

IT IS HEREBY AGREED by and between Wesley-Jessen, by its duly authorized officers and its attorneys, and counsel for the Commission that:

(1) Wesley-Jessen 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 333 East Howard Avenue, Des Plaines, Illinois 60018.

(2) Proposed Respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

(3) Proposed Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this Agreement; and

(d) Any claim under the Equal Access to Justice Act.

(4) This Agreement shall not become part of the public record of the proceedings unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

(5) This Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

(6) This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to divest, and for other relief in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to Proposed Respondent's address as stated in this Agreement shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the Agreement or the order may be used to vary or contradict the terms of the order.

(7) Proposed Respondent has read the proposed complaint and order contemplated hereby. Proposed Respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Proposed Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

I.

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

A. "Respondent" or "Wesley-Jessen" means Wesley-Jessen Corporation, its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, affiliates and groups controlled by Respondent, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

B. "PBH" means Pilkington plc, a corporation organized, existing and doing business under and by virtue of the laws of England and Wales, with its principal place of business at Prescott Road, St. Helens, Merseyside, England WA 10 3TT, and including all of its subsidiaries, affiliates, divisions and groups.

C. "Commission" means the Federal Trade Commission.

D. "Pilkington Acquisition" means the acquisition which is the subject of an agreement between Wesley-Jessen and Pilkington dated July 5, 1996, in which Respondent will acquire voting securities of Pilkington Barnes Hind International, Inc., Barnes-Hind International Inc., Pilkington Barnes Hind (Services) Limited, Pilkington Barnes Hind N.V., Pilkington Barnes Hind SA, Pilkington Barnes Hind, S.A., Pilkington Barnes-Hind Pty Ltd., Pilkington Barnes Hind Japan KK, Pilkington Barnes Hind Nederland B.V., Pilkington Barnes Hind SpA, Pilkington Barnes-Hind Limited, Pilkington Diffractive Lenses Limited, PBH, and certain assets of Pilkington Deutschland GmbH.

E. "Acquirer" means the person to whom Wesley-Jessen divests PBH's Opaque Lens Business pursuant to Paragraph II.A. of this Order.

F. "New Acquirer" means the person to whom the trustee divests PBH's Opaque Lens Business pursuant to Paragraph V. of this Order.

G. "Divestiture Agreement" means the agreement between Wesley-Jessen and the Acquirer or New Acquirer whereby PBH's Opaque Lens Business is divested.

H. "Supply Agreement" means the agreement between Wesley-Jessen and the Acquirer or New Acquirer required by Paragraph III.A. of this Order.

I. "Licensed Territory" means the United States and its territories and possessions.

J. "Opaque Contact Lenses" means contact lenses containing opaque materials that cover the iris and that are designed to change the apparent color of the eye.

K. "PBH's Opaque Lens Products" means Opaque Contact Lenses researched, developed, manufactured, distributed and sold by PBH in the United States, including but not limited to those marketed and sold under the brand name Natural Touch™.

L. "PBH's Opaque Lens Business" means the following rights and assets (other than assets that are part of PBH's physical facilities) relating to the research, development, distribution or sale of PBH's Opaque Lens Products by PBH, including, but not limited to:

(1) all books, records, manuals, reports, lists, advertising and promotional materials, computer records and other documents relating to PBH's Opaque Lens Products;

(2) Natural Touch product line Profit and Loss statements relating to each of PBH's Opaque Lens Products for the United States;

(3) all legal or equitable rights in trademarks and tradenames registered in the United States together with all trademark registrations and applications and trade names therefor relating to PBH's Opaque Lens Products;

(4) all lists of stock keeping units ("SKUs"); i.e., all forms, package sizes and other units in which PBH's Opaque Lens Products are sold and which are used in records of sales and inventories;

(5) all Bills of Materials for each of PBH's Opaque Lens Products, consisting of full manufacturing standards and procedures, quality control specifications, specifications for raw materials and components, including all lists of authorized sources for materials and components;

(6) all artwork and mechanical drawings currently in use relating to each of PBH's Opaque Lens Products;

(7) all customer lists, including but not limited to, lists of distributors, opticians, ophthalmologists, optometrists, and eye-care chains who have bought PBH's Opaque Lens Products, including, but not limited to, all files of names, addresses, and telephone numbers of the individual customer contacts, and the unit and dollar amounts of sales monthly, by product, to each customer in the United States;

(8) all marketing information relating to PBH's Opaque Lens Products, including but not limited to PBH's consumer and trade promotion, marketing and business programs;

(9) inventories of finished goods, packaging and raw materials relating to PBH's Opaque Lens Products equal to the percentage of PBH's worldwide sales of Opaque Lens Products for which United States sales account as of August 31, 1996;

(10) all documents containing or relating to product testing and laboratory research data relating to PBH's Opaque Lens Products, including but not limited to all regulatory registrations and correspondence;

(11) all consumer correspondence and documents relating to PBH's Opaque Lens Business;

(12) all documents constituting or relating to price lists for PBH's Opaque Lens Products;

(13) all documents and information relating to costs of production for each of PBH's Opaque Lens Products, including

but not limited to raw material costs, packaging costs, and advertising and promotional costs;

(14) all documents containing sales data relating to PBH's Opaque Lens Products;

(15) subject to the Patent Assignment Agreement granted to Allergan, Inc., dated December 17, 1992, a royalty-free license under the patents listed in Appendix A of this Order to manufacture, import, offer for sale, use and sell Opaque Contact Lenses in the Licensed Territory, said license to be exclusive with respect to the sale of Opaque Contact Lenses. Further, Wesley-Jessen Corporation shall release Acquirer or New Acquirer from all claims that Wesley-Jessen has or may have against Acquirer or New Acquirer with respect to PBH's patents listed in Appendix A, including but not limited to the Request for Interference filed on April 11, 1995, by Schering Plough (Wesley-Jessen's U.S. Continuation Application of 07/984,817) against US Patent No. 5,302,978, issued April 12, 1994 (Evans, et al.), provided that said release is not in violation of any applicable law. Further, if, pursuant to any interference proceeding, with respect to the patents listed in Appendix A Wesley-Jessen is awarded claims in any pending patent application in replacement of the claims presently held in the PBH patents listed in Appendix A then Wesley-Jessen shall license those claims to Acquirer or New Acquirer under terms consistent with the terms of the license granted in the first sentence of this paragraph. Moreover, if the US Patent Office declares an interference between any Janke patent application and any PBH patent listed in Appendix A, then Wesley-Jessen shall agree to settle the action consistent with the terms of the license granted in the first sentence of this paragraph with all costs and attorneys fees for both parties paid by Wesley-Jessen;

(16) a non-transferable, irrevocable, non-exclusive, royalty-free license under the patents listed in Appendix B of this Order to manufacture, import, offer for sale, use and sell Opaque Contact Lenses in the Licensed Territory, except that the Acquirer or New Acquirer may transfer this license as part of a sale of all of PBH's Opaque Lens Business of the Acquirer or New Acquirer but not until the

Acquirer or the New Acquirer has obtained all necessary United States Food and Drug Administration ("FDA") approvals to manufacture PBH's Opaque Lens Products for sale in the United States;

(17) a non-transferable, irrevocable, non-exclusive assignment of PBH's rights and obligations under the licensing agreement between Wesley-Jessen and PBH dated August 1, 1994, (or a license providing at least equivalent rights and obligations) to enable the Acquirer or New Acquirer to manufacture, import, offer for sale, use, distribute and sell PBH's Opaque Lens Products in the Licensed Territory, except that the Acquirer or New Acquirer may transfer this assignment as part of a sale of all of PBH's Opaque Lens Business of the Acquirer or New Acquirer but not until the Acquirer or New Acquirer has obtained all necessary FDA approvals to manufacture PBH's Opaque Lens Products and otherwise consistent with the terms of the licensing agreement between Wesley-Jessen and PBH dated August 1, 1994 ; and

(18) all trade secrets, technology and knowhow of PBH relating to researching, developing, manufacturing, distributing, and selling PBH's Opaque Lens Products, including, but not limited to, books and records, documents containing the results of research and development efforts, filings with the FDA, scientific and clinical reports, designs, manuals, drawings, and design material and equipment specifications.

Provided, however, that Wesley-Jessen may retain copies of documents or information to the extent such documents or information relate to products other than PBH Opaque Lens Products.

M. "Supplied Products" means non-disposable opaque colored contact lenses approved by the FDA as daily wear lenses having a planned replacement period of ninety (90) days or more, and which are promoted, advertised or marketed solely as daily wear lenses and are sold in vials with labeling claims for frequency of use and replacement no less restrictive than those currently approved for the PBH Natural Touch™ lenses by the FDA. The specifications for these are:

The polymacon material is a hydrophilic polymer of 2-hydroxyethyl methacrylate cross-linked with ethylene glycol dimethacrylate. When fully hydrated in 0.9% sodium chloride solution, the composition of the

polymacon lens is 62% polymacon polymer and 38% water by weight. The material has a refractive index of 1.44, as measured in 0.9% sodium chloride solution. Lenses are tinted with one or more of the following vat dyes: Cl#59825, 69825, 73335, 61725. Lenses range in power from -10.00 to +4.00 (including plano) in quarter diopters, and are to be disinfected using either a thermal (heat), chemical (not heat), or hydrogen peroxide disinfection system.

N. "Information Relating to Licensing of Patents" means any information not in the public domain disclosed by the Acquirer or New Acquirer to Respondent relating to the assignment of the licensing agreement between Wesley-Jessen and PBH dated August 1, 1994, as referenced in Paragraph I.L.17.

II.

IT IS FURTHER ORDERED that:

A. Wesley-Jessen shall divest, absolutely and in good faith and at no minimum price, PBH's Opaque Lens Business. PBH's Opaque Lens Business shall be divested within four (4) months of the date this Agreement is signed, to an Acquirer that receives the prior approval of the Commission and only pursuant to a Divestiture Agreement that receives the prior approval of the Commission.

The purpose of this divestiture is to create an independent competitor in the research, development, manufacture, distribution and sale of Opaque Contact Lenses and to remedy the lessening of competition resulting from the Pilkington Acquisition as alleged in the Commission's Complaint.

B. Upon reasonable notice and request from the Acquirer or New Acquirer to Wesley-Jessen, Wesley-Jessen shall provide information, technical assistance and advice to the Acquirer or New Acquirer such that the Acquirer or New Acquirer will be capable of continuing the current research, development, manufacture, distribution and sale with respect to PBH's Opaque Lens Products. Such assistance shall include reasonable consultation with knowledgeable employees of Wesley-Jessen and training at the facility of the Acquirer or New Acquirer, sufficient to satisfy the management of the Acquirer or New Acquirer that its personnel are adequately knowledgeable about PBH's Opaque Lens Products. However, Respondent shall not be required to continue providing such assistance for more than

eighteen (18) months after divestiture to the Acquirer or New Acquirer of PBH's Opaque Lens Products. Respondent may require reimbursement from the Acquirer or New Acquirer for all of its own direct costs incurred in providing the services required by this Subparagraph. Direct costs, as used in this Subparagraph, means all actual costs incurred exclusive of overhead costs.

C. Pending the divestiture of PBH's Opaque Lens Business, Respondent shall take such actions as are necessary to maintain the viability and marketability of PBH's Opaque Lens Business (including, but not limited to, any planned research and development programs, marketing plans, capital improvements, or business plans) and to prevent the destruction, removal, wasting, or impairment of PBH's Opaque Lens Business except for ordinary expiration of patents and ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

A. Respondent shall enter into a Supply Agreement with the Acquirer or New Acquirer contemporaneously with the Divestiture Agreement. The Supply Agreement shall be subject to the prior approval of the Commission and shall require the Respondent to supply the Acquirer or New Acquirer with the amount of Supplied Products requested by the Acquirer or New Acquirer. The Supply Agreement will remain in effect for eighteen (18) months; **provided, however,** the 18 month period may be extended by the Commission for a period not to exceed 24 months, if the Commission determines that the Acquirer or New Acquirer made a good faith effort to obtain all necessary FDA approvals for the manufacture of PBH's Opaque Lens Products and that such FDA approvals appear likely to be obtained within the extended time period.

During the term of the Supply Agreement, upon reasonable request by the Acquirer or New Acquirer Wesley-Jessen shall make available to the Acquirer or New Acquirer all records kept in the normal course of business that relate to the cost of manufacturing the Supplied Products.

B. The Divestiture Agreement shall include the following and Wesley-Jessen shall commit to satisfy the following:

(1) Wesley-Jessen shall commence delivery of Supplied Products to the Acquirer or the New Acquirer within two (2) months from the date the Commission approves the Acquirer

and the Divestiture Agreement (or the New Acquirer and its Divestiture Agreement), or such later time as the Acquirer or New Acquirer may require.

(2) Wesley-Jessen shall make representations and warranties to the Acquirer or New Acquirer that the Supplied Products meet FDA approved specifications therefor and are not adulterated or misbranded within the meaning of the Food, Drug and Cosmetic Act, 21 U.S.C. §§ 321, et seq. Wesley-Jessen shall agree to indemnify, defend and hold the Acquirer or New Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Supplied Products supplied by Wesley-Jessen to meet FDA specifications. This obligation may be contingent upon the Acquirer or the New Acquirer giving Wesley-Jessen prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting Wesley-Jessen to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel. This obligation shall not require Wesley-Jessen to be liable for any negligent act or omission of the Acquirer or New Acquirer or for any representations and warranties, express or implied, made by the Acquirer or New Acquirer that exceed the representations and warranties made by Wesley-Jessen to the Acquirer or New Acquirer, as applicable.

(3) The Divestiture Agreement shall require the Acquirer or New Acquirer to submit to the Commission with the divestiture application, a certification attesting to the good faith intention of the Acquirer or New Acquirer, and including an actual plan by the Acquirer or New Acquirer, to obtain in an expeditious manner all necessary FDA approvals to manufacture PBH's Opaque Lens Products for sale in the United States.

(4) The Divestiture Agreement shall require the Acquirer or New Acquirer to submit to the trustee appointed pursuant to Paragraph IV. of this Order periodic verified written reports setting forth in detail the efforts of the Acquirer or New Acquirer to sell in the United States PBH's Opaque Lens Products supplied by Wesley-Jessen and to obtain all FDA approvals necessary to manufacture its own PBH's Opaque Lens Products for sale in the United States. The Divestiture Agreement shall require such reports to be submitted 60 days from the date the Divestiture Agreement is approved by the Commission and every 90 days thereafter until all necessary FDA approvals are obtained by the

Acquirer or New Acquirer to manufacture PBH's Opaque Lens Products for sale in the United States. The Divestiture Agreement shall also require the Acquirer or New Acquirer to report to the Commission and the trustee at least thirty (30) days prior to its ceasing the manufacture or sale of PBH's Opaque Lens Products in the United States for any time period exceeding sixty (60) days or abandoning its efforts to obtain all necessary FDA approvals to manufacture its own PBH's Opaque Lens Products for sale in the United States.

C. The Divestiture Agreement shall provide that the Commission may terminate the Divestiture Agreement if the Acquirer or New Acquirer: (1) ceases for sixty (60) days or more the sale of PBH's Opaque Lens Products prior to obtaining all necessary FDA approvals to manufacture PBH's Opaque Lens Products for sale in the United States; (2) abandons its efforts to obtain all necessary FDA approvals to manufacture PBH's Opaque Lens Products for sale in the United States; or (3) fails to obtain all necessary FDA approvals to manufacture PBH's Opaque Lens Products for sale in the United States within eighteen (18) months from the date the Commission approves a Divestiture Agreement with the Acquirer or New Acquirer; **provided, however,** that the eighteen (18) month period may be extended for a period not to exceed twenty-four (24) months if the Commission determines that the Acquirer or the New Acquirer made good faith efforts to obtain all necessary FDA approvals for manufacturing PBH's Opaque Lens Products for sale in the United States and that such FDA approvals appear likely to be obtained within the extended time period.

D. While the obligations imposed by Paragraphs II. and III. of this Order are in effect, Respondent shall take such actions as are necessary: (1) to maintain all necessary FDA approvals to research, develop, manufacture, offer for sale, use and sell PBH's Opaque Lens Products in the United States; (2) to maintain the viability and marketability of PBH's Opaque Lens Business as well as all tangible assets, including manufacturing facilities needed to contract manufacture the Supplied Products; and (3) to prevent the destruction, removal, wasting, deterioration or impairment of any of PBH's Opaque Lens Business or tangible assets including manufacturing facilities needed to contract manufacture and sell PBH's Opaque Lens Products except for ordinary wear and tear.

E. Respondent shall not provide, disclose or otherwise make available to any department/division of Respondent other than the legal and accounting departments any Information Relating to Licensing of Patents.

F. Respondent shall use any Information Relating to Licensing of Patents obtained by Respondent only in Respondent's capacity as a licensor of certain patents in order to collect royalties, pursuant to Paragraph II. of this Order.

IV.

IT IS FURTHER ORDERED that:

A. Within three (3) months of the date this Agreement is signed, or any time thereafter, the Commission may appoint a trustee to monitor that Wesley-Jessen and the Acquirer or New Acquirer expeditiously perform their respective responsibilities as required by this Order, the Divestiture Agreement, and the Supply Agreement approved by the Commission. Wesley-Jessen shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, and responsibilities:

(1) The Commission shall select the trustee, subject to the consent of Wesley-Jessen, which consent shall not be unreasonably withheld. If Wesley-Jessen has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Wesley-Jessen of the identity of any proposed trustee, Wesley-Jessen shall be deemed to have consented to the selection of the proposed trustee.

(2) The trustee shall have the power and authority to monitor Respondent's compliance with the terms of this Order and the compliance of the Respondent with the terms of the Divestiture Agreement and the Supply Agreement. If directed by the Commission to divest PBH's Opaque Lens Business pursuant to Paragraph V. of this Order, the Trustee shall also have the power and the authority as described in Paragraph V. to divest those assets.

(3) Within ten (10) days after appointment of the trustee, Wesley-Jessen shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the trustee all the rights and powers necessary to permit the trustee to monitor Respondent's compliance with the terms of this Order and with the Divestiture Agreement and the Supply Agreement with the Acquirer or New Acquirer and to monitor the compliance of the Acquirer or New Acquirer under the Divestiture Agreement and the Supply Agreement. Further, the trust agreement shall confer on the trustee all

the rights and powers necessary for the trustee to divest PBH's Opaque Lens Business pursuant to Paragraphs II. and V. of this Order, if necessary.

(4) The trustee shall serve until such time as the Acquirer or the New Acquirer has received all necessary FDA approvals to manufacture PBH's Opaque Lens Products for sale in the United States.

(5) The trustee shall have full and complete access to the personnel, books, records, documents, facilities and technical information relating to the research, development, manufacture, importation, distribution and sale of PBH's Opaque Lens Products, or to any other relevant information, as the trustee may reasonably request, including but not limited to all documents and records kept in the normal course of business that relate to the cost of manufacturing PBH's Opaque Lens Products. Respondent shall cooperate with any reasonable request of the trustee. Respondent shall take no action to interfere with or impede the trustee's ability to monitor Respondent's compliance with Paragraphs I. and III. of this Order and the Divestiture Agreement and Supply Agreement with the Acquirer or the New Acquirer.

(6) The trustee shall serve, without bond or other security, at the cost and expense of Wesley-Jessen, on such reasonable and customary terms and conditions as the Commission may set. The trust agreement shall provide that, if the Commission directs the trustee to divest PBH's Opaque Lens Business, the trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting PBH's Opaque Lens Business. The trustee shall have authority to employ, at the cost and expense of Wesley-Jessen, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.

(7) Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims,

or expenses result from the misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

(8) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph IV. of this Order.

(9) The Commission may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of Paragraph II. of this Order and the Divestiture Agreement and Supply Agreement with the Acquirer or the New Acquirer.

(10) The trustee shall report in writing to the Commission every three months concerning compliance by the Respondent and the Acquirer or the New Acquirer with the provisions of Paragraphs II. and III. of this Order and the efforts of the Acquirer or the New Acquirer to receive all necessary FDA approvals to manufacture Opaque Contact Lenses for sale in the United States.

B. Respondent shall comply with all reasonable directives of the trustee regarding Respondent's obligation to cooperate with the trustee's efforts to monitor the compliance of the Respondent and the Acquirer or New Acquirer with this Order, the Divestiture Agreement, and the Supply Agreement.

C. If the Commission terminates the Divestiture Agreement pursuant to Paragraph III.C. of this Order, the Commission may direct the trustee to seek a New Acquirer, as provided for in Paragraph V. of this Order.

V.

IT IS FURTHER ORDERED that:

A. If Wesley-Jessen has not divested PBH's Opaque Lens Business as required by Paragraph II.A. of this Order, or if the Commission terminates the Divestiture Agreement pursuant to Paragraph III.C. of this Order, the Commission may direct the trustee appointed pursuant to Paragraph IV. of this Order to divest PBH's Opaque Lens Business. In the event that the Commission or the Attorney General brings an action pursuant to § 5(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(1), or any other statute enforced by the Commission, Wesley-Jessen shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the

Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.

B. If the trustee is directed by the Commission or a court pursuant to Paragraph V.A. of this Order to divest PBH's Opaque Lens Business, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

(1) Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest PBH's Opaque Lens Business.

(2) The trustee shall have twelve (12) months from the date the Commission directs the trustee to divest PBH's Opaque Lens Business to accomplish the divestiture of PBH's Opaque Lens Business, which divestiture shall be subject to the prior approval of the Commission. If, however, at the end of this twelve (12) month period, the trustee has submitted a divestiture candidate or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend the twelve (12) month period only two (2) times.

(3) The trustee shall have full and complete access to the personnel, documents, books, records and facilities related to PBH's Opaque Lens Business and to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time to accomplish the divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

(4) The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made pursuant to a Divestiture Agreement approved by the

Commission and to a New Acquirer approved by the Commission; provided, however, if the trustee receives bona fide offers from more than one entity, and if the Commission determines to approve more than one such entity, the trustee shall divest to the entity selected by Respondent from among those approved by the Commission.

(5) The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondent, and the trustee's power to divest PBH's Opaque Lens Business pursuant to this paragraph shall be terminated.

(6) Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the 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 liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

(7) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph IV.A. of this Order.

(8) The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

(9) The trustee shall have no obligation or authority to operate or maintain PBH's Opaque Lens Business.

(10) The trustee shall report in writing to Respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

VI.

IT IS FURTHER ORDERED that, for a period of ten (10) years after the date the Order becomes final, respondent shall not, without prior notice to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire more than 5% of any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition, the research, development, manufacture, importation, distribution or sale of opaque contact lenses in the United States; or

B. Acquire any assets at the time of the proposed acquisition used for or used in the previous two years for (and still suitable for use for) the research, development, manufacture, distribution or sale of Opaque Contact Lenses in the United States. Provided, however, that this Paragraph VI. shall not apply to the acquisition of equipment, machinery, supplies or facilities constructed, manufactured or developed by or for respondent.

The prior notifications required by this Paragraph VI. shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, respondent shall not consummate the transaction until twenty (20) days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Notwithstanding, prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

VII.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate structure of Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that Respondent, for the purpose of determining and securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on five (5) days' notice to Respondent, shall permit any duly authorized representative(s) of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this Order; and

B. Upon five (5) days' notice to Respondent, and without restraint or interference from Respondent, to interview Respondent's officers, directors, or employees, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate twenty (20) years from the date this Order becomes final.

Signed this _____ day of _____, 1996.

Federal Trade Commission

Wesley-Jessen Corporation

Catharine M. Moscatelli
Counsel for the Federal
Trade Commission

Kevin J. Ryan
President and C.E.O.
Wesley-Jessen Corporation

Ann Malester
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William J. Baer
Director
Bureau of Competition

Mary Lou Steptoe
Attorney for Proposed
Respondent

Appendix A

<u>Patent No.</u>	<u>Title</u>	<u>Inventor</u>	<u>Country</u>	<u>Issue or Grant Date</u>
5,034,166	Method of Molding a Colored Contact Lens	Rawlings, et.al.	U.S.	July 23, 1991
5,116,112	Colored Lens and Method of Manufacture	Rawlings	U.S.	May 26, 1992
5,120,121	Colored Lens	Rawlings, et.al.	U.S.	June 9, 1992
5,158,718	Contact Lens Casting (corona mold treatment)	Thakrar et.al.	U.S.	October 27, 1992
5,160,463	Method of Manufacturing Contact Lens	Evans et.al.	U.S.	November 3, 1992
5,302,978	Contact Lens (limbal ring)	Evans, et.al.	U.S.	April 12, 1994
Application 08/053,504	Novel colored lens and method of manufacture	Rawlings, et.al.	U.S.	April 26, 1993 filing date. Earliest effective filing date July 21, 1988
Application 08/143,373	Colored Contact Lens and Method for Making Same	Thakrar, et.al.	U.S.	October 26, 1993, filing date. Earliest effective date, February 16, 1989

Appendix B

<u>Patent No.</u>	<u>Title</u>	<u>Inventor</u>	<u>Country</u>	<u>Issue or Grant Date</u>
4,955,580	Contact Lens Mold (no lip molding)	Seden et.al.	U.S.	September 11, 1990
5,036,971	Molding Contact Lenses (no lip molding)	Seden et.al.	U.S.	August 6, 1991
5,114,629	Process for Casting Lenses (lens casting)	Morland, et.al.	U.S.	May 19, 1992
4,944,899	Process and Apparatus for Casting Lenses (lens casting)	Morland, et.al.	U.S.	July 31, 1990

I. RESPONDENT

1. Respondent Wesley-Jessen Corporation ("Wesley-Jessen") 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 333 East Howard Avenue, Des Plaines, Illinois.

II. THE ACQUIRED COMPANY

2. Pilkington plc ("PBH") is a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom, with its principal place of business located at Prescot Road, St. Helens, Merseyside, England.

III. JURISDICTION

3. Respondent 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.

IV. THE ACQUISITION

4. On or about March 27, 1996, Wesley-Jessen and PBH signed a Letter of Intent whereby Wesley-Jessen would acquire all the voting securities of PBH, voting securities of certain foreign issuers controlled by PBH and certain assets located outside the United States for approximately \$80 million ("Acquisition").

V. THE RELEVANT MARKETS

5. For purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture and sale of opaque contact lenses.

6. For purposes of this Complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant line of commerce.

VI. STRUCTURE OF THE MARKET

7. The market for the manufacture and sale of opaque contact lenses is highly concentrated as measured by the Herfindahl-Hirschman Index. The parties to the Acquisition combined account for over 90% of the market.

VII. BARRIERS TO ENTRY

8. Entry into the manufacture and sale of opaque contact lenses is difficult and time consuming, requiring the expenditure of significant resources over a period of many years with no assurance that a viable commercial product will result. The existence of broad patents governing design and manufacture make new entry both difficult and unlikely.

VIII. EFFECTS OF THE ACQUISITION

9. The effects of the Acquisition if consummated may be substantially to lessen competition and to tend to create a monopoly in the relevant market in violation of 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, by, among others:

- (a) eliminating actual, direct and substantial competition based on pricing, service and innovation between Wesley-Jessen and PBH International in the relevant market;
- (b) increasing the likelihood that Wesley-Jessen will unilaterally exercise market power in the relevant market;
- (c) creating a dominant firm in the relevant market;
and
- (d) enhancing the likelihood of collusion or coordinated interaction between or among the remaining firms in the relevant market.

IX. VIOLATIONS CHARGED

10. The Acquisition described in Paragraph 4, if consummated, would constitute a violation of 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.

11. The Acquisition agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this day of A.D., 199__, issues its Complaint against said respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED:

Analysis of Proposed Consent Order
To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted subject to final approval an agreement containing a proposed Consent Order from Wesley-Jessen Corporation ("Wesley-Jessen") which requires Wesley-Jessen to divest the opaque contact lens business of Pilkington Barnes Hind International, Inc. ("PBH") to a Commission-approved purchaser by January 24, 1997, four (4) months from the date the agreement was signed. PBH's Opaque Lens Business includes an exclusive license under PBH's patents and a non-exclusive license under other patents owned by Wesley-Jessen relating to the manufacture and sale of opaque lenses in the United States. Further, Wesley-Jessen has agreed to enter into a contract manufacturing supply agreement which requires Wesley-Jessen to supply the acquirer with PBH's opaque lenses while the acquirer obtains its own FDA approvals.

Opaque contact lenses are lenses that completely change the color of the wearer's eyes, e.g., wearing opaque lenses, a brown-eyed person can appear blue-eyed. Wesley-Jessen and PBH dominate the opaque lens market in the United States, accounting for over 90% of all opaque lens sales. Wesley-Jessen, in acquiring PBH, is buying its main rival in the opaque contact lens market. The possibility of new entry in response to a post-merger price increase is very remote because of barriers presented by broad industry patents governing the design and manufacture of opaque lenses. The proposed complaint alleges that the acquisition, if

consummated, would result in higher prices, lower quality and less innovation in the opaque contact lens market.

On March 27, 1996, Wesley-Jessen and PBH signed a Letter of Intent whereby Wesley-Jessen would acquire 100 percent of the voting securities of PBH, voting securities of certain foreign issuers controlled by PBH and certain assets located outside the United States for approximately \$80 million. The proposed complaint alleges that the proposed acquisition 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, in the market for the sale of opaque contact lenses in the United States.

The proposed Consent Order preserves competition in the opaque contact lens market while allowing Wesley-Jessen to increase production and sales volumes in its broader conventional contact lens business. The proposed Order would remedy the alleged violation in the opaque contact lens market by ensuring that an acquirer of the PBH Opaque Lens Business would be in the same competitive position that PBH is in today as a manufacturer and seller of opaque contact lenses in the United States. The Order requires that the acquirer secure the requisite FDA approvals to begin its own production of opaque contact lenses within eighteen months from Commission approval of the acquirer.

Additionally, the proposed Consent Order provides that within three (3) months of the date the Order is signed, the

Commission may appoint a trustee to monitor Wesley-Jessen's and the acquirer's performance of their respective responsibilities. In the event that Wesley-Jessen has not divested the PBH Opaque Lens Business within four (4) months to an acquirer approved by the Commission, the Commission may direct the trustee described earlier in this paragraph to divest PBH's Opaque Lens Business.

Also, the Consent Order prohibits Wesley-Jessen, for a period of ten (10) years, from acquiring any interest in any entity engaged in the development, manufacture and sale of opaque contact lenses in the United States without prior notice to the Commission.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.