

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
THOMASVILLE DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff;)
)
 v.) Civil Action No.: 6-95-cv-45(WLS)
)
 ENGELHARD CORPORATION,)
 FLORIDIN COMPANY,)
 U.S. BORAX INC., and)
 U.S. SILICA COMPANY;)
)
 Defendants.)
 _____)

UNITED STATES' EMERGENCY MOTION FOR AN INJUNCTION PENDING APPEAL

On March ____, 1997 Your Honor entered an order finding that the government failed to prove that the acquisition of the Floridin Company assets by Engelhard Corporation was anticompetitive. The United States asks this Court, pursuant to Federal Rule of Civil Procedure 62 and Federal Rule of Appellate Procedure 8, to enjoin Engelhard's acquisition of Floridin's assets for thirty days to permit the Antitrust Division and the Solicitor General the opportunity to review this Court's opinion and determine whether to appeal. In the event the Solicitor General authorizes an appeal, we ask that Your Honor extend the injunction through the pendency of the appeal pursuant to Federal Rule of Civil Procedure 62(c). If an appeal is authorized, plaintiff commits to immediately ask the Court of Appeals for an expedited briefing and argument schedule. In the alternative, plaintiff moves this Court to enjoin the acquisition until the U.S. Court of Appeals for the Eleventh Circuit rules on the government's motion

for an injunction pending appeal. Plaintiff commits that within two weeks it will either file such a motion or decide not to pursue a motion for an injunction pending appeal in the Court of Appeals.

If the transaction is not enjoined, the defendants can proceed with the sale of Floridin's assets to Engelhard, which will eliminate Floridin as a competitor in the gel clay market, irrevocably harming competition and the rights of the United States to appeal and obtain effective relief. The defendants have steadfastly refused plaintiff's request to delay with the transaction for any period of time, however brief. Plaintiff has no assurance that the transaction will not proceed as soon as the defendants receive Your Honor's decision.

Engelhard has indicated its intention, once the transaction is consummated, to move Engelhard's equipment into the Floridin plant, combine its attapulgite clay production operations with Floridin's, discharge more than 100 employees, and demolish the Engelhard plant. These actions would eliminate a gel clay competitor permanently, and the benefits to customers of competition between Floridin and Engelhard in pricing, service, and quality would disappear. Purchasers of gel clay will be left with at most two gel clay producers, and some customers, only one. Data that are now trade secrets of Engelhard or Floridin and other competitively-sensitive data about pricing, mining, production, and marketing will be shared by the companies, and the secrecy of those data will be lost forever. Information that customers previously supplied in confidence only to one company will be handed over to its former competitor. Once the assets and managements of the two companies are combined, the unscrambling of the assets, reestablishment of the managements, and reassembly

of Floridin and Engelhard as two separate, independent competitors would be very difficult, if not impossible.

The acquisition agreement between Engelhard and Floridin (DX1116) states that the transaction cannot proceed until Your Honor's opinion is final and unappealable. However, the defendants have refused to assure the government that they will abide by that provision or to agree to maintain the status quo for any period of time. In light of this unwillingness, the United States asks Your Honor to enjoin Engelhard's proposed acquisition of the Floridin assets. Given the irreparable harm that could proceed from the transaction, we ask that this motion be considered on an expedited basis.

Dated: March ____, 1997.

Respectfully submitted,
United States Department of Justice
Antitrust Division

By _____

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