

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

Commissioners:

Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of

LIBBEY INC., a corporation,

and

NEWELL RUBBERMAID, INC., a corporation.

Docket No. 9301

ANSWER AND DEFENSES OF RESPONDENT NEWELL RUBBERMAID INC.

Respondent Newell Rubbermaid Inc. (“Newell Rubbermaid”), by its attorneys,
Chadbourne & Parke LLP, answers the allegations of the Complaint as follows:

1. On information and belief, admits the allegations of paragraph 1 of the Complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the Complaint.
3. Admits the allegations of paragraph 3 of the Complaint.

4. Admits that Anchor Hocking produces and sells glassware to, among other customers, food service customers. Denies that “food service glassware” is a distinct product line as a matter of fact or law. Except as stated above, denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the Complaint.

5. On information and belief, admits the allegations of paragraph 5 of the Complaint.

6. Admits the allegations of paragraph 6 of the Complaint.

7. Denies each and every allegation of paragraph 7 of the Complaint, and avers that Libbey proposes to acquire the stock of Anchor Hocking from Newell Rubbermaid pursuant to an Amended and Restated Stock Purchase Agreement, dated January 21, 2002 ("the Amended Agreement"), which supersedes the Stock Purchase Agreement dated June 17, 2001 (the "Original Agreement"), and avers that it is retaining the Anchor Hocking business of selling tabletop glassware to food service customers.

8. On information and belief, admits that the Federal Trade Commission ("Commission" or "FTC") authorized the FTC staff, pursuant to Section 13(b) of the FTC Act, to seek a preliminary injunction against the Original Agreement, and avers that the Original Agreement has been superseded by the Amended Agreement. Admits that on January 14, 2002, the FTC commenced an action in the United States District Court for the District of Columbia, and admits that on April 22, 2002, the district court granted the

FTC's motion for a preliminary injunction pending the completion of administrative adjudication.

9. Admits that Libbey and Newell Rubbermaid entered into the Amended Agreement, which supersedes the Original Agreement, after the preliminary injunction action was commenced. Admits that Newell Rubbermaid and Libbey entered into the Amended Agreement to alleviate the FTC's concerns. Admits that the Amended Agreement reduced the purchase price by approximately \$32.5 million. Admits that pursuant to the Amended Agreement, Libbey will acquire two manufacturing plants and certain other assets. Except as stated above, denies each and every allegation of paragraph 9 of the Complaint.

10. Admits that under the Amended Agreement, Newell Rubbermaid will retain molds, customer relationships and certain other assets used in Anchor Hocking's food service glassware business. Admits that pursuant to such agreement, Libbey will acquire two manufacturing plants and certain other assets. Except as stated above, denies each and every allegation of paragraph 10 of the Complaint.

11. Admits the allegations of paragraph 11 of the Complaint.

12. Denies each and every allegation of paragraph 12 of the Complaint. Avers that pursuant to the Original Agreement, Libbey proposed to acquire Anchor Hocking, including its food service, retail and specialty/industrial glassware businesses. Further avers that pursuant to the Amended Agreement, which supersedes the Original Agreement, Libbey proposes to acquire only Anchor Hocking's retail and

specialty/industrial glassware businesses. Newell Rubbermaid will retain its food service glassware business.

13. Denies that “food service glassware” is a distinct product line as a matter of fact or law. Further avers that the Original Agreement has been superseded by the Amended Agreement and that there is therefore no reason to assess the effects of the Original Agreement.

14. Admits that the relevant geographic area in which to assess the effects of the Amended Agreement is the United States. Avers that this geographic market includes all domestic and foreign companies that have the ability to sell glass tableware in the United States. Further avers that the Original Agreement has been superseded by the Amended Agreement and that there is therefore no reason to assess the effects of the Original Agreement in any geographic market. Except as stated above, denies each and every allegation of Paragraph 14 of the Complaint.

15. Denies each and every allegation of paragraph 15 of the Complaint. Specifically denies that "food service glassware" is a distinct product line as a matter of fact or law.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16 of the Complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17 of the Complaint.

18. Admits that Anchor competes with Libbey (and many other entities) in the sale of glassware and that such competition is based, among other factors, on price. Denies that “food service glassware” is a distinct product line as a matter of fact or law. Except as stated above, denies each and every allegation of paragraph 18 of the Complaint.

19. Denies each and every allegation of paragraph 19 of the Complaint. Avers that the Original Agreement has been superseded by the Amended Agreement and that there is therefore no reason to assess the effects of the Original Agreement.

20. Denies each and every allegation of paragraph 20 of the Complaint. Specifically denies that “food service glassware” is a distinct product line as a matter of fact or law.

21. Denies each and every allegation of paragraph 21 of the Complaint.

22. Denies each and every allegation of paragraph 22 of the Complaint. Avers that the Original Agreement has been superseded by the Amended Agreement and that there is therefore no reason to assess the effects of the Original Agreement.

23. Repeats and realleges each and every statement, admission and denial made in response to the paragraphs of the Complaint referred to in paragraph 23 thereof with the same force and effect as if set forth herein at length.

24. Denies each and every allegation of paragraph 24 of the Complaint. Avers that the Original Agreement has been superseded by the Amended Agreement and that there is therefore no reason to assess the effects of the Original Agreement.

25. Repeats and realleges each and every statement, admission and denial made in response to the paragraphs of the Complaint referred to in paragraph 25 thereof with the same force and effect as if set forth herein at length.

26. Denies each and every allegation of paragraph 26 of the Complaint. Avers that the Original Agreement has been superseded by the Amended Agreement and that there is therefore no reason to assess the effects of the Original Agreement.

27. Repeats and realleges each and every statement, admission and denial made in response to the paragraphs of the Complaint referred to in paragraph 27 thereof with the same force and effect as if set forth herein at length.

28. Denies each and every allegation of paragraph 28 of the Complaint.

29. Repeats and realleges each and every statement, admission and denial made in response to the paragraphs of the Complaint referred to in paragraph 29 thereof with the same force and effect as if set forth herein at length.

30. Denies each and every allegation of paragraph 30 of the Complaint.

DEFENSES AND AFFIRMATIVE DEFENSES

Without assuming any burden that it would not otherwise bear, Newell Rubbermaid asserts the following defenses and affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

Because the Original Agreement has been abandoned and superseded by the Amended Agreement, there presently exists no actual or potential violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, or Section 5 of the FTC Act, 15 U.S.C. § 45, as a result of the Original Agreement. Therefore, to the extent that it is directed solely to the Original Agreement, the Commission's Complaint is moot.

THIRD AFFIRMATIVE DEFENSE

Newell Rubbermaid has not knowingly or intentionally waived any applicable affirmative defenses. Newell Rubbermaid presently lacks sufficient knowledge or information on which to form a belief as to whether it may have available additional defenses or affirmative defenses, and reserves the right to assert such additional defenses.

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