

UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE FEDERAL TRADE COMMISSION

LIBBEY INC, a corporation,

and

NEWELL RUBBERMAID, INC., a corporation.

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) Docket No. 9301
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ANSWER AND AFFIRMATIVE DEFENSES OF LIBBEY INC.

Latham & Watkins, hereby answers the allegations of the Federal Trade

Commission ("FTC") Complaint as follows:

including tumblers, stemware, platters and candleholders, to, among other customers, food service customers, including distributors who resell glassware to restaurants, hotels and other food service establishments. Except as stated above

[Libbey denies each and every allegation in Paragraph 2, including the

characterization of "food service glassware" as a distinct product line

8. On December 18, 2001, the Commission authorized the commencement of an action under Section 13(b) of the FTC Act to seek a preliminary injunction barring the acquisition during the pendency of administrative proceedings. Thereafter, on January 14, 2002, the FTC commenced such an action in the United States District Court for the District of Columbia, and on April 22, 2002, the district court granted the FTC's motion for a preliminary injunction pending the completion of administrative adjudication.

ANSWER: Based on information and belief, Libbey admits the

~~the acquisition in Paragraph 8. Libbey further states that the transaction upon which~~

the Commission voted to seek authorize the commencement of an action under Section 13(b) of the FTC Act was the acquisition contemplated by the Original

ANSWER: Libbey admits that on January 21, 2002 it amended the Original Agreement in response to the Commission's vote to challenge the

Hocking from Newell Rubbermaid pursuant to Amended Agreement, which superseded the Original Agreement. Libbey admits that the Amended Agreement

ANSWER: Libbey admits that after the district court granted the Commission's motion for a preliminary injunction, respondents told the court Libbey would not solicit certain Anchor Hocking employees. Based on information and belief, Libbey admits that Newell Rubbermaid and a third party modified the price term under a supply agreement for RCP.

12. The amended merger agreement and the changes described in Paragraph 11 do not materially change the acquisition or its likely effect on competition.

ANSWER: Libbey denies each and every allegation of

Paragraph 12. Moreover, Libbey states that pursuant to the Original Agreement, Libbey proposed to acquire from Newell Rubbermaid its Anchor Hocking division, including its food service, retail and industrial glassware businesses.

assess the effects of the Original Agreement.

14. The relevant geographic area in which to assess the effects of the acquisition and amended merger agreement is the United States.

ANSWER: Libbey admits that the relevant geographic area in

which to assess the effects of the Amended Agreement is the United States and

including the characterization of "food service glassware" as a distinct product line.

17. Anchor is the third largest maker and seller of food service

ANSWER: Libbey admits that Anchor Hocking makes and sells

glassware. Except as stated above, Libbey denies each and every allegation in

service glassware market, would result in a highly concentrated market, would eliminate the existing substantial competition between Libbey and Anchor, would

~~impair the competitive viability of Newell Rubbermaid and would substantially~~

reduce competition and tend to create a monopoly in the market for food service

~~glassware in the United States~~

■ **ANSWER:** Libbey denies each and every allegation of Paragraph 19 and states that the Original Agreement has been superseded and rendered null by the Amended Agreement.

20. The amended merger agreement, if consummated, would impair the competitive viability of Newell Rubbermaid as a competitor in the sale of food service glassware in the United States, and would reduce competition in

f. they may allow Libbey to exercise market power in the relevant market either unilaterally or in coordination with others.

ANSWER: Libbey denies each and every allegation of Paragraph 21.

22. Entry into the relevant product market would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract anticompetitive effects of the acquisition and the amended merger agreement.

ANSWER: Libbey denies each and every allegation of Paragraph 22, and states that entry into the United States for the sale of glassware to all customers including food service distributors and end-users would not only be timely, but also sufficient in its magnitude, character, and scope

to deter and counteract the any alleged anticompetitive effects of the acquisition.

Further, Libbey states that the Original Agreement has been superseded by the

Amended Agreement and therefore there is no basis to assess the effects of the

Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

ANSWER: Libbey denies each and every allegation of

Paragraph 24. Further, Libbey states that the Original Agreement has been

superseded by the Amended Agreement and therefore there is no basis to assess the effects of the Original Agreement pursuant to the Clayton Act or the FTC Act.

COUNT II – ILLEGAL ACQUISITION AGREEMENT

25. The allegations contained in Paragraphs 1-22 are repeated and realleged as though fully set forth here.

ANSWER: Libbey repeats its responses to the allegations contained in Paragraphs 1-22 and realleges them as though fully set forth here.

26. Libbey and Newell Rubbermaid, through the Stock Purchase Agreement described in Paragraph 7, have engaged in unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

ANSWER: Libbey denies each and every allegation of Paragraph 26. Further, Libbey states that the Original Agreement has been superseded by the Amended Agreement and therefore there is no basis to assess the effects of the Original Agreement pursuant to the Clayton Act or the FTC Act.

ANSWER: Libbey repeats its responses to the allegations contained in Paragraphs 1-22 and realleges them as though fully set forth here.

28. The effect of the amended merger agreement may be substantially to lessen competition or tend to create a monopoly in violation of

Commission Act, 15 U.S.C. § 45.

ANSWER: Libbey denies each and every allegation of Paragraph 28.

**COUNT IV – ILLEGAL ACQUISITION AGREEMENT
~~AMENDED MERGER AGREEMENT~~**

29. The allegations contained in Paragraphs 1-22 are repeated and realleged as though fully set forth here.

ANSWER: Libbey repeats its responses to the allegations

DEFENSES AND AFFIRMATIVE DEFENSES

[REDACTED]

Without assuming any burden that it would not otherwise bear, Libbar

[REDACTED]

asserts the following defenses and affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

[REDACTED]

[REDACTED]

relief can be granted.

SECOND AFFIRMATIVE DEFENSE

WHEREFORE, Libbey prays for judgment as follows:

1. That the Complaint be dismissed with prejudice;

2. That judgment be entered in favor of Libbey and against Plaintiff

on each and every claim set forth in the Complaint; and

3. For such other and further relief as is just and proper.

Dated: May 29, 2007

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