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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil No. C 80-3388 TEH
)	
v.)	<u>FINAL JUDGMENT</u>
)	
ACORN ENGINEERING COMPANY,)	Filed: December 23, 1981
)	
Defendant.)	Entered: March 30, 1982
)	

Plaintiff, United States of America, having filed its complaint on August 19, 1980, defendant having filed its answer thereto, plaintiff's motion for preliminary relief having been heard and granted by the Court, and plaintiff and defendant by their respective attorneys having consented to the entry of this Final Judgment, and without this Final Judgment constituting evidence or an admission by any party with respect to any issue consented to:

NOW, THEREFORE, and upon a determination by this Court that entry of this Judgment will be in the public interest, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto. The complaint states a claim upon which relief may be granted against defendant under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

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II.

As used in this Final Judgment:

A. "Acorn" shall mean defendant Acorn Engineering Company.

B. "APFC" shall mean Aluminum Plumbing Fixture Corporation, all the stock of which Acorn acquired on March 19, 1979.

C. "Vandal-resistant plumbing fixtures" shall mean aluminum and stainless steel urinals, lavatory wash basins, water closets, and combination water closet/wash basins of a configuration and with characteristics designed to be break-resistant, tamper-resistant, and to be used in an environment where there is a significant potential for fixture abuse, such as in a jail.

D. "Super Secur tooling and component parts" shall mean the tooling (dies and patterns) and component parts identified in Appendix A hereto.

E. "Person" shall mean any individual, partnership, firm, corporation, association, or any other business or legal entity.

III.

The provisions of this Final Judgment shall apply to Acorn and its officers, directors, agents, employees, subsidiary companies, affiliates, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

A. Acorn is ordered and directed to use its best efforts to divest itself completely, within 180 days of the date of this Final Judgment, as hereinafter provided, of all of its right, title, interest and obligations in the following: the Super Secur

1 tooling and component parts; all engineering drawings associated
2 with such tooling and component parts as listed in Appendix B; all
3 letters patent relating to vandal-resistant plumbing fixtures,
4 accessories, or fittings obtained by Acorn in its acquisition of
5 APFC and in its prior acquisition of certain assets of Kelsey
6 Hayes, which patents are listed in Appendix C.

7 B. Acorn is ordered and directed to use its best efforts to
8 divest itself completely, within 180 days of the date of this
9 Final Judgment, as hereinafter provided, of all of its right,
10 title, and interest, except as expressly provided below, in the
11 trademarks or trade names "Super Secur," "Super Secur Ware," and
12 "Super Secur Manufacturing Co." and in all other trade names,
13 trademarks, symbols and distinctive logos associated with APFC's
14 vandal-resistant plumbing fixture line, all of which are
15 identified in Appendix D. For a period of eighteen months from
16 the date of entry of this Final Judgment, Acorn may use, in
17 marketing, its prefabricated metal building catalogs printed
18 before November 1, 1981, provided that after the divestiture
19 ordered herein closes, each such catalog reveals on the cover in a
20 conspicuous way that Acorn has divested its rights to use the
21 "Super Secur" name, but printed the catalog before such
22 divestiture.

23 C. The divestiture described in the two immediately preceding
24 paragraphs shall be made to a single purchaser who shall
25 reasonably demonstrate to the plaintiff and/or the Court, as
26 hereinafter provided, that (1) the purchase is for the purpose of
27 competing with Acorn in the United States in the vandal-resistant
28 plumbing fixtures market, and (2) the purchaser has the
29 management, operational and financial capability to compete
30 effectively with Acorn. The purchaser shall not be Waltec, Inc.
31 or any of its subsidiaries or affiliates, or any subsidiary or
32 affiliate of Acorn.

V.

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2 A. Acorn shall utilize its best efforts to make the
3 divestiture herein ordered and to make known promptly the
4 availability of the assets by all ordinary and usual means. Acorn
5 shall permit prospective purchasers to make such inspection of the
6 assets as may be helpful in promoting the divestiture. In the
7 event that the divestiture has not been completed within
8 seventy-five (75) days from the entry of this Final Judgment,
9 Acorn shall augment its best efforts by causing an advertisement
10 offering the assets for sale to be published for a reasonable
11 period in at least two trade or business publications of national
12 circulation, including one circulated to the plumbing fixtures
13 industry.

14 B. Acorn shall furnish to prospective purchasers all revenue
15 and cost data for the operation formerly carried on by APFC, in
16 the form prepared by APFC for calendar years 1976, 1977 and 1978;
17 information concerning sources of supply for raw materials and
18 parts for APFC vandal-resistant plumbing fixtures, specifically
19 including the name and address of all such vendors indicating the
20 item supplied; a list of all persons, and the address of each, who
21 were sales representatives in 1978 or 1979 for vandal-resistant
22 plumbing fixtures produced by APFC; and the name and address of
23 major purchasers who placed orders, in 1978 and 1979, with APFC
24 for the purchase of any vandal-resistant plumbing fixtures. Acorn
25 shall not be required to submit any such information or materials
26 to anyone unless the recipient thereof executes an affidavit
27 requiring recipient to keep such information and/or materials
28 confidential, not to reproduce the same, and to return the same to
29 Acorn in the event a sale to such recipient is not consummated.

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VI.

The divestiture ordered and directed by this Final Judgment shall be made in good faith and shall be absolute and unqualified. Except upon written approval by the plaintiff or the Court, Acorn shall not reacquire any of the assets divested, nor accept any lien, mortgage, deed of trust or other form of security on or interest in any portion of the assets sold. Acorn shall take no action which will impair or impede the divestiture ordered by this Final Judgment.

VII.

Each sixty (60) days following the entry of this Final Judgment until divestiture has been completed, or until the end of six (6) months from the date of entry of this Final Judgment, whichever first occurs, Acorn shall file with this Court and serve upon plaintiff an affidavit describing in detail the fact and manner of its efforts to accomplish the divestiture ordered by this Final Judgment. Such reports shall be supplemented by such additional information as the plaintiff may request.

VIII.

At least thirty (30) days in advance of the anticipated closing date of the contract of divestiture pursuant to this Final Judgment, Acorn shall submit to plaintiff the name of the proposed purchaser and all pertinent information respecting the proposed divestiture together with such additional information as plaintiff may request in writing. Within fourteen (14) days after Acorn has supplied the name of the proposed purchaser, the pertinent information regarding the proposed divestiture, and any requested additional information, plaintiff will advise Acorn in writing of plaintiff's approval or objections to the proposed divestiture. If plaintiff objects to the proposed divestiture, then such contract of divestiture shall not be consummated unless (1) plaintiff notifies Acorn in writing of any subsequent approval or

XI.

The trustee, who may be an investment banker or broker, a person engaged in the business of selling industrial plants or equipment, or a similarly qualified person, shall perform at the expense of Acorn under a schedule of court-approved fees, incentive compensation and costs to be fixed at the time of the trustee's appointment. The compensation shall be based at least in significant part on a commission arrangement which shall be contingent on the trustee causing the sale of the assets.

XII.

A. The trustee shall have all such powers as are necessary and proper to accomplish divestiture in accordance with the provisions of this Final Judgment. The trustee may require Acorn to convey all rights, titles, interests and obligations in the assets to be divested to any purchaser. Such conveyance shall be absolute and unqualified. The trustee shall have the right to assemble and permit inspection by prospective purchasers of the assets to be divested and to furnish to prospective purchasers the information furnished to prospective purchasers by Acorn, as described in paragraph B of Section V of this Final Judgment, and such other information pertaining to the assets to be divested as is reasonably necessary to accomplish the main endeavor of the trustee, as described in Section X of this Final Judgment.

B. Acorn shall also provide the trustee the revenue and cost data kept by Acorn in accord with paragraph 12 of the Preliminary Relief Order entered in this case on June 18, 1981 who shall have the right to furnish such data to prospective purchasers, provided however, Acorn may petition the Court to limit the disclosure permitted by this paragraph upon a showing that such disclosure would not aid the trustee in accomplishing his main endeavor, as described by Section X of this Final Judgment.

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The trustee, who may be an investment banker or broker, a person engaged in the business of selling industrial plants or equipment, or a similarly qualified person, shall perform at the expense of Acorn under a schedule of court-approved fees, incentive compensation and costs to be fixed at the time of the trustee's appointment. The compensation shall be based at least in significant part on a commission arrangement which shall be contingent on the trustee causing the sale of the assets.

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B. Acorn shall also provide the trustee the revenue and cost data kept by Acorn in accord with paragraph 12 of the Preliminary Relief Order entered in this case on June 18, 1981 who shall have the right to furnish such data to prospective purchasers, provided however, Acorn may petition the Court to limit the disclosure permitted by this paragraph upon a showing that such disclosure would not aid the trustee in accomplishing his main endeavor, as described by Section X of this Final Judgment.

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1 C. The trustee shall advise the parties of all significant
2 matters arising in his efforts to make the divestiture ordered
3 herein.

4 D. Acorn shall provide such reasonable assistance as the
5 trustee may request to enable him to sell the assets to be
6 divested.

7 XIII.

8 In the event the trustee is unable to accomplish or complete
9 the divestiture required by this Final Judgment during the term of
10 the trust, such term shall be extended pending further orders of
11 the Court. Plaintiff may apply to the Court for further
12 instructions for the trustee in order to accomplish prompt and
13 complete divestiture.

14 XIV.

15 For two years following the date of closing of the contract of
16 divestiture ordered herein, any person inquiring of Acorn, Elmco
17 Sales, Inc., or Mechanical Sales, Inc., orally or in writing,
18 about the possible purchase of any "Super Secur" vandal-resistant
19 plumbing fixtures, including Super Secur replacement parts,
20 promptly shall be informed of Acorn's divestiture of the Super
21 Secur assets, and of the name and address of the person to whom
22 Acorn divested such assets.

23 XV.

24 At any time during the period of ten (10) years from the date
25 of entry of this Final Judgment, without prior written approval of
26 the plaintiff, Acorn is enjoined and restrained from acquiring:

27 A. Any capital stock of any person engaged in the
28 vandal-resistant plumbing fixture business in the United States;

29 B. All or any part of the assets (except for the
30 purchase of products, inventory, or equipment in the normal course
31 of business) of a person engaged in the vandal-resistant plumbing
32 fixture business in the United States.

1 XVI.

2 At any time during the period of ten (10) years from the date
3 of entry of this Final Judgment, without prior written approval of
4 the plaintiff, Acorn is enjoined and restrained from transferring,
5 except as expressly provided in Section IV herein:

6 A. Any of its capital stock to any person engaged in the
7 vandal-resistant plumbing fixture business in the United States;

8 B. All or any part of its assets (except for the
9 transfer of products, inventory, or equipment in the normal course
10 of business) to a person engaged in the vandal-resistant plumbing
11 fixture business in the United States.

12 XVII.

13 For the purpose of determining or securing compliance with
14 this Final Judgment, and subject to any legally recognized
15 privilege, from time to time:

16 A. Duly authorized representatives of the Department of
17 Justice shall, upon written request of the Attorney General or of
18 the Assistant Attorney General in charge of the Antitrust
19 Division, and on reasonable notice to Acorn made to its principal
20 offices, be permitted:

21 1. Access during regular office hours of
22 Acorn to inspect and copy all relevant books, ledgers,
23 accounts, correspondence, memoranda, and other records
24 and documents in the possession or under the control of
25 Acorn and without restraint or interference from Acorn,
26 who may have counsel present; and

27 2. Subject to the reasonable convenience of
28 Acorn and without restraint or interference from Acorn,
29 to interview officers, employees, and agents of Acorn,
30 who may have counsel present;

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1 bound by this Final Judgment.

2 XIX.

3 Jurisdiction is retained for the purpose of enabling any of
4 the parties to this Final Judgment to apply to this Court at any
5 time for such further orders or directions as may be necessary or
6 appropriate for the construction or carrying out of this Final
7 Judgment, for the modification of any of the provisions hereof,
8 for the enforcement of compliance therewith and for the punishment
9 of any violation hereof.

10 XX.

11 Entry of this Final Judgment is in the public interest.

12 Dated: March 30, 1982

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15 /s/ Judge Henderson
16 UNITED STATES DISTRICT JUDGE
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