

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

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In the Matter of)
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PRESTIGE BRANDS)
HOLDINGS, INC.)
a corporation;)
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and)
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INSIGHT PHARMACEUTICALS)
CORPORATION)
a corporation.)
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Docket No. C-4487

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Prestige Brands Holdings, Inc. (“Prestige”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Insight Pharmaceuticals Corporation. (“Insight”), a corporation subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act (“FTC Act”), as amended, 15 U.S.C. § 45, that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Prestige is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate head office and principal place of business located at 660 White Plains Road, Suite 250, Tarrytown, New York 10591.

2. Respondent Insight is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate head office and principal place of business located at 900 Northbrook Drive, Suite 200, Trevose, Pennsylvania 19053.

3. Each Respondent is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and is a company whose business is in or affects commerce, as “commerce” is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

4. Pursuant to a Stock Purchase Agreement dated April 25, 2014 (the “Agreement”), Medtech Products Inc. (“Medtech”), a subsidiary of Prestige, intends to purchase all of the outstanding shares of Insight for approximately \$750 million (the “Acquisition”). The Acquisition is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

III. THE RELEVANT MARKET

5. For the purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture, marketing, distribution, and sale of over-the-counter (“OTC”) motion sickness medications.

6. For the purposes of this Complaint, the United States is the relevant geographic area in which to assess the competitive effects of the Acquisition in the relevant line of commerce.

IV. THE STRUCTURE OF THE MARKETS

7. Prestige and Insight are the two leading suppliers of branded OTC motion sickness medication in the United States and each other’s closest competitor. The only other branded OTC motion sickness medication supplier has minimal sales. Private label OTC motion sickness products account for a substantial share of sales, but they have only a limited competitive impact in the market because they are usually priced at a fixed discount to branded OTC motion sickness medication products, and are not promoted or marketed. The Acquisition would substantially increase the Herfindahl-Hirschman Index.

V. ENTRY CONDITIONS

8. Entry into the relevant market described in Paragraphs 5 and 6 would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition. Given the limited sales opportunities available in the U.S. OTC motion sickness medication market, potential new entrants are unlikely to incur the high up-front investment costs required to establish a recognized brand and compete effectively. A potential new entrant would also find it difficult to convince retailers to replace established brands in the limited shelf space they allocate to OTC motion sickness products.

VI. EFFECTS OF THE ACQUISITION

9. The effects of the Acquisition, if consummated, may be substantially to lessen competition, or tend to create a monopoly, in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by, among other things, eliminating actual, direct, and substantial competition between Prestige and Insight and reducing the number of significant competitors in the market for OTC motion sickness medications, thereby increasing the likelihood that: (1) Prestige would be able to unilaterally exercise market power in this market; and (2) customers would be forced to pay higher prices.

VII. VIOLATIONS CHARGED

10. The Agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

11. The Acquisition described in Paragraph 4, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-seventh day of August, 2014 issues its Complaint against said Respondents.

By the Commission.

Janice Podoll Frankle
Acting Secretary

SEAL: