

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

In the Matter of)
)
)
 THE PROCTER & GAMBLE COMPANY,)
 a corporation;)
) Docket No. C-
 and)
)
 THE GILLETTE COMPANY,)
 a corporation.)
)
)
)

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent The Procter & Gamble Company ("P&G") of Respondent The Gillette Company ("Gillette"), hereinafter referred to as "Respondents," and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge 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 Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than 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 dete

issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets (attached to this Order as Appendix I), 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 P&G is a corporation organized, existing and doing business under and by virtue of the laws of the state of Ohio, with its offices and principal place of business located at One Procter & Gamble Plaza, Cincinnati, Ohio 45202.
2. Respondent Gillette is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its offices and principal place of business located at Prudential Tower, Boston, Massachusetts 02199.
3. The Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is

E. "Philips" means Philips Oral Healthcare, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its offices and principal place of business located at 35301 Center Street, Snoqualmie, Washington 98065, together with its affiliates.

F. "Acquisition" means the acquisition contemplated by the "Agreement and Plan of Merger" dated as of January 27, 2005, among The Procter & Gamble Company, Aquarium Acquisition Corp. and The Gillette Company.

G. "Commission" means the Federal Trade Commission.

H. "Acquisition Date" means the earlier of the following dates:

1. the date the Respondents close on the Acquisition pursuant to the Acquisition Agreement; or
2. the date the merger contemplated by the Acquisition Agreement becomes effective by filing the certificate of merger with the Secretary of State of the State of Delaware.

I. "Agency(ies)" means any governmental regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution, or sale of the Divestiture Products or the IntelliClean Products, respectively.

J. "APDO Assets" means all of Respondent Gillette's rights, title and interest in and to all assets related to Respondent Gillette's worldwide business related to the APDO Products to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of the APDO Products including, without limitation, the following:

1. all Product Intellectual Property related to the APDO Products (which shall also include the following Product Trademarks: Power Stripe[®]; Power Caps[®] and Cool Spray[®], or any variations or derivatives of such Product Trademarks; *provided however*, that Respondents may receive a transitional license back for a limited period of time (as is approved by the Commission in the Remedial Agreements related to the APDO Products) to these three Product Trademarks for the purposes of 112m80000 12m00 0.00000 0.00000 1.

world;

3. all Product Manufacturing Technology related to the APDO Products;
 4. all Product Marketing Materials related to the APDO Products;
 5. all Website(s) related to the APDO Products;
 6. at the Commission-approved Acquirer's option, all Product Assumed Contracts related to the APDO Products (copies to be provided to the Commission-approved Acquirer on or before the Closing Date);
 7. all Respondent Gillette's books, records, and files related to the foregoing or to the APDO Products; *provided, however*, that in cases in which documents or other materials included in the APDO Assets contain information: (1) that relates both to the APDO Products and to other Products or businesses of Respondent Gillette and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the APDO Products; or (2) for which Respondent Gillette has a legal obligation to retain the original copies, Respondent Gillette shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Commission-approved Acquirer, Respondent Gillette shall provide the Commission-approved Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondent Gillette provides the Commission-approved Acquirer with the above-described information without requiring Respondent Gillette completely to divest itself of information that, in content, also relates to Products and businesses other than the APDO Products;
 8. list of all customers and/or targeted customers for the APDO Products and the pricing and/or planned or proposed pricing of the APDO Products for such customers;
 9. at the Commission-approved Acquirer's option, all inventory in existence as of the Closing Date including, but not limited to, raw materials, packaging materials, work-in-process and finished goods related to the APDO Products;
 10. all unfilled customer orders for finished goods as of the Closing Date related to the APDO Products (a list of such orders is to be provided to the Commission-approved Acquirer within two (2) days after the Closing Date); and
 11. at the Commission-approved Acquirer's option, the APDO Manufacturing Equipment.
- K. "APDO Core Employee(s)" means the Product Manufacturing Employees, the Product

Marketing Employees, the Product Research and Development Employees and the Product Sales Employees related to the APDO Products.

- L. “APDO Manufacturing Equipment” means all manufacturing and other equipment located at Respondent Gillette’s facility located in Andover, Massachusetts, that was used, within the one (1) year period immediately prior to the Acquisition and/or within the one (1) year period immediately prior to the Closing Date, in the research, Development, manufacture, or packaging of the APDO Products.
- M. “APDO Products” means all Products Developed, in Development, manufactured, distributed, marketed or sold by Respondent Gillette prior to the Acquisition that were marketed or sold or to be marketed or sold as Products using the Product Trademark Right Guard® or any variations or derivatives of such Product Trademark; *provided however*, that, at the Commission-approved Acquirer’s option, “APDO Products” shall also include all Products Developed, in Development, manufactured, distributed, marketed or sold by Respondent Gillette prior to the Acquisition that were marketed or sold or to be marketed or sold as Products using any of the Product Trademarks Soft&Dri® and Dry Idea® or any variations or derivatives of such Product Trademarks; *provided further*, that, pending Commission approval of the divestiture of the APDO Assets, “APDO Products” includes Products using the Product Trademarks Soft&Dri® and Dry Idea® for the purposes of any requirements under this Order or the Order to Maintain Assets to ma0000 04.4400ed, mai600 0.000 TD(der

Q. “Confidential Business Information” means all information owned by, or in the possession or control of, Respondents that is not in the public domain and that is related to the research, Development, manufacture, marketing, commercialization, importation, exportation, cost, pricing, supply, sales, sales support or use of the Divestiture Product(s) or the IntelliClean Products, respectively; provided however, that “Confidential Business Information, maneesea51“c5rt or ush

approved by the Commission to accomplish the requirements of this Order. The IntelliClean Amended Agreement is attached to this Order and contained in non-public Appendix III. Upon amendment of the IntelliClean Agreement in accordance with the above-described agreement to amend, the “IntelliClean Amended Agreement” shall mean the “IntelliClean Agreement” as so amended.

- DD. “Interim Monitor” means any monitor appointed pursuant to Paragraph VI of this Order or Paragraph III of the related Order to Maintain Assets.
- EE. “Law” means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Governmental Entity having the effect of law.
- FF. “Order to Maintain Assets” means the Order to Maintain Assets incorporated into and made a part of

- assignments of the Divestiture Product with the High Volume Retail Accounts;
5. relating to the manufacture of the Divestiture Product(s);
 6. constituting confidentiality agreements involving the Divestiture Product(s);
 7. involving any royalty, licensing, or similar arrangement involving the Divestiture Product(s);
 8. pursuant to which any services are provided with respect to the Divestiture Product(s) or the Divestiture Product(s) business, including consultation arrangements; and/or
 9. pursuant to which any Third Party collaborates with the Respondent(s) in the performance of research, Development, marketing or selling of the Divestiture Product(s) or the Divestiture Product(s) business;

provided, however, that where any such contract or agreement also relates to a Retained Product(s), Respondent(s) shall assign the Commission-approved Acquirer all such rights under the contract or agreement as are related to the Divestiture Product(s), but concurrently may retain similar rights for the purposes of the Retained Product(s).

KK. “Product Copyrights” means rights to all original works of authorship of any kind related to the Divestiture Product(s) or the IntelliClean Products and any registrations and applications for registrations thereof, including, but not limited to, the following: all promotional materials for retailers; all promotional materials for customers; copyrights in Development data and reports relating to the research and Development of the Divestiture Product(s) or the IntelliClean Products or of any materials used in the research, Development, manufacture, marketing or sale of the Divestiture Product(s) or the IntelliClean Products, including all raw data relating to quality trials of the Product(s), customer information, promotional and marketing materials, the Divestiture Product(s) or the IntelliClean Products sales forecasting models, Website content and advertising and display materials; all records relating to employees who accept employment with the Commission-approved Acquirer (excluding any personnel records the transfer of which is prohibited by applicable Law); all records, including customer lists, sales force call activity reports, vendor lists, sales data, slotting allowance data, speaker lists, manufacturing records, manufacturing processes, and supplier lists; all data contained in laboratory notebooks relating to the Divestiture Product(s) or the IntelliClean Products.

LL. “Product Employee Information” means the following, as and to the extent permitted by the Law:

1. a complete and accurate list containing the name of each relevant employee (including former employees who were employed by Respondent(s) within ninety (90) Days of the

- execution date of any Remedial Agreement);
2. with respect to each such employee, the following information:
 - a. the date of hire and effective service date;
 - b. job title or position held;
 - c. a specific description of the employee's responsibilities related to the relevant Divestiture Product; *provided, however*, in lieu of this description, Respondent(s) may provide the employee's most recent performance appraisal;
 - d. the base salary or current wages;
 - e. the most recent bonus paid, aggregate annual compensation for the Respondent's last fiscal year and current target or guaranteed bonus, if any;
 - f. employment status (*i.e.*, active or on leave or disability; full-time or part-time); and
 - g. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 3. at the Commission-approved Acquirer's option or the Proposed Acquirer's option (as applicable), copies of all employee benefit plans and s

PP. “Product Manufacturing Technology” means all technology, trade secrets, know-how, and proprietary information (whether patented, patentable or otherwise) related to the manufacture (including, at the Commission-approved Acquirer’s option, all equipment used to manufacture) the Divestiture Products or the IntelliClean Products, respectively, including, but not limited to all product specifications, processes, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals, and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions, annual product reviews, regulatory communications, and labeling and all other information related to the manufacturing process, and supplier lists.

QQ. “Product Marketing Employees” means salaried management level employees of Respondent(s) who directly have participated (irrespective of the portion of working time involved, unless such participation was a part of a broad executive management portfolio above the brand manager level, or of oversight of legal, accounting, tax or financial compliance) in the marketing, contracting, or promotion of the Divestiture Product(s) in the United States within the eighteen (18) month period immediately

program was applied to Products and in effect within the one (1) year period prior to the

GGG. “SpinBrush Asset Purchase Agreement” means the “Asset Sale and Purchase Agreement” among The Procter & Gamble Company, certain of its affiliates and Church & Dwight Co., Inc. dated September 23, 2005, a

II.

IT IS FURTHER ORDERED that:

- A. Not later than ninety (90) days after the date this Order becomes final, Respondents shall divest the Rembrandt Assets, absolutely and in good faith, and at no minimum price. Respondents shall divest the Rembrandt Assets to a Commission-approved Acquirer and only in a manner that receives the prior approval of the Commission.
- B. Any Remedial Agreement related to the Rembrandt Assets shall be deemed incorporated into this Order, and any failure by Respondents to comply with any term of such Remedial Agreement related to the Rembrandt Assets shall constitute a failure to comply with this Order.
- C. Respondents shall include in any Remedial Agreement related to the Rembrandt Assets the following provisions:
 1. upon reasonable notice and request from the Commission-approved Acquirer to the Respondents, Respondents shall provide in a timely manner at no greater than Direct Cost the following:
 - a. assistance and advice to enable the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to obtain all necessary permits and approvals from any Agency or Governmental Entity to manufacture and sell the Rembrandt Products;
 - b. assistance to the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to manufacture Rembrandt Products in substantially the same manner and quality employed or achieved by or on behalf of Respondent Gillette; and
 - c. consultation with knowledgeable employees of Respondents and training, at the request of the Commission-approved Acquirer and at a facility chosen by the Commission-approved Acquirer sufficient to satisfy management of the

3. Respondents shall covenant to the Commission-approved Acquirer that Respondents shall:

- a. not join, file, prosecute or maintain any suit, in law or equity, against the Commission-approved Acquirer under Patents that are owned or licensed by Respondents as of the Acquisition Date, if such suit would have the potential to

2. deliver such Confidential Business Information as follows: (1) in good faith; (2) as soon as practicable, avoiding any delays in transmission of the respective information; and (3) in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;
3. pending complete delivery of all such Confidential Business Information to the Commission-approved Acquirer, provide the Commission-approved Acquirer and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files related to the Rembrandt Products that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order;
4. not use, directly or indirectly, any such Confidential Business Information related to the research, Development, manufacturing, marketing, or sale of the Rembrandt Products (other than as necessary to comply with the following: (1) the requirements of this Order; (2) the Respondents' obligations to the Commission-approved Acquirer under the terms of any Remedial Agreement related to the Rembrandt Assets; or (3) applicable Law); and
5. not disclose or convey any such Confidential Business Information, directly or indirectly,

G. Respondents shall:

1. for a period of at least six (6) months from the Closing Date, provide the Commission-approved Acquirer with the opportunity to enter into employment contracts with the Rembrandt Core Employees and Rembrandt Key Employees. This period is hereinafter referred to as the “Rembrandt Access Period”; and
2. not later than the earlier of the following dates: (1) ten (10) days after notice by staff of the Commission to the Respondents to provide the Product Employee Information; or (2) ten (10) Days after the Closing Date, Respondents shall provide the Commission-approved Acquirer or the Proposed Acquirer with the Product Employee Information related to the Rembrandt Core Employees and Rembrandt Key Employees. Failure by Respondents to provide the Product Employee Information for any relevant employee within the time provided herein shall extend the Rembrandt Access Period with respect to that employee in an amount equal to the delay.

H. Respondents shall:

1. during the Rembrandt Access Period, not interfere with the hiring or employing by the Commission-approved Acquirer of Rembrandt Core Employees and Rembrandt Key Employees, and remove any impediments within the control of Respondents that may deter these employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any noncompete or nondisclosure provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by the Commission-approved Acquirer. In the case of the Rembrandt Key Employees, Respondents shall waive, for the benefit of the Commission-approved Acquirer, any attorney-client privilege as it pertains to the

- make an offer of employment to that employee;
2. until the Closing Date, provide all Rembrandt Core Employees and Rembrandt Key Employees with reasonable financial incentives to continue in their positions and to market and promote the Rembrandt Products consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Rembrandt Products and to ensure successful execution of the pre-Acquisition marketing plans related to the Rembrandt Products. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondents until the Closing Date for the divestiture of the Rembrandt Assets has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law). In addition to the

for work specifically related to Products for use as teeth whitening agents.

- I. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary for the divestiture of the Rembrandt Assets to the Commission-approved Acquirer, or for the continued research, Development, manufacture, sale, marketing or distribution of the Rembrandt Products by the Commission-approved Acquirer; *provided, however*, Respondents may satisfy this requirement by certifying that the Commission-approved Acquirer has executed all such agreements directly with each of the relevant Third Parties.
- J. Respondents shall require, as a condition of continued employment post-divestiture of the Rembrandt Assets, that each Rembrandt Core Employee retained by Respondents, the direct supervisor(s) of any such employee, and any other employee retained by Respondents and designated by the Interim Monitor sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Confidential Business Information related to the Rembrandt Products strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondents (other than as necessary to comply with the requirements of this Order).
- K. Respondents shall provide written notification of the restrictions on the use of the Confidential Business Information related to the Rembrandt Products by Respondents' personnel to all of Respondents' employees who:
 - 1. are or were involved in the research, Development, manufacturing, distribution, sale or marketing of the Rembrandt Products;
 - 2. are involved in the research, Development, manufacturing, distribution, sale or marketing of Products for use as teeth whitening agents for Respondent P&G; and/or
 - 3. may have Confidential Business Information related to the Rembrandt Products.

Respondents shall give such notification by e-mail with return receipt requested or similar transmission, and keep a file of such receipts for one (1) year after the Closing Date. Respondents shall provide a copy of such notification to the Commission-approved Acquirer. Respondents shall maintain complete records of all such agreements at Respondents' corporate headquarters and shall provide an officer's certification to the Commission stating that such acknowledgment program has been implemented and is being complied with. Respondents shall provide the Commission-approved Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.

- L. Upon reasonable notice and request by the Commission-approved Acquirer, Respondents shall make available to the Commission-approved Acquirer, at no greater than Direct Cost,

such personnel, assistance and training as the Commission-approved Acquirer might reasonably need to transfer the Rembrandt Assets, and shall continue providing such personnel, assistance and training, at the request of the Commission-approved Acquirer the Rembrandt Assets are completely transferred to the Commission-approved Acquirer or its Designee in a manner that fully preserves their usefulness.

- M. Pending divestiture of the Rembrandt Assets, Respondents shall take such actions as are necessary to maintain the full economic viability and marketability of the business associated with the Rembrandt Assets, to minimize any risk of loss of competitive potential for such business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Rembrandt Assets except for ordinary wear and tear.
- N. Counsel for Respondents (including in-house counsel under appropriate confidentiality arrangements) may retain unredacted copies of all documents or other materials provided to the Commission-approved Acquirer and may have access to original documents (under circumstances where copies of documents are insufficient or otherwise unavailable) provided to the Commission-approved Acquirer only in order to do the following:
1. comply with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals), any data retention requirement of any applicable Governmental Entity, or any taxation requirements; or
 2. defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or any other aspect of the Rembrandt Assets or Rembrandt business; *provided, however*, that Respondents may disclose such information as necessary for the purposes set forth in this Paragraph pursuant to an appropriate confidentiality order, agreement or arrangement;
- provided, however*, that pursuant to this Paragraph II.N., Respondents shall: (1) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the Commission-approved Acquirer (but shall not be deemed to have violated this requirement if the Commission-approved Acquirer withholds such agreement unreasonably); and (2) use their best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.
- O. Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against the Commission-approved Acquirer or the Rembrandt Releasee(s) for the research, Development, manufacture, use, import, export, distribution, or sale of the Rembrandt IP Protected Products in connection with the Commission-approved Acquirer's research, Development, manufacture, use, import, export, distribution, or sale of the Rembrandt IP Protected Products under the following:
1. any Patents owned or licensed by Respondents as of the Acquisition Date that claim the

use of the Rembrandt IP Protected Products;

Church & Dwight or to reduce any obligations of the Respondents under such agreement), and such agreement, if it becomes the Remedial Agreement related to the SpinBrush Assets, is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondents have divested the SpinBrush Assets to Church & Dwight prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Church & Dwight is not an acceptable purchaser of the SpinBrush Assets, then Respondents shall immediately rescind the transaction with Church & Dwight and shall divest the SpinBrush Assets within one hundred eighty (180) days from the date the Order becomes final, absolutely and in good faith, at no minimum price, to a Commission-approved Acquirer and only in a manner that receives the prior approval of the Commission;

provided further that if the Respondents have divested the SpinBrush Assets to Church & Dwight prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies the Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct the Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the SpinBrush Assets to Church & Dwight (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

provided further, however, the Respondents requirement as to the timing to divest the Spinbrush Assets shall be tolled pending any required approvals for such divestiture from the Commission of the European Communities but, in any event, shall not be later than ten (10) days of the Respondents' receipt of such approval.

- B. Any Remedial Agreement related to the SpinBrush Assets shall be deemed incorporated into this Order, and any failure by Respondents to comply with any term of such Remedial Agreement related to the SpinBrush Assets shall constitute a failure to comply with this Order.
- C. Respondents shall include in any Remedial Agreement related to the SpinBrush Assets the following provisions:
 - 1. upon reasonable notice and request from the Commission-approved Acquirer to the Respondents, Respondents shall provide in a timely manner at no greater than Direct Cost the following:
 - a. assistance and advice to enable the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to obtain all necessary permits and approvals from any Agency or Governmental Entity to manufacture and sell the SpinBrush Products;

- b. assistance to the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to manufacture the SpinBrush Products in substantially the same manner and quality employed or achieved by or on behalf of Respondent P&G; and
 - c. consultation with knowledgeable employees of Respondents and training, at the request of the Commission-approved Acquirer and at a facility chosen by the Commission-approved Acquirer sufficient to satisfy management of the Commission-approved Acquirer that its personnel (or the Designee's personnel) are adequately trained in the manufacture of the SpinBrush Products;
 2. upon reasonable notice and request from the Commission-approved Acquirer to Respondents, Respondents shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of the Respondents to assist the Commission-approved Acquirer to defend against, respond to, or otherwise participate in any litigation related to the Product Intellectual Property;
 3. Respondents shall covenant to the Commission-approved Acquirer that Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against the Commission-approved Acquirer under Patents that are owned or licensed by Respondents as of the Acquisition Date, if such suit would have the potential to interfere with the Commission-approved Acquirer's freedom to practice in the research, Development, manufacture, use, import, export, distribution or sale of the SpinBrush Products; *provided however*, that Respondents may receive a covenant from the Commission-approved Acquirer not to assert against the Respondents any Patent related to the SpinBrush Products that is assigned to the Commission-approved Acquirer from the Respondents pursuant to this Order; and
 4. Respondents shall covenant to the Commission-approved Acquirer that: (1) as a condition of any assignment, transfer or license to a Third Party of the above-described Patents, the Third Party shall agree to provide a covenant whereby the Third Party covenants not to sue the SpinBrush Releasees under such Patents, if the suit would have the potential to interfere with the Commission-approved Acquirer's freedom to practice in the research, Development, manufacture, use, import, export, distribution or sale of the SpinBrush Products; and (2) with respect to any Third Party rights licensed to Respondents as of or after the Acquisition Date, and as to which Respondents do not control the right of prosecution of any legal action, Respondents shall not actively induce, assist or participate in any legal action or proceeding relating to the SpinBrush Products against the SpinBrush Releasees, unless required by Law or contract (such contract not to be solicited or entered into for the purpose of circumventing any of the requirements of this Order).

D. Respondents shall:

1. submit to the Commission-approved Acquirer, at Respondents' expense, all Confidential Business Information related to the SpinBrush Products;
 2. deliver such Confidential Business Information as follows: (1) in good faith; (2) as soon as practicable, avoiding any delays in transmission of the respective information; and (3) in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;
 3. pending complete delivery of all such Confidential Business Information to the Commission-approved Acquirer, provide the Commission-approved Acquirer and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files related to the SpinBrush Products that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order;
 4. not use, directly or indirectly, any such Confidential Business Information related to the research, Development, manufacturing, marketing, or sale of the SpinBrush Products (other than as necessary to comply with the following: (1) the requirements of this Order; (2) the Respondents' obligations to the Commission-approved Acquirer under the terms of any Remedial Agreement related to the SpinBrush Assets; or (3) applicable Law);
 5. not disclose or convey any such Confidential Business Information, directly or indirectly, to any person except the Commission-approved Acquirer; and
 6. shall not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the SpinBrush Assets to the employees associated with business related to the non-rechargeable battery operated toothbrush Products marketed and sold by Respondent Gillette prior to the Acquisition (including, but not limited to, those employees with work responsibilities related to the Oral-B[®] trademark and any variations or derivatives of such trademark).
- E. Respondents shall not enforce any agreement against a Third Party or the Commission-approved Acquirer to the extent that such agreement may limit or otherwise impair the ability of the Commission-approved Acquirer to acquire the Product Manufacturing Technology related to the SpinBrush Products or related equipment from the Third Party. Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Product Manufacturing Technology.
- F. Not later than ten (10) days after the Closing Date, Respondents shall grant a release to each Third Party that is subject to an agreement as described in Paragraph III.E. that allows the Third Party to provide the relevant Product Manufacturing Technology or related equipment

2. until the Closing Date, provide all SpinBrush Core Employees with reasonable financial incentives to continue in their positions and to market and promote the SpinBrush Products consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the SpinBrush Products and to ensure successful execution of the pre-Acquisition marketing plans to relaunch certain SpinBrush Products. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondents until the Closing Date for the divestiture of the SpinBrush Assets has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law);

provided, however, that nothing in this Order requires or shall be construed to require the Respondents to terminate the employment of any employee or prevents the Respondents from continuing the employment of the SpinBrush Core Employees (other than those conditions contained in this Order) in connection with the Acquisition; and

3. for a period of one (1) year from the Closing Date, not:
 - a. directly or indirectly, solicit or otherwise attempt to induce any employee of the Commission-approved Acquirer with any amount of responsibility related to SpinBrush (“SpinBrush Employee”) to terminate his or her employment relationship with the Commission-approved Acquirer; or
 - b. hire any SpinBrush Employee; *provided, however,* Respondents may hire any former SpinBrush Employee whose employment has been terminated by the Commission-approved Acquirer or who independently applies for employment with the Respondents, as long as such employee was not solicited in violation of the nonsolicitation requirements contained herein;

provided, however, Respondents may do the following: (1) advertise for employees in newspapers, trade publications or other media not targeted specifically at the SpinBrush Employees; or (2) hire an SpinBrush Employee who contacts Respondents on his or her own initiative without any direct or indirect solicitation or encouragement from the Respondents.

- I. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary for the divestiture of the SpinBrush Assets to the Commission-approved Acquirer, or for the continued research, Development, manufacture, sale, marketing or distribution of the SpinBrush Products by the Commission-approved Acquirer;

provided, however, Respondents may satisfy this requirement by certifying that the Commission-approved Acquirer has executed all such agreements directly with each of the relevant Third Parties.

- J. Respondents shall require, as a condition of continued employment post-divestiture of the SpinBrush Assets, that each SpinBrush Core Employee retained by Respondents, the direct supervisor(s) of any such employee, and any other employee retained by Respondents and designated by the Interim Monitor sign a confidentiality agreement pursuant to which such employee shall be r

necessary to maintain the full economic viability and marketability of the business associated with the SpinBrush Assets, to minimize any risk of loss of competitive potential for such business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the SpinBrush Assets except for ordinary wear and tear.

- N. Counsel for Respondents (including in-house counsel under appropriate confidentiality arrangements) may retain unredacted copies of all documents or other materials provided to the Commission-approved Acquirer and may have access to original documents (under circumstances where copies of documents are insufficient or otherwise unavailable) provided to the Commission-approved Acquirer only in order to do the following:
1. comply with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals), any data retention requirement of any applicable Governmental Entity, or any taxation requirements; or
 2. defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or any other aspect of the SpinBrush Assets or SpinBrush business; *provided, however*, that Respondents may disclose such information as necessary for the purposes set forth in this Paragraph pursuant to an appropriate confidentiality order, agreement or arrangement;

provided, however, that pursuant to this Paragraph III.N., Respondents shall: (1) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the Commission-approved Acquirer (but shall not be deemed to have violated this requirement if the Commission-approved Acquirer withholds such agreement unreasonably); and (2) use their best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

- O. Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against the Commission-approved Acquirer or the SpinBrush Releasee(s) for the research, Development, manufacture, use, import, export, distribution, or sale of SpinBrush under the following:
1. any Patents owned or licensed by Respondents as of the Acquisition Date that claim the use of the SpinBrush Products;
 2. any Patents owned or licensed at any time after the Acquisition Date by Respondents that claim any;);.0000 0.0n Dau000 cm

igation,

Product Trademarks, as a trademark, tradename, or service mark; (2) attempt to register such Product Trademarks; (3) attempt to register any mark confusingly similar to such Product Trademarks; (4) challenge or interfere with the Commission-approved Acquirer's use and registration of such Product Trademarks; or (5) challenge or interfere with the Commission-approved Acquirer's efforts to enforce its trademark registrations for and trademark rights in such Product Trademarks against Third Parties; *provided however*, that nothing in this Order shall preclude Respondents from continuing to use those trademarks, tradenames, or service marks related to the Retained Products as of the Acquisition Date.

- Q. The purpose of the divestiture of the SpinBrush Assets is to ensure the continued use of the SpinBrush Assets in the same business, independent of Respondents, in which the SpinBrush Assets were engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

IV.

IT IS FURTHER ORDERED that:

- A. Not later than one hundred twenty (120) days after the date this Order becomes final, Respondents shall divest the APDO Assets, absolutely and in good faith, and at no minimum price. Respondents shall divest the APDO Assets to a Commission-approved Acquirer and only in a manner that receives the prior approval of the Commission.
- B. Any Remedial Agreement related to the APDO Assets shall be deemed incorporated into this Order, and any failure by Respondents to comply with any term of such Remedial Agreement related to the APDO Assets shall constitute a failure to comply with this Order.
- C. Respondents shall include in any Remedial Agreement related to the APDO Assets the following provisions:
1. Respondents shall Contract Manufacture and deliver to the Commission-approved Acquirer, in a timely manner and under reasonable terms and conditions, a supply of finished APDO Product(s) at Respondent Gillette's Supply Cost, for a period of 180 days.

approved Acquirer and the Interim Monitor (if applicable) all records that relate to the manufacture of the APDO Products that are generated or created after the Closing Date;

3. upon reasonable notice and request from the Commission-approved Acquirer to the Respondents, Respondents shall provide in a timely manner at no greater than Direct Cost the following:
 - a. assistance and advice to enable the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to obtain all necessary permits and approvals from any Agency or Governmental Entity to manufacture and sell the APDO Products;
 - b. assistance to the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to manufacture the APDO Products in substantially the same manner and quality employed or achieved by or behalf of Respondent Gillette; and
 - c. consultation with knowledgeable employees of Respondents and training, at the request of the Commission-approved Acquirer and at a facility chosen by the Commission-approved Acquirer sufficient to satisfy management of the Commission-approved Acquirer that its personnel (or the Designee's personnel) are adequately trained in the manufacture of the APDO Products;
4. upon reasonable notice and request from the Commission-approved Acquirer to Respondents, Respondents shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of the Respondents to assist the Commission-approved Acquirer to defend against, respond to, or otherwise participate in any litigation related to the Product Intellectual Property;
5. Respondents shall covenant to the Commission-approved Acquirer that Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against the Commission-approved Acquirer under Patents that are owned or licensed by Respondents as of the Acquisition Date, if such suit would have the potential to interfere with the Commission-approved Acquirer's freedom to practice in the research, Development, manufacture, use, import, export, distribution or sale of the APDO Products; *provided however*, that Respondents may receive a covenant from the Commission-approved Acquirer not to assert against the Respondents any Patent related to the APDO Products that is assigned to the Commission-approved Acquirer from the Respondents pursuant to this Order; and
6. Respondents shall covenant to the Commission-approved Acquirer that: (1) as a condition of any assignment, transfer or license to a Third Party of the above-described Patents, the Third Party shall agree to provide a covenant whereby the Third Party

covenants not to sue the APDO Releasees under such Patents, if the suit would have the potential to interfere with the Commission-approved Acquirer's freedom to practice in the research, Development, manufacture, use, import, export, distribution or sale of the APDO Products; and (2) with respect to any Third Party rights licensed to Respondents as of or after the Acquisition Date, and as to which Respondents do not control the right of prosecution of any legal action, Respondents shall not actively induce, assist or participate in any legal action or proceeding relating to the APDO Products against the APDO Releasees, unless required by Law or contract (such contract not to be solicited or entered into for the purpose of circumventing any of the requirements of this Order).

D. Respondents shall:

1. submit to the Commission-approved Acquirer, at Respondents' expense, all Confidential Business Information related to the APDO Products;
2. deliver such Confidential Business Information as follows: (1) in good faith; (2) as soon as practicable, avoiding any delays in transmission of the respective information; and (3) in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;
3. pending complete delivery of all such Confidential Business Information to the Commission-approved Acquirer, provide the Commission-approved Acquirer and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files related to the APDO Products that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order;
4. not use, directly or indirectly, any such Confidential Business Information related to the research, Development, manufacturing, marketing, or sale of the APDO Products (other than as necessary to comply with the following: (1) the requirements of this Order; (2) the Respondents' obligations to the Commission-approved Acquirer under the terms of any Remedial Agreement related to the APDO Assets; or (3) applicable Law;

provided however, Respondents may use such Confidential Business Information that also relates to those Retained Products that have been marketed and sold as antiperspirants or deodorants under the Gillette Series® trademarks prior to the Acquisition to the extent necessary for Respondents to continue to manufacture, market, and sell such Retained Products; *provided, further*, Respondents shall take such actions, as may be practicable, to prevent the exploitation or use of the most recent brand plan(s) related to the APDO Products by Respondents' employees with responsibilities relating to the Retained Products to be marketed or sold as antiperspirants or deodorants;

5. not disclose or convey any such Confidential Business Information (other than as otherwise permitted under this Order), directly or indirectly, to any person except the Commission-approved Acquirer; and
 6. shall not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information (other than as otherwise permitted under this Order) related to the marketing or sales of the APDO Assets to the employees associated with business related to Retained Products that are marketed and sold as antiperspirants or deodorants prior to the Acquisition (including, but not limited to, such employees with work responsibilities related to the Retained Products that have been marketed and sold as antiperspirants or deodorants under the Old Spice® trademark and any variations or derivatives of such trademark prior to the Acquisition).
- E. Respondents shall not enforce any agreement against a Third Party or the Commission-approved Acquirer to the extent that such agreement may limit or otherwise impair the ability of the Commission-approved Acquirer to acquire the Product Manufacturing Technology

3. for a period of one (1) year from the Closing Date, not:

a. directly or indirec

2. are involved in the research, Development, manufacturing, distribution, sale or marketing of Respondent P&G's antiperspirant or deodorant Products;
3. are involved in the research, Development, manufacturing, distribution, sale or marketing of Respondent Gillette's antiperspirant or deodorant Retained Products; and/or
4. may have Confidential Business Information related to APDO.

Respondents shall give such notification by e-mail with return receipt requested or similar transmission, and keep a file of such receipts for one (1) year

provided to the Commission-approved Acquirer

1. any Patents owned or licensed by Respondents as of the Acquisition Date that claim the use of the APDO Products;
 2. any Patents owned or licensed at any time after the Acquisition Date by Respondents that claim any aspect of the research, Development, manufacture, use, import, export, distribution, or sale of the APDO Products, other than such Patents that claim inventions conceived by and reduced to practice after the Acquisition Date.
- Q. Respondents shall not, in any jurisdiction throughout the world: (1) use the Product Trademarks related to APDO or any mark confusingly similar to the Product Trademarks, as a trademark, tradename, or service mark; (2) attempt to register the Product Trademarks; (3) attempt to register any mark confusingly similar to the Product Trademarks; (4) challenge or interfere with the Commission-approved Acquirer's use and registration of the Product Trademarks; or (5) challenge or interfere with the Commission-approved Acquirer's efforts to enforce its trademark registrations for and trademark rights in the Product Trademarks against Third Parties; *provided however*, that nothing in this Order shall preclude Respondents from continuing to use those trademarks, tradenames, or service marks related to the Retained Products as of the Acquisition Date.
- R. The purpose of the divestiture of the APDO Assets is to ensure the continued use of the APDO Assets in the same business, independent of Respondents, in which the APDO Assets were engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

V.

IT IS FURTHER ORDERED that:

- A. Not later than twenty (20) days after the Acquisition Date, Respondents shall amend the IntelliClean Agreement in accordance with the IntelliClean Amended Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Philips (other than with respect to any noncompete provisions contained in the IntelliClean Agreement) or to reduce any obligations of Respondents (other than with respect to any noncompete provisions contained in the IntelliClean Agreement) under the IntelliClean Amended Agreement).
- B. The IntelliClean Agreement as amended in accordance with the IntelliClean Amended Agreement shall be deemed incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with any term of the IntelliClean Amended Agreement, if such agreement is approved by the Commission in connection with

the Commission's determination to make this Order final shall constitute a failure to comply with this Order. Any other Remedial Agreement related to the IntelliClean Products shall also be deemed incorporated into this Order, and any failure by Respondents to comply with any term of such Remedial Agreement related to the IntelliClean Products shall constitute a failure to comply with this Order.

C. Respondents shall:

1. grant a perpetual, fully paid-up and royalty-free license(s) with rights to sublicense to all Product Intellectual Property, Product Licensed Intellectual Property, and the Product Manufacturing Technology to use, make, distribute, offer for sale, promote, advertise, sell, import, export, or have used, made, distributed, offered for sale, promoted, advertised, sold, imported, or exported the IntelliClean Products anywhere in the world; *provided however*, such license for the Product Intellectual Property shall also include the rights to use Respondent P&G's Crest[®] trademark in the United States and Canada in connection with the marketing of the IntelliClean Products for a limited period as is approved by the Commission in the Remedial Agreements related to the IntelliClean Products;
2. as reflected in the IntelliClean Amended Agreement, Contract Manufacture and deliver to Philip or its Designee, in a timely manner and under reasonable terms and conditions (such terms and conditions to be in a manner that preserves the full economic viability and competitiveness of the IntelliClean Products) a supply of the finished dentifrice Product used in connection with the rechargeable toothbrush(es) that are a part of the IntelliClean Products;
3. upon reasonable notice and request from Philips to the Respondents, provide in a timely manner at no greater than Direct Cost the following:
 - a. assistance and advice to enable Philips or its Designee to obtain all necessary permits and approvals from any Agency or Governmental Entity to manufacture and sell the dentifrice used in connection with the rechargeable toothbrush(es) that are a part of the IntelliClean Products;
 - b. assistance to Philips or its Designee to manufacture the dentifrice used in connection with the rechargeable toothbrush(es) that are a part of the IntelliClean Products in substantially the same manner and quality employed or achieved by or behalf of Respondent P&G; and
 - c. ~~208~~ consultation with knowledgeable employ

copies (with all attachments and exhibits) of the Notification to the Commission at least thirty (30) days prior to terminating the IntelliClean Amended Agreement (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not terminate IntelliClean Amended Agreement until thirty (30) days after substantially complying with such request. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition; *provided, however*, that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

- H. The purpose of Paragraph V of this Order is to ensure the continued marketing and sale of the IntelliClean Products independently of Respondents and for the same purposes which it was researched, developed, manufactured, marketed and sold by Philips and Respondent P&G at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission’s Complaint.

VI.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor (“Interim Monitor”) to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order, the Order to Maintain Assets and the Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent P&G, which consent shall not be unreasonably withheld. If Respondent P&G has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent P&G of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents’ compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order.

assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.

6. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations 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 misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
7. Respondents shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by the Commission-approved Acquirer with respect to the performance of Respondents' obligations under the Order or the Remedial Agreement. Within _____ Interim Monitor

agreements, except

Respondents shall

Respondents shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by the Commission-approved Acquirer with respect to the performance of Respondents' obligations under the Order or the Remedial Agreement. Within _____ Interim Monitor

Respondents shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by the Commission-approved Acquirer with respect to the performance of Respondents' obligations under the Order or the Remedial Agreement. Within _____ Interim Monitor

Respondents shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by the Commission-approved Acquirer with respect to the performance of Respondents' obligations under the Order or the Remedial Agreement. Within _____ Interim Monitor

VII.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey relevant assets as required by this Order, the Commission may appoint a trustee (“Divestiture Trustee”) to assign, grant, license, divest, transfer, deliver or otherwise convey the assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed pursuant to each of the relevant Paragraphs in a manner that satisfies the requirements of each such Paragraph. 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 to assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph 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 Respondents to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent P&G, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent P&G has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent P&G of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee’s powers, duties, authority, and responsibilities:
 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the assets that are required by this Order to be assigned, granted,

licensed, divested, transferred, delivered or otherwise conveyed.

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall Develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission; and, *provided further, however*, that Respondent shall select such entity within five (5) days after receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all

Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee'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 misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *provided, however*, that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of the Order to Maintain Assets in this matter.
8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement;

VIII.

IT IS FURTHER ORDERED that:

- A. Within five (5) days of the Acquisition, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondents have fully complied with, the following:
 1. and eve

IX.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of such Respondent, (2) acquisition, merger or consolidation of Respondents, or (3) any other change in the Respondents that may affect compliance obligations arising out of the Order, including, but not limited to, assignment and the creation or dissolution of subsidiaries.

X.

IT IS FURTHER ORDERED

**PUBLIC
APPENDIX I
ORDER TO MAINTAIN ASSETS**

**NON-PUBLIC APPENDIX II
AGREEMENTS RELATED TO
THE SPINBRUSH ASSETS**

[Redacted From the Public Record Version But Incorporated By Reference]

**NON-PUBLIC
APPENDIX III
AGREEMENTS RELATED TO
THE INTELICLEAN PRODUCTS**

[Redacted From the Public Record Version But Incorporated By Reference]

**NON-PUBLIC
APPENDIX IV
REMBRANDT KEY EMPLOYEES**

[Redacted From the Public Record Version But Incorporated By Reference]

**NON-PUBLIC
APPENDIX V
RELATED TO THE DEFINITION OF
REMBRANDT IP PROTECTED PRODUCTS**

[Redacted From the Public Record Version But Incorporated By Reference]