

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: William E. Kovacic, Chairman
Pamela Jones Harbour
Jon Leibowitz
J. Thomas Rosch

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In the Matter of)
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McCORMICK & COMPANY, INCORPORATED,)
a corporation.)
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Docket No. C-

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by McCormick & Company, Incorporated ("McCormick"), hereinafter "Respondent," of the Lawry's and Adolph's brands from Conopco, Inc., an indirect subsidiary of Unilever N.V. ("Unilever"), and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent 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

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent 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 Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an 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 McCormick is a corporation organized, existing and doing business under and by virtue of the laws of the state of Maryland, with its office and principal place of business located at 18 Loveton Circle, Sparks, MD 21152-6000.
2. The Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

I.

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

- A. "McCormick" or "Respondent" means McCormick & Company, Incorporated, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by McCormick, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- B. "Unilever" means Unilever N.V., a corporation organized under the laws of the Netherlands, with its office and principal place of business located at Weena 455, 3013 AL Rotterdam, Netherlands. Unilever includes Conopco, Inc. ("Conopco"), the wholly-owned subsidiary of Unilever's wholly-owned subsidiary, Unilever United States, Inc.
- C. "Commission" means the Federal Trade Commission.
- D. "Morton" means Morton International, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the state of Indiana, with its office and principal place of business located at 123 North Wacker Drive, Chicago, IL 60606-1743. Morton is a wholly-owned subsidiary of Rohm and Haas Company, a Delaware corporation, with its principal executive offices located at 100 Independence Mall West, Philadelphia, PA 19106.
- E. "Acquisition" means the acquisition by McCormick of the Lawry's and Adolph's brands described in and contemplated by the Asset Purchase Agreement by and between McCormick and Conopco, dated as of November 13, 2007 ("McCormick/Unilever Agreement").
- F. "Acquisition Date" means the date on which McCormick closes on the Acquisition pursuant to the McCormick/Unilever Agreement.

- G. “Branded Seasoned Salt Products” means any dry branded products or product formulations (not including private or store label) sold at retail, usually in glass or plastic bottles, that consist primarily of salt, contain at least two other different herbs, spices and/or other seasonings, and are labeled or otherwise described on the container as seasoned salt, including, but not limited to, any products meeting the foregoing definition and acquired by Respondent in connection with the Acquisition.
- H. “Closing Date” means the date on which Respondent (or a Divestiture Trustee) consummates the divestiture of the Season-All Assets to a Commission-approved Acquirer pursuant to and as required by Paragraph II. (or Paragraph III.) of this Order.
- I. “Commission-approved Acquirer” means: (1) Morton; or (2) another entity approved by the Commission to acquire the Season-All Assets that the Respondent is required to divest pursuant to this Order.
- J. “Divestiture Agreement” means: (1) the Morton Asset Purchase Agreement; or (2) any agreement between the Respondent and another Commission-approved Acquirer (or between a Divestiture Trustee and a Commission-approved Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements (including, but not limited to, all Season-All Transitional Agreements), and schedules thereto, related to the relevant assets to be divested, transferred, assigned, licensed, granted, delivered or otherwise conveyed, that have been approved by the Commission to accomplish the requirements of this Order.
- K. “Divestiture Trustee” means a trustee appointed by the Commission pursuant to Paragraph III. of this Order.
- L. “Manufacturing Agreement” means the Morton Transitional Manufacturing Agreement as defined in Paragraph I.BB.2 of this Order, or, if Morton is not the Commission-approved Acquirer, any other manufacturing agreement entered into by and between Respondent and another Commission-approved Acquirer, provided such other agreement receives the prior approval of the Commission.
- M. “Morton Asset Purchase Agreement” means the Asset Purchase Agreement by and between the Respondent and Morton, dated as of June 2, 2008, that is referenced and attached to this Order as Confidential Appendix I, including all amendments, exhibits, attachments, agreements (including, but not limited to: the Trademark and Formulation License Agreement dated as of the Closing Date, entered into by and between Morton and McCormick, appended Exhibit A; the Morton Transition Services Agreement, appended Exhibit B; the Morton Transitional Manufacturing Agreement, appended Exhibit C; and the Morton Transitional License Agreement, appended Exhibit D), and schedules thereto, related to the relevant Season-All Assets to be divested, transferred, assigned, licensed, granted, delivered or otherwise conveyed to Morton, and that have been approved by the

Commission to accomplish the requirements of this Order in connection with the Commission's determination to make the Order final.

- N. "Order to Maintain Assets" means the Order to Maintain Assets issued by the Commission in this matter.
- O. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or governmental entity, and any subsidiaries, divisions, groups or affiliates thereof.
- P. "Season-All Assets" means all of Respondent McCormick's rights, title and interest, tangible and intangible, worldwide, without limitation, in and to all of the following assets of the Season-All Business:
1. all Season-All Intellectual Property;
 2. all Season-All Confidential Business Information;
 3. all Season-All Sales and Marketing Materials;
 4. at the Commission-approved Acquirer's option, all finished inventory, on hand or in transit, packaging materials, marketing materials, raw materials and work-in-process relating to the Season-All Brand Products;
 5. all customer information, including a list of all customers and/or targeted customers for the Season-All Brand Products and the pricing and/or planned or proposed pricing of the Season-All Brand Products for such customers;
 6. all unfilled customers orders for finished goods as of the Closing Date related to the Season-All Brand Products (a list of such orders is to be provided to the Commission-approved Acquirer within two (2) days after the Closing Date);
 7. a copy of all vendor lists, and the names of all manufacturers and suppliers under contract with Respondent that produce for, or supply, Respondent with ingredients or packaging in connection with the manufacture, production, distribution or sale of the Season-All Brand Products;
 8. at the option of the Commission-approved Acquirer as set forth in the Divestiture Agreement with such Acquirer and to the extent presently transferable, divisible or assignable, all rights, title and interest in and to agreements (except contracts of employment), express or implied, relating to the research, design, development, production, distribution, marketing, promotion, sale or after-sales support of the Season-

All Brand Products, including contracts with customers, suppliers, contract manufacturers, sales representatives, distributors, agents, licensors and licensees;

9. all rights under warranties and guarantees, express or implied, to which McCormick is entitled and which it can presently convey, relating to the Season-All Brand Products;
10. all consents, licenses, certificates, registrations or permits issued, granted, given or otherwise made available by or under the authority of any government body or pursuant to any legal requirement, and all pending applications therefor or renewals thereof, to the extent presently assignable; and
11. all of the Respondent's books, records, books of account, sales and purchase records, lists of customers and prospects, lists of suppliers, marketing and promotional materials and other product information, including website content, pricing information, operations information, sales programs and any deviations and all other documents, files, records and other data and information of the Respondent (whether stored on hard or floppy disks or other media), relating to the operation of the Season-All Business; *provided, however*, that in cases in which documents or other materials included in the Season-All Assets contain information: (1) that relates both to the Season-All Business and to other products or businesses of Respondent and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Season-All Business; or (2) for which Respondent has a legal obligation to retain the original copies, Respondent shall be required to provide only copies or relevant excerpts of the documents and materials containing the information relating to the Season-All Business. In instances where such copies are provided to the Commission-approved Acquirer, and subject to appropriate confidentiality restrictions, Respondent shall provide the Commission-approved Acquirer or its outside counsel access to original documents under circumstances in which copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondent provides the Commission-approved Acquirer with the above-described information without requiring Respondent completely to divest itself of information that, in content, also relates to products and businesses other than the Season-All Business or allowing the Commission-approved Acquirer to use or disclose such information in connection with products or businesses other than the Season-All Business.
12. *Provided, however*, that the Season-All Assets shall not include:
 - a. cash on hand, cash equivalents, bank deposits and investments (including stock, debt instruments, options and other instruments and securities) of Respondent;
 - b. accounts, notes receivable and similar rights of Respondent to receive payments arising out of the operation of the Season-All Business on or before the Closing Date;

- c. tax refunds, tax, insurance and other claims or rights to recoveries and similar benefits of the Season-All Business on or before the Closing Date, and any prepaid items with respect to the Season-All Business on or before the Closing Date, except as otherwise provided in a Divestiture Agreement;
 - d. subject to any limited or transitional rights conveyed to the Commission-approved Acquirer in a Divestiture Agreement, including any Season-All Transitional Agreements, the name and mark “McCormick” and all derivatives and formatives thereof, including, but not limited to, the trademarks pertaining to the products set forth on Schedule 1.1(b)(vi) to the Morton Asset Purchase Agreement, together with all issued registrations and pending applications for registration with respect to the foregoing and all goodwill associated therewith;
 - e. unless requested by the Commission-approved Acquirer in a Divestiture Agreement: machinery, fixtures, equipment, vehicles, furniture, tools and other personal property associated with the manufacture, packaging, distribution, marketing or sale of the Season-All Brand Products;
 - f. any other assets not covered in Paragraphs I.P.12.a – I.P.12.e, including without limitation trademarks and all issued registrations and pending applications for registration and all goodwill associated therewith, rights, products, property, documents, materials, records, information, or data relating or pertaining to Respondent McCormick’s products, operations, businesses or activities, that are not exclusively related to the Season-All Business or that are otherwise expressly excluded in a Divestiture Agreement; or
 - g. any rights to use Respondent’s general business strategies or practices relating to products, product formulations, market research activities, methods or methodologies that McCormick uses in connection with other products in addition to Season-All Brand Products for the purpose of developing, marketing, manufacturing, promoting, managing, distributing, or selling its own brands and products, except as conveyed to the Commission-approved Acquirer in a Divestiture Agreement or through a nonexclusive license by Respondent as otherwise necessary to permit the continued use of the Season-All Assets in the Season-All Business in the same manner in which such assets were engaged at the time of the announcement of the proposed Acquisition.
- Q. “Season-All Brand Products” means (A) those products consisting of: (1) Original Season-All® brand seasoned salt; (2) Garlic Season-All® brand seasoned salt; (3) Pepper Season-All® brand seasoned salt; (4) Spicy Season-All® brand seasoned salt; (5) 25% Less Sodium Season-All® brand seasoned salt; and (6) Season-All™ brand coating mix; and (B) any other product under development or developed prior to the Closing Date to be marketed as a Branded Seasoned Salt Product under the Season-All® brand.

- R. “Season-All Brand Products Key Employee(s)” means salaried and management level employees of Respondent McCormick who have participated directly (irrespective of the portion of working time involved, but excluding participation that was a part of a broad executive management portfolio, or of oversight of legal, accounting, tax or financial compliance) in leading the formulation of retail brand marketing strategies, including marketing, promotion, and advertising strategies relating to the Season-All Brand Products in the United States within the one (1) year period immediately prior to the Closing Date. These employees include employees with primary responsibility for brand management, sales training, and market research for Season-All Brand Products, and those employees of Respondent that, within one (1) year prior to the Closing Date, have dedicated at least twenty (20) percent of working time to the Season-All Brand Products. In the event that Morton is the Commission-approved Acquirer, those employees will be deemed to be the individuals that are specifically identified in Appendix II to this Order.
- S. “Season-All Business” means all of the operations and business of Respondent McCormick relating to the research, development, manufacture, marketing, advertising, promotion, distribution, sale or after-sales support for the Season-All Brand Products.
- T. “Season-All Confidential Business Information” means, subject to Paragraphs I.P.11 – I.P.12 of this Order, all information owned by, or in the possession or control of, Respondent that is not in the public domain and that is related to the research, development, manufacture, marketing, commercialization, importation, exportation, cost, pricing, supply, sales, sales support or use of the Season-All Brand Products; *provided, however*, that Season-All Confidential Business Information shall not include the following:
- (i) information that Respondent acquires from a third party or that subsequently falls within the public domain through no violation of this Order or breach of any confidentiality or non-disclosure agreement with respect to such information by Respondent;
 - (ii) information that is required by law to be publicly disclosed; or
 - (iii) information that does not relate to the Season-All Assets.
- U. “Season-All Copyrights” means, subject to Paragraphs I.P.11 - I.P.12 of this Order, all rights to all original works of authorship of any kind related to the Season-All Brand Products and any registrations and applications for registrations thereof, including, but not limited to, the following, as applicable: the Season-All Confidential Business Information; the Season-All Sales and Marketing Materials; development data and reports relating to the research, development, manufacture, marketing or sale of the Season-All Brand Products; sales forecasting models; Website content and advertising and display materials; all records, including customer lists and information, sales force call activity reports, vendor lists, sales data, slotting allowance data, manufacturing records, manufacturing processes and supplier

lists; and all data contained in quality assurance and quality control information and documentation.

- V. “Season-All Intellectual Property” means, subject to Paragraphs I.P.11 – I.P.12 of this Order, all of Respondent’s rights to:
1. Season-All Trademarks;
 2. Season-All Trade Dress;
 3. Season-All Manufacturing Technology;
 4. Season-All Copyrights;
 5. Season-All Patents; and
 6. trade secrets, know-how, techniques, inventions, practices, methods, data contained in software, and other confidential or proprietary technical, business, research, development and other materials and information, and all rights in any jurisdiction to limit the use or disclosure thereof, anywhere in the world, of or relating to the Season-All Brand Products.

Provided, however, that where such intellectual property (other than Season-All Trademarks or Season-All Trade Dress) also relates to other brands or businesses of Respondent McCormick, Respondent McCormick shall grant the Commission-approved Acquirer the rights to use such intellectual property on a non-exclusive basis in connection with the Season-All Business as is needed to accomplish the purposes of this Order.

- W. “Season-All Manufacturing Technology” means, subject to Paragraphs I.P.11 – I.P.12 of this Order, all technology, technical information, data, trade secrets, know-how, and proprietary information, anywhere in the world, related to the manufacture (including, at the Commission-approved Acquirer’s option as set forth in the Divestiture Agreement, all equipment used to manufacture), bottling and packaging of the Season-All Brand Products, including, but not limited to, all recipes, formulas, formulations, blend specifications, processes, procedures, product development records, trade secrets, manuals, quality assurance and quality control information and documentation, regulatory communications, and all other information relating to the manufacturing and packaging process, and vendor and supplier lists.
- X. “Season-All Patents” means, subject to Paragraphs I.P.11 – I.P.12 of this Order, all patents, patents pending, patent applications and statutory invention registrations, including reissues, divisions, continuations, continuations-in-part, supplementary protection certificates,

extensions and reexaminations thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for patents and registrations thereto, anywhere in the world, related to the Season-All Brand Products.

- Y. “Season-All Sales and Marketing Materials” means, subject to Paragraphs I.P.11 – I.P.12 of this Order, all sales, marketing and promotional materials used anywhere in the world with respect to the Season-All Brand Products as of the Closing Date, including, without limitation: all advertising materials; customer lists; contribution statements; Internet/Web sites and domain name(s) (uniform resource locators), and registration(s) thereof, and related materials; product data; profit and loss statements; price lists; mailing lists; sales materials; marketing information (*e.g.*, customer sales and competitor data); catalogs, sales promotion literature and other promotional materials; spend records related to advertising, marketing or promotion; training and other materials associated with the Season-All Brand Products; and all copyrights in and to the Season-All Sales and Marketing Materials. Season-All Sales and Marketing Materials include all assets, rights and other intellectual property set forth on Schedule 1.1(a)(iii)(B) to the Morton Asset Purchase Agreement.
- Z. “Season-All Trade Dress” means, subject to Paragraphs I.P.11 – I.P.12 of this Order, the current trade dress of the Season-All Brand Products, including, but not limited to, product packaging associated with the sale of Season-All Brand Products anywhere in the world, logos, domain names, and the lettering of the Season-All Brand Products’ trade name or brand name; but excluding any portion of any such trade dress rights that is solely related to Respondent McCormick or is also related to any of its businesses, products, or brands other than the Season-All Brand Products. Season-All Trade Dress includes all assets, rights and other intellectual property set forth on Schedule 1.1(a)(iii)(B) to the Morton Asset Purchase Agreement.
- AA. “Season-All Trademarks” means, subject to Paragraphs I.P.11 – I.P.12 of this Order, all trademarks, trade names and brand names, including registrations and applications for registration thereof (and all renewals, modifications, and extensions thereof), and all common law rights, and the goodwill symbolized by and associated therewith, anywhere in the world, for or relating to the Season-All Brand Products. Season-All Trademarks include all assets, rights and other intellectual property set forth on Schedule 1.1(a)(ii)(B) to the Morton Asset Purchase Agreement.
- BB. “Season-All Transitional Agreements” means any transitional agreements or arrangements entered into by and between Respondent McCormick and a Commission-approved Acquirer that receives the prior approval of the Commission, including, but not limited to, the following agreements:
1. The Agreement for Transition Services entered into by and between McCormick and Morton dated as of the Closing Date, appended to the Morton Asset Purchase Agreement

- as Exhibit B, and all amendments, exhibits, attachments, and schedules thereto (“Morton Transition Services Agreement”);
2. The Manufacturing Agreement entered into by and between Morton and McCormick dated as of the Closing Date, appended to the Morton Asset Purchase Agreement as Exhibit C, and all amendments, exhibits, attachments, and schedules thereto (“Morton Transitional Manufacturing Agreement”); and
 3. The License Agreement entered into by and between McCormick and Morton dated as of the Closing Date, appended to the Morton Asset Purchase Agreement as Exhibit D, and all amendments, exhibits, attachments, and schedules thereto (“Morton Transitional License Agreement”).
- CC. “Transition Services Agreement” means the Morton Transition Services Agreement as defined in Paragraph I.BB.1. of this Order, or, if Morton is not the Commission-approved Acquirer, any other transition services agreement entered into by and between Respondent and another Commission-approved Acquirer, provided such other agreement receives the prior approval of the Commission.

II.

IT IS FURTHER ORDERED that:

- A. Not later than fifteen (15) days after the Acquisition Date, Respondent shall divest the Season-All Assets, absolutely and in good faith, to Morton pursuant to and in accordance with the Morton Asset Purchase Agreement. The Morton Asset Purchase Agreement is incorporated by reference into this Order and made a part hereof as Confidential Appendix I. Any failure by Respondent to comply with the Morton Asset Purchase Agreement shall constitute a failure to comply with this Order. The Morton Asset Purchase Agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order. Nothing in this Order shall reduce, or be construed to reduce, any rights or benefits of Morton, or any obligations of Respondent, under the Morton Asset Purchase Agreement. If any term of the Morton Asset Purchase Agreement varies from the terms of this Order (“Order Term”), then to the extent that Respondent cannot fully comply with both terms, the Order Term shall determine Respondent’s obligations under this Order. Notwithstanding any paragraph, section, or other provision of the Morton Asset Purchase Agreement, any failure by Respondent to meet any condition precedent to closing (whether waived or not) or any modification of the Morton Asset Purchase Agreement, without the prior approval of the Commission, shall constitute a failure to comply with this Order.

Provided, however, that if Respondent has divested the Season-All Assets to Morton prior to the date this Order becomes final, and if, at the time the Commission determines to make

this Order final, the Commission notifies Respondent that Morton is not an acceptable purchaser of the Season-All Assets, then Respondent shall immediately rescind the transaction with Morton and shall divest the Season-All Assets within one hundred eighty (180) days from the date the Order becomes final, absolutely and in good faith, at no minimum price, to a Commission-approved Acquirer and only in a manner that receives the prior approval of the Commission;

Provided further, however, that if the Respondent has divested the Season-All Assets to Morton prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies the Respondent that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct the Respondent, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Season-All Assets to Morton (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine is necessary to satisfy the requirements of this Order;

Provided further, however, that Respondent may not modify or amend any Divestiture Agreement without receiving the prior approval of the Commission.

- B. No later than the Closing Date, Respondent shall secure all consents, assignments, and waivers from all Persons that are necessary to effectuate the divestiture, transfer, assignment or other conveyance of the Season-All Assets to a Commission-approved Acquirer.
- C. Respondent shall:
 - 1. submit and deliver to the Commission-approved Acquirer, at Respondent's expense, in good faith and as soon as practicable, in a manner that ensures its completeness and accuracy, all Season-All Confidential Business Information;
 - 2. provide the Commission-approved Acquirer with access to all Season-All Confidential Business Information and to employees who possess or are able to locate or identify the books, records, and files that contain Season-All Confidential Business Information pending complete delivery of all the Season-All Confidential Business Information;
 - 3. not use, directly or indirectly, any Season-All Confidential Business Information related to the research, development, manufacturing, marketing, or sale of the Season-All Assets other than as necessary to comply with the requirements of this Order or applicable law;
 - 4. not provide, disclose, convey or otherwise make available, directly or indirectly, any Season-All Confidential Business Information to any person except the Commission-approved Acquirer, except as required by law.

- D. Not later than five (5) days after the Acquisition Date, or the date on which the Order to Maintain Assets becomes final, whichever is earlier, Respondent shall provide written or electronic notification of the restrictions on the use of the Season-All Confidential Business Information by Respondent's personnel to all of Respondent's employees who:
1. are, or were, directly involved in the research, development, manufacturing, distribution, sale or marketing of the Season-All Brand Products; and
 2. may have Season-All Confidential Business Information.
- E. Respondent shall:
1. provide such notification (in a form similar to that attached as Appendix B to the Order to Maintain Assets) by e-mail with return receipt requested or by whatever manner or form of transmission as will assure receipt and acknowledgment by Respondent's employees, and keep a file of such receipts for one (1) year after the Closing Date.
 2. maintain complete records of all such files at Respondent's corporate headquarters, and provide an officer's certification to the Commission stating that such an acknowledgment and file retention program has been implemented and is being complied with.
- F. Respondent shall prohibit any Season-All Brand Products Key Employee from participating in formulation of the marketing, promotion or advertising strategies or in the research and development of Respondent's Branded Seasoned Salt Products until January 1, 2009.
- G. Respondent shall require, to the extent lawful, as a condition of continued employment following the divestiture of the Season-All Assets, that each Season-All Brand Products Key Employee retained by Respondent, and the direct supervisor(s) of any such employee, sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Season-All Confidential Business Information related to the Season-All Brand Products strictly confidential, including the nondisclosure of such information to all other employees, executives, or other personnel of Respondent (other than as necessary to comply with the requirements of this Order) until January 1, 2009.
- H. Respondent shall:
1. for a period of up to one (1) year from the Closing Date, provide the Commission-approved Acquirer with the opportunity to enter into employment contracts with the Season-All Brand Products Key Employees. This period is hereinafter referred to as the "Employee Access Period"; and

2. not later than ten (10) days after the Closing Date at the request of the Commission-approved Acquirer, or otherwise upon reasonable notice and request by the Commission-approved Acquirer, and subject to compliance with all laws: (1) provide the Commission-approved Acquirer with a list of all the Season-All Brand Products Key Employees; (2) allow the Commission-approved Acquirer to interview any of the Season-All Brand Products Key Employees; and (3) allow the Commission-approved Acquirer access to the personnel files and other documentation (“Employee Information”) relating to any such Season-All Brand Products Key Employee.
3. provide an opportunity for the Commission-approved Acquirer to: (1) meet personally, and outside of the presence or hearing of any employee or agent of Respondent, with any one or more of the Season-All Brand Products Key Employees; and (2) make offers of employment to any one or more of the Season-All Brand Products Key Employees.

I. Respondent shall:

1. during the Employee Access Period, not interfere with the hiring or employing by the Commission-approved Acquirer of Season-All Brand Products Key Employees, and remove any impediments within the control of Respondent that may deter these employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any noncompete provisions or nondisclosure provisions (to the extent that they relate to Season-All Brand Products) of employment or other contracts with Respondent that would affect the ability or incentive of those individuals to be employed by the Commission-approved Acquirer. In addition, Respondent shall not make any counteroffer to a Season-All Assets Key Employee who receives a written offer of employment from the Commission-approved Acquirer;

Provided, however, that this Paragraph II.I.1. shall not prohibit the Respondent from making offers of employment to or employing any Season-All Brand Products Key Employee during the Employee Access Period where the Commission-approved Acquirer has notified the Respondent in writing that the Commission-approved Acquirer does not intend to make an offer of employment to that employee;

Provided further that if the Respondent notifies the Commission-approved Acquirer in writing of their desire to make an offer of employment to a particular Season-All Brand Products Key Employee and the Commission-approved Acquirer does not make an offer of employment to that employee within twenty (20) days of the date the Commission-approved Acquirer receives such notice, the Respondent may make an offer of employment to that employee;

2. until the Closing Date, provide all Season-All Brand Products Key Employees with reasonable financial incentives to continue in their positions and to market and promote the Season-All Brand Products consistent with past practices and/or as may be necessary

to preserve the marketability, viability and competitiveness of the Season-All Assets and to promote successful execution of the pre-Acquisition marketing plans related to the Season-All Brand Products. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondent until the Closing Date has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by law);

Provided, however, that nothing in this Order requires or shall be construed to require the Respondent to terminate the employment of any employee or prevent Respondent from continuing the employment of Season-All Brand Products Key Employees (other than those conditions contained in this Order) in connection with the Acquisition or prevents the Respondent from continuing the employment of the Season-All Brand Products Key Employees in connection with the Acquisition; and

3. for a period of one (1) year from the Closing Date, not:
 - a. directly or indirectly, solicit or otherwise attempt to induce any employee of the Commission-approved Acquirer with any amount of responsibility related to the Season-All Assets (“Divestiture Employee”) to terminate his or her employment relationship with the Commission-approved Acquirer; or
 - b. hire any Divestiture Employee;

Provided, however, Respondent may hire any former Divestiture Employee whose employment has been terminated by the Commission-approved Acquirer or who independently applies for employment with the Respondent, as long as such employee was not solicited in violation of the nonsolicitation requirements contained herein;

Provided further, however, Respondent may do the following: (1) hire a Divestiture Employee who responds to an advertisement for employees in newspapers, trade publications or other media not targeted specifically at the Divestiture Employees; or (2) hire a Divestiture Employee who contacts Respondent on his or her own initiative without any direct or indirect solicitation or encouragement from the Respondent.

- J. Upon reasonable notice and request by the Commission-approved Acquirer, and for a period not to exceed eighteen (18) months, Respondent shall make available to the Commission-approved Acquirer such personnel, assistance and training as the Commission-approved Acquirer might reasonably need to transfer the Season-All Assets pursuant to a Transition Services Agreement, and shall continue providing such personnel, assistance and training, at the request of the Commission-approved Acquirer, until the Season-All Assets are completely transferred to the Commission-approved Acquirer in a manner that fully promotes their viability and commercial usefulness. In the case of a Commission-approved Acquirer other than Morton, this assistance may include, at the Commission-approved

Acquirer's sole discretion, but is not limited to, such assistance as is contemplated in the Morton Transition Services Agreement, attached to this Order as Exhibit B of the Morton Asset Purchase Agreement.

- K. Upon reasonable notice and request by the Commission-approved Acquirer, and subject to appropriate safeguards against the transmittal of confidential or competitively-sensitive information, Respondent shall provide, in a timely manner, the assistance of knowledgeable employees of the Respondent to assist the Commission-approved Acquirer (1) to prosecute any pending patent or trademark applications included in the divested Season-All Assets, and (2) to defend against, respond to, or otherwise participate in any litigation related to the divested Season-All Assets.
- L. Upon reasonable notice and request by the Commission-approved Acquirer, and subject to appropriate safeguards against the transmittal of confidential or competitively-sensitive information, Respondent shall enter into a Manufacturing Agreement with the Commission-approved Acquirer for the supply of the divested Season-All Brand Products for a period not to exceed eighteen (18) months to provide a steady supply of the divested Season-All Brand Products until such time as the Commission-approved Acquirer is able to obtain or manufacture an independent supply; *provided, however*, Respondent may not modify or amend such Manufacturing Agreement without receiving the prior approval of the Commission.
- M. The purpose of this Paragraph II. of this Order is to ensure the continuation of the Season-All Assets as part of an ongoing viable enterprise engaged in the Season-All Business in the same manner in which such assets were engaged at the time of the announcement of the proposed Acquisition and to remedy the lessening of competition alleged in the Commission's complaint.

III.

IT IS FURTHER ORDERED that:

- A. If Respondent has not divested all of the Season-All Assets and fully complied with all of the divestiture-related obligations as required by Paragraph II. of this Order, the Commission may appoint a trustee to divest the Season-All Assets in a manner that satisfies the requirements of Paragraph II. of this Order. 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, Respondent shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture 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 Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Within ten (10) days after appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or transfer required by the Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.
 - 2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.
 - 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture

caused by Respondent shall extend the time for divestiture under this Paragraph III. in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable 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 expeditiously and at no minimum price. The divestiture shall be made in the manner and to a Commission-approved Acquirer as required by this Order;

Provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondent from among those approved by the Commission;

Provided further, however, that Respondent shall select such Person within five (5) days of receiving notification of the Commission's approval.

5. The Divestiture 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 Divestiture 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 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 the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
6. Respondent 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 losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.

8. The Divestiture Trustee shall act in a fiduciary capacity for the benefit of the Commission.
9. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
10. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement;

Provided, however, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph III.
- F. 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.

IV.

IT IS FURTHER ORDERED that for a period of ten (10) years from the date this Order becomes final, Respondent shall not, without providing advance written notification to the Commission in a manner described in this paragraph, directly or indirectly:

- A. Acquire:
 1. any assets for use in the development, manufacture or sale of a Branded Seasoned Salt Product from any Person other than Respondent who develops, manufactures, or sells Branded Seasoned Salt Products in the United States, other than an acquisition in the ordinary course of business; or
 2. a cumulative financial interest in excess of one (1) percent in any Person other than Respondent who develops, manufactures, or sells Branded Seasoned Salt Products in the United States; or

- B. Enter into any contract to participate in the management of any Person other than Respondent who develops, manufactures, or sells Branded Seasoned Salt Products in the United States.

Said notification 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, 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 or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent shall not consummate the transaction until thirty (30) days after substantially complying with such request. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. *Provided, however,* that 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.

V.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until Respondent has fully complied with the provisions of Paragraphs II. A-E, G, and III. of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied, is complying, and will comply with this Order and with the Order to Maintain Assets. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Order and with the Order to Maintain Assets, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.
- B. Beginning one (1) year after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondent shall submit to the Commission verified written reports setting forth in detail the manner and form in which it is complying and has complied with this Order, the Order to Maintain Assets, and the Divestiture Agreements.

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of Respondent,
- B. any proposed acquisition, merger or consolidation of Respondent, or
- C. any other change in the Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

- A. access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and
- B. to interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date the Order is issued.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

CONFIDENTIAL APPENDIX I
MORTON ASSET PURCHASE AGREEMENT
[Redacted From Public Record Version But Incorporated By Reference]

APPENDIX II
SEASON-ALL BRAND PRODUCTS KEY EMPLOYEES

Margaret Kime, Director of Flavor Enhancers

Dina Clark, Senior Marketing Manager for Flavor Enhancers

Beth Brubaker, Product Manager for Flavor Enhancers

Kim Hart, Associate Product Manager for Flavor Enhancers