

Repositioning and the Revision of the Horizontal Merger Guidelines

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De novo entry has long been accepted as a possible defense against anticompetitive concerns in any merger context. The potential for using product repositioning by extant competitors as a defense has only received consideration as the unilateral effects analysis of differentiated product mergers has entered the mainstream. In 1991, Robert Willig—at that time the chief economist at the Department of Justice (DOJ) Antitrust Division—noted that if other firms can easily reposition their products to be closer to those of the merging parties, then “there would be little reason for special concern about the effects of a merger between two firms just because their products happened to be close substitutes at the current point in time.”¹

Carl Shapiro, currently the chief economist at the DOJ Antitrust Division, offered similar observations in a 1995 presentation to the American Bar Association during his previous tenure at the DOJ. He noted that in the event of a post-merger price increase

it may well pay for a rival firm to reposition its brand closer to the merging brands. And this threat could well deter the price increase in the first place Very often in differentiated-product markets, brands enter and exit with some regularity, and existing products may be repositioned either through design changes or revised marketing strategies.²

Indeed, some prominent examples of repositioning include grocery stores and beer—examples we describe in greater detail below.

Against that background, it is not surprising that the DOJ and FTC’s Horizontal Merger Guidelines consider the potential for repositioning (and entry) by existing rivals in response to a merger as potential factors in assessing the likelihood of a post-merger price increase.³ In particular, repositioning—at least until recently—had become a standard defense for mergers in differentiated product industries. Specifically, Section 2.212 of the Horizontal Merger Guidelines notes that a “merger is not likely to lead to unilateral elevation of prices of differentiated products if, in response to such an effect, rival sellers likely would replace any localized competition lost through the merger by repositioning their product lines.”

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¹ Robert Willig, *Merger Analysis, Industrial Organization Theory, and Merger Guidelines*, in BROOKINGS PAPERS ON ECONOMIC ACTIVITY: MICROECONOMICS 281, 304–05 (Clifford Winston & Martin Neil Baily eds., 1991).

² Carl Shapiro, Dep. Assistant Att’y Gen., Antitrust Div., U.S. Dep’t of Justice, *Mergers with Differentiated Products*, Address Before the ABA and IBA 17 (Nov. 9, 1995), available at <http://www.justice.gov/atr/public/speeches/227167.pdf>. Shapiro also notes that “the greater are the sunk costs associated with product entry or repositioning, and the longer such supply responses take, the less likely they are to deter or defeat an anticompetitive price increase.” *Id.* at 18. As this caveat suggests, the differences between entry and repositioning are effectively quantitative, not qualitative.

³ U.S. Dep’t of Justice & Fed. Trade Comm’n, *Horizontal Merger Guidelines* §§ 2.2, 3 (1992, rev. 1997), available at <http://www.justice.gov/atr/public/guidelines/hmg.pdf>.

However, despite the apparent importance of the potential for repositioning to evaluating post-merger competition, the extent to which repositioning arguments have influenced the actual review of potential mergers is not obvious. In the antitrust agencies' 2006 *Commentary on the Horizontal Merger Guidelines*, which was an attempt to provide some clarification and discussion of the actual practice of the agencies in applying the Guidelines, the repositioning defense was effectively written out of the Guidelines:

The Agencies rarely find evidence that repositioning would be sufficient to prevent or reverse what otherwise would be significant anticompetitive unilateral effects from a differentiated products merger. Repositioning of a differentiated product entails altering consumers' perceptions instead of, or in addition to, altering its physical properties. The former can be difficult, especially with well-established brands, and expensive efforts at doing so typically pose a significant risk of failure and thus may not be undertaken.⁴

[W]e find that the factual assertions in the Commentary that repositioning is difficult appear at odds with the data we have seen in consumer goods industries—those where product differentiation models are most likely to be relevant.

In this article, we consider what role repositioning should play in the merger review process as the agencies begin the task of revising the Guidelines. Specifically, we look at the economic arguments for why explicit consideration of repositioning (and entry) may be unwarranted in some cases and ask what limitations those arguments have. We find, for example, there are some theoretical reasons why reliance on repositioning (or even entry) to defend a merger is misplaced in circumstances where appropriate elasticities (i.e., ones that account for the threat of repositioning by rivals) can be readily estimated. However, in most instances, estimating appropriate elasticities will be difficult at best, and so the repositioning defense can be key to a complete evaluation of competitive effects.

Perhaps more importantly, we find that the factual assertions in the *Commentary* that repositioning is difficult appear at odds with the data we have seen in consumer goods industries—those where product differentiation models are most likely to be relevant.⁵ Thus, we conclude that repositioning should continue to receive explicit consideration in the revised Guidelines. There should be a clear statement of any factors that the agencies believe limit the role of repositioning in practice or any reasons for discounting evidence concerning repositioning based on theoretical grounds.⁶

Repositioning in Theory

Coordinated Effects. In the context of coordinated effects concerns, repositioning may not always be relevant to the assessment of competitive effects. For example, suppose a merger raises coordinated effects concerns because the effect of the merger is likely to increase tacit collusion by perfecting the ability to detect and punish “cheaters” to the agreement. The effect of the merg-

⁴ U.S. Dep't of Justice & Fed. Trade Comm'n, *Commentary on the Horizontal Merger Guidelines* 31 (2006), available at <http://www.ftc.gov/os/2006/03/CommentaryontheHorizontalMergerGuidelinesMarch2006.pdf> [hereinafter *Commentary*].

⁵ This view of the *Commentary* is all the more troubling to the extent that the revisions considered by the agencies may well be driven by the *Commentary* as the most recent interpretation of current agency practice. See Darren S. Tucker, *Seventeen Years Later: Thoughts on Revising the Horizontal Merger Guidelines*, ANTITRUST SOURCE, Oct. 2009, at 1, <http://www.abanet.org/antitrust/at-source/09/10/Oct09-Tucker10-23f.pdf>.

⁶ Economists Gregory Werden and Luke Froeb have noted that in the presence of sunk costs for entrants, anticompetitive mergers in differentiated product industries may not provide an entry opportunity sufficiently large to induce entry. In these general situations, reliance on entry as a “cure” for an otherwise anticompetitive merger may be misplaced. See Gregory J. Werden & Luke M. Froeb, *The Entry-Inducing Effects of Horizontal Mergers: An Exploratory Analysis*, 46 J. INDUS. ECON. 525 (1998). While in principle, these same arguments could apply to repositioning, the prevalence of repositioning opportunities seems empirically important.

er then may be to enhance the internal stability of the coordinating group, but it has no apparent effect on the external constraints on the merged firm. That is, the merger may have no price effect but acts only as a tacit cartel stabilizer. Thus, arguably, entry and repositioning are not affirmative defenses to coordinated effects concerns because there is no price change to respond to.

However, there are several ways in which repositioning can be relevant in a coordinated effects case. First, to the extent that repositioning is a regular feature of an industry, the likelihood that a merger in that industry would improve firms' ability to coordinate may be lessened. Frequent repositioning of products would likely frustrate efforts by any putative coordinating group to monitor price and share and so would disrupt efforts to coordinate pricing tacitly (other things equal). In this sense, explicit consideration of repositioning during the merger review process would be an important part of assessing the likely competitive effects of the merger.

In the context of a merger review, the role of repositioning is most prominent in considering the likelihood of adverse unilateral effects for a merger in a differentiated product industry . . .

Repositioning also would be relevant in the context of coordinated effects when a merger eliminates a maverick. If before the merger, the maverick was the constraint on the ability of the coordinating group to raise price, then the elimination of that constraint would result (all things equal) in a higher price.⁷ However, that higher price, in turn, may invite repositioning by firms outside of the coordinating group. In effect, the merger may give rise to a new maverick that exerts as great a constraint on the coordinating group as the previous maverick eliminated by the merger. If that were the case, then the merger would have no price-increasing effect and, indeed, the only reason for the merger would then be efficiency based. Ignoring the potential for repositioning in such a case could lead to a substantial overstatement of the adverse competitive effects of the merger.

Thus, as a matter of theory, repositioning should be a key part of the revisions to the Guidelines' discussion of coordinated effects. To proceed otherwise could substantially increase the likelihood of false positives without any corresponding benefit in reducing the likelihood of false negatives.

Unilateral Effects. In the context of a merger review, the role of repositioning is most prominent in considering the likelihood of adverse unilateral effects for a merger in a differentiated product industry, i.e., the likelihood of a unilateral post-merger price increase in such an industry. The question we ask is whether the effects of such repositioning on the likelihood of adverse unilateral effects need explicitly to be taken into account. If the effects of repositioning on the likelihood of adverse unilateral effects are already accounted for through their embodiment in own- and cross-price elasticities and diversion ratios—factors that are usually examined in the context of a differentiated product merger—then it may be unnecessary or even inappropriate to consider the potential for product repositioning by rivals.

When two firms in a differentiated product industry merge, the post-merger incentive to increase price depends on the extent to which the products of the merging firms are close substitutes. As long as there is some degree of substitution between the products of the merging firms, prices will increase absent any offsetting efficiencies. If an increase in price of one firm's products leads some consumers to shift to the products of the other merged firm, the merged firm will have an incentive to increase price. That is, as a result of the merger, the firm increasing its price recaptures some of its lost sales when consumer purchases are diverted to the merging partner. That recapture rate provides the merged firm with the incentive to increase prices above the pre-merger level.

⁷ If there are multiple equally effective mavericks, then the elimination of one will not change the external constraints on the coordinating group. For a discussion of the maverick role, see Jonathan B. Baker, *Mavericks, Mergers, and Exclusion: Proving Coordinated Competitive Effects Under the Antitrust Laws*, 77 N.Y.U. L. Rev. 135 (2002).

In Bertrand-type models of differentiated product competition, key inputs into an assessment of the likelihood of unilateral effects include the own- and cross-price elasticities of the firms in the industry. If those elasticities are estimated correctly in that they account for repositioning, then no additional consideration of repositioning by rival firms is necessary.

For example, suppose that in the pre-merger state a firm raises its price, and that when it does so, one or more rivals reposition their products to appeal to consumers who valued the lower price point. In that case, the measured own- and cross-price elasticities will reflect the fact that the firm lost additional sales to those that repositioned—more sales than would have been lost had repositioning not occurred. Thus, the elasticities—both own and cross—will be larger than if repositioning had not occurred, and, in that sense, those elasticities will already reflect the effects of repositioning on the likelihood of a unilateral post-merger price increase. Concomitantly, the diversions from the firm raising price to those that repositioned will be larger in proportion to the effect of the repositioning.⁸ The greater the extent to which rivals can reposition their products when the firm increases price (and the extent to which consumers of the firm that increased price divert their purchases to the newly repositioned firm), the more elastic will be the estimated firm's demand curve and the larger will be the cross elasticities.

Therefore, if one relies on an analysis that is based on estimates of elasticities and diversions from actual data that account for repositioning—an analysis such as the Guidelines market definition test using a small but significant and non-transitory increase in price (SSNIP), the use of an Upward Pricing Pressure index as recently suggested by Farrell and Shapiro,⁹ a critical loss analysis, or a full simulation of the post-merger equilibrium—the fact of the potential for repositioning generally could not be used as an affirmative defense of a merger. That would amount to double dipping because the elasticities already reflect any repositioning that may result from merger-induced price increases.¹⁰

However, estimating a demand system to obtain such own- and cross-price elasticities can be difficult, especially in the context of frequent product repositioning. In the first instance, the presence of repositioning may make it difficult to construct a demand model that allows for product characteristics to change over time. Repositioning may itself also be endogenous (i.e., repositioning may occur in response to shocks in demand that also affect pricing) and thereby render estimates biased or necessitate more sophisticated econometric approaches. Therefore, explicit consideration of repositioning in assessing competitive effects may be warranted if it is not possible to obtain reliable estimates of elasticities that adequately account for repositioning.

Approaches that rely on HHIs, capacities, or win-loss records, rather than estimated elasticities, to infer competitive effects may also not adequately capture the effects of repositioning on the likelihood of post-merger competitive effects.¹¹ For example, one might use win-loss records

⁸ This assumes that future repositioning patterns will be reflected in historical repositioning patterns. If that is not the case, then even what would otherwise be a reasonable estimate of the own- and cross-price elasticities will not reflect the repositioning that matters for mergers—i.e., repositioning should the merged firm attempt to increase price.

⁹ Joseph Farrell & Carl Shapiro, *Antitrust Evaluation of Horizontal Mergers: An Economic Alternative to Market Definition* (Working Paper 2008), available at <http://faculty.haas.berkeley.edu/shapiro/>.

¹⁰ One could make the same argument about entry.

¹¹ It is possible that the econometric approach used in *FTC v. Staples Inc.*, 970 F. Supp. 1066 (D.D.C. 1997), for example, of regressing price on HHI, while introducing numerous well-documented challenges to the researcher, may succeed in capturing the effects of repositioning. This would be the case if repositioning provides a strong constraint on pricing such that the regression shows little effect on pricing from changes in concentration.

to identify the extent to which products of the merging parties are close substitutes, and the extent to which products of other rivals are close substitutes for those of the merging parties. But diversion estimates based on win-loss records will not account for post-merger repositioning. Thus, there is the possibility that historical win/loss records may present a distorted picture of who the real constraints might be at any given time.

Similarly, relying on proportional diversion—that is, assuming that diversions are proportional to industry shares—may provide a reasonable starting point for a competitive effects analysis, but may not be sufficiently reliable for a full analysis. If a post-merger price increase results in repositioning by the rivals of the firm, that repositioning will dampen the incentives to raise post-merger prices. Based as it is on current shares, proportional diversion cannot account for repositioning.

While in principle there may be ways of estimating own-price and cross-price elasticities that reduce the need for any reliance on external repositioning information, in practice such estimates are difficult to generate. Thus, reliance on external data to gauge the extent of repositioning will be necessary if, as a general matter, repositioning is a reasonable possibility in the event of a post-merger price increase.

Repositioning has historically played a significant role in the grocery industry.

Repositioning in Fact

As noted at the outset, the *Commentary* asserts that as a general rule, repositioning in practice is not likely to be of any competitive significance. We assess the validity of that general rule by considering the evidence on the possible extent of repositioning in some common consumer goods industries. In doing so, rather than generally identifying repositioning in response to a merger-induced price change (although such a data set would have been ideal for this exercise), we illustrate that repositioning in general, whether through the introduction of new brands or through product extension, is common in a number of consumer goods industries.

Examples from the Retail Grocery Industry. Repositioning has historically played a significant role in the grocery industry. The potential for repositioning by “conventional” grocery stores in response to the success of the “natural and organic” grocery store concept was a central issue in a recent challenge by the FTC of the merger of grocery chains Whole Foods and Wild Oats.¹² The FTC’s complaint alleged that Whole Foods and Wild Oats competed in a market of “premium, natural and organic supermarkets” (PNOS) and faced no effective competition from conventional grocery stores.¹³ The merging parties argued that they faced competition from a broad range of grocery stores, including grocery chains focused on natural and organic foods; so-called conventional grocery stores, such as Safeway and Kroger; as well as some more specialized stores like Trader Joe’s, so that there could be no market defined as narrowly as PNOS.

In its finding that Whole Foods competes in a broad market including all grocery stores and not just the PNOS market alleged by the FTC, the district court cited evidence of actual entry and repositioning by so-called conventional stores in response to stores in the putative PNOS’ market. For example, the court noted that numerous grocery stores had already proven themselves adept at repositioning through the addition and expansion of organic produce sections, perishable meat sections and other products, and through reformatting and redesigning stores. These firms included Delhaize America and, in particular, its high-end banners, Hannaford and Bloom; Safeway; Publix; Kroger; Supervalu; and Wegmans.¹⁴

¹² *FTC v. Whole Foods Market, Inc.*, 502 F. Supp. 2d 1 (D.D.C. 2007), *rev’d*, 548 F.3d 1028 (D.C. Cir. 2008).

¹³ *Id.* at 5.

¹⁴ *Id.* at 43–48.

In fact, there appear to be numerous examples of repositioning by grocery chains as a means of competition. Whole Foods launched its “365” brand in 1997 as a low-cost all-natural product line (but without the organic designation) to attract more customers and compete against lower priced private label brands of conventional supermarkets and Trader Joe’s.¹⁵ The 365 line includes many of the same products that Whole Foods sells as natural and organic, such as soft drinks, juices, salad dressings, and pasta sauces.¹⁶ Thus, this launch was an attempt by Whole Foods to reposition itself in the grocery space to compete not only with other natural and organic supermarkets but also with stores in the conventional space. The launch of the 365 brand has been regarded as a success for Whole Foods and other manufacturers, and retail competitors have since responded by introducing or repositioning product lines, or altering pricing on existing product lines, to compete with Whole Foods’ 365 brand.¹⁷

More generally, as various non-conventional grocery chains have demonstrated that “organic” and “natural” concepts appeal to consumers, “traditional” chains like Safeway have felt pressure to respond and adapt to the changing preferences of customers. In particular, Whole Foods’ challenge to conventional grocery chains is based on a combination of successful marketing designed to exploit a growing preference for healthy, natural, and organic foods and an acquisition strategy in which Whole Foods has converted numerous smaller chains into Whole Foods banners.

In response to this challenge, grocery chains, such as Safeway, Shaws, and Publix, have repositioned themselves by introducing new product lines and reformatting stores, allowing them to compete more directly in the fast growing natural and organic grocery space. For example, in 2003, as the demand for specialized stores grew, Safeway introduced several new brands, such as Ranchers Reserve meats and Signature sandwiches, soups, and salads. A year later, Safeway introduced its healthy-sounding “Ingredients for Life” advertising campaign and started remodeling its stores to create a warmer environment with hardwood floors and softer lighting to compete more effectively in the “healthy foods” product space.¹⁸

Each of these initiatives was part of a broader campaign by Safeway to rebrand itself under the “Lifestyle” moniker, emphasizing healthy foods, prepared foods, an enhanced shopping experience, and organic foods.¹⁹ By the end of 2006, Safeway had already remodeled 751 of its more than 1,500 stores to the new Lifestyle format. In December 2006, Safeway also introduced its “O Organics” private label line of organic products, including beverages, baked goods, cereals, canned and frozen foods, dairy products, and snack items.²⁰ The O Organics line was positioned to compete with Whole Foods’ 365 brand of private label non-perishables.

Examples of repositioning are not confined to conventional grocery chains. Perhaps one of the more notable and widely reported efforts to compete in organic and natural foods came from Wal-Mart. By early 2006, Wal-Mart was already introducing multi-product lines of organic foods into its

¹⁵ Michelle Wilde, *Low-Priced Private Label Is Coming to Whole Foods*, SUPERMARKET NEWS, Mar. 10, 1997, at 49.

¹⁶ R. Michelle Breyer, *Whole Foods to Introduce New Line of Products/Whole Foods Outlines Vigorous Plans to Expand*, AUSTIN AMERICAN-STATESMAN, Mar. 25, 1997, at D1.

¹⁷ “365” Brand Leads Private-Label Charge Among Retailers, Distributors, LOHAS WKLY. NEWSL., Dec. 1, 1997, available at <http://www.lohas.com/articles/65563.html>.

¹⁸ Andrea K. Walker, *Safeway Readies Ad Drive as Grocer Redefines Itself: The Supermarket Chain Redesigns Stores, Redraws Its Logo and Introduces New Brands to Compete with Discounters and Specialty Rivals*, BALT. SUN, Apr. 15, 2005, at 1D.

¹⁹ *Solutions for Living*, PROGRESSIVE GROCER, Oct. 1, 2006, at 31; Pia Sarkar, *Safeway Paying for New “Lifestyle,”* S.F. CHRON., July 27, 2005, at C3.

²⁰ David Goll, *Organic Food Fight: Safeway Gets Aggressive with New Line*, EAST BAY BUS. TIMES, Mar. 20, 2006.

stores and by late 2007, some industry watchers were declaring it to be the largest retailer of organic foods.²¹

While the district court's finding in favor of Whole Foods in *FTC v. Whole Foods* was overturned on appeal,²² the district court's opinion nevertheless highlights the important role that evidence of repositioning can play in a merger analysis. And, while those repositioning arguments did not ultimately save the Whole Foods merger, there may be others where this history of repositioning will be a potent affirmative defense against claims of post-merger harms.

Examples from the Retail Pharmaceutical Industry.

IN-STORE MEDICAL CLINICS. In 2005, partly in response to rising health care costs, CVS partnered with MinuteClinic to open in-store health clinics and subsequently acquired MinuteClinic in 2006.²³ These clinics expanded CVS' health care offerings by providing diagnoses and treatments of common illnesses, health screenings, and vaccinations. The CVS partnership with and acquisition of MinuteClinic was quickly mimicked by rival pharmacy retailers. In 2006, Take Care Health Systems opened clinics in Walgreens stores,²⁴ SmartCare Family Medical Centers opened clinics in Wal-Mart stores, and Lindora and Sutter Health opened clinics in Rite Aid stores.²⁵ By the end of 2008, the number of retail clinics in the United States reached 1,135, and Walgreens had the highest growth with 293 in-store clinics.²⁶

90-DAY RETAIL PHARMACY PRESCRIPTIONS. Pharmacy benefit management (PBM) companies have long offered drug benefit plans to insurers that include tiered co-pay incentives to encourage plan members to fill ninety-day prescriptions at PBM-owned mail-order pharmacies, rather than thirty-day prescriptions at retail pharmacies. A ninety-day prescription through mail order can be filled at lower cost than a thirty-day retail prescription, so PBMs are able to pass lower costs on to plan sponsors in the form of lower prices. In response, retail pharmacies, including Walgreens, CVS, and Rite Aid, developed their own PBM offerings and either bought or contracted with mail-order pharmacies to provide mail-order prescription services. This allowed them not only to compete directly with independent PBM-owned mail-order operations, but also to offer their own drug benefit plans featuring ninety-day mail-order prescriptions.²⁷

Some retail pharmacies have taken this one step further and have begun offering ninety-day prescriptions at retail as a way of differentiating their PBM offerings from those of the independent PBMs. For example, with its acquisition of Caremark in 2007, CVS positioned itself to develop new offerings for plan sponsors that would exploit the combined entity's strengths as both a retail

²¹ *Wal-Mart Goes Organic: Giant Looks to Lure Affluent Shoppers with Green Move*, ASSOCIATED PRESS, Mar. 26, 2006, available at <http://www.msnbc.msn.com/id/11977666/>; Press Release, Scarborough Research, When It Comes to Organic Food, the West is the Best (Oct. 10, 2007), available at http://www.scarborough.com/press_releases/Grocery%20FINAL%2010.10.07.pdf.

²² *FTC v. Whole Foods Market, Inc.*, 548 F.3d 1028 (D.C. Cir. 2008).

²³ *First Three MinuteClinics in CVS Stores Set to Open*, CHAIN DRUG REV., May 23, 2005, at 1; Press Release, CVS Corp., CVS Corporation to Acquire MinuteClinic, Largest Provider of Retail-based Health Clinics in the US (July 23, 2006), available at http://www.minuteclinic.com/Documents/Press-Releases/MC_CVS_Release.pdf.

²⁴ Bruce Japsen, *Walgreen to Set Up 20 Clinics; Kansas City, St. Louis Facilities Are Planned*, CHI. TRIB., Apr. 26, 2006, at 3.

²⁵ *In-store Clinics on Rise*, CHAIN DRUG REV., Oct. 23, 2006, at 3.

²⁶ Bruce Japsen, *Walgreens Leads Field in Retail Medicine: Drugstore Chain to Operate 400 Clinics in U.S. by August*, CHI. TRIB., Dec. 4, 2008, at 38.

²⁷ James Mulder, *Chains Adopt By-Mail Tactics; Drugstore Giants to Fill 90-Day Prescriptions*, NEW ORLEANS TIMES PICAYUNE, July 31, 2005, at 1.

pharmacy chain and a major PBM.²⁸ One example of this is its introduction of its “Maintenance Choice” program, which allows patients with chronic conditions to purchase ninety-day prescriptions at retail for the same price as by mail.²⁹ Rival retail pharmacy chains have introduced similar programs. Rite Aid, for example, offers a “Rite Fill 90” program for maintenance drugs through its PBM, Rite Aid Health Solutions.³⁰ Most recently, Walgreens, which offered a 90-day retail PBM offering called “Advantage90” as early as 2003 through its PBM, Walgreens Health Initiative, announced a new 90-day retail initiative in September of this year. The new initiative is a national ninety-day retail program aimed not only at its own PBM customers but also those of other PBMs.³¹

Examples from the Beer Industry.

The beverage industry offers numerous examples of dynamic repositioning by rivals.

THE RISE OF LIGHT BEERS. The beverage industry offers numerous examples of dynamic repositioning by rivals. One such example is competition in light beers. In January 1975, Miller Brewing Company introduced the first nationally distributed light beer, Miller Lite.³² Miller accompanied the introduction with an aggressive advertising campaign, and Miller’s overall beer sales increased 43 percent in the following year, in large part due to the success of Miller Lite.³³ Miller’s success with light beer set off a wave of product line extensions and new brand introductions by both small and well-established brewers. The Joseph Schlitz Brewing Company was the first to follow, introducing its light beer in December 1975;³⁴ Anheuser-Busch (AB) followed in 1977;³⁵ and Coors Brewing Company followed in 1978.³⁶ By mid-1977, there were over twenty light beers being marketed, and by 1980, there were nearly forty light-beer brands in the United States.³⁷ In 1982, AB introduced Budweiser Light, which became the top selling light beer by 1994.³⁸

THE RISE OF MICROBREWS AND CRAFT BREWS. Another well-known example of new brand entry and dynamic repositioning is found in the rise of microbrews.³⁹ Throughout the 1980s, numerous small, local brewers began encountering success in marketing their products and increasing

²⁸ Antoinette Alexander, *PBM Powerhouse CVS Caremark Redefines Retail Model*, DRUG STORE NEWS, Apr. 21, 2008, at 115.

²⁹ *Id.*

³⁰ Rite Aid Health Solutions, Enhanced Network Services, Maintenance Drug Programs, http://www.riteaidhealthsolutions.com/network_services.html.

³¹ Press Release, Walgreens Co., Walgreens Launches National Initiative for 90-Day Prescriptions at Community Pharmacies (Sept. 29, 2009); Russell Redman, *Push for 90-day at Retail Prescriptions Begins at Walgreens*, CHAIN DRUG REV., Sept. 29, 2009, <http://www.chaindrugreview.com/front-page/newsbreaks/push-for-90day-at-retail-prescriptions-begins-at-walgreens>; Matthew Coffina, *Walgreen Pushes 90-Day Scripts*, Morningstar Stock Analyst Notes, Sept. 29, 2009, available at <http://quicktake.morningstar.com/StockNet/san.aspx?id=310155>; Mari Edlin, *Retail Pharmacies Fill 90-Day Prescriptions to Compete with Mail*, MANAGED HEALTHCARE EXECUTIVE, Apr. 1, 2006, at 46.

³² MAUREEN OGLE, *AMBITIOUS BREW: THE STORY OF AMERICAN BEER* 283 (2006).

³³ *Id.*

³⁴ Judith VandeWater, *Letting Go; New Brands Are Crucial to Success In Brewing*, ST. LOUIS POST-DISPATCH, Feb. 4, 1990, at 1E.

³⁵ *Corporation Affairs: Anheuser-Busch Sets Industry Record*, N.Y. TIMES, Jan. 18, 1978, at D10.

³⁶ Philip H. Dougherty, *Advertising; Coors Adds an Ale to Its Product Line*, N.Y. TIMES, Apr. 1, 1981, at D16.

³⁷ *Many Brewers Set New Entries in Surging Light-Beer Market*, WALL ST. J., Sept. 3, 1980, at 29.

³⁸ Ryan Nakashima, *Miller’s Time: Oldest Major U.S. Brewer Turns 150*, AP WORLDSTREAM, Aug. 1, 2005. Bud Light was AB’s third light beer, following Natural Light and Michelob Light. See *Anheuser-Busch Introduces Light Beer—Its Third*, WALL ST. J., Mar. 1, 1982.

³⁹ A microbrewery is usually defined as a small brewery, often attached to a pub, that produces less than 15,000 barrels per year. See Brewers Association, *Craft Brewer Definition*, http://www.beertown.org/education/craft_defined.html; see also Brewers Association, *Market Segments*, <http://www.brewersassociation.org/pages/business-tools/craft-brewing-statistics/market-segments>.

sales.⁴⁰ The most prominent and successful examples of this phenomenon were the Sierra Nevada Brewery, which was the first of the microbreweries to cross the 25,000 barrel/year mark in 1990; Jim Koch's Boston Beer Company, which brews Sam Adams; and the Redhook Ale brewery.⁴¹

By the early 1990s, these microbreweries—often called craft breweries once they have grown past the threshold for being classified as a microbrewery—were stealing substantial market share from the big breweries. In 1992, for example, while the overall U.S. beer market remained flat, sales of craft beers rose by 44 percent.⁴²

Concerned with the rise of craft brewers and waning sales on college campuses, the major brewers entered the craft space themselves by purchasing and repositioning smaller brands or by extending existing product lines. In 1988, Miller Brewing Company bought Jacob Leinenkugel Brewing Company, a regional Wisconsin brewery, and in 1992, it introduced the Miller Reserve line of all-barley draft beers.⁴³ In 1993, Miller added Amber Ale and Velvet Stout to the Reserve family,⁴⁴ and Stroh Brewing Company launched its Augsburg line, including Oktoberfest and Doppelbock.⁴⁵ In 1994, Coors Brewing Company started seasonal boutique brews, such as its Wheat Beer, Bock Beer, and Marzen Oktoberfest labels,⁴⁶ and AB introduced Elk Mountain Amber Ale.⁴⁷ In 1995, Coors Brewing Company launched the Blue Moon Brand with the first craft beer of the line, Blue Moon Belgian White.⁴⁸ Despite these efforts by the major brewers in the craft space, many of the original microbrewers grew significantly and continue to hold large shares today, such as Boston Beer (Sam Adams), Redhook Ale, Genesee, and Sierra Nevada.

THE RISE OF MEXICAN BEERS. Yet another example of new brand entry and repositioning in the beer industry occurred in response to the rising popularity of Mexican beers. The initial growth of Mexican beers was spurred by the growth of the Hispanic demographic among beer drinkers. However, as the popularity of Mexican beers spilled over to a wider demographic, Mexican brewers such as Grupo Modelo (Corona) and FEMSA (Dos Equis and Tecate) have been able to achieve much broader success. This success (likely among other reasons) led AB to purchase a 17.7 percent share of Grupo Modelo in 1993, and it later expanded its ownership share to 50 percent. Partly as a result of its access to AB's distribution network, as well as aggressive and successful marketing campaigns, Grupo Modelo was able to increase Corona's share of the U.S. market rapidly, and by 1997 Corona had surpassed Heineken as the number one imported beer in the United States.⁴⁹

In response to AB and Grupo Modelo's success with Corona, AB's domestic rivals have engaged in product line extensions. While Grupo Model and AB successfully introduced into the United States the trend of drinking Corona with a wedge of lime, AB's rivals have responded by

⁴⁰ These included Old New York, Sierra Nevada, Redhook Ale, William S. Newman, Boulder, Yakima, Manhattan, Hale's Ales, Montana Beverage, Columbia River, Chesapeake Bay, and Widmer brewing companies.

⁴¹ Beer Advocate, History of American Beer, http://beeradvocate.com/beer/101/history_american_beer.

⁴² *Micro Breweries*, INDUSTRIES IN TRANSITION BUSINESS COMMUNICATIONS, INC., Mar. 1, 1993.

⁴³ *Miller Brewing Company Introduces Miller Reserve Amber Ale*, PR NEWswire, Mar. 10, 1993.

⁴⁴ *Miller Reserve Velvet Stout Set for February Introduction*, PR NEWswire, Dec. 14, 1993.

⁴⁵ Tim Moran, *Something's Brewing: Microbreweries and Brew-pubs Are Becoming Popular Players in the Suds Wars, But Restrictive Laws Keep the Numbers Small*, DETROITER, Feb. 1994, at 14.

⁴⁶ *Coors Winterfest Beer; Bock Beer; Wheat Beer; Marzen Oktoberfest Beer*, PRODUCT ALERT MARKET INTELLIGENCE SERV., Nov. 29, 1993.

⁴⁷ Mitchell Landsberg, *Unblinded by the Lite: The Brewing Industry's Renaissance*, ASSOCIATED PRESS, Jan. 29, 1995.

⁴⁸ MillerCoors LLC, MillerCoors Timeline, <http://www.millercoors.com/who-we-are/miller-coors-history/timeline/PanelId/6.aspx>.

⁴⁹ Rick Wills, *Corona Brews Way to Top of Imported Beers in U.S.*, DAILY NEWS L.A., May 30, 1999, at B1.

launching lime flavored beers. In 2007, Miller introduced a new product called Miller Chill, which is a version of Miller's light beer that is infused with salt and lime.⁵⁰ Miller's introduction was quickly followed by AB, which introduced Bud Light Lime in 2008, and by Coors' Blue Moon Brewing Company, which launched Rising Moon, a lime version of its Blue Moon ale.⁵¹

Examples from the Shampoo Industry. A hallmark of the hair care industry is the extensive proliferation of brands and brand extensions. In the case of shampoo, there appear to be hundreds of profitable ways for competing firms to locate their products to satisfy seemingly narrow consumer demands for a shampoo type. A recent visit to a local CVS drug store revealed a total of 153 brands or brand extensions at that one store alone. These included shampoos for damaged hair (e.g., Aussie brand's "Protect and Soften" and Pantene Pro-V's "Nature Infusion"); for dandruff protection (e.g., Head and Shoulders' "Intensive Treatment" and Gillette's "Antidandruff"); and for moisturizing shampoos (Aveeno's "Nourish and Moisturize").

*In the case of shampoo,
there appear to be
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Table 1 in the Appendix sets out the wide variety of types and combinations of shampoos observed at the CVS. Not surprisingly, with so many product varieties, many of these have small shares, yet they appear to have a lasting presence and succeed despite their small shares. More generally, our experience working on matters in the shampoo industry suggests that the minimum viable scale for repositioned brands and brand extensions seems quite small.

Our example from the CVS store visit is just a snapshot. We also reviewed a number of national magazines over the past three years to identify the shampoos advertised and the extent to which new shampoos were advertised. This broader review provides some indication of how frequently brands (particularly national brands) "reinvent" themselves, i.e., are repositioned. As indicated in Table 2 in the Appendix, between 2007 and 2009, 227 shampoo advertisements appeared in the magazines we reviewed.⁵² Of those, nearly one third were advertising new products. Thus, at least among nationally advertised brands, repositioning and brand extensions are very frequent occurrences.

For example, in the third quarter of 2007, John Frieda introduced "Daily" (and "Moisturizing") versions of its "Brilliant Brunette Shine Release" shampoos. At about the same time, John Frieda also introduced "Daily" versions of the "Sheer Blonde" and "Radiant Red" shampoos.⁵³

Around the third quarter of 2008 Pantene Pro-V "reinvented" the products in its "Expressions" line, which consists of shampoos designed for specific hair colors ("Brunette Expressions Shampoo," "Blonde Expressions Shampoo," and "Red Expressions Shampoo"). In particular, Pantene introduced a new formula for these shampoo lines (a "Liquid Crystals" technology)⁵⁴ and began emphasizing the ability to use the color-enhancing products on a daily basis.⁵⁵ These changes allowed Pantene Pro-V products to compete more directly with the more narrowly tailored daily-use John Frieda color care products mentioned above.

⁵⁰ Emily Fredrix, *Miller to Launch Mexican-Style Beer to Court Hispanics*, AP WORLDSTREAM, Feb. 5, 2007.

⁵¹ David Kesmodel, *Anheuser to Offer Lime in Bud Light*, WALL ST. J., Feb. 13, 2008, at B3.

⁵² The magazines reviewed were *Cosmopolitan*, *Seventeen*, *Marie Claire*, and *Redbook*. Not all issues were available for each year reviewed.

⁵³ Over the same time period, John Frieda offered three new color-focused varieties of its Sheer Blonde product: one characterized as "high-light activating," another called "Go Blonder Lightening" option, and another called "Color Renew Tone Restoring" for color-treated hair. These were advertised as new in the third quarter of 2007, the second quarter of 2009, and the fourth quarter of 2009, respectively.

⁵⁴ Hannah Morrill, *Crystal Lights*, ALLURE, July 2008, at 44.

⁵⁵ These were "Brunette Expressions Daily Color Enhancing Shampoo, with Liquid Crystals," "Blonde Expressions Daily Color Enhancing Shampoo, with Liquid Crystals," and "Red Expressions Daily Color Enhancing Shampoo, with Liquid Crystals."

That a shampoo brand can reposition and extend itself in such a flexible manner is also evident from the Herbal Essences experience. Over the 2007–2009 time period, Herbal Essences offered ten distinct shampoo products, five of which were identified as “new.” For example, Herbal Essences expanded its line in the fourth quarter of 2007 to include a shampoo product that claimed to increase hair volume. It also offered three new hydrating products called “Hydralicious Featherweight,” “Hydralicious Reconditioning,” and “Hydralicious Self Targeting Shampoos,” each of which focuses on a particular hair type. In the fourth quarter of 2009, Herbal Essences advertised as new a “Toussle Me Softly” Shampoo product, which is for individuals who want wavy, but not necessarily curly hair. (Herbal Essences offered a “Curls and Wave” product already.)

In short, there appears to be no shortage of repositioning in the shampoo industry.

Examples from the Radio Industry. Another industry that has been known for rapid repositioning is the radio industry, where format changes appear to be an ongoing part of the competitive dynamic. This is illustrated in a 2005 paper by Charles Romeo and Andrew Dick assessing in part the effect of ownership changes on format changes.⁵⁶ In looking at five two-year periods between 1988 and 1998 across ten large Metropolitan Statistical Areas, the paper counted 153 “major” format changes over the five two-year periods, for example, a change from a category like “Talk” to “Rock.” In addition, the paper found 104 “minor” format changes during those time periods, e.g., a change from “Album-Oriented Rock” to “Classic Rock.”⁵⁷ Thus, over these five two-year periods, there were over 250 format changes in total, an average of five format changes per MSA for each two-year period. The paper further reports that nearly 17 percent of all stations experienced a major format change during the period; another 11 percent made minor format changes; and almost half of all format changes were associated with ownership changes.⁵⁸

The frequency of format changes should not be surprising. As Romeo and Dick note, “Superficially, format changes would appear to be relatively straightforward to undertake. The requisite tangible investment appears to be quite nominal: purchasing a new library of CDs, hiring new disc jockeys, and undertaking an advertising campaign.”⁵⁹ Put somewhat differently, the minimum viable scale of a new format seems small. And the evidence cited above is consistent with that view.

While the data used by Romeo and Dick are a little over a decade old, there is no reason to believe that repositioning in the radio industry has become any more difficult. Table 3 in the Appendix highlights twenty-five recent format changes. For example, in Jacksonville, “Point” WMXQ changed its format from “‘80s music” to “Contemporary Hit Radio” in February 2009. In Chicago, 105.9 WCKG switched its format from “Talk” to “Adult Contemporary.”

There were three relatively rapid changes in formats for a single station in New York. In early 2006, 92.3 K-Rock changed its format from a “Rock”-orientation to “all Talk.” In May 2007, it switched back to a “Rock” format. Then in March 2009, it modified its format to “Contemporary Hit” radio from “Rock.” (See Table 3 in the Appendix.)

In most cases reported in Table 3, these format changes were associated with name changes. In the language of the *Commentary*, most of these changes involved not product extensions but

⁵⁶ Charles J. Romeo & Andrew R. Dick, *The Effect of Format Changes and Ownership Consolidation on Radio Station Outcomes*, 27 REV. INDUS. ORG. 351 (2005).

⁵⁷ *Id.* at 354–55.

⁵⁸ *Id.* at 356–57.

⁵⁹ *Id.* at 353.

brand name changes. For example, 92.3 K-Rock changed its name to Free FM, back to K-Rock, and then to 92.3 Now. While the frequency of both the format change and the “brand name” change for this example is probably atypical, Table 3 highlights the apparent ease of repositioning even when a “brand name” change is involved.

Finally, note that nearly half of the examples of repositioning discussed by Romeo and Dick are examples of changes made by the merged firm, not by rivals to the merged firm. By contrast, the repositioning “defense” is usually focused on whether rivals have the incentive and ability to reposition their products closer to those of the merged firms in response to a price change by the merged firm. There is no discussion of a merger’s effect on the merged firm’s incentives to alter the positioning of the newly merged firm’s products. Indeed, in a related paper, Berry and Waldfogel note that (using a Hotelling-like spatial model of product differentiation where the locations along a line represent different locations in product space and consumers must pay a “travel” cost to move from one location to another) mergers of radio stations in the same market that broadcast similar programming may result in the merged firm moving the radio stations farther apart in product space to avoid the cannibalization of the audience of one station by another.⁶⁰ Their empirical results are consistent with the variety-increasing effect of the consolidation relative to the number of stations in the market.

The antitrust importance of repositioning by the merging firm is not one that has been widely assessed.

The antitrust importance of repositioning by the merging firm is not one that has been widely assessed. One paper, by Gandhi et al., considers the post-merger price effect when the merged firm is allowed to make price and product location changes simultaneously, instead of just price changes.⁶¹ Using a Hotelling-like model, the paper shows that if pre-merger the products of the merging parties were close substitutes, then post-merger an increase in the sales of one product will (to some extent) come at the expense of the other product (other things equal). If the merged firm’s only choice variable is price, then the merger will result in a substantial price increase (other things equal). If instead, the merged firm can choose both price and product locations, those pricing effects are greatly attenuated. To reduce cannibalization, the merged firm will move both products farther apart in product space (thus reducing post-merger incentives to raise prices) while rivals will respond to the repositioning of the merged firm by moving their products in between those of the merging firm.

In sum, the radio station example reveals a history of continual product repositioning. Importantly, repositioning by the merged firm may be as important, if not more important, than repositioning by rivals.

Conclusion

Our experience in conducting antitrust analyses in the various industries reviewed above—the retail grocery, retail pharmacy, shampoo, radio and beer industries—suggests that new brands or product extensions introduced by one firm are frequently and quickly matched by rivals. As a result, the fact patterns from these industries appear to support the view that at least some significant repositioning could occur as a result of a merger-induced price increase, i.e., that repositioning will be timely and likely. While we cannot demonstrate sufficiency, in our experience new brands or product extensions in shampoo and beer in particular have survived for substantial peri-

⁶⁰ Steven T. Berry & Joel Waldfogel, *Do Mergers Increase Product Variety? Evidence From Radio Broadcasting*, 116 Q.J. ECON. 1009, 1011 (2001).

⁶¹ Amit Gandhi, Luke Froeb, Steven Tschantz & Gregory Werden, *Post-Merger Product Repositioning*, 56 J. INDUS. ECON. 49 (2008).

ods of time with quite small shares. That is, our experience suggests that for many consumer goods industries, the minimum viable scale for repositioning will be small. Further, the evidence (particularly from the radio industry) highlights the importance of accounting for repositioning by the merged firm itself.

Finally, the evidence offered during the course of the *Whole Foods* litigation and the opinion of the district court in that matter highlight the importance the courts have placed on evidence of entry and repositioning.

This article was written shortly after the antitrust agencies announced their intention to consider revising the Merger Guidelines.⁶² In a series of questions posed about possible revisions, the agencies included “the role of product repositioning in evaluating unilateral effects.”⁶³ Based on our review of both the theory and evidence of repositioning, we believe that repositioning should not be written out of the Merger Guidelines, as might be suggested by the *Commentary*. Instead, the potential for repositioning by rivals should be given full consideration as a potential affirmative defense in the face of agency concerns in a merger matter, and the Merger Guidelines should continue to reference if not emphasize repositioning as a possible factor reducing the potential for harmful post-merger competitive effects. ●

⁶² See Press Release, Fed. Trade Comm’n, Federal Trade Commission and Department of Justice to Hold Workshops Concerning Horizontal Merger Guidelines (Sept. 22, 2009), available at <http://www.ftc.gov/opa/2009/09/mgr.shtm>.

⁶³ See Fed. Trade Comm’n & U.S. Dep’t of Justice, Horizontal Merger Guidelines: Questions for Public Comment 1–2 (Sept. 22, 2009), available at <http://www.ftc.gov/bc/workshops/hmg/hmg-questions.pdf>.

Appendix

Table 1: Shampoos Available at the Surveyed CVS

PRODUCT CATEGORY	PRODUCT NAME
Color Care	BedHead TIGI – Dumb Blonde: Colored Hair
	Dove – Advanced Color: Lightened or Highlighted Hair
	Fruitopia – Color Control
	Garnier Fructis – Fortifying: Color Shield
	Herbal Essences – Color Me Happy: Color Treated
	John Frieda – Brilliant Brunette: Daily
	John Frieda – Radiant Red: Daily Color Captivating
	John Frieda – Sheer Blonde: Color Renew
	John Frieda – Sheer Blonde: Enhancing
	John Frieda – Sheer Blonde: Go Blonder Lightening
	Matrix – Biolage: Color Care Therapie
	Nexus – Color Assure: Replenishing Color Care
	Pantene Pro-V – Color Revival (2 in 1)
	Pantene Pro-V – Daily Color Enhancing: Blonde Expressions
	Pantene Pro-V – Daily Color Enhancing: Brunette Expressions
	Pantene Pro-V – Daily Color Enhancing: Silver Expressions
	TRESemme – Color Thrive: Blonde
	TRESemme – Color Thrive: Brunette and Red
Color Care and Damaged Hair	Loreal – Ever Pure: Color Care System (Smooth)
	John Frieda – Sheer Blonde: Strengthening
	Nexus – Dualiste Dual Benefit: Color Pro and Anti-Breakage
Color Care and Moisturizing	John Frieda – Brilliant Brunette: Moisturizing
	Loreal – Ever Pure: Color Care System (Moisture)
	Nexus – Dualiste Dual Benefit: Color Pro and Intense Hydration
Color Care and Natural Ingredients	Naked Naturals – Awapuhi and Lavender Color Treated Hair
Curly/Frizzy Hair	BedHead TIGI – Control Freak: Frizzy Hair
	Garnier Fructis – Fortifying: Wondor Waves
	Herbal Essences – Anti-Frizzy: None of Your Frizzyness
	Herbal Essences – Curly Hair: Totally Twisted
	Herbal Essences – Straightening: Dangerously Straight
	John Frieda – Frizzy Ease: Curl Ahead
	John Frieda – Frizzy Ease: Straightening
	Marc Anthony – Strictly Curls: Curl Defining
	Marc Anthony – Strictly Curls: Frizz Sealing
	Matrix – Sleek.look: Smoothing
	Pantene Pro-V – Curls
	Pantene Pro-V – Smooth
	Rusk – Sensories: Calm
	Sexy Hair (Ecology International) – Curly Sexy Hair
	TRESemme – Flawless Curls: Curl Moisturizing

Table 1: Shampoos Available at the Surveyed CVS *continued*

PRODUCT CATEGORY	PRODUCT NAME
Damaged Hair	Aussie – Protect and Soften
	Pantene Pro-V – Nature Fusion: Smooth Vitality
	Aussie – Cleanse and Mend
	Aussie – Opposites Attract
	Biosilk – Silk Therapy
	Dove – Intense Therapy
	Herbal Essences – Strengthening: Break's Over
	John Frieda – Root Awakening: Nourishing Moisture (For Dry Hair)
	John Frieda – Root Awakening: Strength Restoring (For Breakage-Prone Hair)
	Matrix – Biolage: SmoothTherapie
	Nexus – Keraphix: Restorative Strengthening
	Optimum Care – Stay Strong: Antibreakage Shampoo and Conditioner
	Optimum Oil Therapy – Ultimate Recovery: Shampoo and Conditioner
	Rusk – Sensories: Smoother
	Sexy Hair (Ecology International) – Silky Sexy Hair
	Suave – Professionals: Humectant (Dry Hair, Moisturize)
	TRESemme – Anti-breakage: Reducing Split Ends
	TRESemme – Moisture Rich
	TRESemme – Smooth: Smooth and Silky for Dry/Damaged Hair
	Viologie – Smooth and Silky
Damaged Hair and Dandruff	Head & Shoulders – Smooth and Silky
	Head & Shoulders – Smooth and Silky (2 in 1)
Dandruff	Gillette – Anti-Dandruff
	Head & Shoulders – Intensive Treatment
	Head & Shoulders – Classic Clean
	Head & Shoulders – Dry Scalp Care
	Herbal Essences – Anti-Dandruff: No Flakin' Way
Dandruff and Natural Ingredients	Head & Shoulders – Citrus Breeze
	Head & Shoulders – Refresh
	Head & Shoulders – Sensitive Care
	Head & Shoulders – Ocean Lift
	Head & Shoulders – Ocean Lift (2 in 1)
Dandruff and Shine	Head & Shoulders – Restoring Shine
	Head & Shoulders – Restoring Shine (2 in 1)
Deep Clean	Gillette – Clean and Conditioning
	Gillette – Deep Clean
	Neutrogena – Anti-Residue Formula
	Herbal Essences – Refresh/Renew: Drama Clean
	Loreal – VivePro: “For Men” Absolute Clear
	TRESemme – Deep Cleansing
Long Hair	Garnier Fructis – Fortifying: Length and Strength
	Pantene Pro-V – Beautiful Lengths
	Viologie – Great Lengths

Table 1: Shampoos Available at the Surveyed CVS *continued*

PRODUCT CATEGORY	PRODUCT NAME
Moisturizing	Pert Plus – Deep Conditioning Formula: For Dry Hair (2 in 1)
	American Crew Classic – Daily Moisturizing Shampoo
	Ellen Lavar – Textures: OptiMoist
	Neutrogena – Triple Moisture: Cream Lather
	Aveeno – Nourish and Moisturize
	Biosilk – Hydrating
	Dove – Daily Moisture Therapy
	Dove – Go Fresh Therapy: Cool Moisture
	Fruitopia – Healthy Hydration
	Garnier Fructis – Fortifying: Moisture Works, Vitamin B3 and B6
	Herbal Essences – Moisturizing: Hello Hydration
	Herbal Essences – Moisturizing: Hydralicious
	Matrix – Biolage: HydraTherapie
	Neutrogena – Clean Replenishing: Moisture
	Nexxus – Humectress: Ultimate Moisture
	Nexxus – Therappe: Luxurious Moisture
	Pantene Pro-V – Nature Fusion: Moisture Balance
	Rusk – Sensories: Moist
	Pantene Pro-V – Moisture Renewal
	Pantene Pro-V – Moisture Renewal (2 in 1)
Moisturizing and Natural Ingredients	Fruitopia – Moisturizing Acai Berry
	Organix – Hydrating Teatree Mint
Moisturizing and Shine	Loreal – Vivepro: Hydra Gloss Moisturizing, Royal Jelly Omega Complex
Natural Ingredients	BedHead TIGI – Mega Nutrient
	Organix – Healing Mandarin Olive Oil
	TRESemme – Natural Aveeno – Nourish and Soothe
	Garnier Fructis – Fortifying: Triple Nutrition (Avocado, Shea)
	Nexxus – Botanphuse: Nourishing Botanical
	Naked Naturals – Shea Butter and Avocado Smoothing
	Organix – Nourishing Coconut Milk
	Organix – Revitalizing Pomegranite
	Suave – Naturals: Aloe and Water Lilly (Aloe Vera and Vitamin E)
	Suave – Naturals: Ocean Breeze (Sea Algae and Vitamin E)
	V05 – Moisturizing: Kiss me Fresia
	V05 – Moisturizing: Strawberries and Cream
	V05 – Tea Therapy: Clarifying Vanilla Mint Tea
	V05 – Volumizing: Collagen, Maximizes body and bounce; Shine Enhancing
Other	Garnier Fructis – Fortifying: Daily Care (2 in 1)
	Pert Plus – Medium Conditioning Formula: For Normal Hair
	American Crew Classic – Daily Shampoo
	Gillette – Daily Balance
	Aveeno – Nourish and Revitalize
	John Frieda – Root Awakening: Health Infusing (For Normal Hair)
	Pantene Pro-V – Classic Clean
	Pantene Pro-V – Classic Clean (2 in 1)
Suave – Professionals: 2 in 1 Plus	

Table 1: Shampoos Available at the Surveyed CVS *continued*

PRODUCT CATEGORY	PRODUCT NAME
Shine	Viologie – Crystal Shine
	Dove – Shine
	Fruitopia – Silk and Shine
	Garnier Fructis – Fortifying: Sleek and Shine
	Loreal – VivePro: High Gloss
	Rusk – Sensories: Brilliance
Shine and Volumizing	Loreal – VivePro: Glossy Volume
Volumizing	Loreal – VivePro: "For Men" Daily Thickening (2 in 1)
	Neutrogena – Triple Renewal: Volume Boosting
	Aussie – Aussume Volume
	Aveeno – Nourish and Volumize
	Dove – Volume Therapy
	Fruitopia – Total Volume
	Garnier Fructis – Fortifying: Body Boost
	Herbal Essences – Body Envy: Volumizing
	John Frieda – Luxurious Volume: Full Splendor
	Marc Anthony – Instantly Thick: Hair Thickening
	Matrix – Amplify: Volumizing
	Matrix – Biolage: VolumaTherapie
	Neutrogena – Clean Volume: Body
	Rusk – Sensories: Full
	Sexy Hair (Ecology International) – Big Sexy Hair
	TRESemme – 24 Hour Body: Healthy Volume
	Viologie – Incredibly Full
Pantene Pro-V – Full and Thick	
Pantene Pro-V – Full and Thick (2 in 1)	
Volumizing and Color Care	Loreal – Ever Pure: Color Care System (Volume) Nexus – Dualiste Dual Benefit: Color Pro and Volume
Volumizing and Dandruff	Head & Shoulders – Extra Volume

Table 2: Nationally Advertised Shampoos Table

QUARTER	ALL SHAMPOO PRODUCTS	NEW SHAMPOO PRODUCTS	NEW PRODUCTS AS % OF ALL
Q1 2007	34	11	32.4%
Q2 2007	12	3	25.0%
Q3 2007	11	6	54.5%
Q4 2007	39	5	12.8%
Q2 2008	19	6	31.6%
Q3 2008	30	10	33.3%
Q4 2008	14	5	35.7%
Q1 2009	20	8	40.0%
Q2 2009	14	8	57.1%
Q3 2009	19	6	31.6%
Q4 2009	15	4	26.7%
Total	227	72	31.7%

Table 3: Recent Radio Format Changes

MARKET	ORIGINAL STATION	ORIGINAL FORMAT	NEW FORMAT	STATION NAME CHANGE (IF ANY)	DATE OF FORMAT CHANGE
New York, NY	92.3 K-Rock	Classic Rock/Alternative/ Active Rock	Talk	Free-FM	early 2006
New York, NY	Free-FM	Talk	Rock	K-Rock	5/2007
New York, NY	K-Rock	Rock	CHR	92.3 Now	3/11/2009
Jacksonville, FL	“Point” WMXQ	80s	Modern Rock	X102.9	2/25/2009
Los Angeles, CA	97.1 KLSX	Talk	CHR	97.1 “Amp Radio”	2/20/2009
Baltimore, MD	104.3 Smooth Jazz WSMJ	Jazz	Modern Rock	Channel 104.3	5/23/2008
Chattanooga, TN	96.5 WDOD-FM “The Mountain”	AAA/Modern Rock	CHR	No Change	3/3/2008
Chicago, IL	105.9 WCKG	Talk	Adult Contemporary	Fresh 105.9	11/5/2007
San Francisco, CA	95.7 Max FM	Variety Hits	Country	95.7 The Wolf	2/28/2007
Austin, TX	98.9 La Ley	Spanish music	News/Talk	“Big Talker” 98.9 KXBT	11/2/2009
Austin, TX	Digital 104.9 FM	Spanish pop	Sports/Talk	ESPN's 104.9 “The Horn”	11/2/2009
Dallas, TX	KDBN Quality Rock 93.3	AAA	CHR	I 93.3	11/4/2009
Pittsburgh, PA	98.3 WOGL “Froggy Country”	Country	Contemporary Christian	K-Love	9/1/2009
Lexington Park, MD	97.7 “The Rocket”	Adult Contemporary	CHR	Magic 97.7	5/2009
Sacramento, CA	106.5 KWOD	Modern Rock	90s	106.5 The Buzz	5/22/2009
Las Vegas, NV	Fresh 102.7	Adult Contemporary	CHR	102.7 Now	4/1/2009
Eatontown, NJ	Rock Radio 106.3	Rock Alternative	CHR	Hit 106	1/2009
Los Angeles, CA	Indie 103.1	Modern Rock	Regional Mexican	103.1 El Gato	1/15/2009
Miami, FL	Love 94	Smooth Jazz	Rhythmic AC	93.9 MIA	12/25/2008
Memphis, TN	Snap 94.1	Rhythmic AC	Rock and Roll	Classic Hits 94-1 KQK	10/17/2008
Palm Springs, CA	M99.5	Modern Rock	Classic Rock	99.5 The Heat	3/2008
Myrtle Beach, SC	107.1 The Sound	Variety Hits	Urban AC	Q107.1	2/18/2008
Salt Lake City, UT	Movin' 100.7	Rhythmic AC	CHR	No Change	6/15/2009
Northwest Georgia	WXKT 103.7	Classic Rock	News/Talk/Sports	No Change	8/2009
Trempeleau, WI	WFBZ 105.5	Classic Rock	Sports	No Change	6/2009
Dallas, TX	KJSA 110	Classic Country	Spanish Language Music	No Change	4/2009
Albuquerque, NM	KABQ-FM 104.7	Smooth Jazz	Classic Country	“The New 104.7”	5/2009

Notes:

[1] CHR stands for Contemporary Hit Radio.

[2] AAA stands for Adult Album Alternative.

Sources:[1] RadioInsight, <http://radioinsight.com/>[2] FormatChange.com, <http://www.formatchange.com/>[3] Radio-Info.com, <http://www.radio-info.com/>