

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

FEDERAL TRADE COMMISSION,

Court File No.: 12-cv-00307-PJS-AJB

Plaintiff,

v.

**ANSWER OF DEFENDANT GRACO
INC. TO THE FEDERAL TRADE
COMMISSION'S COMPLAINT**

GRACO INC.; ILLINOIS TOOL WORKS
INC.; and ITW FINISHING LLC,

Defendants.

Defendant Graco Inc. (“Graco”), by counsel, answers and responds to the Complaint for Temporary Restraining Order and Preliminary Injunction Pursuant to Section 13(b) of the Federal Trade Commission Act (“Complaint”) of the Federal Trade Commission (“FTC”) as follows: Graco denies each allegation and statement contained in the Complaint except as hereinafter specifically admitted, qualified, or explained. In addition, Graco denies those allegations to which it lacks sufficient information to respond otherwise. Graco has not separately answered the headings supplied by the FTC.

NATURE OF THE CASE

1. In response to paragraph 1 of the Complaint, Graco admits that Graco and Illinois Tool Works Inc. (“ITW”) entered into an Asset Purchase Agreement (the “Agreement”) dated April 14, 2011. Graco avers that its CEO’s statements as a whole speak for themselves. Graco denies the remainder of the allegations set forth in paragraph

1.

2. Graco denies the allegations set forth in paragraph 2 of the Complaint.

3. Graco denies the allegations set forth in paragraph 3 of the Complaint.

4. Paragraph 4 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, Graco denies the allegations set forth in paragraph 4.

5. Graco denies the allegations set forth in paragraph 5 of the Complaint.

6. In response to paragraph 6 of the Complaint, Graco avers that its documents as a whole speak for themselves, and denies the allegations set forth in paragraph 6.

7. In response to paragraph 7 of the Complaint, Graco admits that the FTC filed an administrative complaint challenging the acquisition at issue on December 15, 2011, and that an administrative hearing on the merits is scheduled to begin on May 15, 2012. The unattributed quotations in paragraph 7 contain legal conclusions to which no response is required. To the extent a response is required, Graco denies those allegations. Graco denies the remainder of the allegations set forth in paragraph 7.

JURISDICTION AND VENUE

8. Graco admits the allegations set forth in paragraph 8 of the Complaint.

9. In response to paragraph 9 of the Complaint, Graco denies that it transacts business in the District of Columbia—the original venue of this action—and further denies that venue was proper in that district. Graco admits that venue is proper in the transferee district, the District of Minnesota.

THE PARTIES

10. Graco admits the allegations set forth in paragraph 10 of the Complaint.

11. Graco admits the allegations set forth in paragraph 11 of the Complaint.

12. On information and belief, Graco admits the allegations set forth in paragraph 12 of the Complaint.

13. On information and belief, Graco admits the allegations set forth in paragraph 13 of the Complaint.

14. Paragraph 14 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, Graco denies the allegations set forth in paragraph 14.

SECTION 13(b) OF THE FTC ACT

15. Graco admits that paragraph 15 of the Complaint accurately quotes a portion of section 13(b) of the FTC Act, 15 U.S.C. § 53(b).

THE ACQUISITION

16. In response to paragraph 16 of the Complaint, Graco admits that Graco and ITW entered into an Asset Purchase Agreement, dated April 14, 2011, which speaks for itself. Graco denies the remainder of the allegations set forth in paragraph 16.

17. Graco admits the allegations set forth in paragraph 17 of the Complaint.

18. Paragraph 18 of the Complaint contains legal conclusions to which no response is required.

19. In response to paragraph 19 of the Complaint, Graco states that it is without knowledge or information sufficient to form a belief as to the FTC's beliefs regarding the acquisition at issue. Graco denies that (1) the Agreement constitutes an unfair method of competition, (2) the acquisition would substantially lessen competition and/or tend to

create a monopoly in any lines of commerce, and (3) it is in the public's interest to enjoin the transaction.

AFFECTED MARKETS

20. In response to paragraph 20 of the Complaint, Graco admits that industrial manufacturers use liquid-finishing equipment to apply paint and other coatings to certain manufactured goods, and that applying a consistent finish is an important part of the manufacturing process. Graco denies the remainder of the allegations set forth in paragraph 20.

21. In response to paragraph 21 of the Complaint, Graco admits that Graco and ITW manufacture industrial liquid finishing equipment, and that this equipment includes—but is not limited to—pumps, applicators, proportioners, and related equipment. Graco denies that any of these product categories constitute relevant product markets for the purpose of evaluating anticompetitive effects. Graco denies the remainder of the allegations set forth in paragraph 21.

22. In response to paragraph 22 of the Complaint, Graco admits that Graco and ITW sell products to distributors, and denies the remainder of the allegations set forth in paragraph 22.

23. In response to paragraph 23 of the Complaint, Graco admits that it sells all of its industrial finishing equipment to distributors and integrators. The last sentence in paragraph 23 relates to an entity other than Graco, and Graco is without knowledge or information sufficient to form a belief as to the truth of these allegations. Graco denies the remainder of the allegations set forth in paragraph 23.

24. Graco denies the allegations set forth in paragraph 24 of the Complaint.

25. Graco admits that the statement quoted in paragraph 25 of the Complaint was made in an investigational hearing conducted by the FTC. The transcript of that hearing speaks for itself. Graco denies the remainder of the allegations set forth in paragraph 25.

26. Graco admits that the statement quoted in paragraph 26 of the Complaint was made in an investigational hearing conducted by the FTC. The transcript of that hearing speaks for itself. Graco denies the remainder of the allegations set forth in paragraph 26.

27. Graco denies the allegations set forth in paragraph 27 of the Complaint.

28. Graco denies the allegations set forth in paragraph 28 of the Complaint.

29. In response to paragraph 29 of the Complaint, Graco avers that the documents speak for themselves. Graco denies the remainder of the allegations set forth in paragraph 29.

30. Graco denies the allegations set forth in paragraph 30 of the Complaint.

31. Graco denies the allegations set forth in paragraph 31 of the Complaint.

Relevant Product Markets

32. Graco denies the allegations set forth in paragraph 32 of the Complaint.

33. Graco denies that the putative product markets set forth in paragraph 33 of the Complaint—and each of the subparts therein—are relevant markets for antitrust purposes.

Liquid Finishing Pumps for Industrial Use

34. Graco denies the allegations set forth in paragraph 34 of the Complaint, and further denies that industrial liquid-finishing pumps constitute a relevant product market.

Liquid Finishing Spray Guns for Industrial Use

35. Graco denies the allegations set forth in paragraph 35 of the Complaint, and further denies that industrial liquid-finishing spray guns constitute a relevant product market.

Liquid Finishing Proportioners for Industrial Use

36. Graco denies the allegations set forth in paragraph 36 of the Complaint, and further denies that industrial liquid-finishing proportioners constitute a relevant product market.

Circulation Pumps for Paint Systems in Automotive Assembly Plants

37. Graco denies the allegations set forth in paragraph 37 of the Complaint, and further denies that paint circulation pumps used in automotive plants constitute a relevant product market.

Industrial Liquid Finishing Equipment for Resale

38. Graco denies the allegations set forth in paragraph 38 of the Complaint, and further denies that “Industrial Liquid Finishing Equipment for Resale” constitutes a relevant product market.

GEOGRAPHIC MARKET

39. Graco denies the allegations set forth in paragraph 39 of the Complaint.

PRESUMPTIVE ILLEGALITY OF THE ACQUISITION

40. The allegations in paragraph 40 of the Complaint are legal conclusions, to which no response is required. To the extent a response is required, Graco denies this allegation. Graco denies the remainder of the allegations set forth in paragraph 40.

41. The first sentence in paragraph 41 of the Complaint is a legal conclusion to which no response is required. To the extent a response is required, Graco denies this allegation. Graco denies the remainder of the allegations set forth in paragraph 41.

42. Graco denies the allegations set forth in paragraph 42 of the Complaint.

43. Graco denies the allegations set forth in paragraph 43 of the Complaint.

44. The allegations in paragraph 44 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Graco denies these allegations.

ENTRY AND REPOSITIONING BARRIERS AND LACK OF EFFICIENCIES

45. Graco denies the allegations set forth in paragraph 45 of the Complaint.

46. Graco denies the allegations set forth in paragraph 46 of the Complaint.

47. Graco denies the allegations set forth in paragraph 47 of the Complaint.

48. Graco denies the allegations set forth in paragraph 48 of the Complaint.

**LIKELIHOOD OF SUCCESS ON THE MERITS,
BALANCE OF EQUITIES, AND NEED FOR RELIEF**

49. The allegations in paragraph 49 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, Graco denies these allegations.

50. Graco denies the allegations set forth in paragraph 50 of the Complaint.

51. Graco denies the allegations set forth in paragraph 51 of the Complaint—
including the subparts contained therein.

52. Graco denies the allegations set forth in paragraph 52 of the Complaint.

53. Graco denies the allegations set forth in paragraph 53 of the Complaint.

REQUEST FOR RELIEF

Graco denies each and every allegation contained the WHEREFORE clause following paragraph 53 of the Complaint.

AFFIRMATIVE DEFENSES

1. Any potential anticompetitive effects of the acquisition are outweighed by efficiencies or other pro-competitive effects.

2. The FTC's Complaint fails, in whole or in part, to state a claim upon which relief can be granted.

WHEREFORE, Defendant Graco Inc. prays judgment that the FTC take nothing by its Complaint.

Dated: February 29, 2012

FAEGRE BAKER DANIELS LLP

/s/ Richard A. Duncan

John H. Hinderaker, MN# 45305

john.hinderaker@faegrebd.com

Richard A. Duncan, MN# 192983

richard.duncan@faegrebd.com

Randall E. Kahnke, MN# 202745

randall.kahnket@faegrebd.com

Craig S. Coleman, MN# 0325491

craig.coleman@faegrebd.com

2200 Wells Fargo Center

90 South Seventh Street

Minneapolis, MN 55402-3901

Telephone: (612) 766-7000

Facsimile: (612) 766-1600

**ATTORNEYS FOR DEFENDANT
GRACO INC.**