Graco will be bound by a Decision and Order issued by the FTC. This consent agreement acknowledges that Graco does not admit to any violations of any law.

The consent agreement contains two general groups of provisions. Under the first, the Decision and Order incorporates Graco’s settlement of its pending litigation with Polyurethane Machinery Corporation (PMC), a manufacturer of competing spray foam equipment, its ultimate parent company, PMC Global Inc., and others. Graco’s litigation with PMC was based on its strong belief that PMC’s products were unlawfully based on trade secrets, confidential information and other property that Graco acquired from PMC in 2005 (“Gusmer Intellectual Property”). Under the terms of the settlement, PMC will purchase licenses to the technology that Graco alleged is based on the Gusmer Intellectual Property. Because PMC will purchase these licenses, Graco no longer claims that PMC’s polyurethane foam and polyurea are unfairly based on Graco’s intellectual property; Graco therefore now recognizes PMC as a legitimate competitor. As with any other legitimate competitor, you are free to decide whether you wish to do business with PMC in the U.S. spray foam market.

Second, the Order provides limitations on Graco’s ability to require exclusivity from distributors, subject to certain exceptions, and prohibits Graco from punishing or retaliating against distributors who also deal in competitors’ spray foam products in the U.S. market.

You may read and download a copy of the Order, as well as an Analysis to Aid Public Comment, from the FTC at its website [add link]. If you have any concerns in the future about whether Graco is complying with its obligations under the Order, Graco invites you to raise them with us directly. You may contact any of our sales staff with whom you do business, or contact our corporate offices directly by phoning or emailing [name] at [phone number and email address]. Alternatively or additionally, you may contact the FTC directly to express your concerns, at [phone number] or [email].

Thank you again for your continued support and the confidence you have shown for Graco products.

Sincerely,

Appendix D

[Graco internal communication format]

The Federal Trade Commission (“FTC”) has been investigating whether two acquisitions by Graco Inc. (“Graco”) in the U.S. market for spray foam equipment, as well as certain other terms of our distributor agreements, violated federal antitrust laws.

Graco does not believe that its past or present practices violate any state or federal laws. However, to end the investigation quickly and to obtain clear guidelines from the FTC relating to Graco’s future marketing efforts, Graco has reached a consent agreement with the FTC pursuant to which the FTC can issue and Graco will be bound by a Decision and Order issued by the FTC. This consent agreement acknowledges that Graco does not admit to any violations of any law.

It is very important to Graco that all of its officers and directors, as well as employees whose duties relate primarily to the marketing and sales of spray foam equipment in the United States, understand and comply with the Order. We are providing this notice as a first step to help you do that by telling you about the Order, describing a few of its most important terms, and telling you how you can learn more about the Order and get answers to any questions you may have about it.

The Order contains two general groups of provisions. Under the first, the Order incorporates Graco’s settlement of its pending litigation with Polyurethane Machinery Corporation (PMC), a manufacturer of competing spray foam equipment, its ultimate parent company, PMC Global Inc., and others. Graco’s litigation with PMC was based on its strong belief that PMC’s products were unlawfully based on trade secrets, confidential information and other property that Graco acquired from PMC in 2005 (“Gusmer Intellectual Property”). Under the terms of the settlement, PMC will purchase licenses to the technology that Graco alleged is based on the Gusmer Intellectual Property. Because PMC will purchase these licenses, Graco no longer claims that PMC’s polyurethane foam and polyurea are unfairly based on Graco’s intellectual property; Graco therefore now recognizes PMC as a legitimate competitor. As with any other legitimate competitor, Graco customers are free to decide whether they wish to do business with PMC in the U.S. spray foam market.

Second, the Order provides limitations on Graco’s ability to require exclusivity from distributors, subject to certain exceptions, and prohibits Graco from punishing, retaliating, or in any way discriminating against distributors who also deal in competitors’ spray foam products in the U.S. market.

Graco management wants to help you better understand Graco’s rights and obligations under the Order. Therefore, as required by the Order, Graco has appointed [name and title] to oversee a program to train you on the Order and applicable antitrust laws. You will be contacted soon to schedule your training. In the meantime, if you have any questions at any time about the Order or your training, please contact [identify contact person] at [email or phone].