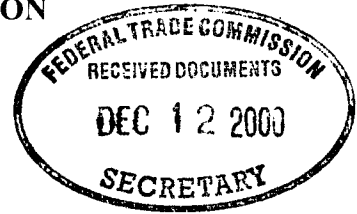


**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**



_____)
IN THE MATTER OF)
)
H. J. HEINZ COMPANY,)
a corporation,)
)
MILNOT HOLDING CORPORATION,)
a corporation,)
)
and)
)
MADISON DEARBORN CAPITAL)
PARTNERS, L.P.,)
a limited partnership.)
_____)

Docket No. 9295

ANSWER OF MILNOT HOLDING COMPANY

Respondent Milnot Holding Corporation (“Beech-Nut”) answers the Federal Trade Commission’s Administrative Complaint (“Complaint”) as set forth below:

Beech-Nut denies all allegations of competitive harm in the Complaint. As the United States District Court for the District of Columbia found, Beech-Nut’s proposed merger with H.J. Heinz Company (“Heinz”) will substantially enhance, not lessen, competition. Gerber has monopolized baby food sales for decades, deterring expansion by Heinz and Beech-Nut and entry by others. As the only national seller of baby food, Gerber has for many years maintained a monopolistic market share above 65-75 percent. Its baby food is sold in virtually 100 percent of all stores that carry baby food. Gerber has also actively engaged in tactics designed to keep Heinz and Beech-Nut from developing a stronger market presence. The result has been declining sales of a prepared baby food – sales that are declining at a faster rate than the birth rate – and anemic levels of innovation, to the detriment of consumers, including grocery stores, parents, and babies.

Heinz and Beech-Nut are unable to compete with Gerber on a national level. Each is sold in fewer than 50% of stores that sell baby food, and for decades their respective market shares have stagnated in the low to mid teens. Neither has been able, standing separately, to make any inroads into Gerber’s monopoly position despite persistent efforts to do so. Significantly, Heinz and Beech-Nut are not major competitors of each other – they focus their distribution in different, non-overlapping areas of the country, and even where Heinz and Beech-Nut are offered in the same city the two brands are almost never sold in the same store.

The Heinz/Beech-Nut merger will not “substantially lessen” competition. Rather, as the District Court found, the merger will produce enormous cost savings, allowing Heinz – energized

by synergies from the merger and a national platform – to re-invigorate the baby food industry. The merger will allow Heinz to offer the best of Beech-Nut and Heinz – *i.e.*, baby food that is both value-priced and of premium quality – and will give Heinz the scale to afford the development of innovative new products and packaging that can be sold – for the first time – in national, head-to-head competition with Gerber. The only certain effect of enjoining the proposed merger will be to guarantee Gerber’s continued monopolization and control over U.S. baby food sales to the detriment of consumers.

In response to all paragraphs of the FTC’s complaint, Beech-Nut denies each and every allegation except as expressly admitted herein.

THE PARTIES

1. Beech-Nut lacks sufficient knowledge and belief to admit or deny the allegation in Paragraph 1.
2. Beech-Nut admits the allegations of paragraph 2, except that Beech-Nut lacks sufficient knowledge and belief to admit or deny that it is “currently the second largest seller of jarred baby food in the United States.”
3. Beech-Nut admits the allegations of paragraph 3, except that Beech-Nut denies that Madison Dearborn Capital Partners, L.P. (“Madison”) is the “ultimate parent entity of Milnot Holding Corporation.” Beech-Nut admits that Madison is the majority shareholder of Milnot Holding Corporation.

JURISDICTION

4. Beech-Nut admits paragraph 4.

THE PROPOSED ACQUISITION

5. Beech-Nut admits the allegations of paragraph 5.

THE RELEVANT MARKETS

6. Beech-Nut admits that the relevant line of commerce (*i.e.*, a product market) in which the competitive effects of the proposed acquisition may be assessed is the manufacture and sale of jarred baby food. Beech-Nut denies that this is the relevant market to the extent that it suggests that other products (including, but not limited to, shelf space, jarred baby food, table food and other foods or products) do not bear on the competitive impact of this merger.
7. Beech-Nut admits that a relevant section of the country (*i.e.*, the geographic market) in which the competitive effects of the proposed acquisition is the United States. Since the

Commission has failed to state in its Complaint which “smaller geographic markets [within the United States]” are proposed relevant Geographic markets, Beech-Nut lacks sufficient information and belief to admit or deny the allegation.

Market Structure

8. Beech-Nut admits that Gerber, Heinz, and Beech-Nut are the largest manufacturers of jarred baby food in the United States. Beech-Nut admits that Gerber dominates the relevant market, which makes the market highly concentrated regardless of Heinz’s and Beech-Nut’s market share. Beech-Nut lacks sufficient information to respond to the HHI calculations, which are not meaningful in any event because, as Judge Robertson found, the unique market realities indicate that competition will increase as a direct result of the merger.

Entry Conditions

9. Beech-Nut denies the allegations in paragraph 9, except that Beech-Nut admits that entry into the U.S. jarred baby food market can require resources and that Gerber’s dominance of the relevant market makes entry or expansion by others difficult.

Actual and Potential Competition

10. Beech-Nut denies that Heinz and Beech-Nut are direct competitors for the sale of jarred baby food. Rather Heinz and Beech-Nut each compete against Gerber in the market for the manufacture and sale of jarred baby food. Heinz and Beech-Nut virtually never compete on the shelf against each other, and competition to be the second brand on the shelf occurs only regionally and episodically. Beech-Nut denies the allegation that Heinz and Beech-Nut are potential competitors in markets in which both are not currently present.

Competitive Effects

11. Beech-Nut denies paragraph 11 in its entirety, and refers the Commission to Judge Robertson’s Opinion in *FTC v. H.J. Heinz Co., et al.*, Civ. A. No. 00-1688 (October 18, 2000).

Violations Charged

12. Paragraph 12 does not contain any factual averments; and therefore, does not require a response. Beech-Nut denies that the FTC is entitled to any relief.

Dated: December 12, 2000

Respectfully Submitted,



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MILNOT HOLDING CORPORATION

CERTIFICATE OF SERVICE

I, Colin R. Kass, hereby certify that on December 12, 2000, a copy of Milnot Holding Company's Answer to the Federal Trade Commission's Administrative Complaint was served by hand delivery to the following persons:

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