

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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

_____	)	
<b>In the Matter of</b>	)	
	)	
<b>RITE AID CORPORATION,</b>	)	
<b>a corporation;</b>	)	
	)	<b>Docket No. C-</b>
<b>and</b>	)	
	)	
<b>THE JEAN COUTU GROUP (PJC), INC.,</b>	)	
<b>a corporation.</b>	)	
_____	)	

**DECISION AND ORDER**

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Rite Aid Corporation (“Rite Aid”) of 100 percent of the common and preferred shares of The Jean Coutu Group USA, Inc. from Respondent The Jean Coutu Group (PJC), Inc. (“Jean Coutu”), and Jean Coutu’s proposed acquisition of 30 percent of the common stock of Rite Aid pursuant to the Stock Purchase Agreement between Rite Aid and Jean Coutu, 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 which, 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;

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 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 has 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 Order to Maintain Assets, and accepted the executed Consent Agreement



**II.**

**IT IS FURTHER ORDERED** that:

- A. Respondents shall divest, absolutely and in good faith, the Assets To Be Divested, in accordance with the Purchaser Agreements (which agreements shall not vary or contradict, or be construed to vary or contradict, the terms of this Order), no later than
  - 1. twenty (20)

### III.

**IT IS FURTHER ORDERED** that:

- A. If Respondents have not divested all of the Assets To Be Divested as required by Paragraph II. of this Order, the Commission may appoint a trustee to divest (“Divestiture Trustee”) the remaining Assets To Be Divested in a manner that satisfies the requirements of Paragraphs II. and III. 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 divest the relevant assets in accordance with the terms of this Order. 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 Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have 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 Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Within ten (10) days after 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 relevant divestiture or transfer required by the Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, 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 relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed.
  - 2. The Divestiture Trustee shall have twelve (12) months from 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 twelve (12) month 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 III.D.3 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 best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents'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 Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such Person within five (5) days of 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 and, in the case of a court-appointed Divestiture Trustee, by approval by acc



- B. The prescription files from or any stock, share capital, equity, or other interest in any entity that owns any interest in or operates any pharmacy or owned any interest in or operated any pharmacy within five (5) miles of any store to be divested pursuant to this Order within six (6) months prior to such proposed acquisition.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the notification to the Commission at least thirty (30) days prior to consummating any such transaction (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 consummate the transaction 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

all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations; and

- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they are complying and have complied with this Order and the Purchaser Agreements.

## **VII.**

**IT IS FURTHER ORDERED** that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of such Respondents;
- B. Any proposed acquisition, merger or consolidation of Respondents; or
- C. Any other change in the Respondents, 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 the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request with reasonable notice to Respondents made to their principal United States office, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Respondents relating to any matters contained in this Order; and
- B. Upon five (5) days notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding any such matters.

**IX.**

**IT IS FURTHER ORDERED** that this Order shall terminate ten (10) years from the date the Order is issued.

By the Commission.

Donald S. Clark  
Secretary

SEAL  
ISSUED:

## **SCHEDULE A**

Pursuant to the terms of the Consent Agreement and this Decision and Order the following assets shall be divested as follows:

1. Rite Aid Store #3342 located at 261

14. Rite Aid Store #3355 located at 145 Main Street, Berlin, NH 03570 will be sold to Medicine Shoppe International Inc.
15. Rite Aid Store #4164 located at 5 Main Street, Peterborough, NH 03458 will be sold to Medicine Shoppe International Inc.
16. Rite Aid Store #0577 located at 941 State Route 17C, Owego, NY 13827 will be sold to Medicine Shoppe International Inc.
17. Rite Aid Store #1861 located at 2156 Grand Island Blvd., Grand Island, NY 14072 will be sold to Medicine Shoppe International Inc.
18. Rite Aid Store #2678 located at #2 Price Chopper Plaza, Mechanicville, NY 12118 will be sold to Medicine Shoppe International Inc.
19. Eckerd Store #5825 located at 45 Hadjus Way, Lake Placid, NY 12946 will be sold to Medicine Shoppe International Inc.
20. Eckerd Store #5961 located at 12 Bank Street, LeRoy, NY 14482 will be sold to Medicine Shoppe International Inc.
21. Eckerd Store #5850 located at 208 South Main Street, Moscow, PA 18444 will be sold to Medicine Shoppe International Inc.
22. Eckerd Store #6008 located at 37 Market Street, Brownsville, PA 15417 will be sold to Medicine Shoppe International Inc.
23. Eckerd Store #8706 located at 533 Greenville Road, Mercer, PA 16137 will be sold to Medicine Shoppe International Inc.