

801.1 (c) (4); 7A (a) (2) (A) and (C)

[REDACTED]

March 24, 1994

Not to the
of Section
restriction
3 31
GENERAL TRADE
COMMISSION
OFFICE

Emergent and Notification Office
Room 303

of the
under the
Act.

RE: Necessity of Hart-Scott-Rodino Filing on Behalf of [REDACTED]

Dear Mr. Smith:

Pursuant to our conversation on March 22, 1994, regarding the necessity of our client, [REDACTED], filing the requisite notification under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. §18a; "Hart-Scott-Rodino"), we submit, on behalf of the Company, this letter describing the proposed transaction and our interpretation of Hart-Scott-Rodino and request your office's comment.

I. Background

The Company is a specialty retailer primarily engaged in the retailing and

distributes high quality [REDACTED]

Unable to resolve its financial problems resulting from its debt leverage, a

wholly-owned subsidiaries filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §101 et. seq., on [REDACTED]. On [REDACTED] the Company, along with the other debtors, filed a Fourth Amended Joint Plan of Reorganization with the Bankruptcy Court (the "Reorganization Plan"). The Reorganization Plan was confirmed by the Bankruptcy Court on [REDACTED] and became effective on [REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED] of the Reorganization Plan approximately \$ [REDACTED] Million of [REDACTED] Lenders, remained secured by substantially all of the Company's real estate.

The Company, and its subsidiaries, meets both the annual net sales and total assets limits under Hart-Scott-Rodino.

II. General Description of the Proposed Transaction

[REDACTED] The Company intends to form a Trust in which substantially all of the [REDACTED] approximately [REDACTED] Million of debt currently owed by the Company to the [REDACTED] Lenders will also be transferred to the Trust. The beneficiaries of the Trust will be the Company and some of its subsidiaries.

[REDACTED] manner as it determines in its sole and absolute discretion without the consent from the Company.

The residual of the Trust, if any, after full payment of the assumed debt and [REDACTED] will be distributed 80% to the Company and 20% [REDACTED]

III. Interpretation Under Hart-Scott-Rodino

In our view the filing of a notification under Hart-Scott-Rodino is not required for the above-described transaction for each of the following reasons:

A. Prior to the proposed transaction the Trust as the "acquiring person" will have no assets or annual net sales, the transaction therefore fails to satisfy any of the [REDACTED]

[REDACTED]

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required tests of §18a(a)(2), each of which require minimum annual net sales or total assets of the "acquiring person".

B Since the Company and some of its wholly owned subsidiaries retain

C Since the Company and some of its wholly owned subsidiaries retain

"acquiring person". Based on this reasoning, we feel that Hart-Scott-Rodino is never triggered.

We would appreciate your prompt response to this letter. We understand that your conclusions are to be deemed binding.

do not hesitate to contact me.

Very truly yours,

[REDACTED SIGNATURE]

3/30/94 - ~~Since~~ The Company has named itself and some of its subsidiaries as the