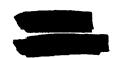
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July 16, 1993

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VIA TELECOPIER - (202) 326-2050

CONFIDENTIAL

John M. Sipple, Jr., Esq.
Chief, Premerger Notification Office
Bureau of Competition
Federal Trade Commission

At your request, I am writing this letter to describe the transaction that we discussed by telephone today. The transaction summarized below involves my client ("X") and

by selected manufacturers, and they are sold bearing various

X has entered into a purchase contract with Y, pursuant

property. After the closing, to the extent that retailers return products previously sold to them by X, X will settle with the retailers, and Y will purchase the products from X.

The purchase contract provides that at closing X and Y will enter into a Trademark License Agreement and a Distribution Agreement (collectively, the "Agreements"). The Agreements pertain to products of the kind purchased from X's inventory and to one other type of product (collectively, the "Products"). Pursuant to the Agreements, Y will be entitled



John M. Sinnle Ir Fan

(1) to procure Products from manufacturers approved by X and (2) to apply X's trademarks to the Products on an exclusive basis and to apply to the Products on a nonexclusive basis those marks germonth Hacasad by V on a non-chaire basis. During the term

of the Amanuate V must am V a distribution for set at a

year, and will increase again it an annual sales threshold is exceeded. The term of the Agreements is five years. If cumulative fees during the five-year term exceed a specified amount, the Agreements will automatically renew for one additional five-year term.

The fee level that triggers the right of renewal was calculated on the basis of X's historical sales, plus a growth factor. However, X is retaining all rights to a segment of its product line that represented roughly one-third of its sales in the most recent year, while giving Y the right to affix the trademarks to one additional Product category that X has not heretofore sold. Hence, in order to qualify for the renewal term, Y will have to cultivate substantial sales of the new Product or significantly expand sales volume in existing Products.

I would very much appreciate any guidance that the Premerger Notification

If question (1) is answered affirmatively, is the asset acquisition under (2) the Agreements limited to the exclusive trademark license, without reference to the

in the acquisition price or the fair market value)?

If this assumption is correct and/or if question (1) was answered affirmatively, can the acquisition price be a "determined" one within the meaning of 16 C.F.R. § 801.10(b)?

John M. Sipple, Jr., Esq. July 16, 1993 Page 3

Whether or not the acquisition price is determinable, Y must determine the fair market value of the assets to be acquired. Interpretation #116 in the Premerger Notification Practice Manual suggests that the most appropriate formulation

account for the fact that the heelise may terminate in five years? In other words, how can the assumption of an all-cash purchase be reconciled with a contingency that itself hinges on the amount of contingent payments made in the first five years?

Please feel free to respond by telephoning me at the above-listed number. Because X and Y are anxious to complete the transaction as soon as practicable, I would greatly appreciate your early attention to this matter. Thank you very much for your consideration.

大学のない ころり 発見しているできるという 7/21/93 The writer was advised that the PMN Office's response to question is afternative. In severe to question (2) the grant of a non-evenine tablements because med not be included in the argunition of an assot" (See ABA litter # 49). (Honever, of setter exiting the business (while does not argues to be the case here) such purchase would must be included in the saye of transaction text.) In response to question (3), the selfer ameans to have records of inventory returned from retailers. Just resort must be used by purchaser to generate a "good last estimate of good closing menting which will be bought by purchaser. This estimated dollar suggest must be included in the acquisition price since it is part of the quadrate

However, the second five year general arream too repealative at the total of the the burger need not attempt to arrigin a walke to the total of the surrounds and the extremely and the extremely and the extremely and the marker. It the first 5- year term excell ISMM, then at they need be made. It the first 5- year term excell ISMM, then at they need be made.

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