

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
J. Thomas Rosch
Edith Ramirez
Julie Brill



_____)
In the Matter of)
)
GRACO INC.)
a corporation,)
) Docket No. 9350
ILLINOIS TOOL WORKS INC.)
a corporation,) PUBLIC
)
and)
)
ILLINOIS FINISHING LLC)
a limited liability company.)
_____)

**ANSWER OF DEFENDANT GRACO INC. TO THE FEDERAL TRADE
COMMISSION'S ADMINISTRATIVE COMPLAINT**

Pursuant to 16 C.F.R. § 3.12, Respondent Graco Inc. ("Graco") hereby answers the Federal Trade Commission's Complaint as follows:

PRELIMINARY STATEMENT

Graco Inc. ("Graco"), headquartered in Minneapolis, Minnesota and founded in 1926, designs, develops, manufactures, and sells fluid handling equipment, components, and parts for a variety of industries. The company's liquid finishing products include applicators (guns), pumps (piston and diaphragm), proportioners, packages, and accessories. Graco prides itself on operational excellence, manufacturing efficiency, and product development, innovation, and quality. The company manufactures its finishing products in the United States and sells them worldwide.

Graco has contracted to purchase the finishing business of Illinois Tool Works Inc. ("ITW"). This transaction will make Graco more competitive by:

- Lowering costs by more than \$10 million within three years;
- Enabling Graco's entry into powder finishing, where the company has no current presence;

- Enabling Graco's entry into rotary atomizers, cure ovens, systems, gear pump proportioners, and consumables, products that Graco does not offer;
- Strengthening Graco's offerings in automotive refinish, a business in which Graco is insignificant; and
- Providing access to ITW's global footprint, which will help Graco expand foreign sales.

Graco has also agreed to divest or license to a buyer approved by the FTC, product lines and their respective spare parts, including: ITW's line of Ransflow manual electronic proportioners; ITW's line of BX pumps; ITW's Solo line of manual electrostatic guns; ITW's line of Pitbull airless guns; and ITW's line of Protective Coatings BX Packages. Graco has agreed to continue to operate ITW Finishing distribution channels and Graco Finishing distribution channels in the same manner as they were pre-merger for a period of three years. As well, Graco has agreed, for a period of three years, not to raise U.S. prices on Graco and ITW industrial liquid finishing products in excess of the year over year change in the US Producer Price Index prepared by the US Bureau of Labor Statistics.

There is no reason to anticipate post-acquisition anticompetitive effects from this transaction. When Graco and ITW are systematically compared product by product, their offerings generally are not close substitutes. The parties do not compete for the sale of finishing products as a whole; neither distributors nor end users typically purchase all of either party's finishing products as a discrete bundle. Rather, Graco and ITW compete with each other and numerous other manufacturers for end user business on a product-by-product basis. Furthermore, they have taken different marketplace approaches. Graco typically focuses on component sales to industrial users and sells solely through distribution. ITW has built a hybrid model, selling direct to customers in some cases and through distribution in others. Additionally, ITW has a sales force, with specialized engineering and other expertise, that is focused just on systems sales. The distribution channel itself introduces a layer of competition. Products are distributed by traditional distributors, integrators, and material suppliers, among others.

More importantly, there are strong competitors in all aspects of the finishing business and in industries that use closely analogous products. At least five competitors active in the United States offer a comparable, if not fuller, portfolio of finishing products than those offered by Graco and ITW and have been successful at selling their products to demanding and sophisticated customers. Exel Industries, for example, is a large French-based industrial conglomerate that boasts Audi, Fiat, PSA Peugeot Citroen, Ford, General Motors, and Caterpillar as customers. Wagner, a German company, provides finishing equipment for the likes of BMW and Mercedes and has just completed investment in a significant new facility center in Illinois, a measure of its growing presence in the United States. Another firm, Nordson, serves U.S. customers Harley-Davidson, Mackie Designs, American Axle Manufacturing, Eagle Window & Door, WireCrafters, Manko, American Desk, and Trek USA, generating \$135 million in revenue from its finishing business in 2010. Anest Iwata and Asahi Sunac have manufactured finishing products since the 1920s and 1950s, respectively. Both are Japanese firms that leveraged their popularity with Japanese car companies to launch successful U.S. operations. In addition to these companies, there are hundreds of other companies that offer products within one or more categories of finishing products, including corporate giants such as 3M.

In sum, Graco and ITW compete for the sale of individual finishing products against many strong companies. Moreover, Graco's and ITW's product offerings are largely

complementary. Accordingly, there is no possibility of a material unilateral effect because Graco and ITW are not particularly close competitors, and there are many other competitors that sell products that compete closely with those supplied by each of the merging parties.

RESPONSES TO THE FTC'S ALLEGATIONS

I. NATURE OF THE CASE

1. Graco admits that Graco and Illinois Tool Works Inc. ("ITW") entered into an Asset Purchase Agreement ("the Agreement") dated April 14, 2011. Graco avers that its presidents' statements as a whole speak for themselves. Graco denies the remaining allegations in Paragraph 1.

2. Graco avers that its president's documents and statements as a whole speak for themselves. Graco denies the allegations of Paragraph 2.

3. Graco denies the allegations in Paragraph 3.

4. The allegations in Paragraph 4 are legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 4 are denied.

5. Graco denies the allegations in Paragraph 5.

6. Graco denies the allegations in Paragraph 6. Graco avers that its documents as a whole speak for themselves.

II. RESPONDENTS

7. Graco admits sentence one of Paragraph 7. Graco avers that it manufactures and sells liquid finishing equipment in various parts of the United States and abroad. Graco denies the remaining allegations in Paragraph 7.

8. The allegations in Paragraph 8 relate to an entity other than Graco, and Graco is without knowledge or information sufficient to form a belief as to the truth of these allegations.

9. The allegations in Paragraph 9 relate to an entity other than Graco, and Graco is without knowledge or information sufficient to form a belief as to the truth of these allegations.

III. JURISDICTION

10. The allegations in Paragraph 10 are legal conclusions to which no response is required. To the extent a response is required, the allegations in Paragraph 10 are denied.

11. The allegation in Paragraph 11 is a legal conclusion to which no response is required. To the extent a response is required, the allegations in Paragraph 11 are denied.

IV. THE ACQUISITION

12. Graco admits that Graco and ITW entered into an Asset Purchase Agreement dated April 14, 2011. The Asset Purchase Agreement speaks for itself. Graco denies the remaining allegations in Paragraph 12.

V. INDUSTRY STRUCTURE AND ANTICOMPETITIVE EFFECTS

13. Graco admits that industrial manufacturers use liquid finishing equipment to apply paint and other coatings to certain manufactured goods. Graco admits applying a consistent finish is an important part of the manufacturing process. Graco denies the remaining allegations in Paragraph 13.

14. Graco admits that Graco and ITW manufacture industrial liquid finishing equipment, and that this equipment includes, but is not limited to, pumps, applicators, proportioners, and related equipment. Graco denies that any of these product categories constitute relevant product markets for the purpose of evaluating anticompetitive effects. Graco denies the remaining allegations in Paragraph 14.

15. Graco admits that Graco and ITW sell products to distributors. Graco denies the allegations in Paragraph 15.

16. Graco admits that it sells all of its industrial finishing equipment to distributors and integrators. The allegations in sentence 4 of Paragraph 16 relates to an entity other than Graco, and Graco is without knowledge or information sufficient to form a belief as to the truth of these allegations. Graco denies the remaining allegations in Paragraph 16.

17. Graco denies the allegations in Paragraph 17.

18. Graco admits that the statement quoted in Paragraph 18 was made in an investigational hearing taken by the FTC. The transcript speaks for itself. Graco denies the remaining allegations in Paragraph 18.

19. Graco admits that the statements quoted in Paragraph 19 were made in an investigational hearing taken by the FTC. The hearing transcript speaks for itself. Graco denies the remaining allegations in Paragraph 19.

20. Graco denies the allegations in Paragraph 20.

21. Graco denies the allegations in Paragraph 21.

22. Graco avers that the documents speak for themselves. Graco denies the remaining allegations in Paragraph 22.

23. Graco denies the allegations in Paragraph 23.

24. Graco denies the allegations in Paragraph 24.

VI. RELEVANT PRODUCT MARKETS

25. Graco denies the allegations in Paragraph 25.

26. Graco denies that the putative product markets set forth in Paragraph 26 and each of its subparts are relevant markets for antitrust purposes.

A. Liquid Finishing Pumps for Industrial Use

27. Graco denies the allegations in Paragraph 27. In addition, Graco denies that industrial liquid finishing pumps constitute a relevant product market.

B. Liquid Finishing Spray Guns for Industrial Use

28. Graco denies the allegations in Paragraph 28. In addition, Graco denies that industrial liquid finishing spray guns constitute a relevant product market.

C. Liquid Finishing Proportioners for Industrial Use

29. Graco denies the allegations in Paragraph 29. In addition, Graco denies that industrial liquid finishing proportioners constitute a relevant product market.

D. Circulation Pumps for Paint Systems in Automotive Assembly Plants

30. Graco denies the allegations in Paragraph 30. In addition, Graco denies that paint circulation pumps used in automotive plants constitute a relevant product market.

E. Industrial Liquid Finishing Equipment for Resale

31. Graco denies the allegations in Paragraph 31. In addition, Graco denies that "Industrial Liquid Finishing Equipment for Resale" constitutes a relevant product market.

VII. GEOGRAPHIC MARKET

32. Graco denies the allegations in Paragraph 32.

VIII. PRESUMPTIVE ILLEGALITY OF THE ACQUISITION

33. The allegation in Paragraph 33 that the acquisition would be "illegal" is a legal conclusion, to which no response is required. To the extent a response is required, this allegation is denied. Graco denies the remaining allegations in Paragraph 33.

34. The first sentence in Paragraph 34 is a legal conclusion to which no response is required. To the extent that a response is required, the allegation is denied. Graco denies the remaining allegations in Paragraph 34.

35. Graco denies the allegations in Paragraph 35.

36. Graco denies the allegations in Paragraph 36.

37. The allegations in Paragraph 37 are legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

IX. ENTRY AND REPOSITIONING BARRIERS AND LACK OF EFFICIENCIES

38. Graco denies the allegations in Paragraph 38.

39. Graco denies the allegations in Paragraph 39.

40. Graco denies the allegations in Paragraph 40.

41. Graco denies the allegations in Paragraph 41.

X. VIOLATIONS

COUNT I - ILLEGAL AGREEMENT

42. Except as where specifically admitted above, the allegations in Paragraphs 1-41 of the Complaint are denied.

43. The allegations in Paragraph 43 are legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

COUNT II - ILLEGAL ACQUISITION

44. Except as where specifically admitted above, the allegations in Paragraphs 1-41 of the Complaint are denied.

45. The allegations in Paragraph 45 are legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

XII. AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The contemplated relief would not be in the public interest.

THIRD AFFIRMATIVE DEFENSE

To provide further assurances that there will be no anticompetitive effects, Graco has agreed to divest or license the following product lines, to a buyer approved by the FTC within a period of 180 days:

- ITW's line of Ransflow manual electronic proportioners (including spare parts)
- ITW's line of BX pumps (including spare parts)
- ITW's Solo line of manual electrostatic guns (including spare parts)
- ITW's line of Pitbull airless guns (including spare parts)
- ITW's line of Protective Coatings BX Packages (including spare parts)

FOURTH AFFIRMATIVE DEFENSE

To provide further assurances that there will be no anticompetitive effects, Graco has agreed to the following terms:

Regarding ITW Industrial Finishing Distribution:

Graco will continue to operate ITW Finishing distribution channels in the same manner as they were pre-merger for a period of three years. To that end, Graco will:

- a. Offer to extend any current ITW Finishing Distributor or Integrator agreement for a period of three years (subject to existing minimum sales and credit standards).
- b. Confirm in writing to each ITW Finishing Distributor that its agreement is non-exclusive and that there are no restrictions on which manufacturers, customers, or integrators with which they choose to deal as it relates to ITW Finishing products.
- c. If the ITW Finishing Distributor or Integrator is also a Graco distributor, integrator or customer, Graco will not use any means to restrict that Distributor or Integrator from selling ITW Finishing Products.
- d. For a period of three years, Graco will continue to offer for sale to ITW Distributors and Integrators a full package of ITW Finishing branded products (no

lesser in scope to the previously offered package, with the exception of divested lines).

Regarding Graco Industrial Finishing Distribution:

Graco will continue to operate Graco Finishing distribution channels in the same manner as they were pre-merger for a period of three years. To that end, Graco will:

- a. Offer to extend any current Graco Industrial Finishing Distributor or Integrator agreement for a period of three years (subject to existing minimum sales and credit standards).
- b. Confirm in writing to each Graco Finishing Distributor that its agreement is non-exclusive and that there are no restrictions on which manufacturers, customers, or integrators with which they choose to deal.
- c. For a period of three years, Graco will continue to offer for sale to Graco Distributors and Integrators a full package of Graco Finishing branded products (no lesser in scope to the previously offered package, with the exception of divested lines).

FIFTH AFFIRMATIVE DEFENSE

To provide further assurances that there will be no anticompetitive effects, Graco has agreed, for a period of 3 years, not to raise U.S. prices on Graco and ITW industrial liquid finishing products in excess of the year over year change in the US Producer Price Index (most recent issue) as prepared by the US Bureau of Labor Statistics. This excludes Gema, BGK, and Auto Refinish.

SIXTH AFFIRMATIVE DEFENSE

Efficiencies and other pro-competitive benefits resulting from the acquisition outweigh any and all proffered anticompetitive effects.

OTHER AFFIRMATIVE DEFENSES

Graco reserves the right to assert any other defenses as discovery proceeds.

CONCLUSION

WHEREFORE, Graco respectfully requests that the Court (i) deny the FTC's contemplated relief, (ii) dismiss the Complaint in its entirety with prejudice, (iii) award Graco its costs of suit, including attorneys' fees, and (iv) award such other relief and further relief as the court may deem proper.

Respectfully submitted,

Dated: Jan. 3, 2012

Katrina Robson / mk

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Attorneys for Graco Inc.

CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2012, I filed an original and one paper copy of the foregoing Answer with the Office of the Secretary of the Federal Trade Commission at the following address:

Donald S. Clark
Secretary of the Commission
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H-126
Washington, DC 20580

I also emailed a copy of the foregoing to secretary@ftc.gov, caused a copy to be filed via ECF, and personally served a paper copy on the following:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
Office of Administrative Law Judges
600 Pennsylvania Avenue, NW
Room H-106
Washington, DC 20580

I further certify that on January 3, 2012, I have caused the foregoing Answer to be served by email upon Phillip Broyles (pbroyles@ftc.gov), Peter Richman (prichman@ftc.gov), Mark Schneider (mschneider@ftc.gov), and Amanda Hamilton (ahamilton1@ftc.gov) of the Federal Trade Commission; and upon J. Robert Robertson (robby.robertson@hoganlovells.com), counsel for Illinois Tool Works Inc. and Illinois Tool Works Finishing LLC.


Michelle J. Koch