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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,) Civil No. C-80-3382 TEH
13)
14 Plaintiff,) Complaint for Equitable
15) Relief for Violation of
16 v.) Title 15 U.S.C. Section 18,
17) Clayton Antitrust Act
18 ACORN ENGINEERING COMPANY;)
19 POTT INDUSTRIES INC.; and)
20 HOUSTON NATURAL GAS) Filed: 8/19/80
21 CORPORATION,)
22)
23 Defendants.)
24)

25 The United States of America, plaintiff, by its
26 attorneys, acting under the direction of the Attorney General
27 of the United States, brings this civil action to obtain
28 equitable relief and complains and alleges as follows:

29 I

30 JURISDICTION AND VENUE

31 1. This complaint is filed and this action is
32 instituted under Section 15 of the Act of Congress of
October 15, 1914, as amended (15 U.S.C. § 25), commonly
known as the Clayton Act, in order to prevent and restrain
the continued violation by the defendants, as hereinafter
alleged, of Section 7 of such Act (15 U.S.C. § 18).

2. Acorn Engineering Company transacts business and is
found within the Northern District of California.

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1 II

2 DEFENDANTS

3 3. Acorn Engineering company (hereinafter "Acorn") is
4 made a defendant herein. Acorn is a corporation organized
5 and existing under the laws of the State of California, having
6 its principal place of business in City of Industry,
7 California. Since approximately 1971, Acorn has engaged in
8 engineering, development, manufacture, and sale of vandal-
9 resistant stainless steel plumbing fixtures, and associated
10 accessories, fittings and plumbing brass, for use in prisons,
11 other institutions, and park and recreation areas. Total
12 1978 revenues for Acorn, from all sources, were approximately
13 \$8 million.

14 4. Pott Industries Inc. (hereinafter "Pott") is made
15 a defendant herein. Pott is a corporation organized and
16 existing under the laws of the State of Missouri, having its
17 principal place of business in St. Louis, Missouri. Pott's
18 total revenues in 1976, from all sources, exceeded \$150
19 million. In the early 1970s, Pott acquired all the common
20 stock of Aluminum Plumbing Fixture Corporation (hereinafter
21 "APFC"). APFC, before March 19, 1979, was organized and
22 existing under the laws of the State of California, having
23 its principal place of business within the Northern District
24 of California, in Burlingame. In the early 1950s, APFC,
25 working with the State of California Corrections Department,
26 developed the first practical, unbreakable wash basin/water
27 closet combination fixture for prison use, made of aluminum.
28 Thereafter, APFC engaged in engineering, development, manu-
29 facture and sale of vandal-resistant plumbing fixtures, and
30 associated accessories, fittings and plumbing brass, for use
31 in prisons, other institutions, and park and recreation areas.
32 In the late 1960s and early 1970s, APFC introduced a line of

vandal-resistant plumbing fixtures made of stainless steel. Total APFC revenues, from all sources, were about \$4,125,000 in 1976.

5. Houston Natural Gas Corporation (hereinafter "HNG") is made a defendant herein. Pott has been a wholly-owned subsidiary of HNG since 1977. HNG is a corporation organized and existing under the laws of the State of Texas, having its principal executive office in Houston, Texas. Total HNG revenues for 1979, from all sources, exceeded \$1.7 billion.

III

TRADE AND COMMERCE

6. The majority of plumbing fixtures used in lavatories and rest rooms are made of a vitreous china material. While this material provides a durable product which stands up satisfactorily to normal use for many years, it is easily broken and therefore not suitable for certain applications. In institutions, including prisons and other detention facilities, broken china fixtures can become lethal weapons, which, when used by the inmates against themselves or prison personnel, result in severe injuries. Therefore, vandal-resistant plumbing fixtures made of break-resistant materials such as aluminum or stainless steel are necessary to provide security and protection from attack and serious injury. Although use of broken china fixtures as weapons is not as great a threat in park and recreation areas, because of the high incidence of vandalism these facilities experience, vandal-resistant fixtures are much more desirable than easily breakable china fixtures.

7. The term "vandal-resistant plumbing fixtures" as used hereinafter refers to aluminum and stainless steel urinals, wash basins, water closets, and combination water

1 closet/wash basins of a gauge and configuration such that
2 they are vandal-resistant. The term does not include showers
3 or shower assemblies. Various accessories and plumbing
4 fittings and brass were ordinarily sold by Acorn and APFC,
5 before March 19, 1979, in conjunction with the sale of
6 fixtures. The term "vandal-resistant plumbing fixtures" as
7 used hereinafter includes such accessories and plumbing
8 fittings and brass.

9 8. The single largest use for vandal-resistant
10 plumbing fixtures is in prison and jail cells. In its
11 business plan for 1978-79, APFC management estimated that
12 860 penal facilities were proposed or under construction,
13 costing between \$2 and \$3 billion. APFC management projected
14 that each of these institutions would have single cells with
15 a stainless steel or aluminum water closet and wash basin.
16 In the three years before March 19, 1979, jails and prisons
17 generally specified vandal-resistant fixtures by specifying
18 a fixture made by Acorn or APFC, with the designation "or
19 equal." Stainless steel fixtures made by Acorn and APFC
20 generally both qualified as acceptable where Acorn or APFC
21 fixtures were specified by name. Fixtures made of vitreous
22 china generally did not qualify as acceptable where APFC
23 or Acorn fixtures were specified by name.

24 9. In the early 1970s, only Anco Industries, Kelsey-
25 Hayes, Acorn and APFC competed in the United States in the
26 manufacture and sale of vandal-resistant plumbing fixtures.
27 By 1975, Anco Industries had ceased manufacturing and
28 selling vandal-resistant fixtures, leaving only Kelsey-
29 Hayes, Acorn and APFC as the competitors in this market.
30 In 1975 Acorn acquired Kelsey-Hayes' finished inventory of
31 vandal-resistant fixtures and its patents, tooling and

32 / / /

1 engineering drawings used in the manufacture of such
2 fixtures.

3 10. In the year before March 19, 1979, Acorn Engineering
4 Company and APFC were the only two competitors in the United
5 States who manufactured and sold vandal-resistant plumbing
6 fixtures for use in institutions and park and recreation
7 areas. Each distributed its plumbing fixtures throughout
8 the country. In 1978, Acorn sold about 70% of the vandal-
9 resistant plumbing fixtures in the United States and APFC
10 sold about 30% of such fixtures. Sales of such fixtures in
11 the United States are about \$6 to \$10 million annually.

12 11. Acorn and APFC, before March 19, 1979, each
13 manufactured vandal-resistant plumbing fixtures in the State
14 of California. Each shipped substantial quantities of such
15 plumbing fixtures to states other than California. In the
16 year before March 19, 1979, Acorn and APFC each engaged in
17 interstate commerce in the line of commerce relevant to this
18 complaint.

19 IV

20 VIOLATION ALLEGED

21 12. On March 19, 1979, Acorn Engineering Company
22 purchased from Pott Industries Inc., for a purchase price of
23 \$2,518,790.42, all the issued and outstanding common stock
24 of Aluminum Plumbing Fixture Corporation. APFC was merged
25 into Acorn Engineering Company and the business of APFC was
26 reorganized as Super Secur Manufacturing Company, a division
27 of Acorn.

28 13. The effect of the aforesaid acquisition may be
29 substantially to lessen competition or to tend to create a
30 monopoly in the manufacture and sale of vandal-resistant
31 plumbing fixtures for use in prisons, other institutions and
32 park and recreation areas, in violation of Section 7 of the

1 Clayton Act, in the following ways, among others:

- 2 (a) actual and potential competition between
3 Acorn and APFC has been eliminated;
4 (b) concentration has increased; and
5 (c) Acorn has acquired monopoly power.

6 PRAYER

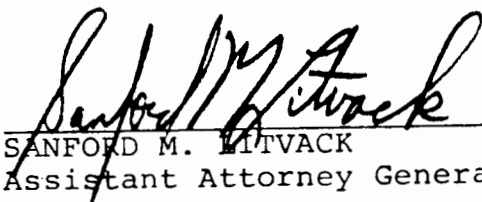
7 WHEREFORE, plaintiff prays:

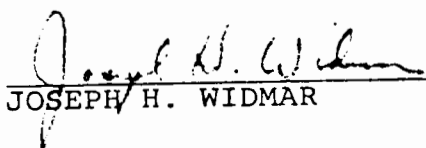
8 1. That the Court adjudge and decree the acquisition
9 described in paragraph 12 of this complaint to be unlawful,
10 in violation of Section 7 of the Clayton Act.

11 2. That the Court order Acorn to divest APFC as a
12 going concern.

13 3. That the plaintiff have such other and further
14 relief as the case requires and the Court deems proper.

15 4. That the plaintiff recover the costs of this
16 suit.

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18 _____
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21 
22 _____
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25 ANTHONY E. DESMOND

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29 G. WILLIAM HUNTER
United States Attorney