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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright

In the Matter of **GRACO INC.,** **a corporation.**	**Docket No. C-4399**

COMPLAINT

The Federal Trade Commission ("Commission"), pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested in it by said Acts, having reason to believe that Respondent Graco Inc. ("Graco") entered into agreements pursuant to which Graco acquired, respectively, all of the voting securities of Gusmer Corp. ("Gusmer"), and all of the voting securities of GlasCraft, Inc. ("GlasCraft"), and that each acquisition violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. STATEMENT OF THE CASE

1. Graco acquired its only significant competitors in the manufacture and sale of fast-set equipment in North America: Gusmer and GlasCraft.

2. Fast-set equipment combines and applies various reactive chemicals that form polyurethane foams or polyurea coatings. The essential components of a complete fast-set equipment system are: (1) the proportioner, which controls the ratio, temperature, and flow of the chemicals; (2) heated hoses, which independently maintain the fast-set chemicals at proper temperature; and (3) the spray gun, which is specially designed to mix and to dispense polyurethane foams and polyurea coatings. A manufacturer that produces or supplies a complete system of fast-set equipment is generally considered to be a full-line manufacturer.

3. The vast majority of end-users of fast-set equipment are contractors or contracting firms that use the equipment to apply polyurethane foams to insulate commercial and residential buildings, and to apply polyurea coatings to protect structures such as bridges, holding tanks, pipelines, and marine hulls.

4. Prior to the acquisitions, Gusmer, GlasCraft, and Graco competed aggressively on price, innovation, service, and quality. Each company responded to the others' innovations and prices with its own improvements and discounts. Prior to the acquisitions, the three companies were the only domestic full-line manufacturers of fast-set equipment, and at the time of each acquisition, Gusmer and GlasCraft were Graco's closest competitors in the relevant market.

5. These acquisitions have led to higher prices and fewer choices, and enabled Graco to raise barriers to entry that inhibited entry and expansion by potential competitors.

6. Fast-set equipment manufacturers sell their products almost exclusively through a specialized, third-party distribution channel, which consists of distributors acting as intermediaries between the manufacturer and the end user. Fast-set equipment manufacturers do not sell competitively significant quantities of equipment directly to end-users.

7. Fast-set equipment distributors meet end-user demand for a convenient and nearby source of expertise, spare parts, and repair services. A robust network of third-party fast-set equipment distributors is necessary for any manufacturer to compete meaningfully in the relevant market.

8. Before Graco's acquisitions, fast-set equipment distributors historically carried multiple manufacturers' brands. Graco's actions after the acquisitions resulted in higher prices and fewer product choices, and these actions created an opportunity for new entry and expansion in the relevant market.

9. Following Graco's acquisition of GlasCraft, Graco initiated several strategies that reduced any prospective entrant's access to distribution resources required for success in the market. These strategies included raising distributors' discount and inventory thresholds, thereby reducing distributors' ability to carry the products of new entrants, and threatening distributors with termination or other retaliation should they agree to carry the products of competing manufacturers. Given distributors' reliance on Graco post-acquisition, these actions further heightened barriers to entry in the relevant market.

10. In 2007 former Gusmer owners and employees, operating through PMC, Garraf Maquinaria S.A., and Gama Machinery USA, Inc. (now Polyurethane Machinery Corp.) ("Gama/PMC") sought to enter the relevant market. Graco initiated a lawsuit in federal district court ("the Gama/PMC litigation") alleging, among other things, theft of trade secrets and breach of contract. The uncertainty of the outcome of the litigation has kept some distributors from purchasing fast-set equipment from Gama/PMC.

II. RESPONDENT GRACO

11. Graco is a for-profit corporation, existing and doing business under and by virtue of the laws of the state of Minnesota, with its office and principal place of business located at 88 11th Avenue Northeast, Minneapolis, Minnesota 55413. Graco manufactures and sells a full line of fast-set equipment throughout North America and the world.

III. GUSMER

12. Prior to its acquisition by Respondent in 2005, Gusmer was the largest and most significant competitor engaged in the manufacture and sale of a full line of fast-set equipment throughout North America and the world, with its principal place of business located in Lakewood, New Jersey.

IV. GLASCRAFT

13. At the time of its acquisition by Respondent in 2008, GlasCraft was the only competitor other than Graco engaged in the manufacture and sale of a full line of fast-set equipment throughout North America and the world, with its principal place of business located in Indianapolis, Indiana.

V. JURISDICTION

14. Respondent is, and at all relevant times has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

15. The acquisition of Gusmer by Graco constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

16. The acquisition of GlasCraft by Graco constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

VI. THE ACQUISITIONS

17. In February 2005, Graco acquired Gusmer and its foreign counterparts from PMC Global, Inc. ("PMC") for $65 million. The transaction was not reportable under the Hart-Scott-Rodino Act, 15 U.S.C. § 18a. The acquisition increased Graco's share of the North American fast-set equipment market to over 65%. The acquisition left GlasCraft as Graco's only significant North American competitor. Following the acquisition of Gusmer, Graco closed Gusmer's fast-set equipment manufacturing facilities.

18. In February 2008, Graco acquired GlasCraft for $35 million. The transaction was not reportable under the Hart-Scott-Rodino Act, 15 U.S.C. § 18a. The acquisition raised Graco's market share above 90% and removed Graco's last significant North American competitor. Following the acquisition of GlasCraft, Graco closed GlasCraft's fast-set equipment manufacturing facilities.

VII. THE RELEVANT PRODUCT MARKET

19. For purposes of this Complaint, the relevant line of commerce within which to analyze the effects of the transactions is the market for the manufacture and sale of fast-set equipment for use by contractors.

VIII. THE RELEVANT GEOGRAPHIC MARKET

20. For purposes of this Complaint, the relevant geographic market within which to analyze the competitive effects of the transactions is North America.

IX. MARKET STRUCTURE

21. The market for fast-set equipment is highly concentrated. Prior to the acquisitions, Gusmer, Graco, and GlasCraft were the only significant suppliers of fast-set equipment in North America. Therefore, the cumulative effect of such acquisitions was that Graco acquired between a 90% and 95% share of the fast-set equipment market in North America.

X. CONDITIONS OF ENTRY AND EXPANSION

22. Entry into the relevant market has not been, and would not be, timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisitions. No significant entry has occurred since Graco's entry in 2002.

23. There are significant entry barriers to the relevant market, which include, *inter alia*, brand reputation, installed base, and the difficulty in finding adequate third-party distribution.

24. The most significant entry barrier is the need for specialized third-party distribution. A fast-set equipment distributor needs to possess the technical expertise to teach contractors to operate and maintain such equipment properly in accordance with the specifications established by equipment manufacturers and various chemical manufacturers. Through its acquisitions, Graco has become the only remaining full-line manufacturer of fast-set equipment, giving it substantial control of the established fast-set equipment distribution channel in North America. Graco's increasing of discount and inventory thresholds, Graco's threatening of distributors with termination or other retaliation should they agree to carry the products of competing manufacturers, and uncertainties resulting from the Gama/PMC litigation, all have substantially reduced prospective competitors' access to

customers in the relevant market, substantially reducing the likelihood of successful entry and the disciplining of Graco's prices.

25. Given all of the above, following Graco's 2008 acquisition of Glascraft, only one competitor, Gama/PMC, has held a market share of as much as five percent, and it is unlikely to expand substantially due to the unavailability of effective distribution.

26. Other prospective entrants have also failed to gain any meaningful market share in the North American fast-set equipment market. These would-be competitors participate at the fringes of the market. Most do not offer full lines of fast-set equipment, but rather individual proportioners or guns. Together, they comprise significantly less than 5% of the relevant market. Without access to the specialized distribution channels, these prospective entrants are not likely to expand beyond being fringe competitors.

XI. EFFECTS OF THE ACQUISITIONS

27. Graco's acquisitions of Gusmer and GlasCraft substantially lessened competition and tended to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

28. Specifically, the acquisitions have:

    a. Eliminated actual, direct, and substantial competition among Graco, Gusmer, and GlasCraft in the relevant market;

    b. Permitted Graco to increase prices, reduce product options and offerings, and reduce innovation;

    c. Permitted Graco to increase barriers to entry and expansion by foreclosing access to established fast-set equipment distributors;

    d. Substantially increased the level of concentration in the relevant market; and

    e. Allowed Graco to exercise market power unilaterally in the relevant market.

29. In particular, the loss of competition from Gusmer and GlasCraft has given Graco the ability to raise barriers to entry and exclude prospective competitors from the North American fast-set equipment market. Graco became the sole supplier for the only significant fast-set equipment distribution channel in North America and the only authorized source of spare parts for its existing installed base. Consequently, Graco has been able to prevent its distributors from carrying the products of competing manufacturers.

30. The significant anticompetitive effects of Graco's acquisitions are not offset by any efficiencies realized by the acquisitions.

XII. VIOLATIONS CHARGED

COUNT I – ILLEGAL ACQUISITION

31. The allegations of Paragraphs 1 through 30 are incorporated by reference as though fully set forth.

32. Graco's acquisition of Gusmer substantially lessened competition and tended to create a monopoly in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

COUNT II – ILLEGAL ACQUISITION

33. The allegations of Paragraphs 1 through 30 are incorporated by reference as though fully set forth.

34. Graco's acquisition of GlasCraft substantially lessened competition and tended to create a monopoly in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this seventeenth day of April, 2013, issues its complaint against Respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL: