

the respective directors, officers, employees, agents, representatives, successors and assigns of each.

B. "Miracle-Gro" means Stern's Miracle-Gro Products, Inc., its predecessors, successors and assigns, its subsidiaries, divisions, groups and affiliates controlled by Stern's Miracle-Gro Products, Inc.

C. "Alljack" means Alljack & Company and Celex Corporation, their predecessors, successors and assigns, subsidiaries, divisions, groups, and affiliates.

D. "Commission" means the Federal Trade Commission.

E. The term "Water Soluble Fertilizer" means fertilizer that is sold as a powder, composed principally of nitrogen, phosphorous and potash, to be dissolved in water prior to application for use principally on houseplants, gardens, shrubs and flowers.

F. The term "Consumer Water Soluble Fertilizer" means Water Soluble Fertilizer packaged for sale in containers of less than 20 pounds.

G. The term "Peters Consumer Water Soluble Fertilizer" means Consumer Water Soluble Fertilizer sold under the Peters brand name.

H. The term "Peters Consumer Water Soluble Fertilizer Business" means all assets, properties, business and goodwill, tangible and intangible, relating to the manufacture or sale of Peters Consumer Water Soluble Fertilizer in the United States, including, without limitation, the following:

1. All Peters trademarks;
2. Inventory;
3. The right to use the same packaging and trade dress that Peters has used for Consumer Water Soluble Fertilizer, provided that the right to use the Scotts trademark is limited to the right to sell existing inventory;
4. All customer lists, distribution agreements, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, inventions, trade secrets, intellectual property, patents, technology, know-how (including, but not limited to manufacturing know-how), specifications, designs, drawings, processes, quality control data, and formulas;
5. All rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

6. All rights under warranties and guarantees, express or implied;
7. All books, records, and files; and
8. All items of prepaid expense.

The term "Peters Consumer Water Soluble Fertilizer Business" does not include accounts receivable, the Peters production facilities located at Allentown, Pennsylvania, the use of intangible assets (including the use of the Peters trademarks on Water Soluble Fertilizer in containers of 20 pounds or more) for the production or sale of agricultural or commercial products, or the use of the Peters trademarks on potting soil, perlite, or vermiculite.

I. The term "Peters Business" means all assets, properties, business and goodwill, tangible and intangible, relating to the manufacture or sale of all products that Scotts has sold under the Peters trademarks during the five (5) years preceding the date on which this agreement is accepted by the Commission, including, without limitation, the Allentown, Pennsylvania plant where Peters products are manufactured and including, without limitation, the following:

1. The Peters Consumer Water Soluble Fertilizer Business;
2. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;
3. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, inventions, trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes, quality control data, and assets relating to research and development;
4. Inventory and storage capacity;
5. All rights, titles and interests in and to owned or leased real property, together with appurtenances, licenses and permits;
6. All rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;
7. All rights under warranties and guarantees, express or implied;
8. All books, records, and files; and
9. All items of prepaid expense.

II

*It is further ordered that:*

A. Scotts shall divest, through sale or exclusive perpetual license, absolutely

and in good faith, no later than December 31, 1995, the Peters Consumer Water Soluble Fertilizer Business as an ongoing business and shall also, at the time of such divestiture, divest such additional ancillary assets and ancillary businesses and effect such arrangements as are necessary to assure the marketability and the viability and competitiveness of the Peters Consumer Water Soluble Fertilizer Business.

B. The divestiture shall be made either—

1. No later than ten (10) days from the date this order becomes final, to Alljack, pursuant to the agreements between Scotts and Alljack, which are Confidential Appendices II and III, or
2. To an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

The purpose of the divestiture of the Peters Consumer Water Soluble Fertilizer Business is to ensure that the Peters Consumer Water Soluble Fertilizer Business continues to operate as an ongoing business in the same business in which it is engaged at the time this Agreement is accepted by the Commission and to remedy the lessening of competition resulting from the acquisition, as alleged in the Commission's complaint.

C. Pending divestiture of the Peters Consumer Water Soluble Fertilizer Business, respondent shall take such actions as are necessary to maintain the viability and marketability of the Peters Consumer Water Soluble Fertilizer Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any part of the Peters Consumer Water Soluble Fertilizer Business.

D. Unless the acquirer has its own source of supply, the divestiture shall include an agreement by Scotts (the "Supply Agreement") to supply Water Soluble Fertilizer for a period of two (2) years from the date of the divestiture required by this Paragraph II. The Water Soluble Fertilizer supplied pursuant to the Supply Agreement shall, at the option of the acquirer, be of the same chemical composition as, and of a quality equal to or greater than, the Water Soluble Fertilizer marketed by the Peters Consumer Water Soluble Fertilizer Business at the time this agreement is accepted by the Commission for comment. The Supply Agreement shall obligate Scotts to supply such Water Soluble Fertilizer at a price equal to direct cash cost of raw materials, packaging, and labor (based on expenses during the previous fiscal year), plus ten (10) percent. The Supply