

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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FEDERAL TRADE COMMISSION	)	
600 Pennsylvania Avenue, NW	)	
Washington, DC 20580	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. _____
	)	
HICKS, MUSE, TATE & FURST	)	
EQUITY FUND V, L.P.	)	
200 Crescent Court	)	
Dallas, Texas 75201,	)	
	)	
PINNACLE FOODS CORPORATION	)	
6 Executive Campus	)	
Cherry Hill, New Jersey 08002-4112,	)	
	)	
PHILIP MORRIS COMPANIES, INC.	)	
120 Park Avenue	)	
New York, New York 10017-5592,	)	
	)	
and	)	
	)	
KRAFT FOODS NORTH AMERICA, INC. )		
Three Lakes Drive	)	
Northfield, Illinois 60093-2753	)	
	)	
Defendants.	)	
	)	

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**COMPLAINT**

Pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), the Federal Trade Commission (“FTC”) petitions the Court for a preliminary injunction enjoining Hicks, Muse, Tate & Furst Equity Fund V, L.P. (“Hicks Muse”) and all of its controlled entities and

subsidiaries, including Pinnacle Foods Corporation (“Pinnacle”), owner of the Vlasic pickle business, from acquiring the Claussen pickle business owned by Philip Morris Companies, Inc. (“Philip Morris”) and all of its controlled entities and subsidiaries, including Kraft Foods North America, Inc. (“Kraft”). If allowed to proceed, the proposed acquisition will likely lessen competition substantially in connection with the marketing and sale of refrigerated pickles. The purpose of this preliminary injunction action, authorized by Section 13(b) of the FTC Act, is to maintain the competitive *status quo* during the pendency of an administrative case that the FTC will initiate to challenge the legality of the proposed acquisition on the merits under Section 7 of the Clayton Act and Section 5 of the FTC Act.

### **Jurisdiction and Venue**

1. Jurisdiction is based upon Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and 28 U.S.C. §§ 1337 and 1345. Venue is proper under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), under 28 U.S.C. §§ 1391(b) and (c), and under Section 12 of the Clayton Act, 15 U.S.C. § 22.

### **The Parties**

2. The FTC is an administrative agency of the United States Government established, organized, and existing pursuant to the FTC Act, 15 U.S.C. § 41 *et seq.*, with its principal offices at 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC has the authority to enforce, *inter alia*, Section 7 of the Clayton Act and Section 5 of the FTC Act.

3. Hicks Muse is a limited partnership organized and existing under the laws of the State of Delaware, with its principal place of business at 200 Crescent Court, Dallas, Texas 75201. Hicks

Muse is engaged in commerce as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12, and transacts business in the District of Columbia.

4. Pinnacle is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 6 Executive Campus, Cherry Hill, New Jersey 08002-4112. Pinnacle is engaged in commerce as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12, and transacts business in the District of Columbia.

5. Philip Morris is a corporation organized and existing under the laws of the State of Virginia, with its principal place of business at 120 Park Avenue, New York, New York 10017-5592. Philip Morris is engaged in commerce as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12, and transacts business in the District of Columbia.

6. Kraft is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at Three Lakes Drive, Northfield, Illinois 60093-2753. Kraft is engaged in commerce as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12, and transacts business in the District of Columbia.

#### **Section 13(b) of the FTC Act**

7. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), provides in pertinent part:

(b) Whenever the Commission has reason to believe –

(1) that any person, partnership or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on

review, or until the order of the Commission made thereon has become final, would be in the interest of the public –

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond. . . .

### **The Proposed Acquisition and the FTC's Response**

8. On or about May 4, 2002, Pinnacle and Kraft entered into an Asset Purchase Agreement pursuant to which Pinnacle would acquire all of the assets of the Claussen pickle business of Kraft.

9. On October 22, 2002, the FTC authorized the commencement of an action under Section 13(b) of the FTC Act to seek a preliminary injunction preventing consummation of the proposed acquisition during the pendency of an administrative case to be commenced by the FTC. In the administrative case, Hicks Muse, Pinnacle, Philip Morris, and Kraft will have the opportunity to elect “fast-track” procedures for the determination on the merits. A fast-track procedure under Section 3.11A of the FTC’s *Rules of Practice* makes available to the defendants in an administrative case procedures that, if accepted by the defendants, will enable the FTC to issue a final decision and order on an expedited basis.

10. In authorizing the commencement of this action, the FTC determined that a preliminary injunction that maintains the *status quo* serves the public interest and that it has reason to believe that

the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the FTC Act by substantially lessening competition or tending to create a monopoly.

### **The Acquisition Would Substantially Lessen Competition**

11. The proposed acquisition would eliminate competition between Vlasic and Claussen, the two leading national pickle brands. This competition has directly affected pricing, marketing, advertising, and product introductions or extensions in the relevant market.

12. Vlasic has served as the greatest competitive constraint upon Claussen in the refrigerated pickles market. No other seller of refrigerated pickles has constrained Claussen like Vlasic.

13. In addition, Vlasic is the leading seller of premium shelf-stable pickles, and although its shelf-stable pickles are not in the same market as the Claussen refrigerated products, there is sufficient substitution that Vlasic's shelf-stable pickles also operate as a competitive constraint on Claussen.

14. Consumers have directly benefitted as a result of price competition between Vlasic and Claussen. As the two leading national pickle brands, Vlasic and Claussen have engaged in a unique rivalry that will be lost if this acquisition is permitted to go forward.

### **Likelihood of Success on the Merits**

15. In a later administrative case adjudicating the legality of the proposed acquisition, the FTC is likely to succeed in demonstrating that the proposed acquisition would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45. In particular the FTC is likely to succeed in demonstrating, *inter alia*, that:

- a. The manufacture, distribution, and sale for retail of refrigerated pickles is a relevant product market in which to assess the likely competitive effects of the proposed acquisition. The relevant geographic market or area in which to assess the proposed acquisition is the United States.
- b. The proposed acquisition will substantially increase concentration in the relevant market, which is already highly concentrated. In 2001, Claussen and Vlasic accounted for about 85% and 5%, respectively, of refrigerated pickle sales. Claussen and Vlasic are by far the strongest pickle brands.
- c. Entry sufficient to deter or counteract the loss of competition is unlikely. No other firm can, or in the near future will likely be able to, replace the rivalry that would be lost if the proposed acquisition is consummated.
- d. The merging parties cannot establish significant, cognizable efficiencies.

16. For the reasons stated above, granting the injunctive relief sought by the FTC serves the public interest and will ensure that consumers continue to benefit from price competition between Vlasic and Claussen.

**WHEREFORE**, the FTC requests that the Court:

1. Preliminarily enjoin Defendants Hicks Muse and Pinnacle, and all of their affiliates, from taking any further steps to consummate, directly or indirectly, their proposed acquisition of the Claussen pickle business, or any other acquisition of assets, stock, or other interest concerning the Claussen pickle business;

2. Order the parties to maintain the *status quo* pending the issuance of an administrative complaint by the FTC challenging the proposed acquisition, and until such time as the FTC dismisses the complaint, a court upon review sets it aside, or an FTC order has become final; and

3. Award such other and further relief as the Court may determine to be proper and just, including costs.

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Respectfully submitted,

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By:

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Dated: October 23, 2002