

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

COMMISSIONERS: **Robert Pitofsky, Chairman**
 Sheila F. Anthony
 Mozelle W. Thompson
 Orson Swindle
 Thomas B. Leary

In the Matter of

MACDERMID, INCORPORATED,
a corporation,

and

POLYFIBRON TECHNOLOGIES, INC.,
a corporation.

Docket No. C-3911

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission having initiated an investigation of the proposed acquisition by the Respondent MacDermid, Incorporated of the Respondent Polyfibron Technologies, Inc., hereinafter referred to as "Respondents," and the Respondents having been furnished thereafter with a copy of a draft of the Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge the Respondents with violations 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by the Respondents of all of the jurisdictional facts set forth in the aforesaid draft of the Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by the Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than the jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that Respondents have violated the said Acts, and that a Complaint should issue

stating its charges in that respect, and having determined to accept the executed Agreement Containing Consent Orders and to place such Agreement on the public record for a period of thirty (30) days, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. MacDermid is a corporation organized, existing and doing business under and by virtue of the laws of the State of Connecticut, with its executive offices located at 245 Freight Street, Waterbury, Connecticut 06702.
2. Polyfibron 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 900 Middlesex Turnpike, Building 2, Billerica, Massachusetts 01821-3946.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

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

- A. “MacDermid” means MacDermid, Incorporated, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by MacDermid, Incorporated, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Polyfibron” means Polyfibron Technologies, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Polyfibron Technologies, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.
- D. “Acquisition” means MacDermid’s proposed acquisition of the common stock of Polyfibron pursuant to the Plan and Agreement of Merger dated February 18, 1999, as amended on July 27, 1999; September 23, 1999; and October 29, 1999.
- E. “Assets To Be Divested” means:

1. all rights, title, and interest in all equipment, machinery, tools, furniture and other tangible property listed in Schedule A to the related Decision and Order and any additional equipment, machinery, tools, furniture and other tangible property, identified by the Commission-approved acquirer within six months of the date of closing as set forth in the agreement to transfer such assets to the Commission-approved acquirer, listed in Schedule B to the related Decision and Order;
2. all rights, title, and interest in and to Patents relating to the research, design, development, manufacture, distribution, marketing, or sale of Polyfibron Liquid Photopolymer Products in North America, including, but not limited to, those patents listed in Schedule C to the related Decision and Order, provided that Respondents may negotiate licenses from the Commission-approved acquirer to enable Respondents to operate the Polyfibron Sheet Photopolymer Business and the Polyfibron International Liquid Photopolymer Business;
3. all rights, titles, and interest in and to Intellectual Property, other than Patents, relating to the research, design, development, manufacture, distribution, marketing, or sale of Polyfibron Liquid Photopolymer Products in North America, provided that Respondents may retain a non-exclusive right to such of the foregoing Intellectual Property as may be required to operate and for the purposes of operating the Polyfibron Sheet Photopolymer Business and the Polyfibron International Liquid Photopolymer Business;
4. all rights, title, and interest in and to inventories of products, raw materials (to the extent requested by the Commission-approved acquirer), supplies and parts, including work-in-process and finished goods, relating to the research, design, manufacture, development, marketing, or sale of Polyfibron Liquid Photopolymer Products in North America, listed and described in Schedule D to the related Decision and Order;
5. all rights, title, and interest in and to agreements, express or implied, relating to the research, design, development, manufacture, distribution, marketing, or sale of Polyfibron Liquid Photopolymer Products in North America, regardless of whether such agreements relate exclusively to such purposes, including, but not limited to, warranties, guarantees, and contracts with joint venture partners, suppliers, including plate-making equipment suppliers, personal property lessors, personal property lessees, licensors, licensees, consignors, consignees, and customers; provided that Respondents may retain a non-exclusive right to such agreements as may

be required to operate and for the purposes of operating the Polyfibron Sheet Photopolymer Business and the Polyfibron International Liquid Photopolymer Business;

6. all rights, title and interest in and to Permits and Approvals relating to the research, design, development, manufacture, distribution, marketing, or

printing plate products and equipment for publishing, including newspapers, newspaper inserts, and books anywhere in the world.

J. “Polyfibron Liquid Photopolymer Business” means the business of Polyfibron of researching, designing, developing, manufacturing, distributing, marketing and selling the Polyfibron Liquid Photopolymer Products.

K. “Polyfibron Liquid Photopolymer Products” means:

1. any liquid photopolymer resins used to produce printing plates,
2. any plate-backing and cover films used in conjunction with liquid photopolymer resins in the production of photopolymer printing plates,
3. any chemicals and related products used in conjunction with liquid photopolymer resins in the production of photopolymer printing plates, and
4. any equipment, agreements relating to equipment, or rights in or to equipment, used to produce photopolymer printing plates from liquid photopolymer resins,

that have been manufactured, distributed, leased or sold by Polyfibron, or have been the subject of research or development by Polyfibron, in North America.

L. “Polyfibron Liquid Photopolymer Resins” means all of the kinds and types of liquid photopolymer resins manufactured by Polyfibron used to produce photopolymer printing plates.

M. “Polyfibron Sheet Photopolymer Business” means the business of Polyfibron of researching, designing, developing, manufacturing, distributing, marketing and selling solid sheet photopolymer printing plate products and equipment for any printing applications anywhere in the world.

II.

IT IS FURTHER ORDERED that:

- A. The purpose of this order is: (i) to preserve the Polyfibron Liquid Photopolymer Business as a viable, competitive, and ongoing business until the divestiture, as described in Paragraphs II and III of the related Decision and Order, is achieved; (ii) to assure that no material confidential information is exchanged between the respective liquid photopolymer businesses of McDermid and Polyfibron; and (iii) to prevent interim harm to competition pending divestiture and other relief.
- B. Respondents shall take such actions as are necessary to maintain the viability, competitiveness, and marketability of the Polyfibron Liquid Photopolymer Business and the Assets To Be Divested; shall not sell, transfer, or encumber the Assets To Be Divested or other assets related to the Polyfibron Liquid Photopolymer Business other than to the Commission-approved acquirer in accordance with Paragraph II.A. of the related Decision and Order and the sale of parts and finished goods inventory in the ordinary course of business; and shall not cause or permit the destruction, removal, wasting, or deterioration, or otherwise impair the viability, competitiveness, or marketability of the Assets To Be Divested or other assets related to the Polyfibron Liquid Photopolymer Business, except for ordinary wear and tear.
- C. Respondents shall conduct or cause to be conducted the Polyfibron Liquid Photopolymer Business in the regular and ordinary course and in accordance with past practice (including regular repair and maintenance efforts) and shall use their best efforts to preserve existing relationships with suppliers, customers, employees, and others having business relations with the Polyfibron Liquid Photopolymer Business.
- D. Prior to the physical transfer of the Assets To Be Divested used in the manufacture of Polyfibron Liquid Photopolymer Products, Respondents shall ensure that a sufficient inventory of Polyfibron Liquid Photopolymer Products is maintained and built up, consistent with past and/or projected demand, so as to assure that no shortages of such products occur at any time, including the period in which the manufacturing assets are shut down for removal, physically transferred to the Commission-approved acquirer, and reassembled and capable of producing Polyfibron Liquid Photopolymer Products in sufficient quantity and quality to satisfy demand for such products.
- E. Respondents shall maintain a work force of equivalent size, training, and expertise associated with the Polyfibron Liquid Photopolymer Business. Respondents shall, directly or through agreement with Chemence or any other proposed acquirer, provide the individuals identified in Schedule F of the related Decision and Order with financial incentives to continue in their employment positions during the period covered by this Order to Maintain Assets. Such incentives shall consist of:

1. continuation of all employee benefits offered by Polyfibron until the divestiture is completed; and
 2. a bonus equal to ten (10) percent of the employee's annual salary (including any other bonuses) as of the date this Order to Maintain Assets is issued by the Commission to those Polyfibron employees that continue their employment with Polyfibron until the divestiture described in the related Decision and Order is completed. Employees identified in Schedule E of the related Decision and Order, or Schedule F if the Commission-approved acquirer is Chemence, that accept employment with the Commission-approved acquirer are entitled to an additional twenty (20) percent bonus under the terms specified in the Decision and Order.
- F. Respondents shall not make offers to remain in Respondents' employment after the divestiture to the individuals listed in Schedule E or Schedule F of the related Decision and Order,.
- G. Respondents shall not interfere with the employment by the Commission-approved acquirer of Polyfibron employees listed in Schedule E of the related Decision and Order, or Schedule F of the related Decision and Order if the Commission-approved acquirer is Chemence; shall not offer any incentive to such employees to decline employment with the Commission-approved acquirer or to accept other employment with the Respondents; and shall remove any impediments that may deter such employees from accepting employment with the Commission-approved acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with the Respondents that would affect the ability of those individuals to be employed by the Commission-approved acquirer; provided that Respondents may continue to enforce such provisions with respect to the Polyfibron International Liquid Photopolymer Business and the Polyfibron Sheet Photopolymer Business.
- H. At the time of execution of a purchase agreement with a Commission-approved acquirer, Respondents shall provide the Commission-approved acquirer with a complete list of all non-clerical employees who have been engaged in the research, design, development, manufacture, distribution, marketing and sale of the Polyfibron Liquid Photopolymer Products at any time during the period from January 1, 1999, until the date of such purchase agreement (Schedule E of the related Decision and Order). Such list shall state each such individual's name and position.
- I. Respondents shall provide the Commission-approved acquirer the opportunity to enter into employment contracts with the individuals listed in Schedule E of the related Decision and Order, or Schedule F of the related Decision and Order if the Commission-approved acquirer is Chemence.

- J. Except as required by law; except to the extent necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, obtaining legal advice, negotiating agreements to divest assets, or complying with the related Decision and Order or this Order to Maintain Assets; or except as necessary to operate the Polyfibron International Liquid Photopolymer Business and the Polyfibron Sheet Photopolymer Business, MacDermid shall not receive or have access to any competitively sensitive or proprietary information, including, but not limited to, customer lists, price lists, marketing methods, patents, technologies, processes or other trade secrets, not independently known to MacDermid from sources other than Polyfibron and that relate to the Assets To Be Divested.
- K. For a period of ninety (90) days from the date of the divestiture required by the related Decision and Order, or until the Commission-approved acquirer has achieved the Capability to Manufacture the Polyfibron Liquid Photopolymer Resins, whichever is earlier, Respondents shall not solicit, induce or attempt to solicit or induce the Liquid Photopolymer business of any customer or client of the Commission-approved acquirer, including Liquid Photopolymer customers or clients of Polyfibron and customers or clients of distributors that have purchased Polyfibron Liquid Photopolymer Products, provided, however, that nothing in this paragraph shall be interpreted as restricting Respondents from (a) providing any product or service to any customer of the Commission-approved acquirer that solicits such purchases from Respondents; (b) engaging in general price

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the Respondents relating to compliance with this Order to Maintain Assets; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

V.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after the divestiture, as described in and required by the related Decision and Order, is completed.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: December 21, 1999