0610220

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

In the Matter of	)	
	)	
JOHNSON & JOHNSON,	)	
a corporation;	)	
	)	**Docket No. C-**
and	)	
	)	
PFIZER INC.,	)	
a corporation.	)	
	)	
	)	

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent Johnson & Johnson ("J&J") of the Consumer Healthcare Division of Respondent Pfizer Inc. ("Pfizer"), hereinafter referred to as "Respondents," and Respondents having been furnished thereafter with a copy of a draft of 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 that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent J&J is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its headquarters address located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.

2. Respondent Pfizer is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address located at 235 E. 42nd St., New York, New York 10017.

3. The Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in the Order, the following definitions shall apply:

A. "J&J" means Johnson & Johnson, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by J&J, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "Pfizer" means Pfizer Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Pfizer, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Commission" means the Federal Trade Commission.

"Pfizer"ni

convey pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission's determination to make this Order final; or

2. an entity that receives the prior approval of the Commission to acquire particular assets that the Respondents are required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.

E. "Acquisition" means the acquisition of Pfizer's Consumer Healthcare Division as contemplated by the "Stock and Asset Purchase Agreement" dated June 25, 2006, between Johnson & Johnson and Pfizer Inc.

F. "Acquisition Date" means the date the Respondents close on the Acquisition.

G. "Agency(ies)" means any governmental regulatory authority or authorities in the world responsible for granting approvals, clearances, qualifications, licenses, or permits for any aspect of the research, Development, manufacture, marketing, distribution, or sale of the Divestiture Products. The term Agency includes, but is not limited to, the United States Food and Drug Administration ("FDA").

H. "Balmex Assets" means all of Respondent J&J's rights, title and interest in and to all assets [illegible] related to [illegible] the Balmex Products [illegible] extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of the Balmex Products including, without limitation, the following:

1. all Product Intellectual Property related to the Balmex Products including, but not limited to the Balmex® Product Trademark, or any variations or derivatives of such

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[illegible]

or imported, the Balmex Products or any line extensions thereof in the field of OTC diaper rash treatment products anywhere in the United States;

3. all Product Manufacturing Technology related to the Balmex Products;

4. all Product Marketing Materials related to the Balmex Products;

5. all Website(s) related to the Balmex Products;

6. all Product Assumed Contracts to the extent related to the Balmex Products (copies to be provided to the Acquirer on or before the Divestiture Date);

7. all books, records, and files related to the Balmex Products;

8. a list of all customers and/or targeted customers for the Balmex Products and the pricing and promotions and/or planned or proposed pricing and promotions of the Balmex Products for such customers;

9. all inventory in existence as of the Divestiture Date including, but not limited to, raw materials, packaging materials, work-in-process and finished goods related to the Balmex Products;

10. all unfilled customer orders for finished goods as of the Divestiture Date related to the Balmex Products (a list of such orders is to be provided to the Acquirer within two (2) days after the Divestiture Date); and

11. the Balmex Manufacturing Equipment;

PROVIDED, HOWEVER, that in cases in which documents or other materials included in the Balmex Assets contain information (1) that relates both to the Balmex Products and to Retained Products or other businesses of Respondent J&J and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Balmex Products or (2) for which Respondent J&J has a legal obligation to retain the original copies, Respondent J&J 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 Acquirer, Respondent J&J shall provide the 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 J&J provides the Acquirer with the above-described information without requiring Respondent J&J to completely divest itself of information that, in content, also relates to Retained Products and businesses other than the Balmex Products;

PROVIDED FURTHER, HOWEVER, that with respect to any contract or agreement included in the Balmex Assets that relates both to the Balmex Assets and to any of Respondent J&J Retained Products or businesses not divested pursuant to this Order, Respondent **J&J shall assign** to the Acquirer all such rights under the contract or agreement as are related to the Balmex Assets.

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M. "BI" means Boehringer Ingelheim Pharmaceuticals, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its headquarters address at 900 Ridgebury Road, Ridgefield, Connecticut 06877-0368.

N. "BI Agreement" means the Asset Purchase Agreement among Johnson & Johnson, Pfizer Inc. and Boehringer Ingelheim Pharmaceuticals, Inc., dated as of October 12, 2006, and amended by letter agreement dated November 27, 2006, and all amendments, exhibits, attachments, agreements, and schedules thereto. The BI Agreement is attached to this Order and contained in non-public Appendix B.

O. "cGMP" means current Good Manufacturing Practice as set forth in the United States Federal, Food, Drug, and Cosmetic Act, as amended, and includes all rules and regulations promulgated by the FDA thereunder.

P. "Chattem" means Chattem, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee, with its headquarters address at 1715 West 38th Street, Chattanooga, Tennessee 37409.

Q. "Chattem Agreement" means the Asset Purchase Agreement among Johnson & Johnson, Pfizer Inc. and Chattem, Inc., dated as of October 5, 2006, and amended by letter agreement dated November 27, 2006, and all amendments, exhibits, attachments, agreements, and schedules thereto. The Chattem Agreement is attached to this Order and contained in non-public Appendix C.

R. "Chattem Supply Agreement" means the Manufacturing and Supply Agreement among Johnson & Johnson, Pfizer Inc. and Chattem, Inc., appended to the Chattem Agreement as Exhibit D., and all amendments, exhibits, attachments, and schedules thereto.

S. "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 Products; *PROVIDED HOWEVER*, that the restrictions contained in this Order regarding the use, conveyance, provision, or disclosure of "Confidential Business Information" shall not apply to the following:

1. information that subsequently falls within the public domain through no violation of this Order or breach of confidentiality or non-disclosure agreement with respect to such information by Respondents;

2. information related to the Balmex Products that Respondent Pfizer can demonstrate it obtained without the assistance of Respondent J&J prior to the Acquisition;

3. information related to the Unisom Products, Cortizone10 Products, and Zantac Products that Respondent J&J can demonstrate it obtained without the assistance of Respondent Pfizer prior to the Acquisition;

4. information that is required by Law to be publically disclosed; or

5. information that does not relate to the Divestiture Products.

T. "Cortizone 10 Assets" means all of Respondent Pfizer's rights, title and interest in and to all assets related to Respondent Pfizer's United States business related to the Cortizone 10 Products to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of the Cortizone 10 Products including, without limitation, the following:

1. all Product Intellectual Property related to the Cortizone 10 Products including, but not limited to, the Cortizone 10® and Cortizone 5® Product Trademarks, 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 Cortizone 10 Products) to these Product Trademarks for the purposes of winding up the use of such Product Trademarks in Respondents' businesses associated with such Product Trademarks;

2. a non-exclusive, perpetual, transferable, fully paid-up and royalty-free license(s) to all Retained Product Licensed Intellectual Property related to the Cortizone 10 Products to use, make, distribute, offer for sale, promote, advertise, sell, import, or have used, made, distributed, offered for sale, promoted, advertised, sold, or imported, the Cortizone 10 Products or any line extensions thereof anywhere in the United States;

3. all Product Manufacturing Technology related to the Cortizone 10 Products;

4. all Product Marketing Materials related to the Cortizone 10 Products;

5. all Website(s) related to the Cortizone 10 Products;

6. all Product Assumed Contracts to the extent related to the Cortizone 10 Products (copies to be provided to the Acquirer on or before the Divestiture Date);

9. all inventory in existence as of the Divestiture Date including, but not limited to, raw materials, packaging materials, work-in-process and finished goods related to the Cortizone 10 Products;

10. all unfilled customer orders for finished goods as of the Divestiture Date related to the Cortizone 10 Products (a list of such orders is to be provided to the Acquirer within two (2) days after the Divestiture Date); and

11. the Cortizone 10 Manufacturing Equipment;

PROVIDED, HOWEVER, that in cases in which documents or other materials included in the Cortizone 10 Assets contain information (1) that relates both to the Cortizone 10 Products and to Retained Products or other businesses of Respondents and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Cortizone 10 Products or (2) for which Respondents have a legal obligation to retain the original copies, Respondents 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 Acquirer, Respondents shall provide the 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 Respondents provide the Acquirer with the above-described information without requiring Respondents to completely divest itself of information that, in content, also relates to Retained Products and businesses other than the Cortizone 10 Products;

PROVIDED FURTHER, HOWEVER, that with respect to any contract or agreement included in the Cortizone 10 Assets that relates both to the Cortizone 10 Assets and to any of Respondents' Retained Products or businesses not divested pursuant to this Order, Respondents shall assign the Acquirer all such rights under the contract or agreement as are related to the Cortizone 10 Products, but concurrently may retain its rights under such contract or agreement for the purposes of the Retained Products and businesses not divested pursuant to this Order;

PROVIDED FURTHER, HOWEVER, that the assets described in Paragraphs I.T.6, I.T.9, and I.T.11 shall be at the Acquirer's option if the Commission approves a divestiture that excludes such assets.

U. "Cortizone 10 Employees" means persons listed in non-public Appendix E to this Order.

V. "Cortizone 10 Manufacturing Equipment" means all manufacturing and other equipment, located at any facility, that:

1. is owned by Respondent Pfizer; and

2. 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 Divestiture Date, in the research, Development, manufacture, or packaging of the Cortizone 10 Products.

W. "Cortizone 10 Products" means all Products Developed, in Development, manufactured, distributed, marketed or sold in the United States by Respondent Pfizer prior to the Acquisition that were marketed or sold or to be marketed or sold in the United States as OTC hydrocortisone anti-itch products using the Cortizone 10® or Cortizone 5® Product Trademarks, or any variations or derivatives of such Product Trademarks, including, but not limited to, Cortizone 10® Quickshot Anti-Itch Spray, Cortizone 10® Creme, Cortizone 10® External Anal Itch Relief Creme, Cortizone 10® Ointment, Cortizone 10® Plus Maximum Strength Creme with 10 Moisturizers, and Cortizone 5® Ointment.

X. "Designee" means any entity other than Respondents that will manufacture a Divestiture Product for an Acquirer.

Y. "Development" means formulation, design (including packaging design), process development, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control development, Product approval and registration. "Develop" means to engage in Development.

Z. "Direct Cost" mea

FF. "Domain Name" means the domain names (universal resource locators) and registrations thereof, issued by any entity or authority that issues and maintains the domain name registration; *PROVIDED, HOWEVER,* Domain Name shall not include any trademark or service mark rights to such domain names other than the rights to the Product Trademarks related to the Divestiture Products.

GG. "Excluded Assets" means:

1. The following trademarks, including names and logos: Pfizer Inc., Pfizer, Pfizer Consumer Healthcare, Warner-Lambert, Parke-Davis, Pharmacia, Johnson & Johnson, J&J, Johnson's, Johnson & Johnson Consumer Companies, Inc., JJCCI, McNeil, McNeil-PPC, Inc., Personal Products Company, Aveeno, or the names or trade dress of any other corporations, companies, or brands owned or sold by Respondents or related logos to the extent used on or in Respondent J&J's or Respondent Pfizer's Retained Products or businesses not divested pursuant to this Order;

2. The following websites: www.pfizer.com, www.pfizerch.com, www.baby.com, www.jnj.com;

3. Content of Website(s) that is owned by Third Parties and other Product Intellectual Property not owned by Respondents that is incorporated in Website(s), such stock photographs used in the Website(s), *except* to the extent that Respondents can convey its rights, if any, therein;

4. Content of Website(s) that is unrelated to the Divestiture Products;

5. Cash or cash equivalents related to the Divestiture Assets;

6. Accounts receivable related to the Divestiture Assets;

7. Losses, loss carry-forwards, or rights to receive funds, credits or loss carry-forwards with respect to any and all taxes of Respondents that relate to any liability retained by Respondents;

8. Rights, claims, or credits of Respondents relating to any assets or liability being retained by Respondents;

9. Real property relating to the Divestiture Assets;

10. Information management systems used by Respondents;

11. Insurance policies relating to the Divestiture Assets and all rights of any nature with

respect thereto;

12. Attorney work product, attorney client communications and other items protected by the attorney-client privilege;

13. Documents received from third-parties related to the divestiture of the Divestiture Assets;

14. Equipment relating to the distribution of the Divestiture Assets including, but not limited to, equipment at Pfizer distribution facilities at Lititz, PA, Elk Grove, IL, and Reno, NV, and equipment at J&J distribution facilities at Mechanicsburg, PA, Memphis, TN, and Ontario, CA;

15. Property and assets located outside of the United States;

16. Non-finish100 470.1600 cl;dg, bn0 TDFor 0.00010 T4he Divi1 distribution facilities at Lititz, PA, Elk G

LL. "Law" means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Governmental Entity having the effect of law.

MM. "Non-Zantac Assets" means the Balmex Assets, the Cortizone 10 Assets, and the Unisom Assets; *PROVIDED, HOWEVER*, that the Non-Zantac Assets shall not include the Excluded Assets.

NN. "Non-Zantac Divestiture Agreement" means:

1. The Chattem Agreement; or

2. Any agreement that receives the prior approval of the Commission between Respondents and an Acquirer for the divestiture of the Non-Zantac Assets entered into pursuant to Paragraph II.B. of this Order, and any attachments, agreements, and schedules related thereto.

OO. "Non-Zantac Products" means the Balmex Products, the Cortizone 10 Products, and the Unisom Products.

PP. "Non-Zantac Supply Agreement" means:

1. the Chattem Supply Agreement; or

2. any agreement that receives the prior approval of the Commission between Respondents and an Acquirer for the supply of Non-Zantac Products entered pursuant to Paragraph II.C. of this Order, and any attachments, agreements, and schedules thereto.

QQ. "OTC" means, with respect to any Product, an over-the-counter product that contains an active pharmaceutical ingredient and is sold without a prescription from a licensed practitioner.

RR. "Patents" means all United States patents, patent applications, and statutory invention registrations, in each case existing as of the D

TT. "Product" means a retail consumer good Developed, made, distributed, marketed or sold by Respondents.

UU. "Product Assumed Contracts" means all of the following contracts or agreements:

1. pursuant to which any Third Party purchases, or has the option to purchase without further negotiation, the Divestiture Products from the Respondents;

2. pursuant to which the Respondents purchase any materials from any Third Party for use in connection with the manufacture of the Divestiture Products;

3. relating to any quality control trials involving the Divestiture Products;

4. relating to the marketing of the Divestiture Products or educational matters relating to the Divestiture Products including, but not limited to, the slotting and/or shelf spacing assignments of the Divestiture Product with the High Volume Retail Accounts;

5. relating to the manufacture of the Divestiture Products;

6. constituting confidentiality agreements involving the Divestiture Products;

7. involving any royalty, licensing, or similar arrangement involving the Divestiture Products;

8. pursuant to which any services are provided with respect to the Divestiture Products or the Divestiture Products business, including consultation arrangements; and/or

9. pursuant to which any Third Party collaborates with the Respondents in the performance of research, Development, marketing or selling of the Divestiture Products or the Divestiture Products business.

VV. "Product Copyrights" means United States rights to all original works of authorship of any kind related to the Divestiture Products and any registrations and applications for registrations thereof existing as of the Divestiture Date, 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 Products or of any materials used in the research, Development, manufacture, marketing or sale of the Divestiture Products, including all raw data relating to quality trials of the Products, customer information, promotional and marketing materials, the Divestiture Products sales forecasting models, Website content and advertising and display materials; all records relating to employees who accept employment with the 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 Products.

WW. "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 Respondents 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, Respondents 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 Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.

XX. "Product Intellectual Property" means all of the following related to a Divestiture Product (other than Retained Product Licensed Intellectual Property):

1. Patents;

2. Product Copyrights;

3. Product Trademarks, trade names, Product Trade Dress, trade secrets, know-how,

techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development and other information; and

4. rights to obtain and file for patents and registrations thereof.

YY. “Product Manufacturing Technology” means all technology, tra

1. Any agreement related to the Zantac Assets entered into pursuant to Paragraph II.A. of this Order;

2. Any agreement related to the Non-Zantac Assets entered into pursuant to Paragraphs II

collectively are less than the aggregate retail sales in dollars within the same period of the Divestiture Products collectively, the above-described intellectual property shall be considered, at the Acquirer's option, Product Intellectual Property and, thereby, subject to assignment to the Acquirer;

PROVIDED FURTHER, HOWEVER, that in such cases, Respondents may take a license back from the Acquirer for such intellectual property for use in connection with the Retained Products.

HHH. "Third Party(ies)" means any private entity other than the following: (1) the Respondents; or (2) an Acquirer.

III. "Unisom Assets" means all of Respondent Pfizer's rights, title and interest in and to all assets related to Respondent Pfizer's United States business related to the Unisom Products to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of the Unisom Products including, without limitation, the following:

1. all Product Intellectual Property related to the Unisom Products including, but not limited to, the "Bendy Girl" character, and the Unisom®, SleepGels® and SleepTabs® Product Trademarks, 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 Unisom Products) to these Product Trademarks for the purposes of winding up the use of such Product Trademarks in Respondents' businesses associated with such Product Trademarks;

2. a non-exclusive, perpetual, transferable, fully paid-up and royalty-free license(s) to all Retained Product Licensed Intellectual Property related to the Unisom Products to use, make, distribute, offer for sale, promote, advertise, sell, import, or have used, made, distributed, offered for sale, promoted, advertised, sold, or imported, the Unisom Products or any line extension thereof anywhere in the United States;

3. all Product Manufacturing Technology related to the Unisom Products;

4. all Product Marketing Materials related to the Unisom Products;

5. all Website(s) related to the Unisom Products;

6. all Product Assumed Contracts to the extent related to the Unisom Products (copies to be provided to the Acquirer on or before the Divestiture Date);

JJJ. “Unisom Employees” means the persons listed in non-public Appendix F to this Order.

KKK. “Unisom Manufacturing Equipment” means all manufacturing and other equipment, located at any facility, that:

1. is owned by Respondent Pfizer; and

2. was used, within the one (1) year period immediately

distributed, offered for sale, promoted, advertised, sold, or imported, the Zantac Products or any line extension thereof anywhere in the United States; *PROVIDED, HOWEVER,* Respondents shall also grant an exclusive (even as to Respondents), perpetual, fully paid-up and royalty-free license(s) with rights to sublicense to the Zantac Patents to use, make, distribute, offer for sale, promote, advertise, sell, import, or have used, made, distributed, offered for sale, promoted, advertised, sold, or imported, the Zantac Products or any line extensions thereof in the field of OTC histamine H2-receptor antagonists products anywhere in the United States;

3. all Product Manufacturing Technology related to the Zantac Products;

4. all Product Marketing Materials related to the Zantac Products;

5. all Website(s) related to the Zantac Products;

6. all Product Assumed Contracts to the extent related to the Zantac Products (copies to be provided to the Acquirer on or before the Divestiture Date);

7. all books, records, and files related to the Zantac Products;

8. a list of all customers and/or targeted customers for the Zantac Products and the pricing and promotions and/or planned or proposed pricing and promotions of the Zantac Products for such customers;

9. all inventory in existence as of the Divestiture Date including, but not limited to, raw materials, packaging materials, work-in-process and finished goods related to the Zantac Products;

10. all unfilled customer orders for finished goods as of the Divestiture Date related to the Zantac Products (a list of such orders is to be provided to the Acquirer within two (2) days after the Divestiture Date); and

11. the Zantac Manufacturing Equipment.

PROVIDED, HOWEVER

documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondents provides the Acquirer with the above-described information without requiring Respondents to completely divest itself of information that, in content, also relates to Retained Products and businesses other than the Zantac Products;

PROVIDED FURTHER, HOWEVER, that with respect to any contract or agreement included in the Zantac Assets that relates both to the Zantac Assets and to any of Respondents' Retained Products or businesses not divested pursuant to this Order, Respondents shall assign the Acquirer all such rights under the contract or agreement as are related to the Zantac Products, but concurrently may retain its rights under such contract or agreement for the purposes of the Retained Products and businesses not divested pursuant to this Order;

PROVIDED FURTHER, HOWEVER, that the assets described in Paragraphs I.NNN.6, I.NNN.9, and I.NNN.11 shall be at the Acquirer's option if the Commission approves a divestiture that excludes such assets.; and

PROVIDED FURTHER, HOWEVER, that Zantac Assets shall not include the Excluded Assets.

OOO. "Zantac Divestiture Agreement" means:

1. The BI Agreement; or

2. Any agreement that receives the prior approval of the Commission between Respondents and an Acquirer for the divestiture of the Zantac Assets entered into pursuant to Paragraph II.A. of this Order, and any attachments, agreements, and schedules related thereto.

PPP. "Zantac Employees" means the persons listed in non-public Appendix G to this Order.

QQQ. "Zantac Marketing Employees" means all salaried management level employees of Respondent Pfizer who directly have participated (irrespective of portion of working time involved, unless such participation was a part of a broad executive management portfolio, or of oversight of legal, accounting, tax or financial compliance) in the formulation of brand marketing or sales strategies, including pricing, discount, allowance, promotion, and advertising strategies relating to the Zantac Products in the United States within the eighteen (18) month period immediately prior to the Divestiture Date. These employees include, without limitation, employees involved in brand management, sales training, and market research, and the Zantac Employees.

RRR. "Zantac Manufacturing Equipment" means all manufacturing and other equipment, located at any facility, that:

1. is owned by Respondent Pfizer; and

2. 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 Divestiture Date, in the research, Development, manufacture, or packaging of the Zantac Products.

SSS. "Zantac Patents" means:

1. U.S. Patent 5,098,715 (Flavor film-coated tablets); and

2. Any patent applications and patents issuing from Attorney Docket Number, PC 33462 (Dual-layer film-coated solid dosage form).

TTT. "Zantac Products" means all Products Developed, in Development, manufactured, distributed, marketed or sold in the United States by Respondent Pfizer prior to the Acquisition that were marketed or sold or to be marketed or sold as in the United States OTC histamine H2-receptor antagonists Products using the Product Trademarks Zantac®, Zantac 150® , and Zantac 75®, or any variations or derivatives of such Product Trademark including, but not limited to, Maximum Strength Zantac 150® Acid Reducer, and Zantac 75® Acid Reducer.

UUU. "Zantac Research and Development Employees" means all salaried employees of Respondent Pfizer who directly have participated (irrespective of the portion of working time involved, unless such participation was a part of a broad executive management portfolio, or of oversight of legal, accounting, tax or financial compliance) in the research, Development, or quality control approval process for the Zantac Products within the eighteen (18) month period immediately prior to the Divestiture Date.

II.

IT IS FURTHER ORDERED

PROVIDED, HOWEVER, that if Respondents have divested the Zantac Assets to BI 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 BI is not an acceptable purchaser of the Zantac Assets, then Respondents shall immediately rescind the transaction with BI and shall divest the Zantac Assets within one hundred eighty (180) days from the date the Order becomes final, absolutely and in good faith, at no minimum price, to an Acquirer and only in a manner that receives the prior approval of the Commission;

PROVIDED FURTHER, HOWEVER, that if the Respondents have divested the Zantac Assets to BI 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 Zantac Assets to BI (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, that Respondents may not modify or amend the Zantac Divestiture Agreement without receiving the prior approval of the Commission.

B. Not later than fifteen (15) days after the Acquisition Date or January 2, 2007, whichever is later, Respondents shall divest the Non-Zantac Assets, absolutely and in good faith, to Chattem pursuant to and in accordance with the Non-Zantac Assets Divestiture 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 Chattem or to reduce any obligations of the Respondents under such agreement);

PROVIDED, HOWEVER, that if Respondents have divested the Non-Zantac Assets to Chattem 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 Chattem is not an acceptable purchaser of the Non-Zantac Assets, then Respondents shall immediately rescind the transaction with Chattem and shall divest the Non-Zantac Assets within one hundred eighty (180) days from the date the Order becomes final, absolutely and in good faith, at no minimum price, to an Acquirer and only in a manner that receives the prior approval of the Commission;

PROVIDED FURTHER, HOWEVER, that if the Respondents have divested the Non-Zantac Assets to Chattem 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 acces final(mediatel)Tj41.2800 0.0000 TD

3. represent and warrant to the Acquirer that the Non-Zantac Products supplied under the Non-Zantac Supply Agreement meet the Agency-approved specifications. For the Non-Zantac Products to be marketed or sold in the United States, Respondents shall agree to indemnify, defend and hold the Acquirer harmless from any and all suits, claims,

2. for the continued research, Development, manufacture, sale, marketing or distribution of the Divestiture Products;

a. not join, file, prosecute or maintain any suit, in law or equity, against the 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 that Acquirer's freedom to practice in the research, Development, manufacture, use, import, distribution, or sale of the relevant Divestiture Products; *PROVIDED, HOWEVER*, that Respondents may receive a covenant from that Acquirer not to assert any Patent related to the Divestiture Products that is assigned to that Acquirer from the Respondents pursuant to this Order against the Respondents for Respondents' infringement of such Patent in connection with those Products marketed or sold by Respondents prior to the Acquisiti

2. provide the relevant Acquirer and the Interim Monitor with access to all Confidential Business Information and to employees who possess or are able to locate or identify the books, records, and files that contain Confidential Business Information pending complete delivery of all the Confidential Business Information;

3. not use, directly or indirectly, any Confidential Business Information related to the research, Development, manufacturing, marketing, or sale of the Divestiture Products other than to comply with the requirements of this Order;

4. not disclose or convey any Confidential Business Information, directly or indirectly, to any person except the relevant Acquirer; and

5. not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information related to the marketing or sales of the:

   a. Balmex Products to Respondents' employees associated with Respondents' retained OTC diaper rash treatment business;

   b. Unisom Products to Respondents' employees associated with Respondents' retained OTC nighttime sleep-aids business;

   c. Cortizone 10 Products to Respondents' employees associated with Respondents' retained OTC hydrocortisone anti-itch products business; and

   d. Zantac Products to Respondents' employees associated with Respondents' OTC histamine H2-receptor antagonists products business.

I. Not later than thirty (30) days after the Acquisition Date, Respondents shall provide written notification of the restrictions on the use of the Confidential Business Information by Respondents' personnel to all of Respondents' employees who:

1. Are, or were, directly involved in the research, Development, manufacturing, distribution, sale or marketing of the Divestiture Products;

2. Are directly involved in the research, Development, manufacturing, distribution, sale or marketing of Respondents' Retained Products related to OTC diaper rash treatments, OTC nighttime sleep-aids, OTC hydrocortisone anti-itch products, or OTC histamine H2-receptor antagonists products; and/or

3. May have Confidential Business Information;

PROVIDED, HOWEVER, 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 relevant Divestiture Date. Respondents shall maintain complete records of all such agreements at Respondents' corporate headquarters, and 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 relevant Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel relating to the Divestiture Products.

J. Respondents shall prohibit any former Zantac Marketing Employees and former Zantac Research and Development Employees from participating in the sales, marketing, or research and Development of Respondents' OTC histamine H2-receptor antagonists Retained Products for a period of two (2) years after the Divestiture Date.

K. Respondents shall not enforce any agreement against a Third Party or an Acquirer to the extent that such agreement may limit or otherwise impair the ability of that Acquirer to acquire the Product Manufacturing Technology related to the relevant Divestiture 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.

L. Not later than ten (10) days after the Divestiture Date, Respondents shall grant a release to each Third Party that is subject to an agreement as described in Paragraph II.K. that allows the Third Party to provide the relevant Product Manufacturing Technology or related equipment to an Acquirer. Within five (5) days of the execution of each such release, Respondents shall provide a copy of the release to the Acquirer.

M. Respondents shall:

1. for a period of at least six (6) months from the Divestiture Date ("Divestiture Product Employee Access Period"), provide the relevant Acquirer of the Divestiture Assets with the opportunity to enter into employment contracts with the related Divestiture Products Employees; and

2. provide the relevant Acquirer of the Divestiture Assets with the Product Employee Information related to the Divestiture Product Employees not later than the earlier of the following dates:

   a. ten (10) days after notice by staff of the Commission to the Respondents to provide the Product Employee Information; or

   b. ten (10) days after the Divestiture Date.

Failure by Respondents to provide the Product Employee Information for any relevant employee within the time provided herein shall extend the Divestiture Employee Access Period with respect to that employe

PROVIDED, HOWEVER, that nothing in this Order requires or shall be construed to require the Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of Divestiture Product 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 Divestiture Date, not:

   a. directly or indirectly, solicit or otherwise attempt to induce any employee of an Acquirer with any amount of responsibility related to the Divestiture Products ("Acquirer Employee") to terminate his or her employment relationship with that Acquirer; or

   b. hire any Acquirer Employee; *PROVIDED, HOWEVER,* Respondents may hire any former Acquirer Employee whose employment has been terminated by an Acquirer or who independently applies for employment with the Respondents, as long as such employee was not solicited in violation of the non-solicitation 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 Acquirer Employees; or (2) hire an Acquirer Employee who contacts Respondents on his or her own initiative without any direct or indirect solicitation or encouragement from the Respondents.

O. Respondents shall require, as a condition of continued employment post-divestiture of the Divestiture Assets, that each Divestiture Product 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 Divestiture 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).

P. Upon reasonable notice and request by the Acquirer, Respondents shall make available to the relevant Acquirer of the Divestiture Assets, at no greater than Direct Cost, such personnel, assistance, and training as that Acquirer might reasonably need to transfer the Divestiture Assets, and shall continue providing such personnel, assistance and training, at the request of such Acquirer until the Divestiture Assets are completely transferred to such Acquirer or its Designee in a manner that fully preserves their usefulness.

Q. Pending divestiture of the Divestiture Assets, Respondents shall take such actions as are necessary to maintain the full economic viability and marketability of the business

associated with the Divestiture 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 Divestiture Assets except for ordinary wear and tear.

R. Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against an Acquirer or the Releasee(s) for the research, Development, manufacture, use, import, distribution, or sale of the relevant Divestiture Products in connection with that Acquirer's research, Development, manufacture, use, import, distribution, or sale of the related Divestiture Products under the following:

1. any Patents owned or licensed by Respondents as of the Acquisition Date that claim the use of the Divestiture Products;

2. any Patents owned or licensed at any time after the Acquisition Date by Respondents that clai te by Respondete by

remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IV.

IT IS FURTHER ORDERED

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 the Order.

4. 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 Order, 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 Order.

5. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent J&J 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 Respondent J&J, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.

6. Respondent J&J shall indemnify the Interim Monitor and Respondents shall 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 Acquirer with respect to the performance of Respondents' obligations under the Order or the Remedial Agreement. Within thirty (30) days 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 Order.

8. 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.

E. 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.

F. 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.

G. 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 Order.

H. The Interim Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

V.

IT IS FURTHER ORDERED that:

A. If Respondents have not fully complied with their obligations under Paragraph II. of 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 J&J, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent J&J 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

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 Respondents' 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 Orw(subis Ond to an)TjET1.00000 0.00000 0.00000 1.00000 0.0000 0.000

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; *PROVIDED, HOWEVER,* such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.

F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

VI.

IT IS FURTHER ORDERED that:

A. Within five (5) days of the Acquisition, Respondent J&J 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. Paragraph II. of this Order; and

2. all its responsibilities to render transitional services to the relevant Acquirer as provided by this Order and the Remedial Agreements;

Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. Respondents shall submit at the same time a copy of their reports concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of this Order, including a full description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all Persons contacted, including, copies of all written communications to and from such Persons, all

internal memoranda, and all reports and recommendations concerning completing the obligations.

C. One (1) year after the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondent J&J shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order.

VII.

IT IS FURTHER ORDERED that Respondent J&J shall notify the Commission at least thirty (30) days prior to:

A. any proposed dissolution of Respondent J&J;

B. any proposed acquisition, merger or consolidation of Respondent J&J; or

C. any other change in Respondent J&J including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VIII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents made to their principal United States offices or

IX.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date on which the Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

NON-PUBLIC APPENDIX A

MONITOR AGREEMENT

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

NON-PUBLIC APPENDIX B

ZANTAC DIVESTITURE AGREEMENT
BI AGREEMENT

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

NON-PUBLIC APPENDIX C

NON-ZANTAC DIVESTITURE AGREEMENT
CHATTEM AGREEMENT

NON-ZANTAC SUPPLY AGREEMENT
CHATTEM SUPPLY AGREEMENT

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

NON-PUBLIC APPENDIX D

BALMEX EMPLOYEES

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

NON-PUBLIC APPENDIX E

CORTIZONE 10 EMPLOYEES

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

NON-PUBLIC APPENDIX F

UNISOM EMPLOYEES

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

NON-PUBLIC APPENDIX G

ZANTAC EMPLOYEES

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