

Syllabus

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APPENDIX D

State and City	Acquired Company	Year of acq.	No. of stores acq.	Sales of acquired stores in 12 mos. prior to acquisition	Acquired sales as est. % of food store sales*	National's % of city market	
						1954	1958
<i>MINNESOTA</i>							
Minneapolis	Gamble-Skogmo	1951	2	\$ 854,068	0.54	19.2	13.1
Grand Rapids	"	1951	1	271,568	7.13	31.8	17.3
International Falls	"	1951	1	149,477	4.88	41.5	64.1
<i>NORTH DAKOTA</i>							
Grafton	"	1951	1	173,747	10.23	22.3	11.7
<i>SOUTH DAKOTA</i>							
Aberdeen	"	1951	1	453,941	6.75	21.3	12.9
<i>MINNESOTA</i>							
Duluth	Piggly-Wiggly	1952	6	2,927,000	9.25	17.9	15.3
<i>MICHIGAN</i>							
Detroit	H. A. Smith	1955	1	n.a.	n.a.	1.7	2.8
Mt. Clemens	"	1955	1	n.a.	n.a.	12.4	8.5
<i>MINNESOTA</i>							
Worthington	Tolerton	1957	1	298,743	8.28	8.1	16.5
<i>SOUTH DAKOTA</i>							
Brookings	"	1957	1	548,667	20.07	23.1	29.4
Madison	"	1957	1	266,503	10.29	8.3	14.0
Mitchell	"	1957	1	412,579	11.41	5.4	10.8
Watertown	"	1957	1	482,503	8.24	16.4	15.3
<i>ILLINOIS</i>							
Chicago	Del Farm	1958	12	18,377,687	1.64	9.6	11.1
<i>MICHIGAN</i>							
Kalamazoo	Kalamazoo Mkt.	1958	3	2,158,000	5.65	7.2	9.9
<i>INDIANA</i>							
Indianapolis	Guidone	1958	1	5,200,000	2.98	20.6	20.8
<i>IOWA</i>							
Fort Dodge	Slim's	1958	1	891,023	8.29	10.6	7.5

SOURCE: CX 395-397, 479.

*See note, Appendix B.

IN THE MATTER OF
GENERAL FOODS CORPORATION

ORDER, OPINIONS, ETC., IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 7 OF THE CLAYTON ACT

Docket 8600. Complaint, September 30, 1963—Decision, March 11, 1966

Order requiring General Foods Corporation, one of the Nation's largest manufacturers of packaged grocery products with headquarters in White Plains, N.Y., to divest itself within one year of all assets and properties of the S.O.S. Company of Chicago, Ill., the dominant manufacturer and distributor of household steel wool, to a purchaser not connected in any way with the respondent or any of its affiliates or subsidiaries.

COMPLAINT

The Federal Trade Commission has reason to believe that the above-named respondent has acquired the assets of another corporation in violation of Section 7 of the amended Clayton Act (15 U.S.C. Section 18); and, therefore, pursuant to Section 11 of said Act, the Commission issues this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. (a) Respondent, General Foods Corporation, is a corporation organized and existing under the laws of the State of Delaware, with its principal offices located at 250 North Street, White Plains, New York.

(b) Respondent, directly and through its various completely owned subsidiaries, is now and had been for many years prior to December 31, 1957, engaged principally in the manufacture or processing, sale and distribution of packaged grocery products, which are sold by respondent under numerous advertised brand names to retail and wholesale grocery and food outlets, particularly supermarkets.

(c) In the course and conduct of its business, respondent is now and was prior to December 31, 1957, engaged in commerce (as commerce is defined in the Clayton Act, as amended), selling, delivering and shipping its numerous products from its plants and other facilities located in various States of the United States to food stores, supermarkets, restaurants, institutions, and other purchasers located in States other than the State in which such sales and shipments originated.

PAR. 2. (a) Prior to December 31, 1957, The S.O.S. Company (S.O.S.) was a corporation organized on November 9, 1927, doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 7125 West 65th Street, Chicago, Illinois.

(b) S.O.S. was engaged in the manufacture, distribution and sale of household steel wool (the line of commerce involved herein). Said product was sold nationally under the name "S.O.S." for use primarily as a household scouring and cleansing aid. "S.O.S." household steel wool is a high volume, rapid turnover packaged grocery product. S.O.S. also manufactured and sold household steel wool for resale by other companies under their own private label. In addition, S.O.S. produced and sold a small amount of steel wool for commercial use.

(c) In the course and conduct, of its business, S.O.S. was en-

gaged on or about December 31, 1957, and for many years prior thereto, in commerce (as commerce is defined in the Clayton Act, as amended), having sold and delivered or shipped household steel wool from its plants and facilities located in the State of Illinois to food stores, supermarkets, and other purchasers located in States other than the State of Illinois.

(d) On or about December 31, 1957, in exchange for 349,410 shares of its common stock, valued at approximately \$17,500,000, respondent acquired all of the assets of The S.O.S. Company, including its wholly owned subsidiary, Tuffy of Canada, Limited. As of July 31, 1957, the book value of the assets of S.O.S. amounted to approximately \$6,000,000.

Pursuant to the acquisition agreement, respondent acquired the exclusive right to the trademark "S.O.S." Following the acquisition, The S.O.S. Company was dissolved and the production and distribution of "S.O.S." household steel wool has been continued through a newly formed division of respondent.

PAR. 3. Respondent is one of the leading packaged grocery products manufacturers in the United States. Directly and through its completely owned subsidiaries, respondent maintains and operates more than 30 plants for the manufacture, processing and distribution of its products in the United States. In addition, respondent engages in foreign manufacturing and marketing of packaged grocery products similar to those manufactured and marketed in the United States.

PAR. 4. During the fiscal year ending March 31, 1957, the last complete fiscal year prior to the acquisition challenged in this complaint, respondent's net sales were \$985,953,000. As of said date, respondent had total assets of \$410,000,000. By the year ending March 31, 1962, respondent's net sales had increased to approximately \$1,189,000,000 and its total assets to approximately \$602,000,000.

In the ten year period from 1953 to 1962, respondent increased its net sales, net earnings and net assets approximately as follows:

	1953	1962
Net Sales	\$701,055,000	\$1,189,483,000
Net Earnings	24,807,000	72,244,000
Net Assets	200,031,000	418,755,000

PAR. 5. A large number of respondent's present products were acquired through the acquisition by respondent of the assets or stock of existing producers of such products. Between the date of

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its incorporation and March 31, 1962, respondent made about 69 such acquisitions including that of the S.O.S. Company.

PAR. 6. Respondent manufactures and sells a broad line of packaged grocery products. Based on the 1954 Census of Manufacturers, respondent accounted for the following percentages of total United States value of shipments in the following product classifications:

A. Over Fifty (50) Percent:

Baking Power (consumer) Powdered beverage bases, desserts (ready-to-mix)

Concentrated coffee (powdered with added carbohydrates)

Coconut

Pectin

Edible Gelatins, (excluding ready-to-mix desserts)

Bluing

B. Twenty-five—Fifty (25-50) Percent:

Frozen beans

Frozen broccoli

Frozen cauliflower

Frozen peas

Other frozen vegetables

Wheat breakfast foods

Desserts (ready-to-mix, cornstarch base)

Other ready-to-mix desserts

Sweetening syrups and molasses

Concentrated coffee (powdered, pure coffee extract)

Other frozen vegetables and prepared foods

C. Ten—twenty-five (10-25) percent of fourteen additional products.

PAR. 7. At the time of its acquisition, and for many years prior thereto, S.O.S. was the largest producer and marketer of household steel wool in the United States, and "S.O.S." household steel wool was a well-known and accepted item in the American home. S.O.S.'s sales of household steel wool were \$14,571,758 in 1957, which represented approximately 51% of all household steel wool sold in the United States.

As of December 31, 1957, in addition to S.O.S. there were only four other producers of household steel wool in the United States. In 1957, the number two producer had sales of \$13,628,606 amounting to approximately 47.6% of the market, the number three producer had sales of \$343,800 amounting to approximately 1.2% of the market, the number four producer had sales of \$63,-

850 amounting to approximately 0.2% of the market, and the fifth producer had sales of \$160 which amounted to less than .05% of the market.

For the year ending December 31, 1957, S.O.S. spent approximately \$2,100,000 in advertising household steel wool. The number two producer of household steel wool was the only other producer that advertised its product to any significant degree. Also, prior to the acquisition of S.O.S., consumer promotions were not used to any significant degree by any producer in the household steel wool industry.

Since the acquisition, respondent has increased materially the amount of advertising devoted to "S.O.S." household steel wool. Additionally, respondent has re-oriented the methods and media used in advertising "S.O.S." household steel wool; particularly through substantially greater use of television, and the commencement of the use of consumer promotions on a large scale.

PAR. 8. By virtue of the acquisition of S.O.S., respondent has entered a market in which it was not a customer, supplier or competitor. In so doing, respondent replaced the dominant factor in the household steel wool industry and immediately became the largest producer and marketer of household steel wool in the United States. Also, respondent, with annual net sales of over one billion dollars, has entered into an industry which at the time of the acquisition, was comprised of five relatively small companies, none of whom had annual sales of over seventeen million dollars.

Additionally, "S.O.S." household steel wool now has the backing of respondent's substantial financial resources, economic power, and demonstrated merchandising expertise and ability to advertise, promote and sell high volume, rapid turnover packaged grocery products. Said acquisition has upset and realigned adversely, and threatens to upset and realign further, the competitive structure of the household steel wool industry. Through its economic power, merchandising prowess and extensive advertising and promotion respondent has increased the "S.O.S." share of the household steel wool market substantially, from approximately 51% at the date of the acquisition to approximately 57% as of December 31, 1961. Thus, to the detriment of competition, respondent has further substantially enhanced the dominant position it acquired as the largest manufacturer and marketer of household steel wool in the United States.

PAR. 9. Respondent is a recognized leader in the merchandising of high volume, rapid turnover, packaged grocery products. The vast majority of respondent's products and "S.O.S." household

steel wool are sold in grocery stores and supermarkets. Consumer acceptance of said products, which is vital in order to obtain critically short and valuable shelf space in retail grocery stores and supermarkets, is obtained largely through extensive advertising and promotion. In 1956, respondent was the sixth largest advertiser of all products in the United States. In 1957, the year prior to said acquisition, respondent spent approximately \$69,000,000 for advertising, including various consumer promotions which respondent utilized successfully in promoting the sale of its packaged grocery products. Subsequent to the acquisition, respondent has employed consumer promotions extensively in promoting the sale of S.O.S. household steel wool.

By 1962, respondent had become the third largest advertiser in the United States, spending approximately \$105,000,000 and utilizing all media to advertise and promote its products. By virtue of these vast expenditures, respondent receives substantial discounts in the placement of its advertising.

As a result of the acquisition, "S.O.S." household steel wool now has the benefit of respondent's ability to acquire valuable and difficult to obtain grocery store shelf space which is to the disadvantage of other household steel wool producers, none of whom possesses the expansive line of packaged grocery products that are so widely advertised, promoted and sold by respondent.

PAR. 10. In the following ways, among others, the effect of respondent's acquisition of S.O.S. has been, or may be, substantially to lessen competition or to tend to create a monopoly in the manufacture, distribution and sale of household steel wool, the relevant line of commerce involved herein, throughout the United States, the relevant geographical market involved herein:

1. Actual and potential competition generally in the production and sale of household steel wool has been or may be substantially lessened.

2. Potential competition in the production and sale of household steel wool has been eliminated by reason of respondent's acquisition of the dominant producer, with whom it would have had to compete had it entered the household steel wool business through internal development rather than through acquisition.

3. The S.O.S. Company has been permanently eliminated as an independent competitive factor in the household steel wool industry.

4. The dominant producer and marketer of household steel wool has been absorbed into and combined with one of the na-

tion's largest producers and marketers of packaged grocery products which is also one of the largest advertisers and merchandisers in the United States.

5. Other household steel wool producers, as well as potential producers, have been, or may be precluded from competing with respondent due to any one, or more, or all of the following factors:

- (a) Respondent's dominant market position;
- (b) Respondent's financial resources and economic power;
- (c) Respondent's advertising ability and experience;
- (d) Respondent's merchandising and promotional ability and experience;
- (e) Respondent's comprehensive line of packaged grocery store products;
- (f) Respondent's ability to command consumer acceptance of its products and of valuable grocery store shelf space;
- (g) Respondent's ability to concentrate on one of its products or on one selected section of the country, the full impact of its advertising, promotional and merchandising experience and ability.

6. Concentration in the production and sale of household steel wool, which was already high, has been, or may be further increased.

7. Respondent has acquired the manufacturing facilities and the dominant market position, which, when combined with its own overwhelming economic power, give it the capacity and ability to monopolize or tend to monopolize the household steel wool market.

8. Competition between and among brokers, wholesalers and retailers of household steel wool has been, or may be, substantially lessened or eliminated.

9. Entry into the household steel wool industry has been or may be discouraged and inhibited.

PAR. 11. The foregoing acquisition, acts and practices of respondent, as hereinbefore alleged and set forth constitute a violation of Section 7 of the Clayton Act (U.S.C., Title 15, Sec. 18) as amended and approved December 29, 1950.

Mr. David J. McKean, Mr. James A. Morgan supporting the complaint.

Covington & Burling, by Mr. Gerhard A. Gesell, Mr. Roberts B. Owen, Mr. Thaddeus Holt, Mr. Franklin J. Okin, Washington, D.C.; Mr. Albert L. Cuff and Mr. Kendall Cole, White Plains, N.Y. for respondent.

