

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

**COMMISSIONERS:**      **Timothy J. Muris, Chairman**  
                                 **Sheila F. Anthony**  
                                 **Mozelle W. Thompson**  
                                 **Orson Swindle**  
                                 **Thomas B. Leary**

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In the matter of	)	
	)	
<b>Nestle Holdings, Inc.,</b>	)	Docket No. C-4028
a corporation, and	)	
	)	
<b>Ralston Purina Company,</b>	)	
a corporation.	)	
_____	)	

**DECISION AND ORDER**

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stating its charges in that respect, and having thereupon issued its Complaint and its Order to Maintain Assets and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Nestle Holdings, Inc., is a corporation organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its office and principal place of business located at 383 Main Avenue, Norwalk, CT 06851. Nestle Holdings, Inc. is a subsidiary of and controlled by Nestle S.A., a corporation organized, existing, and doing business under, and by virtue of, the laws of Switzerland, with its principal executive offices located at Avenue Nestle 55, CH-1800 Vevey, Switzerland.

2. Respondent Ralston Purina Company, is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Missouri, with its office and principal place of business located at Checkerboard Square, St. Louis, Missouri 63164.

3. J.W. Childs Associates, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 111 Huntington Avenue, 29<sup>th</sup> Floor, Boston, Massachusetts 02199.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

- C. “Ralston Purina” means Ralston Purina Company, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Ralston Purina, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Childs” means J.W. Childs Associates, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Childs, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- E. “Commission” means the Federal Trade Commission.
- F. “Acquisition” means the proposed acquisition described in the Agreement and Plan of Merger between Nestle and Ralston Purina, dated January 15, 2001, pursuant to which Nestle agreed to acquire certain voting securities of Ralston Purina.
- G. “Acquisition Date” means the date of consummation of the Acquisition.
- H. “Administrative Services” means provision of administrative services, including but not limited to, order processing, warehousing, shipping, accounting, and information transitioning services.
- I. “Alley Cat Product” means the Alley Cat brand of dry cat food products.
- J. “Childs Acquisition Agreement” means the Asset Purchase Agreement (including all related agreements, schedules, exhibits, and appendices) among Nestle Holdings, Inc., Ralston Purina Company and J.W. Childs Equity Partners II, L.P., dated October 17, 2001, as amended.
- K. “Coating Patent” means the U.S. and foreign patents and patent applications identified in Appendix A of this Order.
- L. “Consent Agreement” means the Agreement Containing Consent Orders executed by Respondents and the Commission in this matter.
- M. "Cost" means (i) if in connection with Paragraph II.F. of this Order: (x) the cost of manufacturing an item, including the actual cost of raw materials (which includes packaging), direct labor, and reasonably allocated factory overhead; and (y) in the case of a Force Majeure Event as defined in Paragraph 19 of the Childs Co-Pack Agreement, reasonable out of pocket costs incurred for actual contracted services, provided that such costs shall not exceed the out of pocket costs incurred in connection with any alternative supply arrangements for Respondents' dry cat food products produced at the facility affected by the Force Majeure Event calculated on a non-discriminatory pro rata basis, and provided further that in making any alternative

supply arrangements, Respondents shall not discriminate in any manner against Ralston Acquirer's products or in favor of the dry cat food products retained by Respondents after this Order goes into effect; or (ii) if in connection with Paragraphs II.G. and II.H. of this order, the cost of direct material, labor, and out of pocket expenses used to provide the relevant service.

- N. "Divestiture Trustee" means the Divestiture Trustee appointed pursuant to Paragraph V of this Order.
- O. "Intellectual Property" means, without limitation, (i) all trade names, registered and unregistered trademarks, service marks and applications, domain names, trade dress, all copy-rights, copyright registrations and applications, in both published works and unpublished works, and goodwill associated with each of them; (ii) all patents, patent applications, and inventions and discoveries that may be patentable, and goodwill associated with each of them; and (iii) all know-how, trade secrets, confidential information, software, technical information, data, processes and inventions, formulae, recipes, methods, and product and packaging specifications, and goodwill associated with each of them; provided, however that Intellectual Property shall not include customer lists or supplier lists.
- P. "International Assets" means any right, title, and interest that Respondents may have, at the time the International Trademarks are divested, in, to, and under the International Trademarks.
- Q. "International Trademarks" means any and all trademarks, service marks, trademark and service mark registrations and pending trademark and service mark registrations that relate exclusively to the Meow Mix Product or Alley Cat Product outside of the United States and Canada.
- R. "Manufacturing Information" means know-how and procedures used in the manufacture of the Meow Mix Product and the Alley Cat Product in the United States or Canada as of the date the Ralston Assets are divested.
- S. "Meow Mix Product" means the Meow Mix brand of dry cat food products (which does not include cat treats), including the brand extension Meow Mix Seafood Middles.
- T. "Monitor" means the Monitor appointed pursuant to Paragraph IV of this Order.
- U. "Non-Public Ralston Acquirer Information" means any propriety information of the Ralston Acquirer relating to the Ralston Assets or the Ralston Business obtained by Respondents in the course of fulfilling the obligations required by Paragraphs II.F., II.G., and II.H. of this Order.
- V. "Order to Maintain Assets" means the Order to Maintain Assets issued by the Commission in this matter.

- W. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity.
- X. “Ralston Acquirer” means the Person that acquires the Ralston Assets pursuant to this Order.
- Y. “Ralston Acquisition Agreement” means either the Childs Acquisition Agreement or the acquisition agreement described in Paragraph II.C.2. of this Order.
- Z. “Ralston Assets” means all of Respondents’ right, title, and interest in and to all assets, tangible or intangible, relating to the operation of the Ralston Business, including, but not limited to:
1. All inventories and supplies held by, or under the control of Respondents;
  2. All Intellectual Property owned by or licensed to Respondents;
  3. Copies of all customer lists and supplier lists;
  4. All rights of Respondents under any contract;
  5. All governmental approvals, consents, licenses, permits, waivers, or other authorizations held by Respondents, to the extent transferable;
  6. All rights of Respondents under any warranty and guarantee, express or implied; and
  7. Copies of all relevant portions of books, records, and files held by, or under the control of, Respondents (subject to Respondents’ rights to maintain attorney client privilege).

Provided, however, that the Ralston Assets shall not include (i) any assets of the kind described in Sections 1.02(b)(i) through (vii), (ix), (x), and (xii) of the Childs Acquisition Agreement, (ii) except for copies or portions thereof reasonably requested by the Ralston Acquirer for the purpose of operating the Ralston Business in a viable and competitive manner, any assets of the kind described in Section 1.02(b)(xi) of the Childs Acquisition Agreement, (iii) any real property (together with appurtenances, licenses and permits) owned, leased, or otherwise held by Respondents, (iv) any personal property (including rights under any contract) owned, leased, or otherwise held by Respondents that does not relate exclusively to operation of the Ralston Business, and (v) any Intellectual Property that does not relate exclusively to operation of the Ralston Business.





1. Respondents shall provide Technical Assistance to the Ralston Acquirer sufficient to enable the Ralston Acquirer to operate the Ralston Business in a viable and competitive manner.
2. In connection with the Technical Assistance required by Paragraph II.G.1. of this Order, Respondents shall allow the Ralston Acquirer reasonable and timely access to Respondents' manufacturing facilities for the purpose of inspecting manufacturing



### III.

**IT IS FURTHER ORDERED** that:

- A. Except in the course of performing their obligations under the Ralston Acquisition Agreement or this Order, Respondents shall not provide, disclose or otherwise make available any Non-Public Ralston Acquirer Information to any Person and shall not use any Non-Public Ralston Acquirer Information for any reason or purpose,
- B. Respondents shall disclose Non-Public Ralston Acquirer Information only to those Persons who require such information for the purposes permitted under Paragraph III.A., and only such part of the Non-Public Ralston Acquirer Information that is so required.
- C. Respondents shall enforce the terms of this Paragraph III as to any Person and take such action as is necessary to cause each such Person to comply with the terms of this Paragraph III, including all actions that Respondents would take to protect their own trade secrets and proprietary information.
- D. The requirements of this Paragraph III do not apply to that part of the Non-Public Ralston Acquirer Information that Respondents demonstrate (i) was or becomes generally available to the public other than as a result of a disclosure by Respondents or (ii) was available, or becomes available, to Respondents on a non-confidential basis, but only if, to the knowledge of Respondents, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.

### IV.

**IT IS FURTHER ORDERED** that:

- A. Angele Thompson (“Monitor”) is hereby appointed to monitor Respondents’ compliance with Paragraphs II and III and to maintain the confidentiality of the information.

2. Within ten days after it signs the Consent Agreement, Respondent shall execute an agreement that, subject to the approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent's compliance with the terms of this Order in a manner consistent with the purposes of this Order. The Monitor shall sign a confidentiality agreement prohibiting the use, or disclosure to anyone other than the Commission, of any competitively sensitive or proprietary information gained as a result of his or her role as Monitor.
3. The Monitor's power and duties under this Paragraph IV shall terminate three business days after the Monitor has completed his or her final report pursuant to Paragraph IV.B.8.(ii), or at such other time as directed by the Commission.
4. The Monitor shall have full and complete access to Respondents' books, records, documents, personnel, facilities and technical information relating to compliance with this Order and Order to Maintain Assets, or to any other relevant information, as the Monitor may reasonably request. Respondents shall cooperate with any reasonable request of the Monitor. Respondents shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order and Order to Maintain Assets.
5. The Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or wilful misconduct. For purposes of this Paragraph IV.B.6., the term "Monitor" shall include all Persons retained by the Monitor pursuant to Paragraph IV.B.5. of this Order.
7. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute to serve as Monitor. The Commission shall select a substitute

Monitor subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Monitor within ten days after notice by the staff of the Commission to Respondent (by delivery receipt acknowledged, to Respondents' counsel of record) of the identity of any proposed substitute Monitor, Respondent shall be deemed to have consented to the selection of the proposed substitute. Respondent shall execute the agreement required by Paragraph IV.B.2 of this Order within ten days after the Commission appoints a substitute Monitor. The substitute Monitor shall serve according to the terms and conditions of this Paragraph IV.

8. The Monitor shall report in writing to the Commission (i) every sixty days from the date this Order becomes final, (ii) no later than thirty days from the date Respondents have completed all obligations required by Paragraph II of this Order, and (iii) at any other time as requested by the staff of the Commission, concerning Respondents' compliance with this Order and the Order to Maintain Assets.
- C. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

## V.

**IT IS FURTHER ORDERED** that:

- A. If Respondents have not divested, absolutely and in good faith any of the Ralston Assets within the time and manner required by Paragraph II of this Order, the Commission may at any time appoint one or more Persons as Divestiture Trustee to divest such assets in the manner provided in this Paragraph V.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph V shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

C. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph V, Respondents shall consent to the following terms and conditions regarding the Divestiture

under this Paragraph in an amount equal to the delay, as determined by the Commission  
or, for a court-appointed Trustee, on



Respondents and to remedy the lessening of competition alleged in the Commission's complaint.

## VII.

**IT IS FURTHER ORDERED** that Respondents and Childs shall provide a copy of this Order to each of Respondents' and Childs' respective officers, employees, or agents having managerial responsibility for any obligations under Paragraphs II, III, IV, and VI of this Order, no later than ten days from the date this Order becomes final.

## VIII.

**IT IS FURTHER ORDERED** that:

- A. Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order and the Order to Maintain Assets:
1. No later than sixty days from the date this Order becomes final and every sixty days thereafter (measured from the due date of the first report) until one year from the date this Order becomes final (for a total of six reports during the first year).
  2. No later than ninety days from the due date of Respondents' sixth report as required by Paragraph VIII.A.1. of this Order, and every ninety days thereafter (measured from the due date of the seventh report) until two years from the date this Order becomes final (for a total of ten reports during the first two years).
  3. No later than one year from the due date of Respondents' tenth report as required by Paragraph VIII.A.2. of this Order, and annually thereafter for the next seven years, on the anniversary of the date this Order becomes final.

Provided, however, that Respondents shall also file the report required by this Paragraph VIII.A. at any other time as the Commission may require.

- B. If, at the time this Order becomes final, Respondents have not completed all of the obligations required by Paragraph II.A. of this Order, Respondents shall comply with Paragraph VIII.A. of this Order by filing a verified written report no later than thirty days from the date this Order becomes final, every thirty days thereafter (measured from the due date of the first report) until Respondents have complied with the obligation required by Paragraph II.A. of this Order. Thereafter, Respondents shall file a verified written report every thirty days thereafter until Respondents have complied with the obligation required by Paragraph II.A. of this Order.

- C. Respondents shall include in their compliance reports a full description of the efforts being made to comply with Paragraph II.A. (or Paragraph II.C., if applicable), of this Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, all reports and recommendations concerning divestiture, the date of divestiture, and a statement that the divestiture has been accomplished in the manner approved by the Commission.

**IX.**

**IT IS FURTHER ORDERED** that Respondents, Nestle S.A., or Childs, respectively, shall notify the Commission at least thirty days prior to any proposed change in the corporate Respondents,



SEAL

ISSUED: February 4, 2002

Confidential Appendix A

[Redacted From Public Record Version]

Confidential Appendix B

[Purchase agreement]

[Redacted From Public Record Version]