

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
	)	Civil No. 90-0188
Plaintiff,	)	
	)	
v.	)	
	)	
AMERICAN SAFETY RAZOR COMPANY;	)	<b>FILED</b> OCT 24 1990
ARDELL INDUSTRIES, INC.; and	)	
THE JORDAN COMPANY,	)	
	)	
Defendants.	)	Judge Newcomer

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE OF THE PROCEEDING

On January 9, 1990, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, 15 U.S.C. § 25, challenging the acquisition of Ardell Industries, Inc. ("Ardell") by the American Safety Razor Company ("ASR") as a violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The original complaint named ASR and Ardell as

defendants. On August 15, 1990, the complaint was amended to add The Jordan Company ("Jordan") as a defendant. The complaint alleges that the effect of the acquisition may be substantially to lessen competition for the manufacture and sale in the United States markets of two product categories: (1) single edge industrial blades and (2) all types of industrial blades other than single edge industrial blades. As defined in the complaint, industrial blades are strip ground, disposable razor blades not for wet shaving or medical use.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the Government withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

## II

### EVENTS GIVING RISE TO THE ALLEGED VIOLATION

On April 28, 1989, ASR acquired Ardell. ASR is a manufacturer of soap and shaving, industrial, and medical blades. Its principal blade manufacturing facility is located in Staunton, Virginia. Ardell is a manufacturer of industrial blades and hand tools. Its principal manufacturing facility is located in Union, New Jersey. Both ASR and Ardell manufacture and sell throughout the United States a wide variety of industrial blades, including single edge industrial blades.

Industrial blades are produced for numerous uses and are sold in industrial and do-it-yourself markets. The different types of blades are produced using a similar process. First, a coil strip of steel is run through a perforating punch press. The press contains a die, and the shape of the blade is determined by the width of the steel and the die that is inserted in the press. The press perforates the steel but does not cut it. Next, the steel strip is heat treated. The strip is fed into a hardening furnace, through a water-cooled quench block, then into a tempering furnace. The steel then is fed through a grinder which sharpens the blade. Different blades require different strip guides, which ensure that the blade is ground at the correct angle and to the correct thickness. Single edge blades may require stropping as well as grinding. As the sharpened steel exits the grinder, the individual blades are broken off by a breaker machine.

Most single edge blades are sold "backed" and "shelled," thus requiring additional processing. To back, a pre-cut aluminum or steel blade back is bent lengthwise down the middle. The back is then fed onto the unsharpened edge of the blade and crimped to become part of the blade. To shell, a sheet of paper is fed around the edged side of the blade, cut, and glued to form a protective sleeve.

Each type of industrial blade, including single edge blades, typically is used for specific purposes. Whether or

not other types of products could be used interchangeably with single edge blades, in practice there is little overlap in usage. Consumers purchase single edge blades either as components and replacement blades for cutting and scraping tools, or for use without a tool. Because the tools in which single edge blades are used are designed specifically to hold only single edge blades, there are no substitute products for use in such tools. For most customers who use single edge blades without a tool, the superior cutting edge protected by the shelling and the ready grip provided by the backing produces a result far superior to that any alternative blade could produce. Although some consumers do purchase alternative blades to accomplish certain tasks for which single edge blades typically are used, a small but significant and nontransitory change in the price of single edge blades is unlikely to cause a significant number of users of single edge blades to switch to another type of blade.

Whether or not they currently do so, manufacturers of one type of industrial blade would shift into the manufacture of other non-single edge industrial blades in response to a small but significant and nontransitory price increase. Because of the additional requirement of backing and shelling, however, industrial blade manufacturers not currently manufacturing single edge industrial blades would not shift into the manufacture of single edge blades in response to a similar price increase.

The complaint alleges that the markets for single edge industrial blades and for industrial blades other than single edge industrial blades both are highly concentrated. Based on 1988 sales data, ASR and Ardell have, respectively, about 50 percent and 18 percent of the single edge industrial blade market and about 36 percent and 11 percent of the market for industrial blades other than single edge blades. Only three companies other than ASR and Ardell have more than one percent of the single edge blade market. ASR has a right of first refusal to purchase one of them, Techni-Edge Manufacturing Corp. ("Techni-Edge"), a company owned by the family of Ardell's President at the time the complaint was filed.

As a result of ASR's acquisition of Ardell, the Herfindahl-Hirschman Index increased by about 1800 points to over 4900 in the single edge industrial blade market, and by about 800 points to over 2600 in the market for other types of industrial blades. A market with an HHI of 1800 is highly concentrated.

Entry into the market for single edge industrial blades is time consuming and requires the commitment of substantial non-recoverable costs. The acquisition of efficient backing and shelling equipment alone likely requires more than two years. Moreover, the cost of this equipment is wholly non-recoverable should a firm choose to exit the market. Backing and shelling equipment typically is manufactured in-house by producers of single edge blades. Such equipment is

not available for purchase off-the-shelf, and used equipment is rarely available. Similarly, equipment that can economically back and shell blades is difficult to design, and existing designs are not readily available. Successful competitors in the single edge blades market, including ASR and Ardell, carefully protect their proprietary technology relating to backing and shelling equipment. While grinding equipment is more readily available than backers and shellers, it may be difficult to acquire such equipment in fewer than two years. Entry that takes more than two years is not quick enough to deter or dispel noncompetitive performance resulting from a merger.

Entry into the market for industrial blades other than single edge blades is less difficult than for single edge blades because there is no need to obtain backing and shelling equipment. As discussed further below, the government has determined that because of the ease of entry into the production and sale of other industrial blades, as well as for other reasons, ASR's acquisition of Ardell will not have anticompetitive effects in the market for other industrial blades.

### III

#### EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States brought this action because it believed the effect of this acquisition may be substantially to lessen competition in the United States markets for single edge

industrial blades and for all types of industrial blades other than single edge blades, in violation of Section 7 of the Clayton Act. As described below, the provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the proposed acquisition in the single edge blade market. Prior to negotiations that led to this proposed Final Judgment the United States independently concluded that the acquisition will not substantially lessen competition in the non-single edge blade market, and had intended to move to amend the complaint to eliminate that claim. Thus, the proposed Final Judgment does not address concerns regarding that market.

Concern regarding the effect of ASR's acquisition of Ardell is based on the highly concentrated nature of the single edge industrial blade market and the difficulty potential new entrants face in achieving the ability to produce single edge industrial blades. The risk to competition posed by this transaction would be substantially reduced by the creation of a new competitor in the market. To this end, the proposed Final Judgment is designed to facilitate the entry of at least one new company with the capacity to manufacture a substantial quantity of single edge blades.

Section IV of the proposed Final Judgment requires defendant Ardell to sell four backing and shelling machines, the most difficult aspect of entry into the market, to a company or companies with the managerial, operational, and

financial capability of becoming effective competitors in the production and sale of single edge industrial blades in the United States, and who intend to compete in that market. The proposed Final Judgment precludes the sale of the backers and shellers to currently viable single edge blade manufacturers, as well as to, The Stanley Works, a likely potential market entrant.

Four backers and shellers will provide the purchaser with sufficient capacity to compete effectively in the single edge blade market. Moreover, Section IV of the proposed Final Judgment also requires ASR and Ardell to license to the purchaser the drawings and specifications for the backers and shellers on a perpetual, royalty-free basis. The purchaser will be able to use this technology to build additional backers and shellers, if required in the normal course of business. Finally, the proposed Final Judgment requires ASR and Ardell to provide assistance to the purchaser in installing, debugging and operating the equipment for a period of three months following delivery of the assets.

The proposed Final Judgment also requires divestiture of ASR's right-of-first-refusal interest in Techni-Edge. Section VIII is intended to ensure that Techni-Edge, one of the few companies capable of manufacturing single edge industrial blades, will be a truly independent competitor. Techni-Edge was founded by the family of Bert Ghavami who, at the time of its founding, was a high ranking employee of Ardell. The



proposed Final Judgment also eliminates uncertainty about the ownership of single edge technology practiced by Techni-Edge. Pursuant to the proposed Final Judgment, Ardell will waive any possible claim against Techni-Edge based on the use of Ardell's proprietary information. Furthermore, within six months after entry of the proposed Final Judgment, Ardell must terminate an existing consulting agreement with Bert Ghavami, who until recently was President of Ardell. These injunctions relating to Techni-Edge will ensure the independence of Techni-Edge from ASR and Ardell as a competitor in the single edge blade market.

Section IX of the proposed Final Judgment requires ASR to refrain from asserting any claim against Hans Rath arising out of three employment agreements. It also requires ASR to release Mr. Rath from his obligations under an October 25, 1988 consulting agreement provided Mr. Rath agrees to release ASR from its obligations under the consulting agreement. In any event, ASR will waive provisions in the consulting agreement that may preclude Mr. Rath from involvement in blade manufacturing with anyone other than ASR beyond the four year term of the agreement. The United States believes Mr. Rath is one of the few people in the United States with expertise in the design of single edge industrial blade manufacturing equipment, and his availability to assist potential market entrants in achieving the ability to manufacture single edge industrial blades may facilitate their entry into the market.

Under the terms of the proposed Final Judgment, defendants must take all reasonable steps necessary to accomplish quickly the sale of the four backers and shellers. Should Ardell fail to complete the sale of the backers and shellers by May 31, 1991, or an additional three months if granted by the United States, the Court will appoint a trustee to accomplish the divestiture. Following the trustee's appointment, only the trustee will have the right to sell the backers and shellers, and ASR and Ardell will assist the trustee in the trustee's efforts to accomplish the required divestiture. ASR and Ardell will be required to pay for all of the trustee's sale-related expenses.

Should a trustee be responsible for accomplishing the divestiture, preference would be given to a potential purchaser of a greater number or all of the backers and shellers over a potential purchaser of a lesser number of backers and shellers. Such a purchaser would begin operation with greater blade-making capacity, providing a greater deterrent to anticompetitive price rises by existing manufacturers. Because obtaining single edge blade grinding equipment may be difficult, the proposed Final Judgment also empowers the trustee to require defendants ASR and Ardell to provide assistance in achieving grinding capability to a purchaser, if necessary.

At the end of six months, if the trustee has not accomplished the sale, the trustee and the parties will make recommendations to the Court and the Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may include extending the trust or the term of the trustee's appointment.

The proposed Final Judgment provides that until the required divestiture has been accomplished, ASR and Ardell will maintain the divestiture assets in operable condition as distinct and saleable assets.

The proposed Final Judgment provides the United States an opportunity to review any proposed sale before it occurs. If the United States requests information from defendants to assess a proposed sale, the sale may not be consummated until at least 20 days after defendants supply the information. If the United States objects to a proposed sale, the sale may not be completed.

The proposed Final Judgment provides that The Jordan Company will be dismissed as a defendant upon entry of the Final Judgment. Jordan was named as a defendant primarily due to its roles in the acquisition and operations of ASR and Ardell. For purposes of carrying out the terms of the proposed Final Judgment, Jordan is not a necessary defendant. Obligations in the proposed Final Judgment, however, bind partners and principals of Jordan to the extent they are officers or shareholders of ASR or Ardell.

#### IV

##### REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

#### V

##### PROCEDURE AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes

to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

John J. Hughes, Chief  
Middle Atlantic Office  
Antitrust Division  
The Curtis Center  
Suite 650 West  
7th & Walnut Streets  
Philadelphia, Pennsylvania 19106

## VI

### ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

An alternative to settling this action pursuant to the proposed Final Judgment would be for the United States to litigate the issues and, if successful, to seek an injunction requiring ASR to divest all of its ownership interest in Ardell.

As noted above, the United States decided not to press its claim concerning a violation in the non-single edge industrial blade market for reasons independent of the negotiations that led to the proposed Final Judgment. Because other types of industrial blades are not backed and shelled, entry into the

market for non-single edge blades is significantly easier than entry into the market for single edge blades. Additionally, while there are few foreign companies capable of manufacturing single edge industrial blades who are reasonable sources for United States customers, foreign sources of non-single edge blades are more numerous and constitute a growing presence in the United States market. Finally, several types of non-single edge industrial blades face growing competition from non-disposable industrial blade products.

Regarding the single edge industrial blade market, the United States could have proceeded with the litigation, but the outcome of the trial, as with any litigation, is uncertain. The divestiture of four backers and shellers and related technology will provide the means for entry into the relevant market of a new, viable competitor. The proposed Final Judgment also assures the independence from ASR and Ardell of Techni-Edge, itself a source of new and significant competition, and the availability to potential entrants of the services of an individual possessing unique expertise in single edge blade manufacturing. The United States expects that these measures will provide new competition sufficient to prevent the ASR acquisition of Ardell from having anticompetitive effects.

The United States is satisfied that the proposed Final Judgment fully resolves the anticompetitive effects of the acquisition alleged in the complaint.

VII

DETERMINATIVE MATERIALS AND DOCUMENTS

There are no materials or documents that the United States considered to be determinative in formulating the proposed Final Judgment. Accordingly, none are being filed with this Competitive Impact Statement.

Respectfully submitted,



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