

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,
Washington, D.C. 20580

Plaintiff,

v.

CVS CORPORATION,
One CVS Drive
Woonsocket, RI 02895

Defendant.

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CASE NUMBER 1:98CV00775

JUDGE: Gladys Kessler

DECK TYPE: Civil General

DATE STAMP: 03/26/98
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COMPLAINT

Plaintiff, Federal Trade Commission, hereinafter "Commission," by its undersigned attorneys, brings this action under Sections 5(l) and 16(a)(1) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(1) and 56(a)(1), to obtain civil penalties based on violations of a final order of the Federal Trade Commission and of an asset maintenance agreement (attached to and made a part of the final order) entered into by defendants with the Federal Trade Commission.

JURISDICTION AND VENUE

1) This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337, 1345, and 1355, and 15 U.S.C. § 45(1).

2) Venue in this District is proper by virtue of the defendant's consent, in the Stipulation relating hereto, to the maintenance of this action and the entry of the Judgment in this District and by virtue of the fact that defendant is operating and doing business in this District.

3) CVS Corporation ("CVS") is made a defendant herein. CVS is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at One CVS Drive, Woonsocket, Rhode Island 02895. CVS is engaged, inter alia, in the retail sale of pharmacy services.

4) Defendant is, and at all times pertinent to this proceeding has been, engaged in commerce as "commerce" is defined in section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

PRIOR COMMISSION PROCEEDINGS

5) In a proceeding entitled "In the Matter of CVS Corporation, et al." FTC Docket No. C-3762, the Commission issued an administrative complaint charging CVS and Revco D.S., Inc. ("Revco") with violating Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. The administrative complaint alleged, inter alia, that the February 6, 1997, Agreement and Plan of Merger entered into by CVS and Revco violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and, 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. The complaint alleged, in relevant part, that the acquisition would lessen competition in the retail sale of pharmacy services in the State of Virginia. A copy of the administrative complaint is attached and made a part hereof.

6) On August 13, 1997, the Commission issued its final order in FTC Docket No. C-3762 ("Order"), with the consent of CVS. The Order was duly served upon CVS and Revco and

became final on or about August 14, 1997. The Order has not at any time been modified or set aside, and is now and has been at all times since August 14, 1997, in full force and effect.

7) On May 29, 1997, before the Commission determined to accept and issue the Order as final, CVS and Revco entered into an Asset Maintenance Agreement ("Agreement") with the Commission. The purpose of the Agreement was to preserve, among other assets, the "Virginia Assets to be Divested" (as defined in Paragraph I.Q. of the Order) pending their divestiture, to preserve the continued viability and competitiveness of these assets, and to preserve the status quo ante of these assets. As a part of the Agreement, CVS and Revco agreed to maintain the marketability and viability of the Virginia Assets to be Divested, to prevent their wasting or deterioration, not to encumber or otherwise impair their marketability or viability and to maintain the competitiveness of the assets. CVS and Revco agreed to continue specific store services, in particular, to continue to offer the same type and quality of pharmacy services at the pharmacies subject to divestiture as was being offered at those pharmacies not subject to divestiture under the Order. Paragraph IV.B. of the Order incorporates the Asset Maintenance Agreement into the Order and makes the Agreement a part of the Order. A copy of the Commission's Order and Asset Maintenance Agreement is attached and made a part hereof.

8) Paragraph II.A. of the Order requires that CVS and Revco divest absolutely and in good faith the Virginia Assets to be Divested. It further provides for such a divestiture to the Eckerd Corporation. The Virginia Assets to be Divested specifically include "all pharmacy files, documents, instructions, papers, books, computer files and records and all other records in any media relating to the Retail Drug Store Business" as well as "lists of all customers (including

third party insurers) and all files of names, addresses, and telephone numbers of the individual customer contacts, and the unit and dollar amounts of sales by product to each customer."

9) Paragraph IV.A. of the Order requires CVS and Revco to "take such actions as are necessary to maintain the viability, marketability and competitiveness" of the Virginia Assets to be Divested and to "prevent the destruction, removal, wasting, deterioration, or impairment of any of these assets except for ordinary wear and tear."

VIOLATIONS ALLEGED

10) The allegations of Paragraphs 1 through 9 hereof are repeated and realleged as though fully set forth herein.

11) On or about May 29, 1997, CVS acquired Revco D.S. Inc. which included, in relevant part, the 114 Revco Retail Drug Stores and associated Retail Drug Store Assets that comprised the Virginia Assets to be Divested pursuant to Paragraph II.A. of the Order. Of these 114 locations, 1 store location was under construction, leaving 113 operating retail drug stores.

12) On or about June 16, 1997, CVS began transferring control of the 114 Revco Retail Drug Stores to Eckerd pursuant to an asset purchase agreement entered into by CVS and Eckerd on May 16, 1997.

13) On or about June 23, 1997, the transfer of control over the 114 Revco Retail Drug Store locations from CVS to Eckerd was completed.

14) Prior to the transfer of the 113 operating drug stores to Eckerd, CVS, with Eckerd's consent, removed the pharmacy computers and all access to Revco's on-line computer system, effectively eliminating all automated access to the pharmacy files (including preexisting patient profile data) necessary to operate the pharmacies competitively.

15) At the time of the transfer, CVS did not provide the pharmacy files in a computerized format that could be translated for use in Eckerd's on-line computer system. Instead, CVS provided Eckerd with the pharmacy files only on microfiche, which required pharmacists to manually look up the relevant patient information, a much more cumbersome and time-consuming process.

16) CVS's transfer of the records by means of microfiche did not comport with Virginia Board of Pharmacy regulations for the proper transfer of the prescription records and, initially, was incomplete (containing only four months of prescription dispensing data rather than the two years of such data as required to be transferred and maintained pursuant to Virginia Board of Pharmacy regulations).

17) On or about August 15, 1997, CVS first provided Eckerd with a computerized flat file that could be converted and loaded onto Eckerd's on-line computer system. The conversion and installation of the data into Eckerd's on-line computer system (in use in these pharmacies since the transfer to Eckerd), took approximately two to four weeks to complete.

18) From approximately June 16, 1997, until September 16, 1997, these pharmacies were without an automated system containing the preexisting patient pharmacy files.

19) Defendant CVS violated the Order and Asset Maintenance Agreement by transferring the preexisting patient pharmacy records in a format that precluded Eckerd from immediately and quickly offering pharmacy services that were competitively equivalent to the pharmacy services being offered by the pharmacies that CVS retained and thus failing to maintain the competitiveness of the Virginia Assets to be Divested.

20) Consumers were denied the full benefits of competition, i.e., automated access to complete, up-to-date, and accurate, prescription dispensing records, as contemplated by the Order and Asset Maintenance Agreement, during the period of CVS's violation.

21) Defendant CVS was continuously in violation of the Asset Maintenance Agreement from approximately June 16, 1997, i.e., the date CVS transferred control over the retail drug store locations to Eckerd without the properly formatted and complete pharmacy records, until, at least, August 15, 1997, i.e., the date CVS provided to Eckerd the complete prescription records in a format that could properly be translated for use in Eckerd's on-line system.

22) Defendant CVS was continuously in violation of the Order from approximately August 14, 1997, i.e., the date on which the Order became final until, at least, August 15, 1997.

PRAYER

WHEREFORE PLAINTIFF PRAYS:

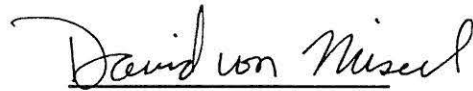
1) That this Court adjudge and decree that the Defendant was continuously in violation of the Asset Maintenance Agreement with regard to each of the 113 operating divestiture pharmacies for each day of the period from June 16, 1997, through, at least, August 15, 1997.

2) That this Court adjudge and decree that the Defendant was continuously in violation of Paragraphs IV.A. and IV.B. of the Order with regard to each of the 113 operating divestiture pharmacies from August 14, 1997, until, at least, August 15, 1997.

3) That this Court enter judgment against the Defendant for an appropriate civil penalty as allowed by law, 15 U.S.C. § 45 (1).

4) That the plaintiff be awarded costs and disbursements of this action and such other and further relief as the Court may deem just and proper.

Dated: March 26, 1998



David Allen von Nirschl
DC Bar # 434621
Attorney
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580
(202) 326-3213

OF COUNSEL FOR THE PLAINTIFFS:

William J. Baer
Director
Daniel P. Ducore
Assistant Director
Elizabeth A. Piotrowski
Deputy Assistant Director
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580
(202) 326-2687

UNITED STATES DISTRICT COURT
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FEDERAL TRADE COMMISSION,
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Plaintiff,

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CVS CORPORATION,
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Defendant.

Civil Action No. 98-0775

FILED

MAR 30 1999

NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. the parties consent to the Court's entry of a "Judgment for Civil Penalties in Connection with the Order in F.T.C. Docket No. C-3762 and with the Related Asset Maintenance Agreement" (hereinafter "Judgment"), substantially in the form attached to this Stipulation, on the Court's own motion or on the motion of the Plaintiff Federal Trade Commission, at any time, and without further notice to any party or other proceedings, if Plaintiff has not withdrawn its consent, which it may do at any time before the entry of judgment by serving notice of its withdrawal on Defendant CVS Corporation, and filing that notice with the Court;

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2. the Defendant waives any objection to venue or jurisdiction for purposes of this Judgment and authorizes Louis R. Sernoff, Esq. of Baker & Hostetler, Washington, D.C., to accept service of all process in this matter on its behalf;

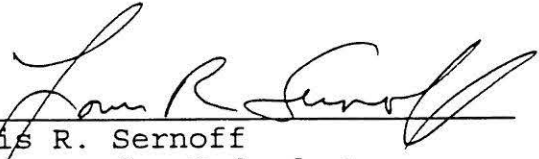
3. the parties' execution of this Stipulation and the entry of the Judgment settle any and all claims of the Plaintiff Federal Trade Commission for Defendant's failure to maintain the "Virginia Assets to be Divested," as defined in Paragraph I.Q. of the Order, as required by Paragraphs IV.A and IV.B. of the Order and by the Asset Maintenance Agreement, attached to the Order and made a part thereof;

4. neither this Stipulation nor the attached Judgment shall be construed to preclude the Federal Trade Commission or the Attorney General from bringing an action against the Defendant for any violation(s) of the Order or related Asset Maintenance Agreement other than those described herein;

5. in the event Plaintiff Federal Trade Commission withdraws its consent, or if the proposed Judgment is not entered pursuant to this Stipulation, this Stipulation shall become null and void and be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.


Dated: 1/22/98

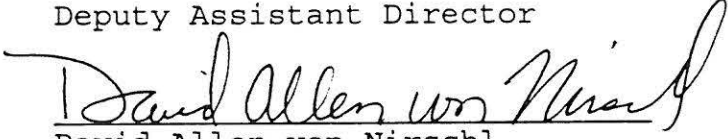
FOR THE DEFENDANT
CVS CORPORATION, INC.:


Louis R. Sernoff
Attorney for Defendant
Baker & Hostetler
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, DC 20036

Ronan P. Harty
Of Counsel to CVS Corporation, Inc
Davis Polk & Wardwell
450 Lexington Avenue
New York, NY 10017

FOR THE PLAINTIFF FEDERAL TRADE COMMISSION:


Elizabeth A. Piotrowski
Deputy Assistant Director


David Allen von Nirschl
Attorney

Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580
(202) 326-2687

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Defendant.

Civil Action No. 98-0113

FILED

MAR 30 1998

NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

JUDGMENT FOR CIVIL PENALTIES IN CONNECTION
WITH THE ORDER IN F.T.C. DOCKET NO. C-3762
AND WITH THE RELATED ASSET MAINTENANCE AGREEMENT

Plaintiff, Federal Trade Commission, having commenced this action by filing its Complaint herein, and the defendant, CVS Corporation, having consented to the entry of this "Judgment for Civil Penalties in Connection with the Order in F.T.C. Docket No. C-3762 and with the Related Asset Maintenance Agreement" (hereinafter "Judgment") without trial or adjudication of any issue of fact or law herein and without this Judgment constituting any evidence against or an admission by any party with respect to any allegation contained in the Complaint:

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

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ORDERED, ADJUDGED, AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter herein and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the defendant under Sections 5(l) and 16(a)(1) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(l) and 56(a)(1).

II.

Judgment is hereby entered in favor of the plaintiff, Federal Trade Commission, and against the defendant, CVS Corporation, and defendant shall pay to the United States, pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), a civil penalty in the amount of six hundred thousand United States dollars (\$600,000). Payment shall be made in the following manner:

- A. The defendants shall make a payment of \$600,000 within thirty (30) days of the date of entry of this Judgment;
- B. The payment specified above shall be made by certified check payable to the Federal Trade Commission. Delivery shall be made to Diane L. Reinertson, Division of Budget and Finance, Federal Trade Commission, 6th & Pennsylvania Ave, N.W., Washington, D.C. 20580;
- C. In the event of a default in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of default to the date of payment.

III.

This Judgment shall not be construed to preclude the Federal Trade Commission or the Attorney General from bringing an action against the defendants for any violation(s) of the Order in F.T.C. Docket No. C-3762 ("Order") or the Asset Maintenance Agreement, attached to the Order and made a part thereof, other than an action for civil penalties for Defendant's failure to maintain the "Virginia Assets to be Divested," as defined in Paragraph I.Q. of the Order, as required by Paragraphs IV.A and IV.B. of the Order and by the Asset Maintenance Agreement.

IV.

Each party shall bear its own costs of the within action.

V.

Entry of this Judgment is in the public interest.

Dated, March 30, 1995, District of Columbia

G. L. Kessler
United States District Judge