

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)	
)	
LIBBEY INC., a corporation,)	
)	Docket No. 9301
and)	
)	DECISION AND ORDER
NEWELL RUBBERMAID INC., a corporation.)	

The Federal Trade Commission (“Commission”) having heretofore issued its complaint charging the Respondents named in the caption hereof with violations of Section 5 of the Federal Trade Commission Act, as amended, and Section 7 of the Clayton Act, as amended, and Respondents having been served with a copy of that complaint, together with a notice of contemplated relief, and Respondents having answered the complaint denying said charges and asserting affirmative defenses but admitting the jurisdictional allegations set forth therein; and

The Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the Respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of said 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The Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with § 3.25(c) of its Rules; and

The Commission having thereafter considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following Order:

1. Respondent Libbey Inc. (“Libbey”) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 300 Madison Avenue, Toledo, Ohio 43604.

2. Respondent Newell Rubbermaid Inc. (“Newell”) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 29 East Stephenson Street, Freeport, Illinois 61032. Anchor Hocking Inc. and Anchor Hocking Consumer Glass Corporation, corporations organized, existing and doing business under and by virtue of the laws of the State of Delaware, with their offices and principal places of business located at 519 Pierce Avenue, Lancaster, Ohio 43130, are indirect, wholly-owned subsidiaries of Newell. Newell Holdings Delaware, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal places of business located at 29 E. Stephenson Street, Freeport, Illinois 61032, is an indirect, wholly-owned subsidiary of Newell.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the Commission has determined that this proceeding is in the public interest.

ORDER

I

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

A. "Libbey" means Libbey Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates, controlled by Libbey, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.

B. "Newell" means Newell Rubbermaid Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates, controlled by Newell (including, but not limited to, Anchor and RCP), and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.

C. "Commission" means the Federal Trade Commission.

D. "Anchor" means Anchor Hocking Inc. and Anchor Hocking Consumer Glass Corporation, two Delaware corporations organized, existing and doing business under and by virtue of the laws of the State of Delaware, with their offices and principal places of business located at 519 Pierce Avenue, Lancaster, Ohio 43130, and assets of Anchor's Food Service Business held by Newell Holdings Delaware, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 29 E. Stephenson Street, Freeport, Illinois 61032.

E. "RCP" means Rubbermaid Commercial Products LLC, a limited liability company organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3124 Valley Avenue, Winchester, Virginia 22601.

F. “Vitrocrista” means Vitrocrista, S. de R.L. de C.V., a joint venture between Libbey and Vitro, S.A., organized, existing and doing business under and by virtue of the laws of Mexico, with its office and principal place of business located at Doblado Norte 1627, Col. Terminal, 64580 Monterrey, Mexico.

G. “Anchor’s Food Service Business” means all of Anchor’s rights, title, and interest in and to all assets and businesses, tangible or intangible, anywhere in the world, used in the research, development, manufacture, distribution, licensing, marketing, or sale of glassware products to Food Service Customers in the United States, including, but not limited to:

1. Real property (together with appurtenances, licenses, and permits) owned, leased or otherwise held by Anchor, including, but not limited to, the Lancaster, Ohio and Monaca, Pennsylvania glassware manufacturing plants, and related machinery, fixtures, equipment, furniture, tools and other tangible property, including, but not limited to, glassware molds;
2. Personal property owned, leased, or otherwise held by Anchor;
3. Inventories, stores, and supplies held by, or under the control of, Anchor;
4. Intellectual property rights owned by or licensed to Anchor, including, but not limited to, trademarks, patents, copyrights, and trade secrets;
5. Rights of Anchor under any contract, including, but not limited to, licenses, leases, customer contracts (including, but not limited to, contracts with Food Service Customers), supply agreements and procurement contracts;
6. Pending and issued governmental approvals, registrations, consents, licenses, permits, waivers, or other authorizations held by Anchor, including foreign equivalents;
7. Rights of Anchor under any warranty or guarantee, express or implied;
8. Items of prepaid expense owned by Anchor; and
9. Separately maintained, and relevant portions of not separately maintained, books, records, and files held by, or under the control of, Anchor.

PROVIDED, HOWEVER, that Anchor’s Food Service Business shall not include:

- i. Rights of Anchor to warehouse space;
- ii. Office equipment, furniture and accessories;
- iii. Computer hardware and accessories;
- iv. Motor vehicles, forklifts, overhead cranes, and other transportation equipment;

- v. Raw materials, including, but not limited to, electricity, natural gas, water, sand, soda lime, cullet, corrugate and other packaging materials and metal, ceramic and plastic accessories;
- vi. Scrap metal and other scrap materials;
- vii. Machine replacement parts;
- viii. Decorating equipment;
- ix. Packaging equipment;
- x. Hand tools;
- xi. Machine tools;
- xii. Sandblasting equipment; and
- xiii. Bakeware, candles, floral items and storage jars, and the molds used to form these items.

Anchor's Food Service Business expressly includes any and all assets of Anchor's Food Service Business sold or transferred to any other Person, including RCP or any other Person or business unit included within Newell, on or after June 10, 2002, except in the ordinary course of business.

H. "Food Service Customers" means restaurants, hotels and other food service establishments, whether private or public, that use or sell glassware in the course of serving or selling food or beverages to consumers, and includes distributors or resellers of glassware to such establishments; PROVIDED, HOWEVER, that Food Service Customers shall not include retail stores, original equipment manufacturers, and warehouse clubs.

I. "Person" means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

J. "Respondents" means Libbey and Newell, individually and collectively.

II

IT IS FURTHER ORDERED that Libbey shall not, without prior written notification to the Commission, acquire, directly or indirectly, through subsidiaries or otherwise, any ownership, leasehold, or other interest, in whole or in part, in the stock of Anchor or the assets of the Anchor Food Service Business.

III

IT IS FURTHER ORDERED that Newell shall not, without prior written notification to the Commission, sell, transfer, or otherwise convey, directly or indirectly, through subsidiaries or otherwise, any ownership, leasehold, or other interest, in all or any part of Anchor's Food Service Business:

A. to Libbey or to Vitrocrisa, for a period commencing on the date this Order becomes final and continuing for ten (10) years; and

B. to any Person other than to Libbey or to Vitrocrisa, for a period commencing on the date this Order becomes final and continuing for five (5) years;

PROVIDED, HOWEVER, that such notification shall not be required for sales, transfers or other conveyances by Newell: (i) to a Person or business unit included within Newell; (ii) in the ordinary course of business; (iii) of inventory to liquidators; or (iv) of accounts receivable in connection with financing transactions.

IV

IT IS FURTHER ORDERED that Respondent Libbey and Respondent Newell shall provide the respective prior written notifications required by Paragraphs II and III of this Order, as applicable, on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as the "Notification"), which Notification shall be prepared and transmitted in accordance with the requirements of that part, except that (i) no filing fee will be required for any such Notification, (ii) Notification shall be filed with the Secretary of the Commission, (iii) Notification need not be made to the United States Department of Justice, and (iv) Notification is required only of the applicable Respondent and not of any other party to the relevant transaction. Notification shall be provided to the Commission at least thirty (30) days prior to consummating any transaction covered by the respective requirements of Paragraph II or Paragraph III, as applicable (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), the applicable Respondent shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in Paragraphs II and III may be requested and, where appropriate, granted by letter from the Commission's Bureau of Competition. PROVIDED, HOWEVER, that prior notification shall not be required by Paragraphs II and III 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 sixty (60) days after the date this Order becomes final, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they have complied and are complying with this Order; and

B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

VI

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents 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.

VII

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request, Respondents 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 books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents relating to any matters contained in this Order; and

B. Upon five (5) days' notice to Respondents and without restraint or interference from them, to interview officers, directors, employees, agents or independent contractors of Respondents, who may have counsel present, relating to any matters contained in this Order.

VIII

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

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: