

**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-4151
and)	
)	
THE GILLETTE COMPANY,)	
a corporation.)	
)	

ORDER TO MAINTAIN ASSETS

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 determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a

E. "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.

F. "Commission" means the Federal Trade Commission.

5. information related to the IntelliClean Products that Respondent Gillette can demonstrate it obtained without the assistance of Respondent P&G prior to the Acquisition;
 6. information that is required by Law to be publically disclosed;
 7. information that does not relate to the Divestiture Product(s) or the IntelliClean Products.
- J. “Divestiture Assets” means the APDO Assets, the Rembrandt Assets and the SpinBrush Assets, individually and collectively, as defined in the Decision and Order.
- K. “Divestiture Product” means a Product that is the subject of a divestiture under this Order, *i.e.*, the APDO Products, the Rembrandt Products, or the SpinBrush Products; *provided, however*, that, for the purposes of this Order to Maintain Assets, the APDO Products shall be deemed to 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
- L. “Acquisition Date” means the date on which the Acquisition occurs.
- M. “Divestiture Core Employees” means the APDO Core Employees, the Rembrandt Core Employees, Rembrandt Key Employees, and the Spinbrush Core Employees, individually and collectively, as defined in the Decision and Order.
- N. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph VI of the Decision and Order .
- O. “Orders” means the Decision and Order and this Order to Maintain Assets.
- P. “Pre-Acquisition Marketing Plan” means any marketing or brand plan that was planned or implemented within the period immediately prior to the Acquisition and without consideration of the affects of the pending Acquisition for a Product(s) subject to divestiture under the attached Decision and Order.
- Q. “Remedial Agreement” means the following: (1) any agreement between Respondent(s) and a Commission-approved Acquirer that is specifically referenced and attached to the Decision and Order and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that have been approved by the Commission to accomplish the requirements of the Decision and Order in connection with the Commission’s determination to make the Decision and Order final; and/or (2) any agreement between the Respondent(s) and a Commission-approved Acquirer (or between a

Divestiture Trustee and a Commission-approved Acquirer) that has been approved by the Commission to accomplish the requirements of the Decision and Order, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed that have been approved by the Commission to accomplish the requirements of the Decision and Order.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final:

- A. Respondents shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of the business associated with the Divestiture Assets, to minimize any risk of loss of competitive potential for the business associated with the Divestiture Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divestiture Assets except for ordinary wear and tear. Respondents shall not sell, transfer, encumber or otherwise impair the full economic viability, marketability or competitiveness of the Divestiture Assets.
- B. Respondents shall maintain the operations of the Divestiture Assets in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the Divestiture Assets) and/or as may be necessary to preserve the marketability, viability, and competitiveness of each of the Products associated with the Divestiture Assets and shall use their best efforts to preserve the existing relationships with, the following: suppliers; vendors including, but not limited to, the High Volume Retail Account; distributors; customers; Agencies; employees; and, others having business relations with the Divestiture Assets. Respondents' responsibilities shall include, but are not limited to, the following:
 1. providing the Divestiture Assets with sufficient working capital to operate the Divestiture Assets at least at current rates of operation, to meet all capital calls with respect to the Divestiture Assets and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the Divestiture Assets (including, but not limited to, such capital related to the slotting and/or shelf spacing assignments of the Divestiture Product with the High Volume Retail Accounts);
 2. continuing, at least at their scheduled pace, any additional expenditures for the Divestiture Assets authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all research, Development, and marketing expenditures (including, but not limited to, expenditures related to the relaunch of the Spinbrush Products);

3. provide such resources as may be necessary to respond to competition against the Products associated with the Divestiture Assets and/or to prevent any diminution in retail sales of such Products during and after the Acquisition process and prior to divestiture;
4. provide such resources as may be necessary to maintain the competitive strength and positioning of the Products associated with the Divestiture Assets at the High Volume Retail Accounts;
5. making available for use by the Divestiture Assets funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the Divestiture Assets;
6. providing the Divestiture Assets with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of the Divestiture Assets; and
7. providing such support services to the Divestiture Assets as were being provided to these

employed by the Commission-approved Acquirer. In addition, Respondents shall not make any counteroffer to an Spinbrush Core Employee who receives a written offer of employment from the Commission-approved Acquirer;

provided, however, that this Paragraph II.E.1 shall not prohibit the Respondents from making offers of employment to or employing any Spinbrush Core Employee during the Spinbrush Access Period where the Commission-approved Acquirer has notified the Respondents in writing that the Commission-approved Acquirer does not intend to make an offer of employment to that employee;

provided further that, if the Respondents notify the Commission-approved Acquirer in writing of their desire to make an offer of employment to a particular Spinbrush Core Employee and the Commission-approveoffer

4. shall institute procedures and requirements to ensure that employees identified above

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint an Interim Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements. The Commission may appoint one or more Interim Monitors to assure Respondents' compliance with the requirements of the Orders, and the related Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondents, 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 Respondents 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 Orders in a manner consistent with the purposes of the Orders.
- D. If one or more Interim Monitors are appointed pursuant to this Paragraph or pursuant to the relevant provisions of the Decision and Order in this matter, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of each Interim Monitor:
 1. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission;
 2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission;
 3. The Interim Monitor shall serve until the later of:

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requirements of this Order to Maintain Assets and notification by the Commission-approved Acquirer to the Interim Monitor that it is fully capable of producing the relevant Product(s) acquired pursuant to a Remedial Agreement independently of Respondents; and fulfillment of the Respondents obligations under the Decision and Order with respect to the IntelliClean Products; or

- b. the completion by Respondents of the last obligation under the Order pertaining to the Interim Monitor's service;

provided, however, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of this Order to Maintain Assets.

- E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with their obligations under the Orders, including, but not limited to, their obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Orders.
- F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of the Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
- G. 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.
- H. Respondents shall report to the Interim Monitor in accordance with the requirements of this Order to Maintain Assets 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 Orders or the Remedial Agreement. Within one (1) month from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning

performance by Respondents of their obligations under the Orders.

- I. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement;

provided, however, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.

- J. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph or the relevant provisions of the Decision and Order in this matter.
- L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.
- M. The Interim Monitor appointed pursuant to this Order to Maintain Assets or the relevant provisions of the Decision and Order in this matter may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

IT IS FURTHER ORDERED that within thirty (2 TD/F1vjET1.3D92400 0.0Td8 information to the C

V.

IT IS FURTHER ORDERED

- B. The day after the divestiture of all of the Divestiture Assets, as required by and described in the Decision and Order, has been completed and each Interim Monitor, in consultation with Commission staff and the Commission-approved Acquirer(s), notifies the Commission that all related assignments, conveyances, deliveries, grants, licenses, transactions, transfers and other transitions are complete, or the Commission otherwise directs that this Order to Maintain Assets is terminated.

By the Commission, Chairman Majoras and Commissioner Harbour recused.

Donald S. Clark
Secretary

SEAL

ISSUED: September 29, 2005

**PUBLIC
APPENDIX A
TO THE ORDER TO MAINTAIN ASSETS
AGREEMENT CONTAINING CONSENT ORDER
AND
PROPOSED DECISION AND ORDER**