UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of	)	
LIBBEY INC, a corporation,	)	
and	)	Docket No. 9301
NEWELL RUBBERMAID, INC., a corporation.	)	

ANSWER AND AFFIRMATIVE DEFENSES OF LIBBEY INC.

Respondent Libbey Inc. ("Libbey"), by and through it attorneys, Latham & Watkins, hereby answers the allegations of the Federal Trade Commission ("FTC") Complaint as follows:

1. Respondent Libbey is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 300 Madison Avenue, Toledo, Ohio 43699-0060.

ANSWER: Libbey admits the allegations in Paragraph 1.

2. Libbey is the largest maker and seller of food service glassware in the United States, with substantially more than half of the sales. Libbey produces and sells food service glassware, a line of products that includes many different styles of tumblers and stemware for beverages, and other glassware products ranging from serving platters to candle holders. Libbey produces and sells glassware, among other segments, to food service customers, including distributors who resell soda-lime glassware to restaurants, hotels and other food service establishments.

ANSWER: Libbey admits that it produces and sells glassware, including tumblers, stemware, platters and candleholders, to, among other customers, food service customers, including distributors who resell glassware to restaurants, hotels and other food service establishments. Except as stated above, Libbey denies each and every allegation in Paragraph 2, including the characterization of "food service glassware" as a distinct product line.

3. Respondent Newell Rubbermaid is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 29 East Stephenson Street, Freeport, Illinois 61032. Anchor is an indirect, wholly-owned subsidiary of Newell Rubbermaid.

ANSWER: Based on information and belief, Libbey admits the allegations in Paragraph 3.

4. Anchor is the third largest maker and seller of food service glassware in the United States. Anchor is Libbey's most formidable competitor in the food service glassware market.

ANSWER: Libbey admits Anchor Hocking Corp. ("Anchor Hocking") produces and sells glassware to, among other customers, food service customers. Libbey admits that Anchor Hocking is one of several companies that sell of glassware to food service customers and states that Libbey and Anchor Hocking are only two of at least sixteen domestic and foreign companies that compete in the sale of glass tableware in the United States. Except as stated above, Libbey denies each and every allegation in Paragraph 4, including the characterization of "food service glassware" as a distinct product line.

5. Libbey 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 corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

ANSWER: Libbey admits the allegations in Paragraph 5.

6. Newell Rubbermaid 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 corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

ANSWER: Based on information and belief, Libbey admits the allegations in Paragraph 6.

7. Pursuant to a Stock Purchase Agreement dated June 17, 2001, Libbey proposed to acquire all of the stock of anchor from Newell Rubbermaid (the "acquisition").

ANSWER: Libbey admits the allegations in Paragraph 7. Libbey also avers that Libbey will acquire the stock of Anchor Hocking from Newell Rubbermaid Inc. ("Newell Rubbermaid") pursuant to an Amended and Restated Stock Purchase Agreement, dated January 21, 2002 (the "Amended Agreement"), which supersedes the Stock Purchase Agreement dated June 17, 2001 (the "Original Agreement").

8. On December 18, 2001, the Commission authorized the commencement of an action under Section 13(b) of the FTC Act to seek a preliminary injunction barring the acquisition during the pendency of administrative proceedings. Thereafter, on January 14, 2002, the FTC commenced such an action in the United States District Court for the District of Columbia, and on April 22, 2002, the district court granted the FTC's motion for a preliminary injunction pending the completion of administrative adjudication.

ANSWER: Based on information and belief, Libbey admits the allegations in Paragraph 8. Libbey further states that the transaction upon which the Commission voted to seek authorize the commencement of an action under Section 13(b) of the FTC Act was the acquisition contemplated by the Original Agreement, a transaction that was superseded and rendered null by the Amended Agreement.

9. On or about January 21, 2002, after the preliminary injunction action was commenced, respondents amended their merger agreement (the "amended merger agreement"). Respondents amended their merger agreement in response to the Commission's vote to challenge the acquisition. Pursuant to the amended agreement, Libbey would still acquire all of the stock of Anchor, but prior to closing Anchor would transfer to Newell Rubbermaid's Rubbermaid Commercial Products ("RCP") division less than 10% of the assets of Anchor, and the consideration to be paid by Libbey for Anchor would be reduced by less than 10%.

ANSWER: Libbey admits that on January 21, 2002 it amended the Original Agreement in response to the Commission's vote to challenge the acquisition. Libbey admits it proposes to acquire to acquire the stock of Anchor Hocking from Newell Rubbermaid pursuant to Amended Agreement, which superseded the Original Agreement. Libbey admits that the Amended Agreement reduced the purchase price by $32.5 million. Except as stated above, Libbey denies each and every allegation in Paragraph 9.

10. Under the amended merger agreement, the assets to be transferred to RCP are most (not all) of the molds, customers relationships and certain other assets used in Anchor's food service glassware business. Anchor would keep, and Libbey would still acquire, key assets used by Anchor in the food service glassware business, most significantly Anchor's two glassware manufacturing plants. Newell would not retain any capability to manufacture glassware.

ANSWER: Libbey admits it will acquire from Anchor Hocking two manufacturing plants and certain other assets (including molds and customer relationships) pursuant to the Amended Agreement. Except as stated above, Libbey denies each and every allegation in Paragraph 10.

11. After the district court granted the Commission's motion for a preliminary injunction, respondents told the court that Libbey would not solicit certain Anchor employees. At approximately the same time, Newell and a third party modified the price term under a supply agreement for RCP.

ANSWER: Libbey admits that after the district court granted the Commission's motion for a preliminary injunction, respondents told the court Libbey would not solicit certain Anchor Hocking employees. Based on information and belief, Libbey admits that Newell Rubbermaid and a third party modified the price term under a supply agreement for RCP.

12. The amended merger agreement and the changes described in Paragraph 11 do not materially change the acquisition or its likely effect on competition.

ANSWER: Libbey denies each and every allegation of Paragraph 12. Moreover, Libbey states that pursuant to the Original Agreement, Libbey proposed to acquire from Newell Rubbermaid its Anchor Hocking division, including its food service, retail and industrial glassware businesses. Libbey further states that that pursuant to the Amended Agreement, which superseded the Original Agreement, Libbey is to acquire only Newell Rubbermaid's retail and specialty glassware businesses, which do not compete in the FTC's alleged relevant market. Newell Rubbermaid will retain its food service glassware business, which competes in the FTC's alleged relevant market.

13. A relevant line of commerce in which to assess the effects of the acquisition and the amended merger agreement is food service glassware.

ANSWER: Libbey denies each and every allegation of Paragraph 13. Libbey instead states that the relevant line of commence in which to assess the effects of the Amended Agreement is the sale of all glass tableware in the United States. Moreover, Libbey states that the Original Agreement has

been superseded by the Amended Agreement and therefore there is no reason to assess the effects of the Original Agreement.

14. The relevant geographic are in which to assess the effects of the acquisition and amended merger agreement is the United States.

ANSWER: Libbey admits that the relevant geographic area in which to assess the effects of the Amended Agreement is the United States and further states that this market includes all domestic and foreign companies that have the ability to sell glass tableware in the United States. Moreover, Libbey states that the Original Agreement has been superseded by the Amended Agreement and therefore there is no basis to assess the effects of the Original Agreement pursuant to the Clayton Act or the FTC Act. Except as stated above, Libbey denies each and every allegation in Paragraph 14.

15. The United States food service glassware market is highly concentrated.

ANSWER: Libbey denies each and every allegation of Paragraph 15 including the characterization of "food service glassware" as the relevant line of commerce. Libbey further states the glass tableware market is not highly concentrated.

16. Libbey is the largest maker and seller of food service glassware to, among other customers, food service distributors and end-users in the United States, with substantially more than half of the sales.

ANSWER: Libbey admits that it produces and sells glassware. Except as stated above, Libbey denies each and every allegation in Paragraph 16,

including the characterization of "food service glassware" as a distinct product line.

17. Anchor is the third largest maker and seller of food service glassware in the United States, with substantially more than half of the sales.

ANSWER: Libbey admits that Anchor Hocking makes and sells glassware. Except as stated above, Libbey denies each and every allegation in Paragraph 17, including the characterization of "food service glassware" as a distinct product line.

18. Libbey and Anchor are direct and actual competitors in the manufacture and sale of food service glassware. They compete with each other on price by, among other things, offering discounts and other promotions on the sale of their food service glassware. Anchor prices and discounts its food service glassware in response to Libbey's pricing, and in order to take sales from Libbey. Anchor has succeeded in taking food service glassware sales from Libbey by offering lower prices to food service customers and distributors.

ANSWER: Libbey admits that it competes with Anchor and many other entities in the sale of glassware and that competition is based, among other factors, on price. Libbey denies that "food service glassware" is a distinct product line. Except as stated above, Libbey denies each and every allegation in Paragraph 18.

19. The acquisition and the amended merger agreement would combine the largest and third largest manufacturers and sellers of food service glassware in the United States, substantially increasing concentration in the food

service glassware market, would result in a highly concentrated market, would eliminate the existing substantial competition between Libbey and Anchor, would impair the competitive viability of Newell Rubbermaid, and would substantially reduce competition and tend to create a monopoly in the market for food service glassware in the United States.

ANSWER: Libbey denies each and every allegation of Paragraph 19 and states that the Original Agreement has been superseded and rendered null by the Amended Agreement.

20. The amended merger agreement, if consummated, would impair the competitive viability of Newell Rubbermaid as a competitor in the sale of food service glassware in the United States, and would reduce competition in the food service glassware market.

ANSWER: Libbey denies each and every allegation of Paragraph 20.

21. The acquisition and the amended merger agreement may substantially lessen competition in the following ways, among others:

a. they would eliminate actual, direct and substantial competition between Libbey and Anchor;

b. they would increase the level of concentration in the relevant market;

c. they may lead to increases in price for the relevant product;

d. they may increase barriers to entry into the relevant market;

e. they may give Libbey market power in the relevant market; and

f. they may allow Libbey to exercise market power in the relevant market either unilaterally or in coordination with others.

ANSWER: Libbey denies each and every allegation of Paragraph 21.

22. Entry into the relevant product market would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract anticompetitive effects of the acquisition and the amended merger agreement.

ANSWER: Libbey denies each and every allegation of Paragraph 22, and states that entry into the United States for the sale of glassware to all customers including food service distributors and end-users would not only be likely, but actual, timely, and sufficient in its magnitude, character and scope to deter and counteract the any alleged anticompetitive effects of the acquisition. Further, Libbey states that the Original Agreement has been superseded by the Amended Agreement and therefore there is no basis to assess the effects of the Original Agreement pursuant to the Clayton Act or the FTC Act.

COUNT I – ILLEGAL ACQUISITION

23. The allegations contained in Paragraphs 1-22 are repeated and realleged as though fully set forth here.

ANSWER: Libbey repeats its responses to the allegations contained in Paragraphs 1-22 and realleges them as though fully set forth here.

24. The effect of the acquisition may be substantially to lessen competition or tend to create a monopoly in violation of 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.

ANSWER: Libbey denies each and every allegation of Paragraph 24. Further, Libbey states that the Original Agreement has been superseded by the Amended Agreement and therefore there is no basis to assess the effects of the Original Agreement pursuant to the Clayton Act or the FTC Act.

COUNT II – ILLEGAL ACQUISITION AGREEMENT

25. The allegations contained in Paragraphs 1-22 are repeated and realleged as though fully set forth here.

ANSWER: Libbey repeats its responses to the allegations contained in Paragraphs 1-22 and realleges them as though fully set forth here.

26. Libbey and Newell Rubbermaid, through the Stock Purchase Agreement described in Paragraph 7, have engaged in unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

ANSWER: Libbey denies each and every allegation of Paragraph 26. Further, Libbey states that the Original Agreement has been superseded by the Amended Agreement and therefore there is no basis to assess the effects of the Original Agreement pursuant to the Clayton Act or the FTC Act.

COUNT III – ILLEGAL ACQUISITION AGREEMENT AMENDED MERGER AGREEMENT

27. The allegations contained in Paragraphs 1-22 are repeated and realleged as though fully set forth here.

ANSWER: Libbey repeats its responses to the allegations contained in Paragraphs 1-22 and realleges them as though fully set forth here.

28. The effect of the amended merger agreement may be substantially to lessen competition or tend to create a monopoly in violation of 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.

ANSWER: Libbey denies each and every allegation of Paragraph 28.

COUNT IV – ILLEGAL ACQUISITION AGREEMENT AMENDED MERGER AGREEMENT

29. The allegations contained in Paragraphs 1-22 are repeated and realleged as though fully set forth here.

ANSWER: Libbey repeats its responses to the allegations contained in Paragraphs 1-22 and realleges them as though fully set forth here.

30. Libbey and Newell Rubbermaid, through the merger agreement described in Paragraph 9 and the changes thereto described in Paragraph 11, have engaged in unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

ANSWER: Libbey denies each and every allegation of Paragraph 30.

DEFENSES AND AFFIRMATIVE DEFENSES

Without assuming any burden that it would not otherwise bear, Libbey asserts the following defenses and affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The acquisition is a pro-competitive response to market dynamics. As a result of the proposed merger, efficiencies in the production, distribution, and sale of soda lime glass will be realized.

THIRD AFFIRMATIVE DEFENSE

Because the Original Acquisition has been abandoned and superseded by the Amended Stock Purchase Agreement dated January 21, 2002, there presently exists no actual or potential violation of Clayton Act § 7 as a result of the proposed acquisition. Therefore, to the extent that it is directed to the Original Acquisition, Plaintiff's Complaint is moot.

FOURTH AFFIRMATIVE DEFENSE

Libbey has not knowingly or intentionally waived any applicable affirmative defenses. Libbey presently lacks sufficient knowledge or information on which to form a belief as to whether it may have available additional, as yet unstated, affirmative defenses, and reserves the right to assert such additional defenses.

WHEREFORE, Libbey prays for judgment as follows:

1. That the Complaint be dismissed with prejudice;

2. That judgment be entered in favor of Libbey and against Plaintiff on each and every claim set forth in the Complaint; and

3. For such other and further relief as is just and proper.

Dated: May 29, 2002

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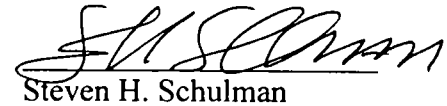
By 
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