

tion, or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said copy of this order from each such person.

*It is further ordered,* That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

*It is further ordered,* That the respondent herein shall within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

BEATRICE FOODS COMPANY

ORDER AND OPINION OF DISMISSAL, ETC., IN REGARD TO THE ALLEGED  
VIOLATION OF SECTION 7 OF THE CLAYTON ACT

*Docket 8814. Complaint, April 30, 1970—Decision, September 28, 1972.*

Order and opinion dismissing a complaint alleging violation of Section 7 of the Clayton Act by a Chicago, Illinois, dairy company. The Commission concluded that the evidence is insufficient to support a finding that a violation of Section 7 has been shown in the "national market" of institutional dry foods wholesaling.

COMPLAINT

The Federal Trade Commission, having reason to believe that Beatrice Foods Co. has acquired John Sexton & Co., a corporation, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C., Section 18), and/or in violation of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C., Section 45), hereby issues this complaint pursuant to Section 11 of the Clayton Act (15 U.S.C. Section 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C., Section 45(b)), stating its charges in that respect as follows:

I

DEFINITIONS

1. For the purpose of this complaint the following definitions shall apply:

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(a) *Dry Grocery Products* are processed packed foods, including all foods canned in tins or glass or preserved in a dry state, but excluding fresh or frozen products such as fresh or frozen meat, fruit, vegetables, fluid milk and bread.

(b) *Institutions* are organizations preparing and serving, or serving, food for consumption on or off the premises, or meals away from home, including but not limited to restaurants, cafeterias, hotels, schools, colleges, hospitals, nursing homes, industrial feeding concerns, automatic merchandising concerns, clubs, and air lines.

(c) *Wholesalers of Dry Grocery Products* are merchant middlemen who buy various dry grocery products from food processors, producers and manufacturers and sell such products to retail food and grocery stores.

(d) *Institutional Dry Grocery Wholesalers* are merchant middlemen who purchase various dry grocery products from food processors, producers and manufacturers and sell such products to institutions.

## II

## RESPONDENT

2. Beatrice Foods Company (Beatrice), a respondent herein, is a corporation organized and existing under the laws of the State of Delaware, with its office and principal place of business at 120 South LaSalle Street, Chicago, Illinois.

3. Beatrice was founded in 1897 in Beatrice, Nebraska. Beatrice is engaged in the business of producing, processing and/or distributing dairy, grocery and confectionery products, among others, and the operation of refrigerated warehouses. During its fiscal year ending February 29, 1968, about 45 percent of Beatrice's net sales were derived from sales of dairy products, about 37 percent from grocery and confectionery products and about 10 percent represented rentals from its public refrigerated warehouses. Prior to December 20, 1968, Beatrice sold dry grocery products to John Sexton & Co. and it also sold and is now selling such products to other institutional grocery wholesalers, some of whom competed with John Sexton & Co. and compete now with Beatrice. Beatrice also sells other products to institutional wholesalers and directly to institutions.

4. During its fiscal year ending February 29, 1968—

(a) Beatrice's net sales totaled \$1,052,431,480, exceeding one billion dollars for the first time. In conducting its business, Beatrice has over 23,000 employees, markets over 5,000 products, and operates about 500 plants and branches.

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(b) Beatrice was the 46th largest national advertiser. Among its better known trade names and products are the following:

*Dairy Division:*

"Meadowgold" milk and frozen deserts

"Louis Sherry" ice cream  
"Dannon" yogurt

*Grocery Division:*

"Bonds" pickles and relishes

"La Choy" chinese foods

"Ma Brown" pickles and relishes

"Temple" chinese foods

"L&S" pickles and relishes

"Gebhardt's" Mexican foods

"Rainbo" pickles and relishes

"Rosarita" Mexican foods

"American" pickles and relishes

"Shedd's" margarine and salad dressing

"Ma Brown" jellies and preserves

"Lambrecht" frozen foods

"L&S" jellies and preserves

"G-W" pizza pies

"Ruby Bee" jellies and preserves

"Lambrecht" pizza pies

"Mario's" olives

"Burney Bros." baked foods

"Fisher's" nut products

"Aunt Nellie's" glass packed vegetables and fruit drinks

"Adams" snack foods

"Lady Betty" glass packed vegetables and fruit drinks

"Rudolph's" snack foods

"Pepis" snack foods

"Time-4" snack foods

"Treat" snack foods

"Pik-Nic" snack foods

"Kobey's" snack foods

"Liberty" maraschino cherries and glazed fruits

"Sugarine" artificial sweetener

"Miracle White" laundry products

*Confectionary Division:*

"Clark" candy bars

"Holloway" milk duds and caramels

"Richardson" mints

"Jolly Rancher" candy bars

(c) Substantially all of Beatrice's non-dairy business, and most of its dairy business, is the result of acquisitions made over a period of time. Since January 1, 1960, Beatrice has acquired among others the following non-dairy firms:

1960	1962
M. J. Holloway & Co.	Fisher Nut Co.
Gebhardt Chili Powder Co.	Cal-Compack Foods, Inc.
Mitchell Syrup & Preserve Co.	1963
Grand Trunk Warehouse & Cold Storage Co.	G-W Food Products Corp.
1961	Burney Bros., Inc.
Adams Corp.	Deppe-Vienna Baking Co.
Pik-Nik Company	1964
Rosarita Mexican Foods Co.	Southland Pecans
Liberty Cherry & Fruit Co.	Liberty Baking, Inc.

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Cincinnati Fruit & Extract Works,  
Inc.  
The Sugarine Co.  
Speciality Foods, Inc.  
Bloomfield Industries  
Regal By-Products Co.  
Chicago Produce Terminal

1965

Chesterton Candy Co.  
Aunt Nellie's Foods  
Murray Biscuit Co.  
Stiffel Co.  
Stahl Finishing Co.  
Vigortone Products  
Colorado By-Products Co.

1966

Switzer Licorice Co.  
Jolly Rancher, Inc.  
Temple Frosted Foods  
Knickerbocker Mills  
Rudolf Foods  
Mid-West Forging & Manufacturing  
Co.  
Ross-Wells, Inc.  
Geerpress Wringer Co.  
Quincy Market Cold Storage Co.  
Tampa Cold Storage Co.  
Inland Underground Facilities, Inc.

Pre-1960 acquisitions include but are not limited to D. L. Clark Co., Thos. D. Richardson Co., La Choy Food Products, Bond Pickle Co., Mario's Food Products, Squire Dingee Co., Tasty Foods, Inc., Shedd-Bartush Foods, Inc., A. F. Thibodeu Co., Detroit Refrigeration Co., and Lackawanna Cold Storage Co.

5. At all times relevant herein, Beatrice sold and shipped, and is now selling and shipping, products in interstate commerce throughout the United States; hence Beatrice was, and is, engaged in commerce as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

## III

## JOHN SEXTON &amp; COMPANY

6. John Sexton & Company (Sexton) was, on December 20, 1968, a corporation organized and existing under the laws of the State of Illinois with its principal office and place of business located at 4700

1967

Mother's Cookies  
Golden Cookie Co.  
J. Warren Bowman, Inc.  
Julian Bail Industries  
South Georgia Pecan Co.  
General Water Conditioning, Inc.  
James H. Rhodes & Co.  
Airstream, Inc.  
Melnor Industries, Inc.  
Tekni-Craft Inc.  
Indiana Moulding & Frame Co.  
Charmglow Products, Inc.  
World Dryer Corp.  
Imperial Oil & Grease Co., Inc.  
Southeastern Reduction Co.  
Lone Star Rendering Co.

1968

Buttercrust Bakeries  
Oswald Jaeger Bakery  
East Coast Foods  
Farboil Co.  
Hart Ski Manufacturing Co., Inc.  
Morgan Yacht Corp.  
Max H. Kahn Curtin Co.  
Vogel-Peterson Co.  
Hi-Temp, Inc.  
Market Forge  
San Angelo Bay Products Co.  
Lubbock Rendering Co.

South Kilbourn Avenue, Chicago, Illinois. It is now operated as a division of Beatrice.

7. Sexton was originally established in 1883 in Chicago, Illinois and incorporated in 1898. It was on December 20, 1968, an institutional dry grocery wholesaler, distributing dry groceries to restaurants, clubs, hospitals, schools, colleges, hotels and other purveyors of prepared food services. It operated thirteen warehouses which served as distribution centers, servicing over 70,000 customers throughout the continental United States, in the West Indies and Hawaii. Nearly all the products distributed by Sexton were sold under its own trade names or brands and labels. About 27 percent of the products distributed by Sexton were manufactured or processed and packed, bottled, or canned by Sexton in its own plants. Sexton purchased other dry grocery products from food manufacturers, including Beatrice.

8. Sexton operated a laboratory for the systematic testing of "quality" in the products it produced, the products it distributed and for the development of new products. Sexton had developed, and placed on the market since July 1, 1967, a number of new convenience products including "Jet Set," an instant gelatin, canned "Chopped Chicken Livers" and "Spoon-Redi," a line of puddings to be spooned directly from the can into dessert dishes.

9. During its fiscal year ending June 28, 1968, Sexton had net sales of \$91,053,770 and net earnings of \$2,000,945. Sexton was on December 20, 1968, the largest independent institutional dry grocery wholesaler in the United States and the only such wholesaler distributing nationwide and manufacturing a significant portion of its products. Sexton's position had in part been attained by the acquisition of a number of distributors and a food manufacturer including the following:

(a) In August 1943, J. C. Stewart Co., an institutional wholesaler located in Pittsburgh, Pennsylvania.

(b) In 1964, National Brands, Inc., Grocery Department, an institutional wholesaler then located in Miami, Florida.

(c) In 1965, Cincinnati Foods, Inc., an institutional wholesaler located in Cincinnati, Ohio.

(d) In January 1953, The Columbia Conserve Company, a food manufacturer located in Indianapolis, Indiana.

10. Sexton sold dry groceries to institutions located in over 150 Standard Metropolitan Statistical Areas (SMSA), as defined by the Executive Office of the President, Bureau of the Budget, and in over 60 other localities. Sexton had nationally a market share of approximately 5 percent in the institutional dry grocery wholesale industry,

and in a number of the SMSA's and other markets which it serves Sexton has market shares ranging from 10 percent to about 50 percent.

11. At all times relevant herein, Sexton sold and shipped products in interstate commerce throughout the United States; and on December 20, 1968 Sexton was engaged in commerce as "commerce" is defined in the Clayton Act and the Federal Trade Commission Act.

## IV

## TRADE AND COMMERCE

12. The institutional dry grocery wholesaling industry consists primarily of a number of small independent concerns operating in local or regional markets, generally from one warehouse or at most three or four warehouses, each concern selling for the most part products bearing its label. The industry is characterized, on the whole, by (a) the solicitations of orders by a street salesman, (b) the extension of credit by the wholesaler, and (c) the delivery of dry groceries to the premises of the purchaser, either by common carrier or in the truck of seller.

13. Since 1960 a merger trend has been developing in the institutional dry grocery wholesale industry. Among others, Sexton has acquired two institutional dry grocery wholesalers during that period, Consolidated Foods Corporation has acquired during this period at least three, and Food Corporation of America has acquired one.

14. In the Chicago SMSA, a number of institutional dry grocery wholesalers have entered, or are now planning to enter, the institutional frozen food wholesale industry. Prior to December 20, 1968, Beatrice was and is now an institutional frozen food wholesaler in the Chicago SMSA, and prior to December 20, 1968, Sexton had contemplated entry into the institutional frozen food industry and was a potential entrant in that industry.

## V

## ACQUISITION

15. On or about December 20, 1968, Beatrice acquired the business and assets of Sexton, exchanging therefor approximately 375,000 shares of Beatrice's preferred convertible preference stock valued at the time at about \$37,500,000.

## VI

## EFFECTS OF ACQUISITION

16. The effect of the acquisition by Beatrice of Sexton may be to lessen competition substantially or to tend to create a monopoly or to restrain competition in the institutional dry grocery wholesale industry and/or in the institutional frozen food wholesale industry, in the United States, or sections thereof, in the following, among other ways:

(1) Actual and potential competition between Beatrice and Sexton in the manufacture of dry groceries and the direct or indirect distribution of dry groceries to institutional purchasers has been, or may be eliminated.

(2) Sexton has been eliminated as a substantial independent competitive factor.

(3) Sexton has been, or may be, foreclosed as a customer for independent packers of dry groceries.

(4) Beatrice has been, or may be, foreclosed or otherwise unavailable as a source of supply for other institutional dry grocery wholesalers.

(5) Sexton has been eliminated as a potential independent entrant into the institutional frozen food wholesale industry.

(6) Beatrice will be substituted for and take over Sexton's large institutional dry grocery wholesale market shares in individual SMSA's and other markets.

(7) The merger trend in the institutional dry grocery wholesale industry may be further accelerated.

(8) As a manufacturer of utensils and equipment for institutions, a seller of bakery and dairy products to institutions, and a public warehouse operator, Beatrice has, or may have, decisive competitive advantages over its competitors in the institutional dry grocery wholesale industry.

(9) Barriers to entry into the institutional dry grocery wholesale industry have been or may be heightened.

(10) Barriers to entry into the manufacturing of dry groceries for the institutional market and into the wholesaling of dry groceries to the institutional market may be heightened as a result of Beatrice's substantial financial resources, its advertising capabilities and the combining of the nationally known Beatrice Foods and Sexton names.

