

Answered 03/28/89

[REDACTED]

Advised that this is a reportable transaction -

[REDACTED]

March 27, 1989

acquisition of an entire business or division is not within "ordinary course of business"

"course of business"

(JFK)

Jeffrey Kaplan, Esq.  
Federal Trade Commission  
Washington, D.C.

Re: Proposed Acquisition by [REDACTED] of Fixtures and Inventory from [REDACTED]

Dear Mr. Kaplan:

This will confirm the request made to you by telephone this

related to you on the telephone are as follows:

[REDACTED] line of business is the operation of [REDACTED] departments in discount department stores. That is to say, it operates [REDACTED] departments for such department stores as [REDACTED]. The public does not know it is dealing

and the department store is one of [REDACTED] largest licensors is [REDACTED]

[REDACTED] recently acquired all of the stores in the [REDACTED]. Historically, [REDACTED] had operated its own retail [REDACTED] departments and did not utilize licensees such as [REDACTED]. [REDACTED] wants to continue utilizing the services of a licensee in connection with its recently-acquired [REDACTED] stores and proposes to expand its License Agreement with [REDACTED] to cover those [REDACTED] stores. In connection with expanding the license, [REDACTED] would transfer to [REDACTED] the fixtures in each of the [REDACTED] stores, as well as the [REDACTED] inventory in each of those stores. It is contemplated that [REDACTED] would pay [REDACTED]

[REDACTED]

Jeffrey Kaplan, Esq.  
March 27, 1989  
Page 2

approximately \$7 Million for the fixtures and approximately \$55 Million for the inventory.

We believe that the purchase of the inventory qualifies for the "acquisition of goods...in the ordinary course of business" exemption found at Sec. 7A(c)(1) of the Hart-Scott-Rodino statute. This is merely an extension of the current business relationship between [REDACTED] and is viewed by both parties as a continuation of their normal, ongoing business relationship. Furthermore, inasmuch as it is [REDACTED] practice

[REDACTED] inventory which it acquired with the [REDACTED] stores to [REDACTED] Under the expanded License Agreements, [REDACTED] will be buying and selling the inventory in the [REDACTED] departments on an on-going basis as licensee, and the purchase of the inventory (as well as the assumption of existing [REDACTED] purchase orders for the acquisition of new inventory) is, effectively, nothing more than a transitional step.

We believe that our position on "normal course" is

supported by Interpretation No. 14 which is contained in the purchase of goods as "exempt" as a transfer of goods in the "ordinary course of business." There, as here, both the purchaser and the seller regularly deal in the type of inventory in question in the ordinary course of their respective businesses. Although the commentary to Interpretation 14 indicates that the ABA expressed "doubts" about the availability of the exemption.

seller. Accordingly, we conclude that the availability of the exemption is more appropriate in the [REDACTED] situation.

We would appreciate it if you could advise us as soon as possible as to your views of this issue. Thank you very much for your cooperation.

[REDACTED]

[REDACTED]