

[File No. 961-0060]

Wesley-Jessen Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would, among other things, require the Des Plaines, Illinois-based maker of opaque contact lenses to divest the opaque lens business of its main rival, Pilkington Barnes Hind International, Inc. The Commission had alleged that the merger of Wesley-Jessen, which manufactures the Durasoft line of opaque lenses, and Pilkington Barnes Hind, which makes the Natural Touch line, would give the merged firm more than 90 percent of the opaque contact lens market, potentially resulting in higher consumer prices and reduced innovation or quality for the lenses.

DATES: Comments must be received on or before December 31, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room H-159, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William J. Baer, Federal Trade Commission, H-374, 6th and Pennsylvania Ave, NW., Washington, DC 20580. (202) 326-2932.

George C. Cary, Federal Trade Commission, H-374, 6th and Pennsylvania Ave, NW., Washington, DC 20580. (202) 326-3741.

Ann Malester, Federal Trade Commission, S-2308, 6th and Pennsylvania Ave, NW., Washington, DC 20580. (202) 326-2682.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), 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 accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home page, on the World Wide Web, at

"http://www.ftc.gov/os/actions/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. 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 subject to final approval an agreement containing a proposed Consent Order from Wesley-Jessen Corporation ("Wesley-Jessen") which requires Wesley-Jessen to divest the opaque contact lens business of Pilkington Barnes Hind International, Inc. ("PBH") to a Commission-approved purchaser by January 24, 1997, four (4) months from the date the agreement was signed. PBH's Opaque Lens Business includes an exclusive license under PBH's patents and a non-exclusive license under other patents owned by Wesley-Jessen relating to the manufacture and sale of opaque lenses in the United States. Further, Wesley-Jessen has agreed to enter into a contract manufacturing supply agreement which requires Wesley-Jessen to supply the acquirer with PBH's opaque lenses while the acquirer obtains its own FDA approvals.

Opaque contact lenses are lenses that completely change the color of the wearer's eyes, e.g., wearing opaque lenses, a brown-eyed person can appear blue-eyed. Wesley-Jessen and PBH dominate the opaque lens market in the United States, accounting for over 90% of all opaque lens sales. Wesley-Jessen, in acquiring PBH, is buying its main rival in the opaque contact lens market. The possibility of new entry in response to a post-merger price increase is very remote because of barriers presented by broad industry patents governing the design and manufacture of opaque lenses. The proposed complaint alleges that the acquisition, if consummated, would result in higher prices, lower quality and less innovation in the opaque contact lens market.

On March 27, 1996, Wesley-Jessen and PBH signed a Letter of Intent whereby Wesley-Jessen would acquire 100 percent of the voting securities of PBH, voting securities of certain foreign issuers controlled by PBH and certain assets located outside the United States for approximately \$80 million. The proposed complaint alleges that the proposed acquisition would violate

Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the market for the sale of opaque contact lenses in the United States.

The proposed Consent Order preserves competition in the opaque contact lens market while allowing Wesley-Jessen to increase production and sales volumes in its broader conventional contact lens business. The proposed Order would remedy the alleged violation in the opaque contact lens market by ensuring that an acquirer of the PBH Opaque Lens Business would be in the same competitive position that PBH is in today as a manufacturer and seller of opaque contact lens in the United States. The Order requires that the acquirer secure the requisite FDA approvals to begin its own production of opaque contact lenses within eighteen months from Commission approval of the acquirer.

Additionally, the proposed Consent Order provides that within three (3) months of the date the Order is signed, the Commission may appoint a trustee to monitor Wesley-Jessen's and the acquirer's performance of their respective responsibilities. In the event that Wesley-Jessen has not divested the PBH Opaque Lens Business within four (4) months to an acquirer approved by the Commission, the Commission may direct the trustee described earlier in this paragraph to divest PBH's Opaque Lens Business.

Also, the Consent Order prohibits Wesley-Jessen, for a period of ten (10) years, from acquiring any interest in any entity engaged in the development, manufacture and sale of opaque contact lenses in the United States without prior notice to the Commission.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by 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 proposed 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 proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 96-25739 Filed 10-7-96; 8:45 am]

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