

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

COMMISSIONERS: **Lina M. Khan, Chair**
 Noah Joshua Phillips
 Rebecca Kelly Slaughter
 Christine S. Wilson

_____)	
In the Matter of)	
)	
American Securities Partners VII, L.P.,)	DECISION AND ORDER
a limited partnership,)	Docket No. C-
)	
Prince International Corporation)	
a corporation, and)	
)	
Ferro Corporation,)	
a corporation.)	
_____)	

DECISION

The Federal Trade Commission initiated an investigation of the proposed acquisition by Respondent American Securities Partners VII, L.P., the ultimate parent entity of Respondent Prince International Corporation, of all the voting securities of Respondent Ferro Corporation (collectively “Respondents”). The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint 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.

Respondents and the Bureau of Competition executed an Agreement Containing Consent Orders (“Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) 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 the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and 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. The Commission accepted the Consent Agreement and placed it on the public

record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent American Securities Partners VII, L.P. is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its executive offices and principal place of business located at 590 Madison Avenue, 38th Floor, New York, New York, 10022.
2. Respondent Prince International Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 15311 Vantage Parkway West, Suite 350, Houston, Texas 77032.
3. Respondent Ferro Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its executive offices and principal place of business located at 6060 Parkland Boulevard, Mayfield Heights, Ohio, 44124.
4. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER

I. Definitions

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

- A. “ASP” means American Securities Partners VII, L.P., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by American Securities Partners VII, L.P., including Prince International Corporation, PMHC II, Inc, and PMHC Fortune Merger Sub, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Prince” means Prince International Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Prince International Corporation, PMHC II, Inc., and PMHC Fortune Merger Sub, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- C. “Ferro” means Ferro Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Ferro Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “KPS” means KPS Capital Partners, LP, a limited partnership 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 One Vanderbilt Avenue, 52nd Floor, New York, New York 10017.
- E. “Commission” means the Federal Trade Commission.
- F. “Acquirer” means
 - 1. KPS; or
 - 2. Any other Person that the Commission approves to acquire the Prince Assets pursuant to this Order.
- G. “Acquisition” means the proposed acquisition described in the agreement titled “Agreement and Plan of Merger among Ferro Corporation, PMHC II, Inc. and PMHC Fortune Merger Sub, Inc., dated as of May 11, 2021.”
- H. “Acquisition Date” means the date Respondents consummate the Acquisition.
- I. “Bruges Facility” means the Prince facility located at Pathoekeweg 116-118, 8000 Brugge, in Bruges, Belgium.
- J. “Business Information” means books, records, data, and information, wherever located and however stored, used in the Prince Business, including documents, written information, graphic materials, and data and information in electronic format, along with the unwritten knowledge of employees, contractors, and representatives. Business Information includes records and information relating to research and development, manufacturing, process technology, engineering, production, sales, marketing, logistics, advertising, personnel, accounting, business strategy, information technology systems, customers, suppliers, and all other aspects of the Prince Business. For clarity, Business Information includes Respondents’ rights and control over information and material provided to any other person.
- K. “Cambiago Facility” means the facility leased by Prince located at Via S. Botticeli, 6-16, 20040 Cambiago (MI) in Cambiago, Italy.
- L. “Confidential Information” means all Business Information not in the public domain, except for any information that was or becomes generally available to the public other than as a result of disclosure by Respondents.

- M. “Consent” means an approval, consent, ratification, waivers, or other authorization.
- N. “Contract” means an agreement, contract, lease, license agreement, consensual obligation, promise or undertaking (whether written or oral and whether express or implied), whether or not legally binding with third parties.
- O. “Direct Cost” means the cost of labor, materials, travel, and other expenditures directly incurred. The cost of any labor included in Direct Cost shall not exceed the hours of labor provided times the then-current average hourly wage rate, including benefits, for the employee providing such labor.
- P. “Divestiture Agreement” means:
1. The Securities and Asset Purchase Agreement By and Between PMHC II., Inc. and Smalto Holdings Alberta, LP, and all amendments, exhibits, attachments, agreements, and schedules thereto, attached to this Decision and Order as Nonpublic Appendix A; or
 2. Any other agreement between Respondents (or a Divestiture Trustee appointed pursuant to Section IX of this Order) and an Acquirer for the purchase of any of the Prince Assets, and all amendments, exhibits, attachments, agreements, and schedules thereto.
- Q. “Divestiture Date” means the date on which Respondents (or a Divestiture Trustee) close on the divestiture of the Prince Assets as required by Section II (or Section IV) of this Order.
- R. “Divestiture Trustee” means the Person appointed by the Commission pursuant to Section IX of this Order.
- S. “Employee Information” means, to the extent permitted by law, the following information summarizing the employment history of each Prince Employee that includes:
1. Name, job title or position, date of hire, and effective service date;
 2. Specific description of the employee’s responsibilities;
 3. The base salary or current wages;
 4. Most recent bonus paid, aggregate annual compensation for Respondents’ last fiscal year, and current target or guaranteed bonus, if any;
 5. Written performance reviews for the past three years, if any;
 6. Employment status (*i.e.*, active or on leave or disability; full-time or part-time);

7. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 8. At the Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.
- T. "Fenton Facility Forehearth Colorants Line" means all assets related to the manufacture and sale of Forehearth Colorants at the Prince facility located at Duke Street, Fenton, Stoke-on-Trent, Staffordshire, ST43NR in Fenton, United Kingdom.
- U. "Forehearth Colorant" means a glass-based product that is added to the forehearth of certain glass furnaces during the manufacture of glass bottles to impart a specific color to the bottles.
- V. "Forehearth Colorant Business" means the research, development, manufacture, commercialization, distribution, marketing, exportation, advertisement, and sale of Forehearth Colorants worldwide by Respondent ASP.
- W. "Ferro Proceeding" means the proceeding filed by Ferro against Prince International Corporation, Prince Minerals Limited, Prince Belgium BVBA, and Jonathan Cork (collectively, the "Defendants") on June 28, 2019 in the High Court of Justice- Business and Property Courts of England and Wales (Docket #: IL-2019-00076) alleging trade secret misappropriation and any other claims or proceedings related thereto, that are pending prior to the Divestiture Date.
- X. "Glass Enamel" means a liquid paste produced by combining glass frit in a furnace with oxides of chrome, cobalt, nickel, and other metals and materials, milling the mixture, and making it into a thick paste that is added to glass surfaces for aesthetic purposes, such as adding color or decoration, or functional purposes, such as blocking UV light.
- Y. "Glass Enamel Business" means the research, development, manufacture, commercialization, distribution, marketing, exportation, advertisement, and sale of Glass Enamel worldwide by Respondent ASP.
- Z. "Governmental Authorization" means any license, registration, or permit issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement.
- AA. "Intellectual Property" means intellectual property of any kind, including patents, patent applications, trademarks, service marks, copyrights, trade dress, commercial names, internet web sites, internet domain names, inventions, discoveries, written and unwritten know-how, product recipes, process technology, engineering technology, product technology, product rights, trade secrets, and proprietary information.

- BB. “Leesburg Facility” means the Prince facility located at 100 Pemco Drive, Leesburg, Alabama, 35983 and the nearby distribution center located at 201 5th Avenue North, Piedmont, Alabama, 36272.
- CC. “Monitor” means any Person appointed by the Commission to serve as a monitor pursuant to this Order or the Order to Maintain Assets.
- DD. “Orders” means this Order and the Order to Maintain Assets entered in this action.
- EE. “Porcelain Enamel” means a glass-based coating applied to metal substrates that is made from ground frit combined with metals such as cobalt, lithium, titanium and nickel, and other additives.
- FF. “Porcelain Enamel Business” means the research, development, manufacture, commercialization, distribution, marketing, exportation, advertisement, and sale of Porcelain Enamel worldwide by Respondent ASP.

Provided, however, the “Porcelain Enamel Business” does not include any business conducted out of Brazil and Argentina, including by Prince Minerais Ltda. and Prince Argentina SA or their subsidiaries.

- GG. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity, or a governmental body.
- HH. “Prince Assets” means all of Respondents’ right, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, used in, or relating to the Prince Business (including assets removed and not replaced after the announcement of the Acquisition), including:
1. The Bruges Facility;
 2. The Cambiago Facility;
 3. The Leesburg Facility;
 4. The Fenton Facility Forehearth Colorants Line;
 5. Prince Minerals Italy S.r.l;
 6. Prince Belgium B.V;
 7. All inventories;
 8. All accounts receivable;

9. All Business Information;
10. All Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto;
11. All Governmental Authorizations and all pending applications therefor or renewals thereof, to the extent transferable;
12. Real property interests owned, leased, or otherwise held, including easements and appurtenances, together with buildings, facilities and other structures, and improvements thereto;
13. Intangible rights and property, including Intellectual Property, owned, used, or licensed (as licensor or licensee) by Respondent, going concern value, goodwill, and telephone listings, internet sites and social media accounts;
14. Prince Trademarks;
15. Tangible personal property (other than inventories or accounts receivable), whether owned or leased, including machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, together with all express or implied warranties by manufacturers, sellers or lessors and all maintenance records and operating manuals; and
16. Contracts, and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto;

Provided, however, that the Prince Assets do not include the Retained Leesburg Facility Assets or the Retained Assets.

- II. “Prince Business” means the Forehearth Colorant Business, the Glass Enamel Business, and the Porcelain Enamel Business.
- JJ. “Prince Employee” means any full-time, part-time, or contract individual employed by Prince at any Prince Business or whose job duties in whole or part include supporting any Prince Business, as of May 11, 2021.
- KK. “Prince Trademarks” means any trademark used by the Prince Business, including, but not limited to the Ecomail™, PACE™, PEMCO®, POESTA™, VitroInx™, VitroLite®, Vitromail®, and VitroMax® trademarks.
- LL. “Retained Assets” means the list of assets identified in Nonpublic Appendix B.
- MM. “Retained Leesburg Facility Assets” means the equipment used solely to produce brick engobes, ladle sands, and water treatment products, or to transload manganese nodules, at the Leesburg Facility and identified in Nonpublic Appendix C.

- NN. “Transition Assistance” means services, assistance, cooperation, training and access to personnel regarding the transfer and operation of the Prince Business, including, but not limited to, accounting and finance, human resources (employee benefits, payroll, etc.) information technology and systems, logistics (purchasing, distribution, warehousing, supply chain management, etc.), manufacturing (technology, technology transfer, operating permits and licenses, regulatory compliance, quality control, manufacturing processes and troubleshooting, etc.), supply of inputs, research and development, and sales and marketing (including customer service, supply chain management, and customer transfer logistics, etc.).

II. Divestiture

IT IS FURTHER ORDERED that:

- A. No later than 10 days after the Acquisition Date, Respondents shall divest the Prince Assets, as an ongoing business, absolutely and in good faith, to KPS;

Provided, however, that, if within 12 months after issuing this Order, the Commission determines, in consultation with the Acquirer and the Monitor, the Acquirer needs one or more Retained Assets or Retained Leesburg Facility Assets to operate the Prince Assets in a manner that achieves the purposes of this Order, Respondents shall divest, absolutely and in good faith, such needed Retained Assets or Retained Leesburg Facility Assets to the Acquirer;

Provided, further, however, that if Business Information includes information (i) that also relates to other retained businesses of Respondents and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Prince Assets or (ii) where Respondents have a legal obligation to retain the original copies, then Respondents shall provide only copies of the materials containing such information with appropriate redactions to the Acquirer and shall provide the Acquirer access to the original materials if copies are insufficient for regulatory or evidentiary purposes.

- B. If Respondents have divested the Prince Assets to an Acquirer prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that:

1. An Acquirer is not acceptable as the acquirer of the Prince Assets, then Respondents shall rescind the divestiture to that Acquirer within 5 days of notification, and shall divest the Prince Assets no later than 180 days from the date this Order is issued, as on-going businesses, absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or

2. The manner in which the divestiture to an Acquirer was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to modify the manner of divestiture of the Prince Assets as the Commission may determine is necessary to satisfy the requirements of this Order.
- C. Respondents shall deliver the Business Information to the Acquirer as soon as practicable after the Divestiture Date in a manner that ensures their completeness, accuracy and usefulness and meets the reasonable requirements of the Acquirer.
- D. No later than the Divestiture Date, Respondents shall, at their sole expense, obtain each Consent required to transfer the Prince Assets, including Contracts and Governmental Authorizations; *provided however*, that Respondents shall assist the Acquirer in obtaining the Contracts or Governmental Authorizations which Respondents have no legal right to assign, transfer or sublicense (even by obtaining relevant Consents).
- E. Respondents shall cooperate and assist the Acquirer (or any other person with whom Respondents engage in negotiations to acquire the Prince Assets) with a due diligence investigation of the Prince Assets and the Prince Business, including by providing sufficient and timely access to all information and employees customarily provided as part of a due diligence process.
- F. Respondent Ferro will seek a dismissal with prejudice of the Ferro Proceeding no later than 10 days after the Divestiture Date and provide a copy of the motion for dismissal and the court dismissal to the Commission.
- G. Respondents shall not join, file, prosecute, or maintain any suit, in law or equity, against an Acquirer related to any Intellectual Property acquired pursuant to this Order if such suit would limit or impair the Acquirer's ability to research, develop, manufacture distribute, market, or sell, anywhere in the world, any product acquired pursuant to this Order.

III. Divestiture Agreement

IT IS FURTHER ORDERED that:

- A. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with the terms of the Divestiture Agreement shall constitute a violation of this Order; *provided, however*, that the Divestiture Agreement shall not limit, or be construed to limit, the terms of this Order. To the extent any provision in the Divestiture Agreement varies from or conflicts with any provision in this Order such that Respondents cannot fully comply with both, Respondents shall comply with the Order.
- B. Respondents shall not modify or amend the terms of the Divestiture Agreement after the Commission issues the Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

IV. Transitional Assistance

IT IS FURTHER ORDERED that:

- A. Until Respondents have transferred all Business Information to the Acquirer, Respondents shall ensure that the Business Information is maintained and updated in the ordinary course of business and shall provide the Acquirer with access to Business Information (wherever located and however stored) that Respondents have not yet transferred to the Acquirer, and to employees who possess the Business Information.
- B. At the option of the Acquirer, Respondents shall provide the Acquirer with Transitional Assistance sufficient to (1) transfer efficiently the Prince Assets to the Acquirer and (2) allow the Acquirer to operate the acquired Prince Assets in a manner that is equivalent in all material respects to the manner in which Respondents did so prior to the Acquisition.
- C. Respondents shall provide Transitional Assistance:
 - 1. As set forth in the Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the Divestiture Date);
 - 2. At the price set forth in the Divestiture Agreement, or if no price is set forth, at Direct Cost; and
 - 3. For a period sufficient to meet the requirements of Section IV, which shall be, at the option of the Acquirer, for up to 12 months after the Divestiture Date;

Provided, however, that within 15 days after a request by the Acquirer, Respondents shall file with the Commission a written request to extend the 12 month time period for providing Transitional Assistance in order to achieve the purposes of this Order.
- D. Respondents shall allow the Acquirer to terminate, in whole or part, any Transitional Assistance at any time upon commercially reasonable notice and without cost or penalty.
- E. Respondents shall not cease providing Transitional Assistance due to a breach by the Acquirer of the Divestiture Agreement, and shall not limit any damages (including indirect, special, and consequential damages) that the Acquirer would be entitled to receive in the event of Respondent's breach of any agreement relating to Transitional Assistance.

V. Employees

IT IS FURTHER ORDERED that:

- A. Until 180 days after the Divestiture Date, Respondents shall cooperate with and assist the Acquirer to evaluate independently and offer employment to any Prince Employee.

- B. Until Respondents have fulfilled their obligation to provide Transition Assistance pursuant to Paragraph IV.C, Respondents shall:
1. No later than 10 days after a request from the Acquirer, provide the Acquirer a list of all Prince Employees and provide Employee Information for each;
 2. No later than 10 days after a request from the Acquirer, provide the Acquirer an opportunity to privately interview any of the Prince Employees outside the presence or hearing of any employee or agent of any Respondent, and to make offers of employment to any of the Prince Employees;
 3. Remove and not enter into any impediments within the control of Respondents that may deter Prince Employees from accepting employment with the Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Acquirer, and shall not make any counteroffer to a Prince Employee who receives an offer of employment from the Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;
 4. Continue to provide Prince Employees with compensation and benefits, including regularly scheduled raises and bonuses and the vesting of benefits;
 5. Provide reasonable financial incentives for Prince Employees to continue in their positions, and as may be necessary, to facilitate the employment of such Prince Employees by an Acquirer; and
 6. Not interfere, directly or indirectly, with the hiring or employing by the Acquirer of any Prince Employee, not offer any incentive to such employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any Prince Employee by the Acquirer.
- C. Respondents shall not, for a period of 180 days following the Divestiture Date, directly or indirectly, solicit or otherwise attempt to induce any Person employed by the Acquirer to terminate his or her employment with the Acquirer; *provided, however*, Respondents may:
1. Hire any such Person whose employment has been terminated by the Acquirer;
 2. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more Person employed by the Acquirer; or

3. Hire a Person who has applied for employment with Respondents, as long as such application was not solicited or induced in violation of Section V.
- D. Respondents Prince and Ferro shall not enforce any noncompete provision or noncompete agreement against any Person seeking employment from or otherwise doing business with the Prince Business.

VI. Asset Maintenance

IT IS FURTHER ORDERED that, pending divestiture of the Prince Assets, Respondents shall operate the Prince Assets in the ordinary course of business consistent with past practices, and shall:

- A. Take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Prince Assets, to minimize any risk of loss of competitive potential of the Prince Assets, to operate the Prince Assets in the regular and ordinary course of business and in accordance with past practice and in a manner consistent with applicable laws and regulations, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Prince Assets (including regular repair and maintenance effort), except for ordinary wear and tear. Respondents shall not sell, transfer, encumber, terminate the operations of, or otherwise impair the Prince Assets (other than in the manner prescribed in this Order), nor take any action that lessens the full economic viability, marketability, or competitiveness of the Prince Assets;
- B. Conduct or cause to be conducted the Prince Business in the regular and ordinary course of business and in accordance with past practice and as may be necessary to preserve the full economic viability, marketability, and competitiveness of the Prince Business, and shall use best efforts to preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, creditors, agents, and others having business relationships with the Prince Business; and
- C. Respondents must warrant to Acquirer of the Prince Assets that (1) the Prince Assets will be operational and without material defect on the date of their transfer to Acquirer of the Prince Assets; (2) there are no material defects in the environmental, zoning, or other permits relating to the operation of the Prince Assets; and (3) Respondents have disclosed all encumbrances on any part of the Prince Assets, including on intangible property. Following the sale of the Prince Assets, Respondents must not undertake, directly or indirectly, challenges to the environmental, zoning, or other permits relating to the operation of the Prince Assets.

Provided, however, that Respondents shall not be in violation of this Section VI if Respondents take actions (i) as explicitly permitted or required by any Divestiture Agreement, or (ii) that have been requested or agreed-to by an Acquirer, in writing, and approved in advance by the Monitor (in consultation with Commission staff), in all cases

to facilitate the Acquirer's acquisition of the Prince Assets and consistent with the purposes of the Order.

VII. Confidential Information

IT IS FURTHER ORDERED that:

- A. Respondents shall (x) not disclose (including as to Respondents' employees), and (y) not use, for any reason or purpose, any Confidential Information received or maintained by Respondents, *provided, however*, that Respondents may disclose or use such Confidential Information in the course of:
 - 1. Performing their obligations or as permitted under the Orders or any Divestiture Agreement; or
 - 2. Complying with financial reporting requirements, historical record-keeping for audit purposes, obtaining legal advice, prosecuting, or defending legal claims, investigations, or enforcing actions threatened or brought against the Prince Assets or Prince Business, or as required by law, rule, or regulation.
- B. Respondents shall only disclose Confidential Information to an employee or any other Person if disclosure is permitted in Paragraph VII.A and the employee or other Person has signed an agreement to maintain the confidentiality of such information and not violate the disclosure requirements of this Order.
- C. Respondents shall enforce the terms of Section VII and take necessary actions to ensure that their employees or other Persons comply with its terms, including implementing access and data controls, training of employees, and taking other actions that Respondents would take to protect their own trade secrets and proprietary information.

VIII. Monitor

IT IS FURTHER ORDERED that:

- A. The Commission appoints Smith & Williamson to serve as Monitor to observe and report on Respondents' compliance with their obligations as set forth in the Orders.
- B. Respondents and the Monitor may enter into an agreement relating to the Monitor's services. Any such agreement:
 - 1. Shall be subject to the approval of the Commission;
 - 2. Shall not limit, and the signatories shall not construe it to limit, the terms of this Section VIII or Section VI of the Order to Maintain Assets ("Monitor Sections"), and to the extent any provision in the agreement varies from or conflicts with any provision in the Monitor Sections, Respondents and the Monitor shall comply with the Monitor Sections; and
 - 3. Shall include a provision stating that the agreement does not limit, and the signatories shall not construe it to limit, the terms of this Order in this matter, and to the extent any provision in the agreement varies from or conflicts with any provision in this Order, Respondents and the Monitor shall comply with this Order.
- C. The Monitor shall:
 - 1. Have the authority to monitor Respondents' compliance with the obligations set forth in this Order;
 - 2. Act in consultation with the Commission or its staff;
 - 3. Serve as an independent third party and not as an employee or agent of Respondents or of the Commission;
 - 4. Serve without bond or other security;
 - 5. At the Monitor's option, employ such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
 - 6. Enter into a non-disclosure or other confidentiality agreement with the Commission related to Commission materials and information received in connection with the performance of the Monitor's duties and require that each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants shall also enter into a non-disclosure or other confidentiality agreement with the Commission;

7. Notify staff of the Commission, in writing, no later than 5 days in advance of entering into any arrangement that creates a conflict of interest, or the appearance of a conflict of interest, including a financial, professional or personal conflict. If the Monitor becomes aware of a such a conflict only after it has arisen, the Monitor shall notify the Commission as soon as the Monitor becomes aware of the conflict;
8. Report in writing to the Commission concerning Respondents' compliance with this Order on a schedule as determined by Commission staff, and at any other time requested by the staff of the Commission; and
9. Unless the Commission or its staff determine otherwise, the Monitor shall serve until Commission staff determines that Respondents have satisfied all obligations under Sections II, IV, and VI of this Order, and files a final report.

D. Respondents shall:

1. Cooperate with and assist the Monitor in performing his or her duties for the purpose of reviewing Respondents' compliance with their obligations under this Order, including as requested by the Monitor, (a) providing the Monitor full and complete access to personnel, information and facilities; and (b) making such arrangements with third parties to facilitate access by the Monitor;
2. Not interfere with the ability of the Monitor to perform his or her duties pursuant to this Order;
3. Pay the Monitor's fees and expenses as set forth in an agreement approved by the Commission, or if such agreement has not been approved, pay the Monitor's customary fees, as well as expenses the Monitor incurs performing his or her duties under this Order, including expenses of any consultants, accountants, attorneys, and other representatives and assistants that are reasonably necessary to assist the Monitor in carrying out his or her duties and responsibilities;
4. Not require the Monitor to disclose to Respondents the substance of the Monitor's communications with the Commission or any other Person or the substance of written reports submitted to the Commission pursuant to this Order; and
5. Indemnify and hold the Monitor harmless against any loss, claim, damage, liability, and expense (including attorneys' fees and out of pocket costs) that arises out of, or is connected with, a claim concerning the performance of the Monitor's duties under this Order, unless the loss, claim, damage, liability, or expense results from gross negligence or willful misconduct by the Monitor.

E. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into a customary

confidentiality agreement, so long as the agreement does not restrict the Monitor's ability to access personnel, information, and facilities or provide information to the Commission, or otherwise observe and report on the Respondents' compliance with this Order.

F. If the Monitor resigns or the Commission determines that the Monitor has ceased to act, has failed to act diligently, or is otherwise unable to continue serving as a Monitor due to the existence of a conflict or other reasons, the Commission may appoint a substitute Monitor. The substitute Monitor shall be afforded all rights, powers, and authorities and shall be subject to all obligations of the Monitor Sections of the Orders. The Commission shall select the substitute Monitor, subject to the consent of the Respondents.

Respondents:

1. Shall not unreasonably withhold consent to the appointment of the selected substitute Monitor;
2. Shall be deemed to have consented to the selection of the proposed substitute Monitor if, within 10 days of notice by staff of the Commission of the identity of the proposed substitute Monitor, Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Monitor; and
3. May enter into an agreement with the substitute Monitor relating to the substitute Monitor's services that either (a) contains substantially the same terms as the Commission-approved agreement referenced in Paragraph VIII.B; or (b) receives Commission approval.

G. 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 this Order.

IX. Divestiture Trustee

IT IS FURTHER ORDERED that:

A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver, or otherwise convey the Prince Assets as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under Section IX shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant

to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than 10 days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestitures required by this Order. Any failure by Respondents to comply with a trust agreement approved by the Commission shall be a violation of this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to Section IX, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed;
 2. The Divestiture Trustee shall have one year from the date the Commission approves the trustee agreement described herein to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one-year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission,

Provided, however, the Commission may extend the divestiture period only 2 times;
 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and

shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestitures. Any delays in divestitures caused by Respondents shall extend the time for divestitures under Section IX in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestitures shall be made in the manner and to Acquirers that receive the prior approval of the Commission as required by this Order,

Provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring person for a divestiture, and if the Commission determines to approve more than one such acquiring person for the divestiture, the Divestiture Trustee shall divest to the acquiring person selected by Respondents from among those approved by the Commission,

Provided further, however, that Respondents shall select such person within 5 days of receiving notification of the Commission's approval;

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;
6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee;

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Prince Assets required to be divested by this Order;
8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and
9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement,

Provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

- E. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee'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 Divestiture Trustee's duties.
- F. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in Section IX.
- G. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by this Order.

X. Prior Approval

IT IS FURTHER ORDERED that Respondents shall not, without prior approval of the Commission, acquire directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any business that manufactures and sells Forehearth Colorants or Glass Enamel anywhere in the world, or manufactures and sells Porcelain Enamel Frit in North America.

XI. Prior Approval for Acquirer

IT IS FURTHER ORDERED that:

- A. For a period of 3 years after the Divestiture Date, KPS or any other Acquirer shall not sell, or otherwise convey, through subsidiaries or otherwise, without the prior approval of the Commission, the Prince Business that was divested pursuant to Section II, to any Person; and

- B. For a period of 7 years after the term of Paragraph XI.A ends, KPS or any other Acquirer shall not sell, or convey, through subsidiaries or otherwise, without the prior approval of the Commission:
1. the Forehearth Colorant Business to any Person who owns, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or other interest, in whole or in part, in any business that manufactures and sells Forehearth Colorant anywhere in the world;
 2. the Glass Enamel Business to any Person who owns, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or other interest, in whole or in part, in any business that manufactures and sells Glass Enamel anywhere in the world; or
 3. the Porcelain Enamel Business to any Person who owns, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or other interest, in whole or in part, in any business that manufactures and sells Porcelain Enamel in North America,

Provided, however, KPS is not required to obtain prior approval of the Commission under this Paragraph XI.B for a change of control, merger, reorganization, or sale of all or substantially all of KPS's business.

XII. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondent ASP shall:
1. Notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date no later than 5 days after the Acquisition Date; and
 2. Submit the complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the Divestiture Date.
- B. Respondents ASP and Prince shall submit verified written reports (“compliance reports”) in accordance with the following:
1. Respondents ASP and Prince shall submit interim compliance reports 30 days after this Order is issued, and every 30 days thereafter until Respondents ASP and Prince have fully complied with the provisions of Sections II, IV, and VI of this Order;

2. Respondents ASP and Prince shall submit annual compliance reports one year after the date this Order is issued, and annually thereafter for the next nine years on the anniversary of that date; and
 3. Respondents ASP and Prince shall submit additional compliance reports as the Commission or its staff may request;
 4. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents ASP and Prince are in compliance with the Order. Conclusory statements that Respondents have complied with their obligations under this Order are insufficient. Respondents ASP and Prince shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents ASP and Prince have implemented or plan to implement to ensure that they have complied or will comply with each section of the Order; and
 5. For a period of 5 years after filing a compliance report, Respondents ASP and Prince shall retain all material written communications with each party identified in each compliance report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling their obligations under this Order during the period covered by such compliance report. Respondents ASP and Prince shall provide copies of these documents to Commission staff upon request; and
- C. Respondents ASP and Prince shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents ASP and Prince shall file their compliance reports with the Secretary of the Commission at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov, as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a). In addition, Respondents ASP and Prince shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

XIII. Change in Respondents

IT IS FURTHER ORDERED that Respondents ASP and Prince shall notify the Commission at least 30 days prior to:

- A. Any proposed dissolution of American Securities Partners VII, L.P. or Prince International Corporation;
- B. Any proposed acquisition, merger, or consolidation of American Securities Partners VII, L.P. or Prince International Corporation; or

- C. Any other change in Respondent ASP or Prince, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

XIV. Access

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days' notice to the relevant Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.71(a)(1) and (2), 16 C.F.R. § 2.71(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; or
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

XV. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and ensure the Acquirer can operate the Prince Business and Prince Assets in a manner at least equivalent in all material respects to the manner in which they were operated prior to the Acquisition.

XVI. Term

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission.

April J. Tabor
Secretary

SEAL:

ISSUED: