

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,
Plaintiff,

v.

FRANKLIN ELECTRIC CO., INC.,
UNITED DOMINION INDUSTRIES LIMITED,

and

UNITED DOMINION INDUSTRIES, INC.,
Defendants.

Civil No:

Filed: 5/31/00

**MOTION OF THE UNITED STATES
FOR A TEMPORARY RESTRAINING ORDER AND
A PRELIMINARY INJUNCTION**

COMES NOW the plaintiff, the United States of America, pursuant to § 15 of the Clayton Act, as amended, 15 U.S.C. § 25, and Rule 65 of the Federal Rules of Civil Procedure, and hereby respectfully moves the Court for the entry of a Temporary Restraining Order and a Preliminary Injunction enjoining defendants Franklin Electric Co., Inc. (“Franklin Electric”), United Dominion Industries, Inc. (“UDI”), and United Dominion Industries Limited, and all persons acting on their behalf, from consummating or taking any action to proceed with or carry out their proposed joint venture, as described in the Complaint, or from entering into or carrying out any other agreement or arrangement by which any commingling of assets would result, pending entry by the Court of a final judgment in this action.

This motion is based on the following grounds:

(1) The United States has filed a Verified Complaint alleging that the proposed joint venture between Franklin Electric and UDI would violate § 7 of the Clayton Act, as amended, 15

U.S.C. § 18.

(2) Unless restrained and enjoined by this Court, defendants intend to proceed with their proposed joint venture on Monday, June 5, 2000, after 5:00 p.m., and thus before this Court can enter a final judgment.

(3) Pursuant to Rule 65(a)(1) of the Federal Rules of Civil Procedure, undersigned counsel for the plaintiff respectfully certifies to the Court that on May 30, 2000, plaintiff provided defendants' counsel with notice by telephone of its intention to seek a temporary restraining order in this matter. The plaintiff is simultaneously, with the filing of this Complaint, providing defendants' counsel with copies of the complaint, this motion, the proposed orders, the proposed findings of fact and conclusions of law, and supporting declarations. Defendants have refused to stipulate to a temporary restraining order.

(4) There is a substantial likelihood that plaintiff will establish at trial that the proposed joint venture violates § 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

(5) A temporary restraining order and a preliminary injunction are necessary to preserve the status quo, to prevent the irreparable injury to the public that would result from this transaction, and to allow the Court to render effective relief if the plaintiff prevails at trial. Plaintiff would have no adequate remedy at law, and this Court's ability to fashion effective relief would be significantly impaired if the proposed joint venture proceeds but is found, after trial, to be unlawful.

(6) Any harm to defendants from enjoining the proposed joint venture would be outweighed by the anticompetitive effects, including the threat of increased prices for submersible turbine pumps throughout the United States, likely to result from the proposed transaction.

(7) Granting the requested preliminary relief will serve the public interest.

(8) This Court has authority under § 15 of the Clayton Act, as amended, 15 U.S.C. § 25 to issue the requested preliminary relief.

(9) Pursuant to Fed. R. Civ. P. 65(c), neither the United States nor any officer or agency of the United States is required to post a bond as a prerequisite to the issuance of an injunction.

This Motion is supported by a concurrently filed Memorandum of the United States in Support of Motion for a Temporary Restraining Order and a Preliminary Injunction, United States' Proposed Findings of Fact and Conclusions of Law, and supporting declarations.

WHEREFORE, the United States prays that the defendants and all persons acting on their behalf be enjoined from consummating or taking any action to proceed with or carry out their proposed joint venture, as described in the Complaint, or from entering into or carrying out any other agreement or arrangement by which any commingling of assets would result, pending entry by the Court of a final judgment in this action.

Attachment A to this Motion is a proposed Temporary Restraining Order. Attachment B is a proposed Preliminary Injunction.

Respectfully Submitted,

_____/s/_____
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Dated: May __, 2000