

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

In the Matter of)	
)	
GRACO INC.,)	
a corporation,)	Docket No. 9350
)	
ILLINOIS TOOL WORKS INC.,)	PUBLIC
a corporation, and)	
)	
ITW FINISHING LLC,)	

Commission hereby makes the following jurisdictional findings and issues this Order to Hold Separate and Maintain Assets (“Hold Separate”):

1. Respondent Graco Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business located at 88-11th Avenue Northeast, Minneapolis, Minnesota 55413.
2. Respondent Illinois Tool Works Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3600 West Lake Avenue, Glenview, Illinois 60026.
3. Respondent ITW Finishing LLC is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3600 West Lake Avenue, Glenview, Illinois 60026. ITW Finishing LLC is indirectly wholly-owned by Illinois Tool Works Inc.
4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Hold Separate, the following definitions, and all other definitions used in the Consent Agreement and the proposed Decision and Order (and when made final, the Decision and Order), shall apply:

- A. “Acquisition” means the proposed acquisition described in the Asset Purchase Agreement by and among Graco Inc., Graco Holdings Inc., Graco Minnesota Inc., Illinois Tool Works Inc., and ITW Finishing LLC, dated April 14, 2011 (the “Asset Purchase Agreement”).
- B. “Acquisition Date” means the date the Acquisition is consummated.
- C. “Commission-approved Acquirer” means any Person that receives the prior approval of the Commission to acquire the Liquid Finishing Business Assets pursuant to the Decision and Order.
- D. “Confidential Business Information” means competitively sensitive, proprietary and all other business information of any kind, except for any information that Respondents demonstrate (i) was or becomes generally available to the public other than as a result of a disclosure by Respondents, or (ii) was available, or becomes available, to Respondents on a non-confidential basis, but only if, to the knowledge of Respondents, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.
- E. “Decision and Order” means (i) the proposed Decision and Order contained in the Consent Agreement in this matter until the issuance and service of a final Decision and

Order by the Commission; and (ii) the final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission.

- F. “Divestiture Date” means the date on which Respondent Graco (or the Divestiture Trustee) and a Commission-approved Acquirer consummate a transaction to divest, license, assign, grant, transfer, deliver

conducted prior to the Acquisition by Respondent ITW, including all business activities relating to the development, manufacture, and sale of products under the brand names Binks, DeVilbiss, Ransburg, and BGK. “Liquid Finishing Business” does not include the Gema Powder Finishing Business.

- Q. “Liquid Finishing Business Assets” means all rights, title, and interest in and to all property and assets, tangible and intangible, of every kind and description, wherever located, and any improvements or additions thereto, relating to the Liquid Finishing Business.
- R. “Liquid Finishing Business Employees” means any full-time, part-time, or contract employee(s) of the Liquid Finishing Business, including the Hold Separate Gema Shared Employees, immediately prior to the Acquisition.
- S. “Orders” means the Decision and Order and this Hold Separate.
- T. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other business entity.
- U. “Prospective Acquirer” means a Person that Graco (or a Divestiture Trustee appointed

Separate Trustee shall act in a fiduciary capacity for the benefit of the Commission.

- (d) Subject to all applicable laws and regulations, the Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents, and facilities of the Hold Separate Business, and to any other relevant information as the Hold Separate Trustee may reasonably request including, but not limited to, all documents and records kept by Respondents in the ordinary course of business that relate to the Hold Separate Business. Respondents shall develop such financial or other information as the Hold Separate Trustee may reasonably request and shall cooperate with the Hold Separate Trustee.
- (e) Respondents shall take no action to interfere with or impede the Hold Separate Trustee's ability to monitor Respondents' compliance with this Hold Separate, the Consent Agreement, or the Decision and Order, or otherwise to perform his or her duties and responsibilities consistent with the terms of this Hold Separate.
- (f) The Hold Separate Trustee shall have the authority to employ, at the cost and expense of Respondent Graco, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.
- (g) The Commission may require the Hold Separate Trustee and each of the Hold Separate Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information received from the Commission in connection with performance of the Hold Separate Trustee's duties.
- (h) Respondents may require the Hold Separate Trustee and each of the Hold Separate Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement; *provided, however*, such agreement shall not restrict the Hold Separate Trustee from providing any information to the Commission.
- (i) Thirty (30) days after the Acquisition Date, and every thirty (30) days thereafter until the Hold Separate terminates, the Hold Separate Trustee shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate and Respondents' compliance with their obligations under the Hold Separate and the Decision and Order. Included within that report shall be the Hold Separate Trustee's assessment of the extent to which the businesses comprising the Hold Separate Business are meeting (or exceeding) their

projected goals as are reflected in operating plans, budgets, projections, or any other regularly prepared financial statements.

- (j) If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Commission may appoint a substitute Hold Separate Trustee consistent with the terms of this Hold Separate, subject to the consent of Respondent Graco, which consent shall not be unreasonably withheld. If Respondent Graco has not opposed, in writing, including the reasons for opposing, the selection of the substitute Hold Separate Trustee within ten (10) days after notice by the staff of the Commission to Respondent Graco of the identity of any substitute Hold Separate Trustee, Respondent Graco shall be deemed to have consented to the selection of the proposed substitute Hold Separate Trustee. Respondent Graco and the substitute Hold Separate Trustee shall execute a Hold Separate Trustee Agreement, subject to the approval of the Commission, consistent with this paragraph.
- (k) The Hold Separate Trustee shall serve until the day after the Divestiture Date; *provided, however,* that the Commission may extend or modify this

vesting of retirement benefits (as permitted by law) on the same basis as provided for under the Asset Purchase Agreement for other employees hired by Respondent Graco, and additional incentives as may be necessary to assure the continuation and prevent any diminution of the Hold Separate Business's viability, marketability, and competitiveness until the end of the Hold Separate Period, and as may otherwise be necessary to achieve the purposes of this Hold Separate.

- (d) The Hold Separate Managers shall make no material changes in the ongoing operations of the Hold Separate Business except with the approval of the Hold Separate Trustee, in consultation with the Commission staff.
- (e) The Hold Separate Managers shall have the authority, with the approval of the Hold Separate Trustee, to remove Hold Separate Business Employees and replace them with others of similar experience or skills. If any Person ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Hold Separate Managers, in consultation with the Hold Separate Trustee, may request Respondent Graco to, and Respondent Graco shall, appoint a substitute Person which.0019 Tw1/ Tc-.00rs sh

or expenses arising out of, or in connection with, the performance of the Hold Separate Trustee's or the Hold Separate Managers' 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 liabilities, losses, damages, claims, or expenses result from gross negligence or willful misconduct by the Hold Separate Trustee or the Hold Separate Managers.

5. The Hold Separate Business shall be staffed with sufficient employees (including any full-time, part-time, or contract employee of the Hold Separate Business) to maintain the viability and competitiveness of the Hold Separate Business. To the extent that such employees leave or have left the Hold Separate Business prior to the Divestiture Date, the Hold Separate Managers, with the approval of the Hold Separate Trustee, may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.
6. In connection with support services or products not included within the Hold Separate Business, Respondent Graco shall continue to provide, or offer to provide, the same support services to the Hold Separate Business as customarily have been or were being provided to such businesses by ITW prior to the Acquisition Date. For any services or products that Respondents may provide to the Hold Separate Business, Respondents may charge no more than the same price they charge others for the same services or products (or a commercially reasonable rate if ITW had not previously charged for such services). Respondents' personnel providing such services or products must retain and maintain all Confidential Business Information of or pertaining to the Hold Separate Business on a confidential basis, and, except as is permitted by this Hold Separate, such persons shall be prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondents' businesses, other than the Hold Separate Business. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Confidential Business Information of the Hold Separate Business.
 - (a) Respondent Graco shall offer to the Hold Separate Business, directly or through Respondent ITW, any services and products that Respondent ITW provided, in the ordinary course of business directly or through third party contracts to the business constituting the Hold Separate Business at any time since December 31, 2011, or such services that Respondent ITW is obligated to provide under Schedule 1.2 of the Asset Purchase Agreement. Respondent ITW shall treat the Hold Separate Business as a Graco Subsidiary, as that term is defined in the Asset Purchase Agreement. Subject to the foregoing, the services and products that Respondent Graco shall offer the Hold Separate Business shall include, but shall not be limited to, the following:

generate new business) consistent with the practices of the Hold Separate Business in place prior to the Acquisition;

- (b) to perform all maintenance to, and replacements of, the assets of the Hold Separate Business in the ordinary course of business and in accordance with past practice and current plans;
- (c) to carry on during the Hold Separate Period such capital projects, physical plant improvements, and business plans as are already underway for which all necessary regulatory and legal approvals have been obtained, including but not limited to existing or planned renovation or expansion projects; and
- (d) to maintain the viability, competitiveness, and marketability of the Hold Separate Business.

Such financial resources to be provided to the Hold Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; *provided, however*, that, consistent with the purposes of the Decision and Order and in consultation with the Hold Separate Trustee: (i) the Hold Separate Managers may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost; and (ii) to the extent that the Hold Separate Business generates financial funds in excess of financial resource needs, Respondent Graco shall have availability to such excess funds consistent with practices in place for the Hold Separate Business prior to the Acquisition.

8. Respondent Graco shall cause the following individuals that have access to Confidential Business Information of or pertaining to the Hold Separate Business to submit to the Hold Separate Trustee, or Commission staff as appropriate, a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate: (i) the Hold Separate Trustee, (ii) the Hold Separate Managers, (iii) each of Respondent Graco's employees not subject to the Hold Separate, (iv) the Hold Separate Gema Employees, (v) the Hold Separate Gema Shared Employees, and (vi) such additional Persons that the Hold Separate Trustee, in consultation with Commission staff, may identify. These individuals must retain and maintain all Confidential Business Information of, or pertaining to, the Hold Separate Business on a confidential basis and, except as is permitted by this Hold Separate, such Persons shall be prohibited from disclosing, providing, discussing; exchanging, circulating, or otherwise furnishing any such information to or with any other Person whose employment involves any of Respondents' businesses or activities other than the Hold Separate Business.
9. Except for the Hold Separate Managers, Hold Separate Business Employees, and support services employees involved in providing services to the Hold Separate Business pursuant to this Hold Separate, and except to the extent provided in this

Hold Separate, Respondent Graco shall not permit any other of its employees, officers, or directors to be involved in the operations of the Hold Separate Business.

10. Respondents' employees (other than the Liquid Finishing Business Employees, the Hold Separate Gema Shared Employees, and Graco employees involved in providing support services to the Hold Separate Business pursuant to Paragraph II.C.6.) shall not receive, or have access to, or use or continue to use any Confidential Business Information of the Hold Separate Business except:
 - (a) as required by law; and
 - (b) to the extent that necessary information is exchanged:
 - (1) in the course of consummating the Acquisition in compliance with the terms of the Asset Purchase Agreement;
 - (2) as necessary to effect the divestiture of the Hold Separate Business, including in connection with the marketing of the divested assets pursuant to the Consent Agreement, in negotiating agreements to divest assets pursuant to the Consent Agreement and engaging in related due diligence;
 - (3) in complying with this Hold Separate or the Consent Agreement;
 - (4) in overseeing compliance with policies and standards concerning the safety, health, and environmental aspects of the operations of the Hold Separate Business and the integrity of the financial controls of the Hold Separate Business;
 - (5) in defending legal claims, investigations, or enforcement actions threatened or brought against or related to the Hold Separate Business;
 - (6) to lenders and auditors; or
 - (7) in obtaining legal advice.

Nor shall the Hold Separate Managers or any Hold Separate Business Employees receive or have access to, or use or continue to use, any Confidential Business Information about Respondents and relating to Respondents' businesses, except such information as is necessary to maintain and operate the Hold Separate Business.

In addition to the foregoing, Respondent Graco may receive aggregate financial and operational information relating to the Hold Separate Business to the extent necessary to allow Respondent Graco to comply with the requirements and obligations of the laws of the United States and other countries, to prepare

- D. Until the Divestiture Date, Respondent Graco shall provide each Hold Separate Employee with reasonable financial incentives to continue in his or her position consistent with past practices and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Liquid Finishing Business and the Liquid Finishing Business Assets pending divestiture. Such incentives shall include employee benefits, including regularly scheduled raises, bonuses, vesting of retirement benefits (as permitted by law) on the same basis as provided for under the Asset Purchase Agreement for other employees hired by Respondent Graco, and additional incentives as may be necessary to assure the continuation and prevent any diminution of the viability, marketability, and competitiveness of the Liquid Finishing Business Assets until the Divestiture Date, and as may otherwise be necessary to achieve the purposes of this Hold Separate.
- E. From the date the Respondents execute the Consent Agreement until this Hold Separate terminates, Respondent Graco shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Hold Separate Employee for a position of employment with Respondent Graco. A Prospective Acquirer or the Commission-approved Acquirer shall have the option of offering employment to any Hold Separate Employee. Respondent Graco shall not interfere with the employment by a Prospective Acquirer or the Commission-approved Acquirer of such employee; shall not offer any incentive to such employee to decline employment with a Prospective Acquirer or the Commission-approved Acquirer or to accept other employment with the Respondent Graco; and shall remove any impediments that may deter such employee from accepting employment with a Prospective Acquirer or the Commission-approved Acquirer including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such employee to be employed by a Prospective Acquirer or the Commission-approved Acquirer.
- F. Respondent Graco shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Hold Separate Employee who has accepted an offer of employment with a Prospective Acquirer or the Commission-approved Acquirer to terminate his or her employment relationship with such Person; *provided, however*, Respondent Graco may:
1. advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, so long as these actions are not targeted specifically at any Hold Separate Business Employees; and
 2. hire Hold Separate Business Employees who apply for employment with Respondent Graco, so long as such individuals were not solicited by the Respondent Graco in violation of this paragraph; *provided further*, that this sub-Paragraph shall not prohibit Respondent Graco from making offers of employment to or employing any Hold Separate Business Employees if a Prospective Acquirer or the Commission-approved Acquirer has notified Respondent Graco in writing that a Prospective Acquirer or the Commission-approved Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined

the offer, or where the individual's employment has been terminated by a Prospective Acquirer or the Commission-approved Acquirer.

- G. The purpose of this Hold Separate is to: (1) preserve the assets and businesses within the Hold Separate Business as viable, competitive, and ongoing businesses independent of Respondent Graco until the divestiture required by the Decision and Order is achieved; (2) assure that no Confidential Business Information is exchanged between the Respondents and the Hold Separate Business, except in accordance with the provisions of this Hold Separate; (3) prevent interim harm to competition pending the relevant divestitures and other relief; and (4) maintain the full economic viability, marketability, and competitiveness of the Hold Separate Business, and prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets or businesses within the Hold Separate Business except for ordinary wear and tear.

III.

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

- A. Any proposed dissolution of Respondent Graco;
- B. Any proposed acquisition, merger, or consolidation of Respondent Graco; or
- C. Any other change in Respondent Graco, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

IV.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Hold Separate, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to the relevant Respondent, relating to compliance with this Hold Separate, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the relevant Respondent(s) 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 the relevant Respondent(s) related to compliance with the Consent Agreement and/or the Orders, which copying services shall be provided by such Respondent(s) at the request of the authorized representative(s) of the Commission and at the expense of such Respondent(s); and
- B. Without restraint or interference from such Respondent(s), to interview officers, directors, or employees of such Respondent(s), who may have counsel present.

V.

IT IS FURTHER ORDERED that this Hold Separate shall terminate at the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 3.25(f), 16 C.F.R. § 3.25(f);
or
- B. The day after the Divestiture Date of the Hold Separate Assets required to be divested pursuant to the Decision and Order.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: March 26, 2012