IN THE MATTER OF

THE PROCTER & GAMBLE COMPANY

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

Docket 6901. Complaint, Sept. 30, 1957—Decision, Nov. 26, 1963

Order requiring the leading producer in the United States of soap and detergent products and a major producer of food products, toilet goods and paper products—sold both as consumer household brands and in bulk quantities, to laundries, hotels, institutions, the baking industry and other industrial users—to divest itself absolutely, within one year, of all assets, properties, rights and privileges, tangible and intangible, acquired as a result of its acquisition in August 1957 of the Nation's leading manufacturer of household liquid bleach, whose annual sales before the acquisition represented almost 50 percent of the national total—the divestiture to be subject to the provisions in the order below set forth and upon terms and conditions approved by the Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, has violated and is now violating the provisions of Section 7 of the Clayton Act (U.S.C., Title 15, Sec. 18) as amended and approved December 29, 1950, hereby issues its complaint, pursuant to Section 11 of the aforesaid Act (U.S.C. Title 15, Sec. 21) charging as follows:

PARAGRAPH 1. Respondent, The Procter & Gamble Company (hereinafter referred to as "respondent") is a corporation organized and existing under the laws of the State of Ohio, with its office and principal place of business at The Procter & Gamble Building, 301 East Sixth Street, Cincinnati, Ohio.

PAR. 2. The Clorox Chemical Co. (hereinafter referred to as "Clorox") was, prior to August 1, 1957, a corporation organized and existing under the laws of the State of Delaware, with its office and principal place of business at 850 – 42nd Avenue, Oakland, California.

PAR. 3. Respondent, directly and through various completely owned subsidiary corporations, is engaged principally in the manufacture and sale of packaged soaps and detergents, paper products, shortening and other food products, and shampoos, dentifrices and home permanents, which are sold under advertised brand names. The respondent is the leading producer in the United States of soap and detergent products and a major producer in its other principal product fields. The most important consumer household brands which are sold by respondent to retail and wholesale grocery and drug outlets, department stores and variety stores are as follows:

Soaps, Detergents and Cleansers:

Ivory Soap
Ivory Flakes
Ivory Snow
Camay—toilet soap
Lava—pumice hand soap
Duz—detergent
Tide—detergent
Cheer—detergent
Dreft—detergent
Oxydol—detergent
Dash—low sudsing detergent
Joy—liquid detergent
Comet—household scouring cleanser
Cascade—automatic dishwasher detergent
Spic and Span—paint and linoleum cleaner
Zest—toilet detergent bar

Food Products:

Crisco—shortening
Golden Fluffo—shortening
Big Top—peanut butter
Duncan Hines—prepared mixes—16 kinds

Toilet Goods:

Crest—fluoridated toothpaste
Gleem—toothpaste
Drene—shampoo
Prell—shampoo
Shasta—shampoo
Lilt—home permanent
Pin-It—home permanent.

Paper Products:

Charmin—toilet tissue
Lady Charmin—toilet tissue
Charmin—facial tissue
Charmin—napkins
Charmin—towels
Evergreen—industrial paper products

Respondent is also marketing "American Family" soap, flakes and detergents in the greater Chicago area. Selected market areas are being used by respondent to market "Biz" liquid detergent, "Whirl" liquid shortening, "Secret" personal deodorant, "Ivory" liquid detergent, "Jif" peanut butter and "Velvet Blend" shampoo.

Respondent also manufactures soaps, detergents, shortenings and edible oils for sale in bulk quantities to laundries, hotels, institutions, the baking industry and other industrial users; vegetable oils and chemicals chiefly for use in its own products; and by-products, such as glycerine, for sale to industrial users.

Respondent does a substantial manufacturing and marketing business abroad in consumer products similar to those manufactured and marketed in this country. Said business is conducted through completely owned subsidiary corporations located in Canada, England, Cuba, the Philippines, Indonesia, Mexico, Venezuela, and Belgium.

PAR. 4. Respondent, directly and through its completely owned subsidiaries, maintains factories for the manufacture of household and industrial soaps and detergents, shortenings, toilet goods, edible vegetable oils and food products in the United States at the following locations:

Cincinnati and St. Bernard, Ohio
Chicago, Illinois
Staten Island, New York
Kansas City, Kansas
Macon, Georgia
Dallas, Texas
Dayton, Ohio
Lexington, Kentucky
Baltimore, Maryland
St. Louis, Missouri
Long Beach, California
Sacramento, California
Portsmouth, Virginia
Quincy, Massachusetts
Iowa City, Iowa
Jackson, Mississippi
Omaha, Nebraska

In addition to the aforementioned locations, respondent and its completely-owned subsidiaries own vegetable oil mills located at Augusta and Macon, Georgia; Charlotte and Raleigh, North Carolina; Montgomery and Selma, Alabama; Corinth and Jackson, Mississippi; Memphis, Tennessee; Little Rock, Arkansas; New Madrid, Missouri; Louisville, Kentucky; Fort Worth, Texas; Baltimore, Maryland; Long Beach, California; and Toronto, Canada. Respondent and its completely-owned subsidiaries also operate chemical pulp plants at Memphis, Tennessee, and Foley, Florida; research facilities at Venice, Ohio; and paper production facilities at Green Bay and West DePere, Wisconsin, and a wood pulp plant at Green Bay.

PAR. 5. Respondent is engaged in the sale of products designated in Paragraphs 3 and 4 herein in commerce, as "commerce" is defined in the Clayton Act. During the fiscal year ending June 30, 1956, respondent's net sales of such products were $1,038,290,374. Estimated net sales for the fiscal year ending June 30, 1957, are $1,148,000,000.

PAR. 6. According to the latest information available, respondent accounted for the following percentages of the total United States market in its designated major product fields by value of shipments:

Product field	Percentage of U.S. market
Toilet Soaps (bar soaps)	24
Laundry Soaps (bar soaps)	91
Package Soap Chips	52
Package Soap Powders	51
Liquid Detergents	45
Packaged Detergents	58
Shampoos	24
Toothpastes	34
Vegetable Shortenings	36

PAR. 7. Respondent has increased its size, operations, sales, profits, assets and earned surpluses tremendously in recent years. Since 1946 respondent's net worth, net sales and net profit have increased over 300%. Respondent now employs over 18,000 persons in the United States and over 8,000 persons abroad. Respondent is constantly diversifying its operations and manufacturing and selling new products. Respondent has also entered into the production and sale of additional products by acquiring assets and stock of existing producers of said products. Among such acquisitions in recent years have been the following:

Year	Company	Product or activity
1955	W. T. Young Foods, Inc.	"Big Top" Peanut Butter and peanut products.
1956	Prepared Mix Division of Nebraska Consolidated Mills, Inc.	Cake mixes.
1956	Hines-Park Foods, Inc.	Distributor of food products, principally cake mixes.
1956	Duncan Hines Institute, Inc.	Licenses for prestige eating establishments.
1957	Charmin Paper Mills, Inc.	Paper tissues and related paper products.
1957	Clorox Chemical Co.	Liquid Bleach.

Respondent has also acquired numerous soap and detergent companies since 1905. Respondent was originally founded in 1837 and has constantly expanded by acquisition, by integration, and by diversification to reach its present standing.

PAR. 8. Prior to August 1, 1957, Clorox was engaged in the production and sale of sodium hypochlorite liquid bleach and disinfectant. Said product was sold nationally under the trade name "Clorox," in commerce, as "commerce" is defined in the Clayton Act. In the fiscal year ending June 30, 1956, net sales of "Clorox" were $36,409,197.70. Net sales of "Clorox" for the fiscal year ending June 30, 1957, were approximately $40,000,000. Clorox is, and has been for many years, the largest producer of household liquid bleach in the United States. In 1956 Clorox produced and sold approximately 48% of all household liquid bleaches sold in the United States. The number two producer in this field accounted for approximately 16% of all household liquid bleaches sold. The remaining producers, approximately forty in number, accounted for the remaining 36% of sales of household liquid bleach in the United States in 1956. Within the latter group of producers, no single liquid bleach producer enjoyed over 5% of the national household liquid bleach market.

PAR. 9. On or after August 1, 1957, respondent acquired Clorox as a going concern, including all of Clorox's assets, trademarks, business and good will. The acquisition was achieved by respondent exchanging 8½ shares of its stock for every 10 shares of Clorox stock outstanding. The market value of respondent's exchanged stock was approximately $30,300,000. The assets of Clorox were valued at approximately $15,000,000 at the time of the acquisition.

Under the terms of the acquisition agreements, respondent was given the exclusive right to the name "Clorox." Respondent formed a new Ohio corporation, The Clorox Company, as a completely owned subsidiary, to commence the manufacture and sale of "Clorox" liquid bleach and transferred the assets and intangibles obtained from Clorox to said subsidiary corporation. The Clorox Chemical Co. was dissolved after its officers distributed respondent's exchanged stock to the stockholders of Clorox Chemical Co. under the ratio of exchange.

PAR. 10. Prior to the aforementioned acquisition, Clorox was the dominant factor in the household liquid bleach market. Said position had been achieved through extensive advertising which had made the product "Clorox" well known and accepted in American households. Production of "Clorox" took place at factories in Atlanta, Georgia; Boston, Massachusetts; Camden, New Jersey; Charlotte, North Carolina; Chicago, Illinois; Cleveland, Ohio; Houston, Texas; Jersey City, New Jersey; Kansas City, Missouri; Los Angeles, California; Oakland, California; Seattle, Washington; and Tampa, Florida, prior to the acquisition. These regional production plants enabled Clorox to reduce freight costs of its finished product. Said freight costs are a significant factor in the sale of household liquid bleach.

Clorox had experienced a pattern of constant growth and expansion in the five years prior to the aforementioned acquisition and its share of the household liquid bleach market had been constantly increasing. Clorox produced no product in addition to "Clorox" bleach. At the time of the aforementioned acquisition Clorox was dominant in its product market, was operating profitably and its product "Clorox" was firmly established by public acceptance. Said public acceptance and the value of the well known and widely advertised name "Clorox" is demonstrated by the fact that respondent paid Clorox far in excess of the value of Clorox's assets in the acquisition aforementioned, said excess amount representing the value of the trade-name "Clorox" and the good will of Clorox.

PAR. 11. Respondent, by virtue of the acquisition of Clorox, has entered a market in which it did not formerly compete or offer a competitive product. Respondent, in so doing, has replaced the dominant factor in that market with its own dominant ability to produce and sell which threatens the household liquid bleach market with extremely adverse competitive effects. Prior to the aforementioned acquisition, Clorox—with assets of approximately $15,000,000; accumulated retained earnings of approximately $6,000,000; annual net income of approximately $2,000,000; and annual net sales of approximately $40,000,000—was gaining a steadily larger share of the household liquid bleach market as the market share of the other household liquid bleach producers constantly diminished. As a result of the acquisition, said household liquid bleach producers must now compete with respondent—with assets of approximately $726,000,000; accumulated retained earnings of approximately $409,-

000,000; annual net income of approximately $60,000,000; and annual net sales of approximately 1.2 billion dollars.

PAR. 12. In addition to its economic strength and ability, as delineated heretofore, respondent is a recognized leader in the merchandising of household or grocery store products. The vast majority of respondent's products, and "Clorox," are sold in grocery stores at low prices and in large volume. Such products require consumer acceptance in order to obtain critically short and valuable shelf space in the grocery stores. Such consumer acceptance of these products, especially soaps, detergents, cleansers, bleaches and toilet goods is obtained by extensive advertising. Respondent is the second largest advertiser of all products in the United States, having spent approximately $79,000,000 for advertising of its products in 1956, utilizing all media and means of reaching the consuming public.

In conjunction with its advertising, respondent has been extremely successful in promoting its household products. Respondent has utilized various promotional devices—including "two-for-one" sales, free samples, price-reducing coupons, reduced prices, and premiums for purchase—to a high degree.

PAR. 13. The ability of respondent to utilize advertising and promotional devices to gain shelf space and to sell its products, as set forth in Paragraph Twelve, has been vividly demonstrated in the recent past. Respondent introduced a new toothpaste, "Gleem," in 1953, and another new toothpaste "Crest," in 1956. By utilizing its advertising and promotional ability, as aforesaid, "Gleem" had acquired 25% of the toothpaste market by 1955 and "Crest" acquired an additional 13% of said market in its first year of production.

In a field more directly related to liquid bleaches, the household cleanser market, respondent introduced in 1956 a new product, "Comet." By utilizing its advertising and promotional ability, as aforesaid "Comet" acquired approximately 29% of the household cleanser market by March, 1957, nine months after it was first introduced. In said promotions respondent distributed approximately 30,000,000 miniature samples of "Comet" at an estimated cost of 3.3 million dollars.

These examples of the effectiveness of respondent's merchandising and advertising ability and power with new and previously unknown products demonstrate the impact on the household liquid bleach market that respondent, as a result of the acquisition of Clorox, can now accomplish with the already existing, dominant, well-known and established product "Clorox." Said impact will be to the competitive disadvantage of household liquid bleach manufacturers and the household liquid bleach industry.

PAR. 14. Respondent, by virtue of the acquisition, has expanded its line of soaps, detergents and cleansers with a closely allied product, household liquid bleach. While respondent had not, prior to the acquisition of Clorox, produced a product competitive with household liquid bleach, respondent's soaps, detergents, and cleansers are used by housewives in conjunction with, and as a complement to, household liquid bleach. Therefore, respondent can now offer grocery stores a complete line of cleansing and laundry products. Said complete line increases respondent's ability to obtain the aforementioned valuable and difficult to obtain grocery store shelf-space and is to the competitive disadvantage of household liquid bleach companies, none of whom possess the complete line of cleansing and laundry products as respondent now does.

PAR. 15. Respondent has violated Section 7 of the Clayton Act, as amended, in that the acquisition of the assets and business of Clorox, as described in Paragraph 9 hereof, may have the effect of substantially lessening competition or tending to create a monopoly in the production and sale of household liquid bleaches in the United States and in each of them.

More specifically, the aforesaid effects include the actual or potential lessening of competition and a tendency to create a monopoly in violation of Section 7 of the Clayton Act, as amended, in the following ways, among others:

1. Actual and potential competition generally in the production and sale of household liquid bleaches may be substantially lessened.

2. The Clorox Chemical Co. has been permanently eliminated as an independent competitive factor in the household liquid bleach industry.

3. Household liquid bleach producers may be unable to compete with respondent due to any one, any combination of, or all of the following factors:

(a) Respondent's market position;

(b) Respondent's financial and economic strength;

(c) Respondent's advertising ability and experience;

(d) Respondent's merchandising and promotional ability and experience;

(e) Respondent's "full-line" of cleansing and laundry 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.

4. Respondent's competitive position in the production and sale of household liquid bleaches may be enhanced to the detriment of actual and potential competition.

5. Industrywide concentration of the production and sale of household liquid bleaches may be increased.

6. The acquisition gives respondent the facilities, the market position and the dominant ability to monopolize or to tend to monopolize the household liquid bleach market.

PAR. 16. 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.