

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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UNITED STATES OF AMERICA,)
Plaintiff,)
)
v.)
)
MICROSEMI CORPORATION,)
Defendant.)
)

Civil Action No. 1:08 CV 1311

2008 DEC 22 P 5:03

CLERK OF US DISTRICT COURT
ALEXANDRIA, VIRGINIA

TEMPORARY RESTRAINING ORDER

This matter is before the Court on Plaintiff's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction. On December 18, 2008, the United States of America filed a Verified Complaint ("complaint") in the above-captioned case to obtain temporary and permanent equitable and other relief against defendant Microsemi Corporation ("Microsemi") to remedy the harm to competition allegedly caused by Microsemi's acquisition of assets of Semicoa, Inc. ("Semicoa") in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 2 of the Sherman Act, 15 U.S.C. § 2. This Court has authority under Section 15 of the Clayton Act, 15 U.S.C. § 25, and Section 4 of the Sherman Act, 15 U.S.C. § 4, as amended, to issue such temporary restraining orders ("TRO") as may be deemed just in the premises to prevent and restrain violations of the Clayton and Sherman Acts.

The attorney for the United States certified that on December 22, 2008, Microsemi was informed by telephone of its emergency motion for a TRO and was provided copies of the complaint and a draft proposed TRO, as efforts to negotiate an Agreed Order to Preserve Assets failed. The attorney for the United States also certified that on December 22, 2008, simultaneous

with the filing of the emergency motion, Plaintiff provided defendant's counsel copies of the TRO motion, the proposed TRO, the memorandum in support of the motion, and declarations and exhibits in support thereof.

Upon consideration of the pleadings, declarations, memoranda, and other exhibits filed in support of the application of the United States, the Court GRANTS the Temporary Restraining Order and finds that:

1. This Court has jurisdiction over the subject matter of this case, there is good cause to believe it has jurisdiction over the parties hereto, and venue in this district is proper.

2. It appears from Plaintiff's evidence that Microsemi and Semicoa were the only manufacturers of JANS small signal transistors, which are used in spacecraft, missiles and other applications critical to the national security of the United States. Microsemi and Semicoa also were two of the three likely manufacturers of JANS 5811 diodes, which are also used in such applications.

3. On July 14, 2008, Microsemi purchased most of the assets of Semicoa, including all of the manufacturing facility and equipment used to make these transistors and diodes.

4. Enjoining Microsemi from destroying, disposing of, or ceasing operation of any asset purchased from Semicoa is necessary to ensure the Court's ability to fashion effective relief, as well as preclude irreparable injury to competition and the public interest. The evidence raises serious questions that go to the merits of the case, and the balance of hardships favors the granting of preliminary relief.

5. No security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c).

THEREFORE, IT IS ORDERED AS FOLLOWS:

DEFINITIONS

For the purpose of this Order, the following definitions shall apply:

A. “Microsemi” means Defendant Microsemi Corporation, a Delaware corporation with its headquarters in Irvine, CA, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. “Semicoa” means Semicoa, Inc., a California corporation with its headquarters in Costa Mesa, CA, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Semicoa Assets” means all assets acquired by Microsemi from Semicoa on July 14, 2008, including but not limited to:

- (1) all specifications, manufacturing plans, assembly instructions, standard operating procedures, and work instructions related to the manufacturing process, including all right, title and interest in, to and under all other assets of every kind and nature used or intended to be used in the operation of Semicoa’s business, including, but not limited to, any finished or unfinished devices, any materials, data or know-how wherever found or of whatever kind reasonably required to manufacture and sell the goods and services previously produced by Semicoa as well as all books and records, and all files, documents, papers and agreements that are material to the continuing operation of Semicoa’s business;

- (2) all finished goods, works in progress, piece parts and materials inventory, packaging, and labels, supplies and other related personal property;
- (3) all equipment, machinery or software used in the development, design, manufacturing and testing of goods previously manufactured by Semicoa;
- (4) all right, title and interest in, and all information related to, any tooling, molds, equipment and proprietary specifications Semicoa previously had with any and all vendors from which Semicoa purchased goods or services, whether or not there are any “open” purchase orders issued to such vendors, as well as names and other information concerning any vendor that provides goods or services that were material to the operation of Semicoa’s business;
- (5) any list of customers to which Semicoa previously sold products or provided services over the three years prior to July 14, 2008, whether or not there are any “open” sales orders from such customers;
- (6) all sales, marketing and promotional literature, cost and pricing data, promotion list, marketing data and other compilations of names and requirements, customer lists and other sales-related materials;
- (7) all intellectual property (“IP”) assets or rights that have been used in the development, production, servicing, and sale of transistors and diodes, including but not limited to: all licenses, rights, and sublicenses, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how,

trade secrets, approvals, certifications, advertising literature, and all manuals and technical information provided to the employees, customers, suppliers, agents, or licensees of Semicoa and used in connection with the development, design, manufacture, testing, markets, sale or distribution of transistors and diodes;

- (8) all rights under all contracts, licenses, sublicenses, agreements, leases, building leases, commitments, purchases orders, bids and offers;
- (9) all rights acquired pursuant to municipal, state and federal franchises, permits, licenses, agreements, waivers and authorizations.

ORDER TO PRESERVE STATUS QUO

IT IS HEREBY ORDERED THAT

A. Microsemi, and its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Microsemi who receive actual notice of this Order by personal service or otherwise, are hereby ordered to preserve and maintain the Semicoa Assets, and are restrained from

- 1. licensing, encumbering, or otherwise impairing the value of any such asset;
- 2. removing, selling, leasing, assigning, transferring, pledging, or otherwise disposing of any such asset;
- 3. transferring or reassigning to other facilities of Microsemi, or dismissing except for cause, employees of the Semicoa Assets;
- 4. failing to use the Semicoa Assets for each stage of the production process for all transistor types that were manufactured using the Semicoa Assets for such stage on

or after November 12, 2008, so long as Microsemi has any orders for such transistor;

or causing or assisting others in carrying out any of these prohibited activities.

B. Microsemi, and its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Microsemi who receive actual notice of this Order by personal service or otherwise, are hereby ordered

1. to provide the United States ten (10) days' advance notice of any dismissal of an employee of the Semicoa Assets;
2. to take all steps necessary to ensure that the Semicoa Assets are fully maintained in an operable condition at no less than their capacity and efficiency as of November 12, 2008, and to maintain and adhere to normal repair and maintenance schedules for the Semicoa Assets; and
3. to take all steps necessary to ensure that the Semicoa Assets retain all regulatory approvals, including but not limited to certifications and qualifications granted by the Defense Supply Center Columbus.

COMPLIANCE MONITORING

Microsemi, and its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Microsemi who receive actual notice of this Order by personal service or otherwise, are hereby ordered to appoint a person or persons to oversee the Semicoa Assets who will be responsible for Microsemi's compliance with this Order and shall have complete managerial responsibility for such assets.

EXPIRATION OF THIS ORDER

IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 65(b), that the Temporary Restraining Order granted herein shall expire within 10 days of its entry, unless within such time the Order, for good cause shown, is extended, or unless the Defendant consents that it should be extended for a longer period of time.

SO ORDERED, this ____ day of _____, 2008, at _____ .m.

UNITED STATES DISTRICT JUDGE