

chelation therapy is proven effective in treating diseases of the human circulatory system, such as atherosclerosis, and it has not done so. Under the terms of the consent agreement, ACAM is prohibited from advertising that chelation therapy is an effective treatment for atherosclerosis without possessing and relying upon competent and reliable scientific evidence to support the representation. Should ACAM possess such evidence, it would be allowed to make the challenged claims.

The risk posed to individuals who rely on advertised medical misrepresentations may be literally a matter of life or death, particularly if the advertisements cause those individuals who need urgent medical care to forego proven treatments. Although I value public comment, I do not believe we should delay further the timely issuance of the Commission's final order accepting the consent agreement, especially on this public health and safety matter.¹

For these reasons, I must vote against reopening and extending the public comment period.

Separate Statement of Commissioner Orson Swindle in American College for Advancement of Medicine, File No. 962-3147

I want to emphasize one of my reasons for voting to extend the public comment period in this matter until March 31, 1999. Commissioner Anthony describes this extension as implicating health and safety issues that may be a matter of "life or death," but I do not share her dire assessment of the prospect for consumer injury. The respondent has not disseminated materials with the allegedly deceptive claims for several months, including during the sixty-day public comment period that ended on February 16, 1999. The respondent also have revised its materials to eliminate the allegedly deceptive claims. Given that the respondent did not disseminate the allegedly deceptive claims during the sixty-day public comment period and has revised its materials, the respondent is unlikely to make its allegedly deceptive claims during the extended public comment period. In light of this, the suggested "life or death" consequences seem unlikely results of an extension.

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¹ I recognize that the Commission, in the past, extended comment periods. I am unaware of such an extension being granted in a matter involving public health or safety.

FEDERAL TRADE COMMISSION

[Dkt. 9290]

Monier Lifetile LLC, et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the administrative complaint issued in September 1998 and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 11, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William Baer or Nicholas Koberstein, FTC/H-374, Washington, DC 20580. (202) 326-2932 or 326-2743.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 2, 1999), on the World Wide Web, at "<http://www.ftc.gov/os/actions97.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted for public comment, from Monier Lifetile LLC ("Monier Lifetile"), Boral Ltd. ("Boral") and Lafarge S.A. ("Lafarge"), an agreement containing consent Order ("Agreement") designed to remedy the anticompetitive effects resulting from the formation of Monier Lifetile, a joint venture that combined the United States concrete roofing tile manufacturing and marketing operations of Boral and Redland PLC, a wholly-owned subsidiary of Lafarge. Under the terms of the agreement, Monier Lifetile, Boral and Lafarge ("Respondents") will be required to divest certain concrete roofing tile manufacturing assets to CRH PLC ("CRH"), an Irish corporation that manufactures materials and products for use in the construction industry. The Agreement has been placed on the public record for sixty (60) days for receipt of comments from interested persons.

Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received, and will decide whether it should withdraw from the Agreement or make final the Agreement's Order ("Order").

The Commission issued an administrative Complaint on September 22, 1998, charging Boral and Lafarge with acquiring shares in and contributing assets to a joint venture limited liability corporation, Monier Lifetile, in violation 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, in the markets for standard-weight concrete roofing tile in Southern California, Nevada, Arizona and Southern Florida.

In September of 1997, Boral and Redland PLC combined their United States concrete roofing tile operations, Boral Lifetile, Inc. and Monier, Inc., to form Monier Lifetile. Monier Lifetile was formed as a limited liability company (LLC) under Delaware state law. The transaction was not reportable under the Hart-Scott-Rodino (HSR) Act because the joint venture was formed as an LLC. If this transaction had been consummated after March 1, 1999, it would have been reportable under Formal Interpretation 15 of the HSR rules. See 64 FR 5808 (February 5, 1999). Under Formal Interpretation 15, the formation of an LLC will be reportable if two or more pre-existing, separately controlled businesses will be

contributed, assuming the HSR size-of-person and size-of-transaction requirements are met and at least one of the members will control the LLC (i.e., have an interest entitling it to 50 percent of the profits of the LLC or 50 percent of the assets of the LLC upon dissolution). Such formations will be treated as mergers or consolidations under § 801.2(d) of the HSR rules.

Concrete roofing tile is the predominant material installed on the roofs of new homes in the Southwest United States and Southern Florida. Other roofing materials, such as asphalt shingles and clay tiles, are not considered substitutes for concrete roofing tile by consumers in these areas due to aesthetic, cost and structural differences. Because of the preference of homeowners for concrete roofing tile in these areas, builders and roofing contractors typically will not switch to other roofing materials.

The areas where concrete roofing tile is the primary material used in new home construction, Southern California, Nevada, Arizona and Southern Florida, are each relevant geographic markets. Tile producers outside these markets cannot compete in these areas because of the substantial costs associated with transporting the heavy and fragile tile into these markets.

Prior to the formation of Monier Lifetile, Boral Lifetile and Monier were the two largest suppliers of concrete roofing tile in the relevant geographic markets. Each of the relevant geographic markets is highly concentrated. In Southern California, Nevada and Southern Florida, there are only two other significant producers of concrete roofing tile. In Arizona, there is only one other significant producer of concrete roofing tile. Additionally, prior to the formation of Monier Lifetile, Boral Lifetile and Monier each controlled significant excess production capacity in the Southwest United States and Florida. As a result, Boral Lifetile and Monier were vigorous, head-to-head competitors in each of the relevant markets.

The formation of Monier Lifetile has combined the two largest suppliers in the relevant geographic markets and reduced the number of concrete roofing tile competitors in Southern California, Nevada and southern Florida from four to three and the number of competitors in the Arizona market from three to two. Further, as a result of the joint venture, Monier Lifetile now controls most of the excess production capacity serving the relevant geographic markets. By reducing the number of competitors and placing almost all of the excess production capacity under the control of

a single firm, the joint venture has substantially increased the likelihood of coordinated interaction and significantly diminished competition in the relevant markets.

Since the formation of the joint venture, Monier Lifetile has closed plants and reduced the amount of production capacity serving the relevant geographic markets. Concrete roofing tile customers are now reporting significant tile shortages in the relevant markets. Monier Lifetile has also recently announced a five per cent increase in the price of its concrete roofing tile. Customers have reported that Monier Lifetile's competitors in the relevant markets have followed Monier Lifetile's lead and raised their prices. Concrete roofing tile customers in the relevant geographic markets have also complained that the joint venture has reduced the number of product lines and colors available.

New entry has not deterred or counteracted the anticompetitive effects of the formation of Monier Lifetile nor is it expected to do so in the future. A new entrant into the concrete roofing tile market would need to undertake the expensive and time-consuming process of constructing manufacturing facilities, developing a competitive product, procuring necessary licenses and approvals, and gaining customer acceptance. Because of the difficulty in accomplishing these tasks, new entry could not be accomplished in a timely manner. Moreover, it is unlikely that new entry would occur at all because of the high costs involved with entering and producing concrete roofing tile relative to the potential sales revenues available to a new entrant.

Since September 1998, this matter has been in pretrial discovery before an administrative law judge, with trial scheduled to begin on May 17, 1999. This matter was removed from administrative adjudication on February 19, 1999, on a joint motion by Respondents and Commission counsel so that the Commission could consider the Agreement. The Agreement, if finally accepted by the Commission, would settle the charges alleged in the Complaint.

The proposed Order effectively remedies the joint venture's anticompetitive effects in the concrete roofing tile market alleged in the Complaint by requiring Respondents to divest three concrete roofing tile manufacturing facilities serving the relevant markets. Pursuant to the Agreement, Respondents are required to divest the following assets, collectively known as the "Tile Manufacturing Assets To Be Divested," to CRH within

five (5) business days of the date the Commission issues and serves its decision containing the Order:

(1) The Corona tile manufacturing facility, located at 1745 Sampson Avenue, Corona, California;

(2) The Casa Grande tile manufacturing facility, located at 1742 South Rooftile Road, Casa Grande, Arizona; and

(3) The Ft. Lauderdale tile manufacturing facility, located at 1900 N.W. 21st Avenue, Ft. Lauderdale, Florida.

CRH, headquartered in Dublin, Ireland, is an international producer and marketer of construction products and building materials with worldwide sales of approximately \$6 billion annually. CRH operates seven roof tile plants in Europe. CRH manufactures concrete roofing tile in the United States through its Westile division located in Littleton, Colorado.

In the event that Respondents fail to divest the Tile Manufacturing Assets To Be Divested to CRH within five (5) days from the day the Order becomes final, the Commission may appoint a trustee to divest these assets.

In order to ensure the viability and competitiveness of the Tile Manufacturing Assets To Be Divested, the Order requires Respondents, upon reasonable notice and request by CRH, to provide CRH with six (6) months of assistance, personnel and training as are reasonably necessary to enable CRH to manufacture concrete roofing tile in substantially the same manner and quality employed or achieved by Monier Lifetile, and to enable CRH to obtain necessary government approval to manufacture concrete roofing tile. The Order also requires Respondents to provide the Commission a report of compliance with the divestiture provisions of the Order within thirty (30) days after the date the Order becomes final, and every sixty (60) days thereafter until Respondents have fully complied with their obligations under the Order.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the Agreement and Order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,
Secretary.

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