

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

COMMISSIONERS: **Timothy J. Muris, Chairman**
 Sheila F. Anthony
 Mozelle W. Thompson
 Orson Swindle
 Thomas B. Leary

_____)
In the matter of)
))
Nestle Holdings, Inc.,) Docket No. C-
 a corporation, and)
))
Ralston Purina Company,)
 a corporation.)
_____)

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Nestle Holdings, Inc. of certain voting securities of Respondent Ralston Purina Company, and Respondents having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and its Order to Maintain Assets and having accepted the executed Consent Agreement and placed such Consent

Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Nestle Holdings, Inc., is a corporation organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its office and principal place of business located at 383 Main Avenue, Norwalk, CT 06851. Nestle Holdings, Inc. is a subsidiary of and controlled by Nestle S.A., a corporation organized, existing, and doing business under, and by virtue of, the laws of Switzerland, with its principal executive offices located at Avenue Nestle 55, CH-1800 Vevey, Switzerland.

2. Respondent Ralston Purina Company, is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Missouri, with its office and principal place of business located at Checkerboard Square, St. Louis, Missouri 63164.

3. J.W. Childs Associates, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 111 Huntington Avenue, 29th Floor, Boston, Massachusetts 02199.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

ORDER

I.

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

- A. “Nestle” means Nestle Holdings, Inc., its parent Nestle S.A., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Nestle, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Nestle S.A.” means Nestle S.A., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Nestle S.A., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Ralston Purina” means Ralston Purina Company, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and

affiliates controlled by Ralston Purina, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- D. “Childs” means J.W. Childs Associates, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Childs, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- E. “Commission” means the Federal Trade Commission.
- F. “Acquisition” means the proposed acquisition described in the Agreement and Plan of Merger between Nestle and Ralston Purina, dated January 15, 2001, pursuant to which Nestle agreed to acquire certain voting securities of Ralston Purina.
- G. “Acquisition Date” means the date of consummation of the Acquisition.
- H. “Administrative Services” means provision of administrative services, including but not limited to, order processing, warehousing, shipping, accounting, and information transitioning services.
- I. “Alley Cat Product” means the Alley Cat brand of dry cat food products.
- J. “Childs Acquisition Agreement” means the Asset Purchase Agreement (including all related agreements, schedules, exhibits, and appendices) among Nestle Holdings, Inc., Ralston Purina Company and J.W. Childs Equity Partners II, L.P., dated October 17, 2001, as amended.
- K. “Coating Patent” means the U.S. and foreign patents and patent applications identified in Appendix A of this Order.
- L. “Consent Agreement” means the Agreement Containing Consent Orders executed by Respondents and the Commission in this matter.
- M. "Cost" means (i) if in connection with Paragraph II.F. of this Order: (x) the cost of manufacturing an item, including the actual cost of raw materials (which includes packaging), direct labor, and reasonably allocated factory overhead; and (y) in the case of a Force Majeure Event as defined in Paragraph 19 of the Childs Co-Pack Agreement, reasonable out of pocket costs incurred for actual contracted services, provided that such costs shall not exceed the out of pocket costs incurred in connection with any alternative supply arrangements for Respondents' dry cat food products produced at the facility affected by the Force Majeure Event calculated on a non-discriminatory pro rata basis, and provided further that in making any alternative supply arrangements, Respondents shall not discriminate in any manner against Ralston Acquirer's products or in favor of the dry cat food

products retained by Respondents after this Order goes into effect; or (ii) if in connection with Paragraphs II.G. and II.H. of this order, the cost of direct material, labor, and out of pocket expenses used to provide the relevant service.

- N. “Divestiture Trustee” means the Divestiture Trustee appointed pursuant to Paragraph V of this Order.
- O. “Intellectual Property” means, without limitation, (i) all trade names, registered and unregistered trademarks, service marks and applications, domain names, trade dress, all copyrights, copyright registrations and applications, in both published works and unpublished works, and goodwill associated with each of them; (ii) all patents, patent applications, and inventions and discoveries that may be patentable, and goodwill associated with each of them; and (iii) all know-how, trade secrets, confidential information, software, technical information, data, processes and inventions, formulae, recipes, methods, and product and packaging specifications, and goodwill associated with each of them; provided, however that Intellectual Property shall not include customer lists or supplier lists.
- P. “International Assets” means any right, title, and interest that Respondents’ may have, at the time the International Trademarks are divested, in, to, and under the International Trademarks.
- Q. “International Trademarks” means any and all trademarks, service marks, trademark and service mark registrations and pending trademark and service mark registrations that relate exclusively to the Meow Mix Product or Alley Cat Product outside of the United States and Canada.
- R. “Manufacturing Information” means know-how and procedures used in the manufacture of the Meow Mix Product and the Alley Cat Product in the United States or Canada as of the date the Ralston Assets are divested.
- S. “Meow Mix Product” means the Meow Mix brand of dry cat food products (which does not include cat treats), including the brand extension Meow Mix Seafood Middles.
- T. “Monitor” means the Monitor appointed pursuant to Paragraph IV of this Order.
- U. “Non-Public Ralston Acquirer Information” means any propriety information of the Ralston Acquirer relating to the Ralston Assets or the Ralston Business obtained by Respondents in the course of fulfilling the obligations required by Paragraphs II.F., II.G., and II.H. of this Order.
- V. “Order to Maintain Assets” means the Order to Maintain Assets issued by the Commission in this matter.

- W. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity.
- X. “Ralston Acquirer” means the Person that acquires the Ralston Assets pursuant to this Order.
- Y. “Ralston Acquisition Agreement” means either the Childs Acquisition Agreement or the acquisition agreement described in Paragraph II.C.2. of this Order.
- Z. “Ralston Assets” means all of Respondents’ right, title, and interest in and to all assets, tangible or intangible, relating to the operation of the Ralston Business, including, but not limited to:
1. All inventories and supplies held by, or under the control of Respondents;
 2. All Intellectual Property owned by or licensed to Respondents;
 3. Copies of all customer lists and supplier lists;
 4. All rights of Respondents under any contract;
 5. All governmental approvals, consents, licenses, permits, waivers, or other authorizations held by Respondents, to the extent transferable;
 6. All rights of Respondents under any warranty and guarantee, express or implied; and
 7. Copies of all relevant portions of books, records, and files held by, or under the control of, Respondents (subject to Respondents’ rights to maintain attorney client privilege).

Provided, however, that the Ralston Assets shall not include (i) any assets of the kind described in Sections 1.02(b)(i) through (vii), (ix), (x), and (xii) of the Childs Acquisition Agreement, (ii) except for copies or portions thereof reasonably requested by the Ralston Acquirer for the purpose of operating the Ralston Business in a viable and competitive manner, any assets of the kind described in Section 1.02(b)(xi) of the Childs Acquisition Agreement, (iii) any real property (together with appurtenances, licenses and permits) owned, leased, or otherwise held by Respondents, (iv) any personal property (including rights under any contract) owned, leased, or otherwise held by Respondents that does not relate exclusively to operation of the Ralston Business, and (v) any Intellectual Property that does not relate exclusively to operation of the Ralston Business.

- AA. “Ralston Business” means Respondent Ralston’s business of researching, developing, manufacturing, distributing, marketing, and selling Meow Mix Product and Alley Cat Product, in any market anywhere in the United States and Canada, prior to the Acquisition Date.
- BB. “Respondents” means Nestle and Ralston Purina, individually and collectively.
- CC. “Technical Assistance” means providing (i) expert advice, assistance, and training with respect to the Manufacturing Information, and (ii) access to Manufacturing Information.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest:
 - 1. The Ralston Assets, absolutely and in good faith, to Childs pursuant to the Childs Acquisition Agreement, no later than twenty days from the date the Commission accepts the Consent Agreement for public comment or January 31, 2002, whichever is later.
 - 2. The International Assets, absolutely and in good faith, to Childs pursuant to the Childs Acquisition Agreement, no later than 180 days from the date the Ralston Assets are divested pursuant to Paragraph II.A.1. of this Order.
- B. The Childs Acquisition Agreement is incorporated by reference and made a part of this Order as Confidential Appendix B. Respondents shall comply with all terms of the Childs Acquisition Agreement, and any breach by Respondents of any term of the Childs Acquisition Agreement shall constitute a violation of this Order. In the event any term of the Childs Acquisition Agreement contradicts any other terms of this Order, such other terms of this Order shall govern Respondents’ obligations under this Order and the Childs Acquisition Agreement.
- C. If, at the time the Commission determines to make this Order final, the Commission determines that Childs is not acceptable as the Ralston Acquirer or that the Childs Acquisition Agreement is not an acceptable manner of divestiture, and so notifies Respondents, Respondents shall immediately terminate or rescind the Childs Acquisition Agreement and divest the Ralston Assets and International Assets:
 - 1. At no minimum price, absolutely and in good faith, to another Person that receives the prior approval of the Commission, no later than 180 days from the date this Order becomes final;

2. In a manner that receives the prior approval of the Commission, including, but not limited to, entering into, and performing, an acquisition agreement (subject to Commission approval) with the Person that acquires the Ralston Assets and International Assets pursuant to Paragraph II.C.1. of this Order; and
 3. Respondents shall comply with all terms of the acquisition agreement described in Paragraph II.C.2. of this Order, and any breach by Respondents of any term of such acquisition agreement shall constitute a violation of this Order. In the event the acquisition agreement varies from or contradicts any other terms of this Order, the terms of this Order shall govern Respondents' obligations under this Order.
- D. No later than the date Respondents divest the Ralston Assets, Respondents shall grant a perpetual, non-exclusive, transferable, fully paid up, license to the Ralston Acquirer to use the Coating Patent (except in Spain, Italy, and Greece) (1) in the development, manufacture, marketing, distribution, or sale of any product manufactured by or for the Ralston Acquirer (or its successor) and sold for its account ("Ralston Acquirer Products"), and (2) in the manufacture by the Ralston Acquirer (or its successor) of any pet food products for any third parties. Neither Respondents nor Ralston Acquirer shall have the right to sublicense or license the Coating Patent except (i) for use in the development, manufacture, marketing, distribution, or sale of products manufactured by or for Respondents (in the case of Respondents) or the Ralston Acquirer Products (in the case of the Ralston Acquirer), and (ii) to the acquirer of any brand divested (whether by license for any period of time or sale) by Respondents if such divestiture relates to product that, at the time of such divestiture, uses the Coating Patent.
- E. Respondents shall use their best efforts (1) to fully identify any registrations of the International Trademarks held by Respondents prior to divesting the International Assets to the Ralston Acquirer, and (2) to assist and cooperate with the Ralston Acquirer to obtain all governmental approvals, consents, licenses, permits, waivers, or other authorizations described in Paragraph I.Z., which are not transferable from Respondents to the Ralston Acquirer.
- F. Upon the request of the Ralston Acquirer, for a period up to 24 months from the date Respondents divest the Ralston Assets, Respondents shall provide a supply of Meow Mix Product and Alley Cat Product to the Ralston Acquirer sufficient to enable the Ralston Acquirer to operate the Ralston Business in a viable and competitive manner.
- G. Upon the request of the Ralston Acquirer, for a period up to 24 months from the date Respondents divest the Ralston Assets:

1. Respondents shall provide Technical Assistance to the Ralston Acquirer sufficient to enable the Ralston Acquirer to operate the Ralston Business in a viable and competitive manner.
 2. In connection with the Technical Assistance required by Paragraph II.G.1. of this Order, Respondents shall allow the Ralston Acquirer reasonable and timely access to Respondents' manufacturing facilities for the purpose of inspecting manufacturing operations relating to the production of Meow Mix Product and Alley Cat Product.
- H. Upon the request of the Ralston Acquirer, for a period up to 6 months from the date Respondents divest the Ralston Assets, Respondents shall provide Administrative Services to the Ralston Acquirer sufficient to enable the Ralston Acquirer to operate the Ralston Business in a viable and competitive manner.
- I. Respondents shall enter into one or more agreements, subject to Commission approval, with the Ralston Acquirer incorporating the terms of Paragraphs II.F., II.G., and II.H. of this Order:
1. Any such agreement shall not require the Ralston Acquirer to pay compensation for the goods and services required by Paragraphs II.F., II.G., and II.H. of this Order that exceeds the Cost of providing such goods and services.
 2. Any such agreement incorporating the terms of Paragraph II.F. of this Order shall not limit the damages (such as indirect and consequential damages) to which Ralston Acquirer would be entitled to receive in the event of Respondents' breach of the agreement.
 3. Any such agreement incorporating the terms of Paragraphs II.G. and II.H. of this Order shall not limit the damages (such as indirect and consequential damages) to which Ralston Acquirer would be entitled to receive in the event of Respondents' breach of the agreement to an amount less than the damages that the Ralston Acquirer would recover in a breach of contract action (as opposed to an indemnity claim) based on such breach.
 4. Any such agreement shall not allow Respondents to terminate such agreement for a material breach of the agreement by the Ralston Acquirer in the absence of a final order of a court of competent jurisdiction, regardless of whether such order is appealable.
- J. The purpose of the divestiture of the Ralston Assets is to ensure the continued use of the assets in the same business in which the Ralston Assets were engaged at the time of the

announcement of the proposed Acquisition by Respondents and to remedy the lessening of competition alleged in the Commission's complaint.

III.

IT IS FURTHER ORDERED that:

- A. Except in the course of performing their obligations under the Ralston Acquisition Agreement or this Order, Respondents shall not provide, disclose or otherwise make available any Non-Public Ralston Acquirer Information to any Person and shall not use any Non-Public Ralston Acquirer Information for any reason or purpose,
- B. Respondents shall disclose Non-Public Ralston Acquirer Information only to those Persons who require such information for the purposes permitted under Paragraph III.A., and only such part of the Non-Public Ralston Acquirer Information that is so required.
- C. Respondents shall enforce the terms of this Paragraph III as to any Person and take such action as is necessary to cause each such Person to comply with the terms of this Paragraph III, including all actions that Respondents would take to protect their own trade secrets and proprietary information.
- D. The requirements of this Paragraph III do not apply to that part of the Non-Public Ralston Acquirer Information that Respondents demonstrate (i) was or becomes generally available to the public other than as a result of a disclosure by Respondents or (ii) was available, or becomes available, to Respondents on a non-confidential basis, but only if, to the knowledge of Respondents, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.

IV.

IT IS FURTHER ORDERED that:

- A. Angele Thompson ("Monitor") is hereby appointed to monitor Respondents' compliance with Paragraphs II and III of this Order and Paragraphs II through IV of the Order to Maintain Assets:
- B. Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondent's compliance with the terms of this Order and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor pursuant to the terms of this Order and in a manner consistent with the purposes of this Order.

2. Within ten days after it signs the Consent Agreement, Respondent shall execute an agreement that, subject to the approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent's compliance with the terms of this Order in a manner consistent with the purposes of this Order. The Monitor shall sign a confidentiality agreement prohibiting the use, or disclosure to anyone other than the Commission, of any competitively sensitive or proprietary information gained as a result of his or her role as Monitor.
3. The Monitor's power and duties under this Paragraph IV shall terminate three business days after the Monitor has completed his or her final report pursuant to Paragraph IV.B.8.(ii), or at such other time as directed by the Commission.
4. The Monitor shall have full and complete access to Respondents' books, records, documents, personnel, facilities and technical information relating to compliance with this Order and Order to Maintain Assets, or to any other relevant information, as the Monitor may reasonably request. Respondents shall cooperate with any reasonable request of the Monitor. Respondents shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order and Order to Maintain Assets.
5. The Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or wilful misconduct. For purposes of this Paragraph IV.B.6., the term "Monitor" shall include all Persons retained by the Monitor pursuant to Paragraph IV.B.5. of this Order.
7. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute to serve as Monitor. The Commission shall select a substitute Monitor subject to the consent of Respondent, which consent shall not

be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Monitor within ten days after notice by the staff of the Commission to Respondent (by delivery receipt acknowledged, to Respondents' counsel of record) of the identity of any proposed substitute Monitor, Respondent shall be deemed to have consented to the selection of the proposed substitute. Respondent shall execute the agreement required by Paragraph IV.B.2 of this Order within ten days after the Commission appoints a substitute Monitor. The substitute Monitor shall serve according to the terms and conditions of this Paragraph IV.

8. The Monitor shall report in writing to the Commission (i) every sixty days from the date this Order becomes final, (ii) no later than thirty days from the date Respondents have completed all obligations required by Paragraph II of this Order, and (iii) at any other time as requested by the staff of the Commission, concerning Respondents' compliance with this Order and the Order to Maintain Assets.
- C. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

V.

IT IS FURTHER ORDERED that:

- A. If Respondents have not divested, absolutely and in good faith any of the Ralston Assets within the time and manner required by Paragraph II of this Order, the Commission may at any time appoint one or more Persons as Divestiture Trustee to divest such assets in the manner provided in this Paragraph V.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of an Divestiture Trustee in such action. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph V shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- C. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph V, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the Divestiture Trustee, subject to the consent of the Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures and may be the same Person as the Monitor appointed pursuant to Paragraph IV of this Order. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten business days after receipt of written notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effect the divestiture for which he or she has been appointed pursuant to the terms of this Order and in a manner consistent with the purposes of this Order.
3. Within ten days after appointment of the Divestiture Trustee, Respondents shall execute an agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed Divestiture Trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture for which he or she has been appointed.
4. The Divestiture Trustee shall have twelve months from the date the Commission approves the agreement described in Paragraph V.C.3. of this Order to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period the Divestiture Trustee has submitted a plan of divestiture 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 Divestiture Trustee, by the court; provided, however, the Commission may extend this period only two times.
5. The Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the assets to be divested, or to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as such Divestiture Trustee may reasonably request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

6. The Divestiture 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, but shall divest expeditiously at no minimum price. The divestiture shall be made only to an acquirer that receives the prior approval of the Commission, and the divestiture shall be accomplished only in a manner that receives the prior approval of the Commission; provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission; provided, further, that Respondents shall select such entity within five business days of receiving written notification of the Commission's approval.
7. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The Divestiture Trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the Divestiture Trustee's divesting the assets.
8. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph V.C.8., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph V.C.7. of this Order.
9. If the Divestiture Trustee ceases to act or fails to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph V for appointment of the initial Divestiture Trustee.

10. The Divestiture Trustee shall have no obligation or authority to operate or maintain the assets to be divested.
 11. The Divestiture Trustee shall report in writing to the Commission every sixty days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
- D. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

VI.

IT IS FURTHER ORDERED that if Childs acquires the Ralston Assets pursuant to Paragraph II.A. of this Order:

- A. Childs shall not, for a period of five (5) years from the date this Order becomes final, sell or otherwise convey, directly or indirectly, all or substantially all of the Ralston Assets (excluding transactions in the ordinary course of business, such as sales of inventory to customers) to any Person without prior approval of the Commission and only in a manner that receives the prior approval of the Commission; provided, however, that:
1. Notwithstanding anything in this Paragraph VI, Childs shall not sell or otherwise convey, directly or indirectly, for use with dry cat food in the United States, any Meow Mix Product or Alley Cat Product or related trademarks except to a Person that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, and
 2. The obligations of this Paragraph VI shall not apply to a sale or conveyance of the Ralston Assets through a public placement of shares in which Childs retains 25% or more of the equity or other interest of the Person owning or operating the Ralston Assets, and no other Person owns, directly or indirectly, a greater percentage than Childs.
- B. Because Childs' plans include the possibility of reselling the Ralston Assets, the purpose of this Paragraph VI is to ensure the continued use of the assets in the same business in which the Ralston Assets were engaged at the time of the announcement of the proposed Acquisition by Respondents and to remedy the lessening of competition alleged in the Commission's complaint.

VII.

IT IS FURTHER ORDERED that Respondents and Childs shall provide a copy of this Order to each of Respondent's officers, employees, or agents having managerial responsibility for any obligations under Paragraphs II, III, IV, and VI of this Order, no later than ten days from the date this Order becomes final.

VIII.

IT IS FURTHER ORDERED that:

- A. Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order and the Order to Maintain Assets:
1. No later than sixty days from the date this Order becomes final and every sixty days thereafter (measured from the due date of the first report) until one year from the date this Order becomes final (for a total of six reports during the first year).
 2. No later than ninety days from the due date of Respondents' sixth report as required by Paragraph VIII.A.1. of this Order, and every ninety days thereafter (measured from the due date of the seventh report) until two years from the date this Order becomes final (for a total of ten reports during the first two years).
 3. No later than one year from the due date of Respondents' tenth report as required by Paragraph VIII.A.2. of this Order, and annually thereafter for the next seven years, on the anniversary of the date this Order becomes final.
- Provided, however, that Respondents shall also file the report required by this Paragraph VIII.A. at any other time as the Commission may require.
- B. If, at the time this Order becomes final, Respondents have not completed all of the obligations required by Paragraph II.A. of this Order, Respondents shall comply with Paragraph VIII.A. of this Order by filing a verified written report no later than thirty days from the date this Order becomes final, every thirty days thereafter (measured from the due date of the first report) until Respondents have complied with the obligation required by Paragraph II.A. of this Order. Thereafter, Respondents shall assume the reporting schedule set forth in Paragraph VIII.A. of this Order and file subsequent reports in accordance therewith.
- C. Respondents shall include in their compliance reports a full description of the efforts being made to comply with Paragraph II.A. (or Paragraph II.C., if applicable), of this Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, all

reports and recommendations concerning divestiture, the date of divestiture, and a statement that the divestiture has been accomplished in the manner approved by the Commission.

IX.

IT IS FURTHER ORDERED that Respondents, Nestle S.A., or Childs, respectively, shall notify the Commission at least thirty days prior to any proposed change in the corporate Respondents, Nestle S.A., or Childs 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.

X.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice, Respondents, Nestle S.A., and Childs shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents, Nestle S.A., or Childs relating to any matter contained in this Order; and
- B. Upon five days' notice to Respondents, Nestle S.A., or Childs and without restraint or interference from them, to interview their officers, directors, or employees, who may have counsel present, regarding any such matters.

XI.

IT IS FURTHER ORDERED that this Order shall terminate ten years from the date this Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

Confidential Appendix A

[Redacted From Public Record Version]

Confidential Appendix B

[Purchase agreement]

[Redacted From Public Record Version]