

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

APR 15 2003

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

UNITED STATES OF AMERICA,
Department of Justice
Antitrust Division
1401 H Street, NW, Suite 4000
Washington, DC 20530,

Plaintiff,

v.

Civil Action No.: 03 C 2528

Filed: April 15, 2003

Judge: John A. Nordberg

UPM-KYMMENE, OYJ,
Etelaasplanadi 2, PL 380
FIN-00101
Helsinki, Finland

RAFLATAC, INC.
235 Cane Creek Road
Fletcher, North Carolina 28732

BEMIS COMPANY, INC.
222 South Ninth Street, Suite 2300
Minneapolis, Minnesota 55402

and

MORGAN ADHESIVES COMPANY
4560 Darrow Road
Stow, Ohio 44224

Defendants.

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MOTION OF THE UNITED STATES
FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

Comes now the plaintiff, the United States of America, pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and Rule 65 of the Federal Rules of Civil Procedure, and hereby

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respectfully moves the Court for the entry of a Temporary Restraining Order and a Preliminary Injunction enjoining the defendants and all persons acting on their behalf from consummating or taking any action to proceed with or carry out the proposed acquisition described in the Verified Complaint, or from implementing any other plan or agreement by which UPM-KYMMENE, OYJ ("UPM"), or any part thereof, would be combined with MORGAN ADHESIVES COMPANY ("MACtac") pending entry by the Court of the Court of a final judgment in this action.

This motion is based on the following grounds:

(1) The United States has filed a Verified Complaint alleging that the proposed acquisition would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Verified Complaint, the affidavits and memorandum accompanying this motion, and the evidence that plaintiff will present at a temporary restraining order and/or preliminary injunction hearing will establish a reasonable probability that the proposed transaction may substantially lessen competition, in violation of Section 7 of the Clayton Act.

(2) Unless restrained and enjoined by this Court, UPM and MACtac plan to proceed with the proposed acquisition. Subject to a timing agreement entered into with the United States, UPM and MACtac can proceed with the proposed acquisition after forty-eight (48) hours advance notice to this Court, and thus before this Court can enter a final judgment.

(3) Pursuant to Rule 65 of the Federal Rules of Civil Procedure, undersigned counsel for the plaintiff respectfully certifies to the Court that on April 14, 2003, plaintiff provided defendants' counsel with notice by letter of its intention to seek a temporary restraining order in this matter. Defendants' counsel are being provided with copies of the Verified Complaint, the Interim Protective Order, this Motion, the Memorandum of United States in Support of the

Motion for Temporary Restraining Order and Preliminary Injunction, the proposed Temporary Restraining Order and the proposed Order for a Preliminary Injunction. Defendants have refused to stipulate to a temporary restraining order.

(4) A temporary restraining order is necessary to preserve the *status quo*, to prevent the irreparable injury to the public that would result from this acquisition, and to allow the Court to render effective relief if the plaintiff prevails at trial. Plaintiffs would have no adequate remedy at law, and this Court's ability to fashion effective relief would be significantly impaired if the proposed acquisition proceeds but is found, after trial, to be unlawful.

(5) A preliminary injunction is necessary to restrain the defendants from proceeding with their allegedly illegal transaction pending final determination of the merits in this case.

(6) Any harm to defendants from temporarily restraining or otherwise enjoining the proposed transaction would be outweighed by the anticompetitive effects of the acquisition.

(7) Granting the requested preliminary relief will serve the public interest.

(8) Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, and Rule 65 of the Federal Rules of Civil Procedure authorize this Court in its discretion to issue such temporary restraining order and preliminary injunction as shall be deemed just in the circumstances.

This Motion is supported by the attached Memorandum of the United States in Support of Motion for Temporary Restraining Order and Preliminary Injunction, and by the affidavits and documentary materials filed in support thereof. A proposed Temporary Restraining Order and proposed Preliminary Injunction Order are being filed with this motion.

WHEREFORE, the United States respectfully prays that the defendants be temporarily restrained and preliminarily enjoined from entering into or carrying any agreement or arrangement by which UPM will acquire all or part of the assets or securities of MACtac pending

final adjudication of the merits of the Verified Complaint.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:



Patrick J. Fitzgerald
United States Attorney
Northern District of Illinois
by Linda Wawzenski
Assistant United States Attorney



Claude Scott
Weeun Wang
Steven Kramer
Karl D. Knutsen
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Department of Justice
Antitrust Division
Litigation I Section
1401 H Street, NW, Suite 4000
Washington, D.C. 20530
(202) 307-3952

Dated: April 15, 2003

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
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TEMPORARY RESTRAINING ORDER

On April 15, 2003, the United States of America filed the above-captioned case alleging that the proposed joint venture between UPM-KYMMENE, OYJ ("UPM") and Morgan Adhesives Company ("MACTac") would violate Section 7 of the Clayton Act, as amended, 15

U.S.C. § 18.

This Temporary Restraining Order is entered on behalf of the plaintiff United States based on the plaintiff's Verified Complaint alleging imminent violation by the defendants of § 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and the Memorandum of United States in Support of Motion for a Temporary Restraining Order and a Preliminary Injunction with related exhibits and declarations filed in support thereof.

This Court has authority under § 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to issue such temporary restraining orders pending a hearing and determination on the motion of the United States for a preliminary injunction.

It appears to this Court that the defendants intend to consummate an agreement as alleged in the plaintiff's Verified Complaint, by which UPM would acquire MACtac. The acquisition may have anticompetitive effects which harm the public more than any private harms to the parties from enjoining the transaction. It appears to the Court that the plaintiff is substantially likely to prevail at trial in demonstrating that the acquisition will violate § 7 of the Clayton Act, as amended, 15 U.S.C. § 18. Defendants will consummate the transaction, unless restrained by order of this Court, before a hearing can be held on the motion of the United States for a preliminary injunction or a trial on the merits of the plaintiff's Verified Complaint could be held and a decision rendered.

It further appears to this Court that enjoining this transaction pending resolution of the United States for a preliminary injunction will maintain the *status quo* and prevent the injury to the public that may occur if the defendants consummate the proposed transaction.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

Pending final adjudication of the merits of this case or further order of the Court, the

plaintiff's motion for a temporary restraining order is granted, and defendants UPM and MACtac and all persons acting on their behalf, are hereby enjoined and restrained from taking any action, directly or indirectly, in furtherance of the Stock Purchase Agreement or any other plan or agreement by which UPM will acquire MACtac, any of its capital stock, or any of its assets, or the effect of which would be to combine the businesses or assets of the defendants.

IT IS FURTHER ORDERED that this Order shall expire 10 days after entry thereof or on the dates of any extension of the expiration date granted by the Court.

IT IS FURTHER ORDERED that the motion of the United States for a preliminary injunction shall be heard on _____, 2003, in Room _____ of the United States Courthouse, Chicago, Illinois, at _____.

Dated: April __, 2003

UNITED STATES DISTRICT COURT JUDGE

Parties Entitled to Notice of Entry of Order:

Counsel for UPM and Raflatac

c/o Elaine Johnston, Esq.
Martin Toto, Esq.
White & Case LLP
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Counsel for Bemis and Morgan Adhesives Company

c/o John D. French, Esq.
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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Judge: John A. Nordberg

ORDER FOR A PRELIMINARY INJUNCTION

This cause came to be heard on plaintiff's Verified Complaint and Motion for a Temporary Restraining Order and a Preliminary Injunction, its supporting Memorandum, declarations and exhibits, and on defendants' response thereto.

The Court, having considered the evidence, memoranda, and arguments presented by both plaintiff and defendants, concludes that defendants UPM-KYMMENE, OYJ ("UPM") and MORGAN ADHESIVES COMPANY ("MACtac") intend to consummate a Stock Purchase Agreement as alleged in plaintiff's Verified Complaint, by which UPM would acquire MACtac before a trial on the merits of plaintiff's Verified Complaint may be held and a decision rendered. It appears to the Court that plaintiff is substantially likely to prevail at trial on the issue that the acquisition will violate § 7 of the Clayton Act, 15 U.S.C. § 18. It also appears that consummation of the acquisition may result in irreparable public harm that in this case is not outweighed by any private harm and may severely limit or frustrate the effectiveness of any relief that this Court may render after trial.

This Court has authority under § 15 of the Clayton Act, 15 U.S.C. § 25, and Rule 65 of the Federal Rules of Civil Procedure to issue such preliminary injunctions as may be deemed just.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

Pending final adjudication of the merits of this case or further order of the Court, the plaintiff's motion for a preliminary injunction is granted, and defendants UPM and MACtac and all persons acting on their behalf, are hereby enjoined and restrained from taking any action, directly or indirectly, in furtherance of the Stock Purchase Agreement or any other plan or agreement by which UPM will acquire MACtac, any of its capital stock, or any of its assets, or the effect of which would be to combine the businesses or assets of the defendants.

Dated: April __, 2003

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that copies of the Motion of the United States for Temporary Restraining Order and Preliminary Injunction, proposed Order for a Preliminary Injunction, proposed Temporary Restraining Order, Memorandum of the United States in Support of Its Motion for Temporary Restraining Order and Preliminary Injunction, and the exhibits to the aforementioned memorandum were served by:

Hand Delivery:

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April 15, 2003


