

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580,

Plaintiff,

v.

LIBBEY, INC.,  
300 Madison Avenue  
Toledo, Ohio 43699-0060

and

NEWELL RUBBERMAID, INC.,  
29 East Stephenson Street  
Freeport, Illinois 61032

Defendants.

)  
) CASE NUMBER 1:02CV00060

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) JUDGE: Reggie B. Walton

)  
) DECK TYPE: Antitrust

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) DATE STAMP: 01/14/2002

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)  
) COMPLAINT FOR  
) PRELIMINARY INJUNCTION  
) PURSUANT TO SECTION 13(b)  
) OF THE FEDERAL TRADE  
) COMMISSION ACT

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Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), by its designated attorneys, for its complaint herein, petitions the Court, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), for a preliminary injunction enjoining defendant Libbey, Inc. ("Libbey"), including its domestic and foreign agents, divisions, parents, subsidiaries, affiliates, partnerships, and joint ventures, from acquiring, through a merger or otherwise, any stock, assets, or other interest, either directly or indirectly, of Anchor Hocking Corporation ("Anchor") from defendant Newell Rubbermaid, Inc. ("Newell Rubbermaid"), or their domestic and foreign agents, divisions, parents, subsidiaries, affiliates, partnerships, or joint ventures; thereby maintaining the status quo during the pendency of an administrative proceeding, challenging defendant Libbey's proposed

acquisition of the soda-lime glassware businesses of Anchor and Newell Rubbermaid, that will be commenced by the Commission pursuant to Section 5 of the FTC Act, 15 U.S.C. § 45, and Sections 7 and 11 of the Clayton Act, 15 U.S.C. §§ 18 and 21; and alleges:

#### Jurisdiction and Venue

1. Jurisdiction is based on Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and 28 U.S.C. §§ 1337 and 1345. Venue is proper under Section 13(b) of the FTC Act; 28 U.S.C. § 1391(b) and (c); and Section 12 of the Clayton Act, 15 U.S.C. § 22.

#### The Parties

2. The Commission is an administrative agency of the United States Government established, organized, and existing pursuant to the Federal Trade Commission Act, 15 U.S.C. § 41, *et seq.*, with its principal offices at 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The Commission is vested with authority and responsibility for enforcing, *inter alia*, Section 7 of the Clayton Act and Section 5 of the FTC Act.

3. Defendant Libbey, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 300 Madison Avenue, Toledo, Ohio 43699-0060.

4. Defendant Newell Rubbermaid, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 29 East Stephenson Street, Freeport, Illinois 61032. Anchor is an indirect, wholly-owned subsidiary of Newell Rubbermaid.

5. Defendants are each engaged in commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

Section 13(b) of the FTC Act

6. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), provides in pertinent part:

(b) Whenever the Commission has reason to believe --

(1) that any person, partnership or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public --

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond . . . .

The Proposed Acquisition and the Commission's Response

7. Pursuant to a Stock Purchase Agreement dated June 17, 2001, Libbey proposes to acquire all the assets of Anchor from Newell Rubbermaid (the "acquisition").

8. On December 18, 2001, the Commission authorized the commencement of an action under Section 13(b) of the FTC Act to seek a preliminary injunction barring the acquisition during the pendency of administrative proceedings.

9. The acquiring entity, Libbey, has assured the Commission that it will not consummate the acquisition until the Court has ruled on Plaintiff's motion for a preliminary injunction, except on 10-days prior notice to the Commission.

10. In authorizing the commencement of this action, the Commission determined that such an injunction is in the public interest and that it has reason to believe that the

acquisition would violate Section 7 of the Clayton Act and Section 5 of the FTC Act because the acquisition may substantially lessen competition and/or tend to create a monopoly in the relevant market, *i.e.*, soda-lime glassware sold to the food service industry in the U.S.

The Acquisition Would Substantially Lessen Competition

11. Libbey is the largest maker and seller of food service glassware in the U.S., with substantially more than half of the sales. Libbey produces and sells food service glassware, a line of products that includes many different styles of tumblers and stemware for beverages, and other glassware products ranging from serving platters to candle holders. Libbey produces and sells glassware, among other segments, to food service customers, including distributors who resell soda-lime glassware to restaurants, hotels and other food service establishments.

12. Libbey has engaged in conduct to exclude competitors who threaten Libbey's position as the largest maker and seller of food service glassware, including Anchor. Libbey has threatened to penalize food service distributors with the loss of significant rebates for selling glassware produced by rival manufacturers, including Anchor, that have the same appearance as Libbey's food service glassware. Libbey has also commenced litigation against another firm that produces glassware that appears identical to Libbey's food service glassware in an attempt to prevent the competitor from entering the U.S. food service glassware market.

13. Anchor is the third largest maker and seller of food service glassware in the U.S.

14. Libbey and Anchor are direct and actual competitors in the manufacture and sale of food service glassware. They compete with each other on price by, among other things, offering discounts and other promotions on the sale of their food service glassware. Anchor prices and discounts its food service glassware in response to Libbey's pricing, and in order to take sales from Libbey. Anchor has succeeded in taking food service glassware sales from Libbey by offering lower prices to food service customers and distributors.

15. The acquisition would combine the largest and third largest manufacturers and sellers of food service glassware in the U.S., substantially increasing concentration in the food service glassware market, would result in a highly concentrated market, would eliminate the existing substantial competition between Libbey and Anchor, and would substantially reduce competition and tend to create a monopoly in the market for food service glassware in the U.S.

Likelihood of Success on the Merits and Need for Relief

16. The Commission is likely ultimately to succeed in demonstrating, in administrative proceedings to adjudicate the legality of the acquisition, that the acquisition would violate Section 7 of the Clayton Act and Section 5 of the FTC Act. In particular, the Commission is likely ultimately to succeed in demonstrating, *inter alia*, that:

- a. The relevant product market in which the competitive effects of the proposed merger may be assessed is food service glassware.
- b. The relevant geographic market within which to assess the competitive effects of the proposed merger is the United States. Only those firms that have made

the substantial investments to manufacture and sell food service glassware are current or likely future competitors in the relevant market.

c. The effect of the acquisition, if consummated, may be substantially to lessen competition and tend to create a monopoly in the relevant market by, among other things, eliminating an effective competitor, and eliminating or reducing substantial actual competition between Libbey and Anchor, thereby increasing the likelihood of anticompetitive activity in the relevant market once this acquisition is consummated.

17. The reestablishment of Anchor as an independent viable competitor in the relevant market if the acquisition were consummated would be difficult, and there is a substantial likelihood that it would be difficult or impossible to restore Anchor's business as it originally existed. Furthermore, it is likely that substantial interim harm to competition would occur even if suitable divestiture remedies could be devised.

18. For the reasons stated above, the granting of the injunctive relief sought is in the public interest.

WHEREFORE, the Commission requests that the Court:

1. Preliminarily enjoin defendant Libbey, and all its affiliates, from taking any further steps to consummate, directly or indirectly, the Acquisition of assets of Anchor from defendant Newell Rubbermaid, or any other acquisition of stock, assets, or other interest, either directly or indirectly, of Anchor;

2. Maintain the status quo pending the issuance of an administrative complaint by the Commission challenging such acquisition, and until such complaint is dismissed by the

Commission or set aside by a court on review, or until the order of the Commission made thereon has become final; and

3. Award such other and further relief as the Court may determine to be proper and just, including costs.

January 14, 2002

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