



BUREAU OF COMPETITION

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

JUN 05 1989

Owen M. Johnson, Jr., Esq.
Akin, Gump, Strauss, Hauer & Feld
1333 New Hampshire Ave., N.W.
Washington, D.C. 20036

Re: Germaine Monteil Cosmetiques Corporation
Docket No. C-3098

Dear Mr. Johnson:

This is in response to your letter requesting a staff advisory opinion concerning the scope of the order in the above case if Revlon Inc. ("Revlon") were to merge its Germaine Monteil Cosmetiques Corporation ("Germaine Monteil") subsidiary into Revlon. Specifically, you ask whether Revlon would be correct in limiting the coverage of the order in Docket No. C-3098 against Germaine Monteil to apply only to products manufactured by Germaine Monteil at the time of its acquisition by Revlon and sold and promoted under the same or substantially similar brand names.

Your request represents that at the time the order was entered on November 19, 1982, the capital stock of Germaine Monteil was owned by the British American Tobacco Company. Subsequently, on March 20, 1987, the stock was acquired by Revlon, Inc. You state that after the acquisition of Germaine Monteil, Revlon maintained Germaine Monteil as a separate corporate entity and has separately sold all Germaine Monteil products. At the time of Revlon's acquisition of Germaine Monteil, Germaine Monteil was selling products only under the brand name "Germaine Monteil". However, your request notes that the order in this matter refers to four specific brand names of Germaine Monteil: Germaine Monteil, Rochas Paris, Tuvache, Inc., and Sonia Rykiel.¹

¹ For the purposes of the order, a product is defined as

any item of cosmetic, fragrance or soap, any accessory containing any item of cosmetic, fragrance or soap, or any related accessory, including but not limited to any applicator or brush, which is manufactured, offered for sale or sold by respondent.

In addition to the foregoing, 'product' is defined to include any item which is manufactured,

(continued...)

Relying upon J.B. Williams Co., 108 F.T.C. 56 (1986), your request seeks an interpretation of the order that would limit the coverage of the order to "any products manufactured by Germaine Monteil at the time of its acquisition, and modifications thereto, sold and promoted under the same or substantially similar brand names." For the reasons set forth below, I believe your interpretation of the order's coverage is too narrow.

The facts that you have presented seem analogous to those in the J.B. Williams matter. In that case, Beecham, Inc. had purchased the stock of J.B. Williams and both companies sold over the counter pharmaceutical products. Beecham filed a request to reopen and modify the orders contending that it should not be bound by the Commission orders prohibiting false advertising by J.B. Williams. However, the Commission found that Beecham was a successor under the orders and was bound by the orders in connection with the advertising of J.B. Williams consumer products. See Letter to James T. Halverson, Esq., J.B. Williams Company, Inc., Docket No. 8547, April 11, 1984, p. 2.

In a subsequent request to reopen and modify the orders, Beecham sought to limit the product coverage of one of the orders on the grounds that covered products had been reformulated and the Beecham and J.B. Williams manufacturing facilities had been integrated. The Commission denied the request to limit the order's product coverage but reiterated its previous determination that Beecham was bound by the order only with respect to J.B. Williams products. The Commission then stated that such products would include products manufactured by J.B. Williams when it was acquired by Beecham as well as modifications of those products and any derivative products. However, product coverage was not limited to those categories and in the event that the determination of product coverage became an issue, the Commission held that it would be resolved on a case-by-case basis. See J.B. Williams, 108 F.T.C. at 60 (order reopening and modifying cease and desist order).

¹(...continued)

offered for sale or sold by respondent for resale to consumers together with any 'product' as defined hereinabove.

Also, the order provides that Paragraphs I.B and II shall not apply to any product, as defined in the order, which is manufactured, offered for sale or sold under any brand of Tuvache, Inc. or Sonia Rykiel.

Based on J.B. Williams, I believe that Revlon would be bound by the order against Germaine Monteil after merging Germaine Monteil into Revlon only with respect to the products, as defined in the order, of Germaine Monteil. Such products would include all products sold under the Germaine Monteil name, products with any other brands or names owned by Germaine Monteil at the time of the acquisition by Revlon or subsequently acquired by Germaine Monteil, products with substantially similar brand names and any derivative products. Of course, the order's scope is not necessarily limited to these categories and whether the order covers a particular situation will depend on the applicable facts.

Thus, I believe that you have construed J.B. Williams too narrowly in your proposal to limit the order's coverage to brands manufactured and sold by Germaine Monteil at the time of its acquisition by Revlon. For example, I believe the order would apply to products sold under the Germaine Monteil name even though the product was not made by Germaine Monteil when it was acquired by Revlon. Similarly, the order would apply to brands acquired by Germaine Monteil after its acquisition by Revlon and to products with brands owned by Germaine Monteil despite their not having been manufactured by Germaine Monteil when it was acquired by Revlon.

This opinion is restricted to the facts as you have represented them in your request. Moreover, a staff opinion is not binding upon the Commission, and the Bureau may at any time reconsider, revoke, or rescind its opinion. Further, this opinion will not preclude the Commission from taking any action it deems appropriate, including an action for civil penalties, for any violation of the order.

Sincerely yours,

Elliot Feinberg
Assistant Director
Bureau of Competition