

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of)
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)
ELI LILLY AND COMPANY,)

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent Eli Lilly is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its headquarters address located at Lilly Corporate Center, Indianapolis, Indiana 46285.
2. Respondent Novartis is a corporation organized, existing and doing business under and by virtue of the laws of the Swiss Confederation with its headquarters address located at Lichtstrasse 35, Basel, Switzerland, CH4056, and the address of its United States subsidiary, Novartis Corporation, located at 230 Park Avenue, New York, New York 10169.
3. The Commission has jurisdiction of the ~~subject~~ matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final and effective, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. "Eli Lilly" means the following Eli Lilly and Company, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Eli Lilly and Company, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Eli Lilly shall include the Novartis Animal Health Group.
- B. "Novartis" means the following Novartis AG, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Novartis AG, and the respective directors, officers, employees, agents, representatives, successors, and assigns ~~Novartis~~ shall not include the OTC Joint Venture.

- C. "Respondents" means Eli Lilly and Novartis, individually and collectively; *provided, however* that from the later to occur of (i) the OTC Joint Venture Date, or (ii) the Closing Date, "Respondents" shall mean Eli Lilly.
- D. "Commission" means the Federal Trade Commission.
- E. "Decision and Order" means the:
 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final and effective Decision and Order by the Commission; and
 2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.
- F. "Canine Health Product Business(es)" means the Business of Respondent Novartis within the Geographic Territory specified in the Decision and Order related to each of the Canine Health Products to the extent that such Business is owned, controlled, or managed by the Respondents and the Assets related to such Business to the extent such Assets are owned by, controlled by, managed by, or licensed to, the Respondents.
- G. "Interim Monitor" means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph of the Decision and Order
- H. "Orders" means the Decision and Order and this Order to Maintain Assets.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final and effective:

- A. Until Respondents fully transfer and deliver the Canine Health Product Assets to an Acquirer, Respondents shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of each of the related Canine Health Product Businesses, to minimize any risk of loss of competitive potential for such Canine Health Product Businesses,

B. Until Respondents fully transfer and deliver the Canine Health Product Assets to an Acquirer, Respondents shall maintain the operations of the related Canine Health Product Businesses in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such business) and/or as may be necessary to preserve the full economic marketability, viability, and competitiveness of such Canine Health Product Businesses and shall use their best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors; High Volume Accounts; used customers; Agencies; employees; and others having business relations with each of the respective Canine Health Product Businesses. Respondents' responsibilities shall include, but are not limited to, the following:

1. providing the Canine Health Product Business with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their scheduled pace, capital projects, business plans and promotional activities for such Canine Health Product Business;
2. continuing, at least at their scheduled pace, any additional expenditures for the Canine Health Product Business authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all research, Development, manufacturing, distribution, marketing and sales expenditures;
3. providing such resources as may be necessary to respond to competition against each of the Canine Health Products and/or to prevent any diminution in sales of each of the Canine Health Products during and after the Acquisition process and prior to the complete transfer and delivery of the related Canine Health Product Assets to an Acquirer; *provided, however,* that a Respondent may continue to operate its Business related to any Retained Product in the ordinary course of business;
4. providing such resources as may be necessary to maintain the competitive strength and positioning of each of the Canine Health Products at the related High Volume Accounts;
5. making available for use by the Canine Health Product Business funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the assets related to such Canine Health Product Business and
6. providing such support services to the Canine Health Product Business as were being provided to the Canine Health Product Business by Respondents as of the date the Consent Agreement was signed by Respondents.

C. Until Respondents fully transfer and deliver each of the respective Canine Health Product Assets to an Acquirer, Respondents shall maintain a workforce that is (i) at least as large in size as measured in full time equivalents;

fiscal year, *provided, however* that a reduction in employees due the hiring of employees by the Acquirer shall not be considered a reduction in the work force.

D. Respondents shall:

1. for a period of one (1) year from the Closing Date provide the Acquirer or its Manufacturing Designee with the opportunity to enter into employment contracts with the Canine Health Product Core Employees. Each of these periods is hereinafter referred to as the Canine Health Product Core Employee Access Period(s);
2. not later than the earlier of the following dates: (i) ten (10) days after notice by staff of the Commission to Respondents to provide the Product Employee Information; or (ii) ten (10) days after written request by an Acquirer or Proposed Acquirer provide the Acquirer or Proposed Acquirer(s) with the Product Employee Information related to the Canine Health Product Core Employees *unless* the Law requires a mandatory notice period prior to the release of such information in which case the information shall be provided not later than ten (10) days after the expiration of the notice period. *Failure* Respondents to provide the Product Employee Information for any Canine Health Product Core Employee within the time provided herein shall extend the Canine Health Product Core Employee Access Period(s) with respect to that employee in an amount equal to the delay *provided, however*, that the provision of such information may be conditioned upon the Acquirer's or Proposed Acquirer's *written* confirmation that it will (i) treat the information as *confidential* and, more specifically, (ii) use the information solely to consider whether to provide or continue providing to Canine Health Product Core Employees the opportunity to enter into employment contracts during a Canine Health Product Core Employee Access Period, (iii) restrict access to the information to such of the Acquirer's or Proposed Acquirer's employees who need such access in connection with the *specified* and permitted use, and (iv) destroy or return the information without retaining copies at such time as the *specified* and permitted use ends;
3. during the Canine Health Product Core Employee Access Period not interfere with the hiring or employing by the Acquirer or its Manufacturing Designee of the Canine Health Product Core Employees, and remove any impediments within the control of Respondents that may deter these employees [(C)- ()Tj (t)Tj -0.004 Tc 0.004 Tw 0.53 0 Td [(h)-4

provided, however, that, subject to the conditions of continued employment prescribed

- E. Respondents, in consultation with the Acquirer for the purposes of ensuring and orderly marketing and distribution transition shall
1. develop and implement a detailed transition plan to ensure that the commencement of the marketing, distribution and sale of the Canine Health Products is not delayed or impaired by the Respondents;
 2. designate employees of Respondent knowledgeable about the marketing, distribution and sale related to each of the Canine Health Products who will be responsible for communicating directly with the Acquirer and the Interim Monitor (if one has been appointed), for the purposes of assisting in the transfer of the Canine Health Product Business to the Acquirer
 3. maintain and manage inventory levels of the Canine Health Products in consideration of the marketing and distribution transition;
 4. continue to market, distribute and sell the Canine Health Products until the Acquirer assumes such functions
 5. allow the Acquirer access at reasonable business hours to all Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files that contain such Confidential Business Information pending the completed delivery of such Confidential Business Information to the Acquirer
 6. provide the Acquirer with a listing of inventory levels (week of supply) for each customer (i.e., retailer, group purchasing organization, wholesaler or distributor) on a regular basis and in a timely manner;
 7. provide the Acquirer with anticipated reorder dates for each customer in a timely manner; and
 8. establish projected time lines for accomplishing all tasks necessary to effect the marketing and distribution transition in an efficient and timely manner
- F. Pending divestiture of the Canine Health Product Assets, Respondents shall:
1. not use, directly or indirectly, any Confidential Business Information that is exclusively related to Sentinel® Spectrum® (NADA 141-833) or Sentinel® Flavor Tabs® (NADA 141-084) other than as necessary to comply with the following:

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Respondent personnel.

- I. Respondents shall monitor the implementation by its employees and other personnel of all applicable restrictions with respect to Confidential Business Information, and take corrective actions for the failure of such employees and personnel to comply with such restrictions or to furnish the written agreements and acknowledgments required by this Order to Maintain Assets
- J. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Canine Health Product Businesses within the Geographic Territory through their full transfer and delivery to an Acquirer, to minimize any risk of loss of competitive potential for the Canine Health Product Businesses within the Geographic Territory, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Canine Health Product Assets except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign a Consent Agreement in this matter, the Commission may appoint a monitor (“Interim Monitor”) to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents’ compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- D. If an Interim Monitor is appointed, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:
 1. The Interim Monitor shall have the power and authority to monitor Respondents’ compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the

purposes of the Orders and in consultation with the Commission.

2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The Interim Monitor shall serve until the date of completion by the Respondents of the divestiture of all Canine Health Product Assets and the transfer and delivery of the related Product Manufacturing Technology in a manner that fully satisfies the requirements of this Order and, with respect to each Canine Health Product until the earliest of: (i) the date the Acquiree (the Acquiree's Manufacturing Designee(s)) is

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and