

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)
CLASS RINGS, INC.,)
)
a corporation;)
)
CASTLE HARLAN PARTNERS II, L.P.,) File No. 961-0067
)
a limited partnership;)
)
and)
)
TOWN & COUNTRY CORPORATION,)
)
a corporation.)

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the

into an Agreement Containing Consent Order (“Agreement”) to provide for certain relief.

IT IS HEREBY AGREED by and among Proposed Respondents, by their duly authorized officers and their attorneys, and counsel for the Commission that:

1. Proposed Respondent Class Rings, Inc., a corporation controlled by Castle Harlan Partners II, L.P., 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 150 East 58th Street, New York, New York 10155.

2. Proposed Respondent Castle Harlan Partners II, L.P., is a limited partnership 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 150 East 58th Street, New York, New York 10155.

3. Proposed Respondent Town & Country Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its office and principal place of business located at 25 Union Street, Chelsea, Massachusetts 02150.

4. Proposed Respondents admit all the jurisdictional facts set forth in the draft of Complaint here attached.

5. Proposed Respondents waive:

- a. Any further procedural steps;
- b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and
- d. Any claim under the Equal Access to Justice Act.

6. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the draft of Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

7. This Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft of Complaint here attached, or that the facts as alleged in the draft of Complaint, other than jurisdictional facts, are true.

8. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondents, (1) issue its Complaint corresponding in form and substance with the draft of Complaint here attached and its decision containing the following Order in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order

shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the Complaint and decision containing the agreed-to Order to Proposed Respondents' addresses as stated in this Agreement shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

9. Proposed Respondents have read the proposed Complaint and Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the Order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

ORDER

I.

For purposes of this Order, the following definitions shall apply:

A. "Respondent Class Rings, Inc." or "Class Rings, Inc." means Class Rings, Inc., its predecessors, subsidiaries, divisions, groups and affiliates controlled by Class Rings, Inc.; and their respective directors, officers, employees, agents and representatives and the respective successors and assigns of each.

B. "Respondent Castle Harlan" or "Castle Harlan" means Castle Harlan Partners II,

L.P., its predecessors, subsidiaries (including, but not limited to, Class Rings, Inc. and Keepsake Jewelry, Inc.), divisions, groups and affiliates controlled by Castle Harlan; and their respective general partners, officers, employees, agents and representatives and the respective successors and assigns of each.

C.

other inscriptions.

II.

IT IS ORDERED that, at or before the time Respondent Class Rings, Inc., acquires L.G. Balfour Company, Inc., its assets and any other assets related to the business of L.G. Balfour Company, Inc., to be purchased by Class Rings, Inc., referred to in the Asset Purchase Agreement dated May 20, 1996, Castle Harlan and Class Rings, Inc., shall not acquire from or agree to acquire from Town & Country, and Town & Country shall not sell to or agree to sell to Castle Harlan or Class Rings, Inc., any stock, share capital, equity, debt, or other interest in or assets of Gold Lance or any stock, share capital, equity, debt, or other interest in or assets of Town & Country; and Respondent Town & Country shall not acquire or agree to acquire from Castle Harlan or Class Rings, Inc., and Castle Harlan and Class Rings, Inc., shall not sell or agree to sell to Respondent Town & Country any stock, share capital, equity, debt, or other interest in or assets of Respondents Castle Harlan or Class Rings, Inc.

The purpose of this provision is to ensure the continuation of Gold Lance as an independent competitor in the design, manufacture and sale of Class Rings and to remedy the lessening of competition as alleged in the Commission's complaint.

III.

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date this Order becomes final, Respondent Class Rings, Inc., and Respondent Castle Harlan shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships,

or otherwise:

A. acquire any stock, share capital, equity, debt, or other interest in Gold Lance or Town & Country, or;

B. acquire any assets used in the design, manufacture, or sale of Class Rings from Gold Lance or Town & Country.

IV.

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date this Order becomes final Respondent Town & Country shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. acquire any stock, share capital, equity, debt, or other interest in Class Rings, Inc., or Castle Harlan, or;

B. acquire any assets used in the design, manufacture, or sale of Class Rings from Castle Harlan or Class Rings, Inc.;

PROVIDED, HOWEVER, Town & Country may purchase assets from Castle Harlan or Class Rings, Inc., totaling not more than \$2 million in any twelve (12) month period, without prior approval of the Commission.

V.

IT IS FURTHERED ORDERED that:

Respondent Castle Harlan and Respondent Class Rings, Inc., shall not, for a period of one (1) year from the date this Order becomes final, employ or seek to employ any person who is or

was employed at any time during calendar year 1996 by Gold Lance or by Town & Country in any position relating to the design, manufacture, or sale of Class Rings.

VI.

IT IS FURTHER ORDERED that:

A. Within sixty (60) days after this Order becomes final and every sixty (60) days thereafter until Respondents have fully complied with the provisions of Paragraph II of this Order, each of the Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraph II of this Order.

B. One year (1) 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 other times as the Commission may require, each of the Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraphs III, IV, and V of this Order.

VII.

IT IS FURTHER ORDERED that Respondents Castle Harlan, Class Rings, Inc., and Town & Country, shall notify the Commission at least thirty (30) days prior to any proposed change in the Respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or partnership, the creation or dissolution of subsidiaries or any other change in the Respondents that may affect compliance obligations arising out of the order.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this order, each of the Respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours of Respondents and in the presence of counsel, 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.

APPROVED:

M. Howard Morse
Assistant Director

George S. Cary
Deputy Director

William J. Baer
Corporation
Director
Bureau of Competition

CASTLE HARLAN PARTNERS, II,
L.P.

By: CASTLE HARLAN, INC.,
as Investment Manager

By: _____
David B. Pittaway
Vice President

By: _____
Joseph Kattan
Morgan, Lewis & Bockius LLP
Counsel for Class Rings, Inc.,
Castle Harlan Partners II, L.P.,
and Town & Country

TOWN & COUNTRY
CORPORATION

By: _____
Francis X. Correra
Senior Vice President and Chief
Financial Officer

By: _____
Keith Shugarman
Goodwin, Procter & Hoar LLP
Counsel for Town & Country
Corporation

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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CLASS RINGS, INC.,)	
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a corporation;)	
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CASTLE HARLAN PARTNERS II, L.P.,)	File No. 961-0067
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a limited partnership;)	
)	
and)	
)	
TOWN & COUNTRY CORPORATION,)	
)	
a corporation.)	

INTERIM AGREEMENT

This Interim Agreement is by and between Class Rings, Inc., a corporation organized and existing under the laws of the State of Delaware (“Class Rings, Inc.”), Castle Harlan Partners II, L.P., a limited partnership organized and existing under the laws of the State of Delaware (“Castle Harlan”), Town & Country Corporation, a corporation organized and existing under the laws of the State of Massachusetts (“Town & Country”), and the Federal Trade Commission, an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, *et seq.* (the “Commission”).

PREMISES

WHEREAS, Class Rings, Inc. has proposed to acquire all of the class ring assets of Town & Country pursuant to the Asset Purchase Agreement dated May 20, 1996 (“the proposed

Acquisition”);

WHEREAS, the Commission is now investigating the proposed Acquisition to determine if it would violate any of the statutes the Commission enforces; and

WHEREAS, if the Commission accepts the Agreement Containing Consent Order (“Consent Agreement”), the Commission will place it on the public record for a period of at least sixty (60) days and subsequently may either withdraw such acceptance or issue and serve its Complaint and decision in disposition of the proceeding pursuant to the provisions of Section 2.34 of the Commission’s Rules; and

WHEREAS, the Commission is concerned that if an understanding is not reached during the period prior to the final issuance of the Consent Agreement by the Commission (after the 60-

time it accepts the Consent Agreement for public comment, it will grant early termination of the Hart-Scott-Rodino waiting period, as follows:

1. Class Rings, Inc., Castle Harlan and Town & Country agree to execute the Consent Agreement and be bound by the terms of the Order contained in the Consent Agreement, as if it were final, from the date Class Rings, Inc., Castle Harlan and Town & Country sign the Consent Agreement.

2. Class Rings, Inc., Castle Harlan and Town & Country agree to submit, within twenty (20) days of the date the Consent Agreement is signed by Class Rings, Inc., Castle Harlan and Town & Country, and every thirty (30) days thereafter until respondents have fully complied with the provisions of Paragraph II of the Consent Agreement, written reports, pursuant to Section 2.33 of the Commission's Rules, signed by Class Rings, Inc., Castle Harlan and Town & Country setting forth in detail the manner in which Class Rings, Inc., Castle Harlan and Town & Country will comply or have complied with Paragraph II of the Consent Agreement.

3. Class Rings, Inc., Castle Harlan and Town & Country agree that, from the date Class Rings, Inc., Castle Harlan and Town & Country sign the Consent Agreement until the first of the dates listed in subparagraphs 3.a. and 3.b., they will comply with the provisions of this Interim Agreement:

a. ten (10) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. the date the Order is final.

4. Class Rings, Inc., Castle Harlan and Town & Country waive all rights to contest the validity of this Interim Agreement.

5. For the purpose of determining or securing compliance with this Interim

Agreement, subject to any legally recognized privilege, and upon written request, and on reasonable notice, Class Rings, Inc., Castle Harlan and Town & Country shall permit any duly authorized representative or representatives of the Commission:

a. access, during the office hours of Class Rings, Inc., Castle Harlan and Town & Country and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Class Rings, Inc., Castle Harlan and Town & Country relating to compliance with this Interim Agreement; and

b. upon five (5) days' notice to Class Rings, Inc., Castle Harlan and Town & Country and without restraint or interference from them, to interview officers, directors, or employees of Class Rings, Inc., Castle Harlan and Town & Country, who may have counsel present, regarding any such matters.

7. This Interim Agreement shall not be binding until accepted by the Commission.

Dated:

FEDERAL TRADE COMMISSION

By: _____
Stephen Calkins
General Counsel

CLASS RINGS, INC.

By: _____
David B. Pittaway
President

CASTLE HARLAN PARTNERS, II,
L.P.

By: CASTLE HARLAN, INC.,
as Investment Manager

By: _____
David B. Pittaway
Vice President

TOWN & COUNTRY

CORPORATION

By: _____
Francis X. Correra
Senior Vice President and Chief
Financial Officer

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)	
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CLASS RINGS, INC.)	
a corporation;)	
)	
CASTLE HARLAN PARTNERS II, L.P.,)	Docket No.
a limited partnership;)	
)	
and)	
)	
TOWN & COUNTRY CORPORATION)	

Delaware with its office and principal place of business located at 150 East 58th Street, New York, New York 10155. Castle Harlan is a venture capital partnership organized by Castle Harlan, Inc., a New York-based investment firm.

3. Respondent Town & Country Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Massachusetts with its office and principal place of business located at 25 Union Street, Chelsea, Massachusetts 02150.

4. At all times relevant herein, all respondents have been and are now engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, 15 U.S.C. § 12, and are partnerships or corporations.

C. RELEVANT LINE OF COMMERCE

9. One relevant line of commerce within which to analyze the effects of the proposed acquisitions is the United States market for class rings. Class rings are rings manufactured and sold to high school, junior high school, undergraduate, graduate, trade school, and community college students, and students of any other post-high school institutions to commemorate their graduation. Class rings are generally made of gold, silver or of steel alloy metals and often include a precious or synthetic stone, the school name, student's interests or activities, date of

of CJC and Town & Country assets would increase the Herfindahl-Hirschman Index (HHI) over 900 points to approximately 3760.

15. The remaining 5% of the class ring market is composed of several smaller class ring manufacturers whose combined share historically has not exceeded 5%. These firms are limited in their ability to expand by their limited inventory of molds and limited distribution.

16. The combination of the CJC and Town & Country class ring assets would give the merged entity a combined market share of over 90% of class rings sold through the retail distribution channel.

E. CONDITIONS OF ENTRY

shifting of share among the leading firms.

22. There already is substantial communication and interaction between the leading firms in the class ring market. Company documents reveal contacts between firms in the market and the exchange of pricing and promotional information.

G. EFFECTS OF THE PROPOSED ACQUISITIONS

23. The proposed acquisition of the class ring assets of CJC and T&C by Class Rings, Inc., may substantially lessen competition in the United States market for class rings by, among other things:

- a. increasing concentration substantially in a highly concentrated market;
- b. eliminating substantial head-to-head competition between Gold Lance and CJC;
- c. substantially increasing the risk of coordinated interaction;
- d. substantially increasing the risk of unilateral effects in class rings sold through the retail distribution channel;
- e. increasing prices for class rings.

H. VIOLATIONS CHARGED

24. The agreements described in paragraph 5 violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

25. The proposed acquisition of the class ring assets of Town & Country and CJC by Class Rings, Inc., and the acquisition of stock in Class Rings, Inc., by Town & Country, if consummated, would violate 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this _____ day of _____, 1996, issues its complaint against said respondents.

Donald S. Clark
Secretary

SEAL:

ANALYSIS TO AID PUBLIC COMMENT ON THE PROVISIONALLY ACCEPTED CONSENT ORDER

The Federal Trade Commission (“the Commission”) has accepted for public comment an agreement containing a consent order with Class Rings, Inc., Castle Harlan Partners II, L.P. (“Castle Harlan”), and the Town & Country Corporation (“Town & Country”). This agreement has been placed on the public record for sixty days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement’s order.

The Commission’s investigation of this matter concerns the proposed acquisition by Class Rings, Inc., a wholly owned subsidiary of Castle Harlan, of certain assets of Town & Country and CJC Holdings, Incorporated (“CJC”). The Commission’s proposed complaint alleges that Town & Country and CJC are two of four major manufacturers of class rings in the United States.

The agreement containing consent order would, if finally accepted by the Commission, settle charges that the acquisitions may substantially lessen competition in the manufacture and sale of class rings in the United States. The Commission has reason to believe that the acquisitions and agreements violate Section 5 of the Federal Trade Commission Act and the acquisitions would have anticompetitive effects and would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act if consummated, unless an effective remedy eliminates such anticompetitive effects.

The Commission’s Complaint alleges that class rings are a uniquely American

phenomenon and that class ring purchasers would not switch to other products even if prices for class rings increased significantly. The top four manufacturers of class rings -- Jostens, Inc., CJC, Town & Country, and Herff Jones, Inc. -- account for over 95% of all class rings sold.

Class Rings, Inc., used for the design, manufacture, or sale of class rings without the prior approval of the Commission. Town & Country, however, may purchase assets from Class Rings, Inc., or Castle Harlan totaling not more than \$2 million in any twelve month period. The purpose of these provisions is to ensure that Class Rings, Inc. and Town & Country remain independent from each other, thereby fostering a competitive environment for the sale of class rings.

The proposed order also prohibits Castle Harlan and Class Rings, Inc., for a period of one year from the date this proposed order becomes final, from employing or seeking to employ any person who is or was employed at any time during calendar year 1996 by Gold Lance or Town & Country in the design, manufacture or sale of class rings. The purpose of this provision is to ensure that Town & Country, through Gold Lance, remains a viable competitor in the manufacture and sale of class rings

An interim agreement was also entered into by the parties and the Commission that requires Class Rings, Inc., Castle Harlan, and Town & Country to be bound by the terms of the proposed order, as if it were final, from the date that Class Rings, Inc. and Castle Harlan signed the proposed order.

Statement of Commissioner Mary L. Azcuenaga

Concurring in Part and Dissenting in Part

in Class Rings, Inc., File No. 961-0067

Today the Commission accepts for public comment a consent agreement resolving allegations that the proposed acquisitions by Class Rings, Inc., a newly created subsidiary of Castle Harlan Partners II, L.P., of certain assets of Town & Country Corp. (two subsidiaries, Gold Lance, Inc., and L.G. Balfour, Inc.) and CJC Holdings, Inc., would be unlawful. The proposed order prohibits the acquisition of Gold Lance.

I concur, except with respect to the prior approval provisions in Paragraphs III and IV of the proposed order, which are inconsistent with the "Statement of Federal Trade Commission Policy Concerning Prior Approval and Prior Notice Provisions" ("Prior Approval Policy Statement" or "Statement"). In its Statement, the Commission announced that it would "rely on" the Hart-Scott-Rodino premerger notification requirements in lieu of imposing prior approval or prior notice provisions in its orders. Although the Commission reserved its power to use prior approval or notice "in certain limited circumstances," it cited only a single situation in which a prior approval clause might be appropriate, that is, "where there is a credible risk that a company" might attempt the same merger.

The complaint does not allege any facts showing a "credible risk" that the parties might attempt to acquire Gold Lance a second time. Nor am I aware of any reason to think that the parties have a concealed plan or intention to circumvent the order by doing so. Of course, as

evidenced by their premerger notification report filed pursuant to the requirements of the Hart-Scott-Rodino Act, the parties wanted to acquire Gold Lance, but every merger case involves parties who want to combine firms or assets.

As I understand it, the primary reason for assuming that the parties will try again is that they seemed so much to want to consummate this transaction. The intensity of the parties' interest in a proposed transaction as perceived by the Commission (even assuming that we can distinguish between the vigor of their legal representation and the intensity of their own feelings) has no established predictive value of the likelihood that parties will again attempt a transaction now known to be viewed unfavorably by the FTC. In addition, the intensity of their feelings as perceived by the Commission is unlikely to result in an evenhanded selection of exceptions to our prior approval policy.

It also has been suggested that one reason for imposing a prior approval requirement is that the Commission is prohibiting the acquisition of Gold Lance, rather than allowing it subject to a divestiture requirement, under which the Commission supervises the divestiture. In fact, however, the choice of remedy is not predictive of the likelihood of recurrence. Once a divestiture has been accomplished, the Commission has no greater ability to deter a particular transaction than it will here.

I am most sympathetic to the concern that if the parties attempted to repeat the transaction in the future, the Commission might be faced with a significant duplicative expenditure of resources. That is one of the reasons I dissented from the Commission's Prior Approval Policy

Statement. Dissenting Statement of Commissioner Mary L. Azcuenaga on Decision to Abandon Prior Approval Requirements in Merger Orders, 4 CCH Trade Reg. Rep. ¶ 13,241 at 20,992 (1995). But given that we have the policy, it seems to me incumbent on the Commission either to live by it or to change it.¹

¹ See Dissenting Statement of Commissioner Mary L. Azcuenaga in The Vons Companies, Inc., Docket No. C-3391 (May 24, 1996).