

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

**COMMISSIONERS:**      **Jon Leibowitz, Chairman**  
                                  **William E. Kovacic**  
                                  **J. Thomas Rosch**  
                                  **Edith Ramirez**  
                                  **Julie Brill**

<p><b>In the Matter of</b></p> <p style="padding-left: 40px;"><b>PERRIGO COMPANY,</b> <b>a corporation;</b></p> <p style="padding-left: 40px;"><b>and</b></p> <p style="padding-left: 40px;"><b>PADDOCK LABORATORIES, INC.,</b> <b>a corporation.</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Docket No. C-4329</b></p>
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**COMPLAINT**

Pursuant to the Clayton Act and the Federal Trade Commission Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Perrigo Company (“Perrigo”), a corporation subject to the jurisdiction of the Commission, has agreed to acquire substantially all of the assets of Paddock Laboratories, Inc. (“Paddock”), a corporation subject to the jurisdiction of the Commission, in violation 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 it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

**I. DEFINITIONS**

1. “Commission” means the Federal Trade Commission.
2. “FDA” means the United States Food and Drug Administration.
3. “Respondents” means Perrigo and Paddock, individually and collectively.

## **II. RESPONDENTS**

4. Respondent Perrigo is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its headquarters address at 515 Eastern Avenue, Allegan, Michigan. Perrigo is engaged in the research, development, manufacture, and sale of generic pharmaceuticals.

5. Respondent Paddock is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its headquarters address at 3940 Quebec Avenue North, Minneapolis, Minnesota. Paddock is engaged in the research, development, manufacture, and sale of generic pharmaceuticals.

6. Respondents are, and at all times relevant herein have been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and are corporations whose businesses are in or affect commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

## **III. PROPOSED ACQUISITION**

7. On January 20, 2011, Perrigo and Paddock entered into a Purchase Agreement whereby Perrigo proposes to acquire substantially all of the assets of Paddock in a transaction valued at approximately \$540 million (the “Acquisition”).

## **IV. RELEVANT MARKETS**

8. For the purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are the manufacture and sale of the following generic pharmaceuticals:

- a. ammonium lactate external cream 12 percent (“ammonium lactate cream”);
- b. ammonium lactate topical lotion 12 percent (“ammonium lactate lotion”);
- c. ciclopirox shampoo 1 percent (“ciclopirox shampoo”);
- d. promethazine hydrochloride rectal suppository 12.5 mg and 25 mg (“promethazine suppository”);
- e. clobetasol proprionate spray 0.05 percent (“clobetasol spray”);
- f. diclofenac sodium topical solution 1.5 percent (“diclofenac solution”); and

g. testosterone gel 1 percent (“testosterone gel”).

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

## V. STRUCTURE OF THE MARKETS

10. The ammonium lactate cream and lotion products are prescription moisturizers used to treat dry, scaly skin conditions, and help relieve itching. The same firms compete in both markets – Perrigo, Paddock, and Taro Pharmaceutical Industries Ltd. (“Taro”), although Paddock has temporarily withdrawn its products from the U.S. market. Perrigo is the leading supplier in the U.S. market for ammonium lactate cream, with 70 percent of the market. In this market, the Acquisition would create a duopoly, with Perrigo accounting for approximately 87 percent. The Herfindahl-Hirschman Index (“HHI”) would increase by 2,380 points, resulting in a post-acquisition HHI of 7,714 points. Perrigo and Paddock are the leading suppliers of ammonium lactate lotion in the United States, with 43 percent and 50 percent of the market, respectively. The Acquisition would increase Perrigo’s market share to 93 percent and increase the HHI concentration by 4,300 points to 8,678 points.

11. Paddock leads the market for ciclopirox shampoo in the United States, with a share of 83 percent. Ciclopirox shampoo is a prescription shampoo used to treat seborrheic dermatitis, an inflammatory condition that causes flaky scales and patches on the scalp. Perrigo and E. Fougera & Co. are the only other U.S. suppliers of ciclopirox shampoo. After the Acquisition, Perrigo would control 99 percent of the market, and the HHI concentration would increase by 2,656 points to a post-acquisition HHI of 9,802 points.

12. The market for the manufacture and sale of promethazine suppository is also highly concentrated; Perrigo, Paddock, and G&W Laboratories, Inc. are currently the only U.S. suppliers. Promethazine suppository is indicated for a variety of uses, including to treat allergic reactions, to prevent and control motion sickness, and to relieve nausea and vomiting associated with surgery. The Acquisition would create a duopoly and increase Perrigo’s market share to 34 percent in the 12.5 mg strength, and to 35 percent in the 25 mg strength. The HHI would increase by 570 and 600 for the 12.5 mg and 25 mg strengths, resulting in post-acquisition HHIs of 5,512 and 5,450, respectively.

13. Clobetasol spray is a topical steroid used to treat moderate to severe psoriasis in adults. Perrigo and Paddock are developing clobetasol sprays and are two of a limited number of suppliers capable of entering this future market in a timely manner.

14. Diclofenac solution is a non-steroidal anti-inflammatory drug used to treat osteoarthritis of the knee. Perrigo and Paddock are in the process of entering the diclofenac solution market and are two of a limited number of suppliers capable of entering this future market in a timely manner.

15. Testosterone gel is a prescription gel used to treat adult males who have a deficiency or absence of testosterone. Abbott Laboratories (“Abbott”) currently markets testosterone gel under the Androgel brand name. Perrigo is one of a limited number of suppliers capable of entering this future market in a timely manner. Par Pharmaceutical Companies, Inc. has an agreement with Abbott relating to AndroGel that provides for Abbott to make substantial annual payments to Paddock. The proposed acquisition would make Perrigo a party to that agreement, thereby enhancing Abbott’s and Perrigo’s ability to coordinate on delaying the introduction of Perrigo’s product into the market.

## **VI. ENTRY CONDITIONS**

16. Entry into each of the relevant markets described in Paragraph 8 would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract the anticompetitive effects of the Acquisition. Entry would not take place in a timely manner because the combination of generic drug development times and FDA approval requirements take a minimum of two years. Moreover, entry is not likely because the relevant markets are relatively small, limiting sales opportunities for any new potential entrant.

## **VII. EFFECTS OF THE ACQUISITION**

17. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by eliminating actual, direct, and substantial competition between Perrigo and Paddock in the markets for ammonium lactate cream, ammonium lactate lotion, ciclopirox shampoo, and promethazine suppository, thereby: (1) increasing the likelihood that Perrigo will be able to unilaterally exercise market power; (2) increasing the likelihood and degree of coordinated interaction between or among the remaining competitors; and (3) increasing the likelihood that customers would be forced to pay higher prices;
- b. by eliminating future competition between Perrigo and Paddock in the markets for clobetasol spray and diclofenac solution, thereby: (1) increasing the likelihood that the combined entity would forego or delay the launch of Perrigo’s or Paddock’s products in the markets; and (2) increasing the likelihood that the combined entity would delay or eliminate the substantial additional price competition that would have resulted from Perrigo’s and Paddock’s independent entry into the markets; and
- c. by (1) increasing the likelihood and degree of coordinated interaction between Perrigo and Abbott in the market for testosterone gel; (2)

increasing the likelihood that the combined entity would forego or delay the launch of Perrigo's product in the testosterone gel market; and (3) increasing the likelihood that the combined entity would delay or eliminate the substantial additional price competition that would have resulted from Perrigo's independent entry into the testosterone gel market.

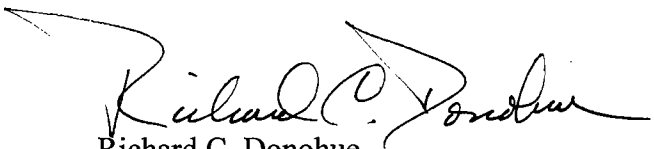
### VIII. VIOLATIONS CHARGED

18. The Acquisition described in Paragraph 7 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

19. The Acquisition described in Paragraph 7, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-second day of July, 2011, issues its Complaint against said Respondents.

By the Commission.



Richard C. Donohue  
Acting Secretary

SEAL: