

801.1(c)(3)
801.2(a)



January 25, 1994

VIA TELECOPY AND MAIL

Patrick Sharpe, Esq.
Bureau of Competition
Premerger Notification Office
Federal Trade Commission
6th and Pennsylvania Avenue, N.W.
Room 303
Washington, D.C. 20580

Notified that I am not an attorney

RECEIVED BY THE SECRETARY OF THE FEDERAL TRADE COMMISSION
JAN 26 2 17 PM '94
FEDERAL TRADE COMMISSION
PREMERGER NOTIFICATION OFFICE

Dear Mr. Sharpe:

This is to confirm the informal interpretation that you gave me orally in a telephone conversation last Wednesday, January 19, 1994, that parties to certain acquisitions that I described are not subject to the reporting and waiting period requirements of section 7A of the Clayton Act, 15 U.S.C. § 18a (the Hart-Scott-Rodino Antitrust Improvements Act of 1976).

The facts I described to you are as follows: Company A is a [redacted]. It distributes its products in the United States through both company-owned and independent dealers. It has commenced a program [redacted]. Company B is a limited partnership engaged in the business of [redacted]. Company B desires to become an authorized dealer for the sale of Company A's [redacted]. Company A has approved Company B's application to become an authorized dealer at [redacted] locations presently being operated as company-owned stores. Company A owns the real property at [redacted] of these locations, and leases premises at the other [redacted].

In connection with the appointment and establishment of Company B as an authorized dealer for Company A, the parties have entered into an agreement in principle regarding the acquisition by Company B of the store assets and floor plan merchandise and equipment (i.e., the new inventory of [redacted] at each of these [redacted] sites.

right to 85% of assets upon dissolution

Company C, a corporation, is the general partner and owns an 85% interest in Company B. All of the stock of C is owned by two natural persons, F and his wife G. The remaining 15%

[Redacted]

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- not an attorney

This was not structured this way to avoid filing under H-S-R.

interest in Company B is owned by a Gift Trust. This Gift Trust was created by F and G in 1987 for estate planning purposes. F and G are the sole grantors of the Trust, which is irrevocable. The beneficiaries of the Trust are the adult son (S) of F and G, and S's children and grandchildren. S is the trustee of the Gift Trust and an officer of Company B. F and G have no reversionary interests under the Gift Trust.

The agreement in principle contemplates that all of the store assets and inventory at the [Redacted] locations will be acquired by Company B. The total purchase price for these assets and inventory, and for certain other assets purchased by B from A in 1993, will be approximately \$14.6 million. The premises at [Redacted] of the [Redacted] locations which Company A leases will be sublet by A to B for the duration of A's leases. The real property owned by A at the [Redacted] other locations will be purchased by the Gift Trust for \$6.2 million dollars, and then leased to Company B for use as [Redacted]

structured
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with
This was not structured this way to avoid filing under H-S-R

bonafide lease not an asset purchase

In our conversation last Wednesday, you confirmed our understanding (1) that because the Gift Trust is an irrevocable trust set up several years ago for purposes wholly unrelated to these transactions, and is a trust in which F and G have no reversionary interests, under the Hart-Scott-Rodino regulations, the trust itself -- and not the trustee -- will be deemed to be the holder (§ 801.1(c)(3)) and the thus the "acquiring person" (§801.2(a)) of the real property acquired from A; (2) irrespective of the fact that S is trustee of the Gift Trust and an officer of B, for purposes of Section 7A(a) of the Hart-Scott-Rodino Act the Gift Trust is considered a different "acquiring person" from Company B; and therefore (3), since neither of the "acquiring persons" (B and the Gift Trust) will hold more than \$15 million worth of the assets of Company A after these acquisitions are consummated, neither of these acquisitions is subject to the reporting and waiting period requirements of the Act.

If I have not correctly stated the substance of our conversation and your informal interpretation, please advise me promptly.

Very truly yours,

with clarifications noted, I concur

RS concurs

RS

called

2-2-94

[Redacted signature block]