

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
Wesley-Jessen Corporation,)	Docket No. C-3700
a corporation)	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that Respondent, Wesley-Jessen Corporation ("Wesley-Jessen"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire all of the voting securities of Pilkington Barnes Hind International, Inc. ("PBH International"), a corporation, Barnes-Hind International Inc. ("Barnes-Hind International"), a corporation, Pilkington Barnes Hind (Services) Limited ("PBH Services"), Pilkington Barnes Hind N.V. ("PBH NV"), Pilkington Barnes Hind SA ("PBH France"), Pilkington Barnes Hind, S.A. ("PBH Spain"), Pilkington Barnes-Hind Pty Ltd. ("PBH Australia"), Pilkington Barnes Hind Japan KK ("PBH Japan"), Pilkington Barnes Hind Nederland B.V. ("PBH BV"), Pilkington Barnes Hind SpA ("PBH SpA"), Pilkington Barnes-Hind Limited ("PBH Ltd."), Pilkington Diffractive Lenses Limited ("Diffractive"), Pilkington Barnes Hind, Inc., a corporation, ("PBH"), and certain assets of Pilkington Deutschland GmbH ("PD"), from Pilkington plc ("Pilkington"), 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, ("FTC Act"), 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. RESPONDENT

1. Respondent Wesley-Jessen Corporation ("Wesley-Jessen") is a corporation organized, existing, and doing business under

and by virtue of the laws of the state of Delaware, with its principal place of business located at 333 East Howard Avenue, Des Plaines, Illinois.

II. THE ACQUIRED COMPANY

2. Pilkington plc ("PBH") is a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom, with its principal place of business located at Prescott Road, St. Helens, Merseyside, England.

III. JURISDICTION

3. Respondent is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

IV. THE ACQUISITION

4. On or about March 27, 1996, Wesley-Jessen and PBH signed a Letter of Intent whereby Wesley-Jessen would acquire all the voting securities of PBH, voting securities of certain foreign issuers controlled by PBH and certain assets located outside the United States for approximately \$80 million ("Acquisition").

V. THE RELEVANT MARKETS

5. For purposes of this Complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture and sale of opaque contact lenses.

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

VI. STRUCTURE OF THE MARKET

7. The market for the manufacture and sale of opaque contact lenses is highly concentrated as measured by the Herfindahl-Hirschman Index. The parties to the Acquisition combined account for over 90% of the market.

VII. BARRIERS TO ENTRY

8. Entry into the manufacture and sale of opaque contact lenses is difficult and time consuming, requiring the expenditure of significant resources over a period of many years with no assurance that a viable commercial product will result. The existence of broad patents governing design and manufacture make new entry both difficult and unlikely.

VIII. EFFECTS OF THE ACQUISITION

9. The effects of the Acquisition if consummated may be substantially to lessen competition and to tend to create a monopoly in the relevant market 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, by, among others:

- (a) eliminating actual, direct and substantial competition based on pricing, service and innovation between Wesley-Jessen and PBH International in the relevant market;
- (b) increasing the likelihood that Wesley-Jessen will unilaterally exercise market power in the relevant market;
- (c) creating a dominant firm in the relevant market;
and
- (d) enhancing the likelihood of collusion or coordinated interaction between or among the remaining firms in the relevant market.

IX. VIOLATIONS CHARGED

10. The Acquisition described in Paragraph 4, 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.

11. The Acquisition agreement described in Paragraph 4 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this 3rd day of January, 1997, issues its Complaint against said respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: