



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Bureau of Competition  
Compliance Division

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June 23, 2003

Neil P. Motenko, Esq.  
Nutter McClenman & Fish LLP  
155 Seaport Boulevard  
Boston, Massachusetts 02210-2604

Re: In the Matter of MacDermid, Inc., et al.  
FTC Docket No. C-3911  
Investigational File No. 021-0091

Dear Mr. Motenko:

As you are aware, the Compliance Division of the Federal Trade Commission ("Commission") has been investigating compliance with the Commission's above-referenced order ("Order") by your client, MacDermid, Inc. ("MacDermid"). The investigation revealed a number of mistakes made by MacDermid in overseeing the required divestiture of the liquid photopolymer business formerly operated by Polyfibron. Nevertheless, when staff raised concerns and began investigating MacDermid, MacDermid appears to have acted in good faith to cooperate with the investigation, to identify and address all outstanding issues regarding MacDermid's compliance, and, most important, to remedy the consequences of any potential non-compliance. On the basis of these circumstances, and pursuant to the authority delegated to the Assistant Directors of the Bureau of Competition by the Commission, 49 Fed. Reg. 6171 (1984), the investigation has been closed.

The Order, issued on February 4, 2000, required MacDermid to divest Polyfibron's liquid photopolymer business in North America ("Divested Assets") to Chemence Incorporated ("Chemence"), in accordance with the asset purchase agreement it had reached with Chemence, no later than twenty (20) days from the date the Order became final.<sup>1</sup> Pursuant to the Order, Chemence would acquire a supply of liquid plate-making equipment, long term equipment/resin supply agreements with customers, an extensive customer base, a sales and technical sales force, and a liquid photopolymer product that was well-established in the market. MacDermid subsequently sold the Divested Assets to Chemence on December 29, 1999, within the time frame required by the Order.<sup>2</sup> The Divested Assets included, in relevant part, "all rights, title,

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<sup>1</sup> Order, ¶ II.A.

<sup>2</sup> The Order became final on February 8, 2000.

and interest in and to:" 1) Patents;<sup>3</sup> 2) Intellectual Property,<sup>4</sup> other than Patents,<sup>5</sup> and 3) agreements with customers, express or implied;<sup>6</sup> in each case "relating to the research, design, development, manufacture, distribution, marketing, or sale of Polyfibron Liquid Photopolymer Products in North America."<sup>7</sup>

The principal issues in this matter centered on the proper transfer of documents relating to certain types of chemicals, chemical processes, and manufacturing techniques, and on whether MacDermid used transferred technology in a manner beyond the scope of its retained rights. In order to evaluate these issues effectively, it became clear that an expert in chemistry who was also experienced in the nature and practice of documentation and record keeping for this type of information and know-how would be needed. To that end, and although not required under the Order, MacDermid agreed to hire an independent third party expert ("Independent Auditor") to review all relevant business records. MacDermid identified a highly qualified expert who could act independently in this role, discussed this candidate with Bureau staff, and then entered into agreements to insure that the Independent Auditor could fulfill his obligations without interference from MacDermid. This Independent Auditor performed duties similar to those of interim monitors that have been used in other Commission orders. MacDermid gave the Independent Auditor full and complete access to its operations and employees and was forthcoming with information and documents whenever the Independent Auditor identified documents and other information that should appropriately be delivered to Chemence, pursuant to the Order's divestiture requirements.

As a result of the involvement of the Independent Auditor and the cooperation of MacDermid with the investigation, both staff of the Commission and Chemence believe that the

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<sup>3</sup> Order ¶ I.F.2.

<sup>4</sup> "Intellectual Property" is defined as:

[a]ny form of intellectual property, including, but not limited to, trademarks, Patents, trade secrets, research materials, technical information, management information systems, software, inventions, test data, technological know-how, licenses, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, formulas, customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, quality control data, books, records, and files. Order, ¶ I.J.

<sup>5</sup> Order, ¶ I.F.3.

<sup>6</sup> Order, ¶ I.F.

<sup>7</sup> Order ¶ ¶ I.F.2, 3, and 5.

Neil P. Motenko, Esq.

Page 3

transfer of all the Polyfibron research and development records to Chemence is now complete. In order to address any future issues that may arise regarding the use of the Polyfibron technology it was permitted to retain, MacDermid has implemented a more thorough internal review procedure to assure its continued compliance with the Order's prohibitions on its use of the Polyfibron technology. In addition, pursuant to a private settlement, MacDermid is compensating Chemence for any potential interim harm caused by MacDermid's past failures to provide the relevant business information in a timely manner.

Based on the foregoing, the Compliance Division has determined not to recommend that the Commission take any further action. Accordingly, this investigation has been closed pursuant to authority delegated by the Commission. This action is not to be construed as a determination that a violation may not have occurred, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take such further action as the public interest may require.

Sincerely,



Daniel P. Ducore  
Assistant Director

cc: Robert D. Wilson, Esq.  
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