

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

|                                    |   |                       |
|------------------------------------|---|-----------------------|
| UNITED STATES OF AMERICA,          | ) |                       |
|                                    | ) | Civil No. 89-4522     |
| Plaintiff,                         | ) |                       |
|                                    | ) | Entered: May 16, 1990 |
| v.                                 | ) |                       |
|                                    | ) |                       |
| PACIFIC DUNLOP HOLDINGS INC.;      | ) |                       |
| BECTON, DICKINSON AND COMPANY; and | ) |                       |
| EDMONT, INC.,                      | ) |                       |
|                                    | ) |                       |
| Defendants.                        | ) |                       |

FINAL JUDGMENT

WHEREAS, plaintiff, United States of America, having filed its Complaint herein on June 16, 1989, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain divestiture is the essence of this agreement and defendants have represented to plaintiff that the divestiture required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I

JURISDICTION

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II

DEFINITIONS

As used in this Final Judgment:

A. "Ansell Granet" means any and all interest that defendants have in all of the real, personal, and intellectual property of Ansell Granet Inc., a Delaware corporation.

B. "Edmont" means Edmont, Inc., a Nevada corporation wholly-owned by Becton, Dickinson and Company, a New Jersey corporation.

C. "Canton facility" means any and all interest that defendants have or shall acquire in all of the real, personal and intellectual property used in the production or sale of industrial gloves by Edmont in Canton, Ohio.

D. "Industrial gloves" means gloves used to protect hands from cuts and abrasions and environmental, chemical, and biological agents and/or to protect products from hand-borne contamination.

E. "Pacific Dunlop" means Pacific Dunlop Holdings Inc., a Delaware corporation wholly-owned by Pacific Dunlop Limited, a Victoria (Australia) corporation.

### III

#### APPLICABILITY

A. The provisions of this Final Judgment apply to the defendants, to their successors and assigns, to their subsidiaries, affiliates, directors, officers, managers, agents, and employees, 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.

B. Nothing contained in this Final Judgment shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

C. Pacific Dunlop shall require, as a condition of the sale or other disposition of all or substantially all of its interest in the Canton facility and Ansell Granet, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.



#### IV

##### DIVESTITURE OF ASSETS

A. Pacific Dunlop is hereby ordered and directed to divest, to an eligible purchaser or purchasers, any and all interest that it has or shall acquire in Ansell Granet, including the right to use the name "Granet."

B. Pacific Dunlop is hereby ordered and directed to divest, to an eligible purchaser or purchasers, any and all interest that it has or shall acquire in all the real, personal, and intellectual property used in the production or sale of industrial gloves at the Canton facility, but excluding formers, patents, trademarks, trade names, copyrights, trade dress, nitrile formulations, and research and development.

C. Pacific Dunlop shall provide to the purchaser or purchasers of the Canton facility all proprietary information (subject to Section IV.B above) required (1) to manufacture and package each type of industrial glove product manufactured for commercial sale at the Canton facility at any time since January 1, 1987, to standards of quality at least equal to currently manufactured product and (2) to maintain equipment at current levels of efficiency. Pacific Dunlop shall also provide to the purchaser or purchasers of the Canton facility a non-exclusive, perpetual license to use any and all patents currently used in the production of industrial gloves at the Canton facility. Pacific Dunlop shall also provide for twelve

(12) months following the dates of divestiture under Sections IV.A and IV.B, or by the trustee appointed pursuant to Section V, if requested by the purchaser or purchasers, any technical assistance required to manufacture and package such gloves and maintain such equipment, for which Pacific Dunlop will be compensated in an amount equal to the salaries, benefits, and out of pocket expenses incurred in providing such services. Pacific Dunlop shall also provide to the purchaser or purchasers of the Canton facility identification of all customers to whom industrial gloves manufactured at the Canton facility were sold since January 1, 1987 and the types of industrial gloves sold to each.

D. Pacific Dunlop shall provide to the purchaser or purchasers of Ansell Granet identification of all customers to whom industrial gloves manufactured by Ansell Granet were sold.

E. Unless plaintiff otherwise consents, divestiture under Sections IV.A and IV.B, or by the trustee, shall be accomplished in such a way as to satisfy plaintiff, in its sole determination, that the Canton facility and Ansell Granet can and will be operated by the purchaser or purchasers as viable, ongoing businesses engaged in the production of industrial gloves. Divestiture under Sections IV.A and IV.B, or by the trustee, shall be made to a purchaser or purchasers for whom it is demonstrated to plaintiff's satisfaction that (1) the purchase or purchases are for the purpose of competing effectively in the sale of industrial gloves in the United

States and (2) the purchaser or purchasers have the managerial, operational, and financial capability to compete effectively in the sale of industrial gloves in the United States.

F. Without the consent of the purchaser or purchasers, Pacific Dunlop shall not offer, for six (6) months following the dates of divestiture under Sections IV.A and IV.B, or by the trustee, employment to employees currently employed at the Canton facility or Ansell Granet.

G. Within one (1) month of the divestiture under Section IV.B, or by the trustee, Pacific Dunlop shall notify customers to whom industrial gloves manufactured at the Canton facility were sold since January 1, 1987 that (1) industrial gloves they purchased from Edmont were manufactured at the Canton facility and (2) the Canton facility was sold to the purchaser or purchasers.

H. At the time of divestiture under Section IV.B, or by the trustee, Pacific Dunlop shall provide to the purchaser or purchasers of the Canton facility a nitrile formulation for use at the Canton facility which will enable such purchaser or purchasers to manufacture nitrile gloves of a quality, manufacturing efficiency, and yield substantially equivalent to the nitrile gloves currently manufactured by Edmont at the Canton facility.

I. Pacific Dunlop or the trustee shall be entitled to require that the purchaser or purchasers of the assets to be



divested be precluded from representing in any manner that the nitrile gloves which it or they manufacture or sell utilize any Edmont nitrile formulation, ~~and that such purchaser or purchasers be precluded from manufacturing or selling a green nitrile glove for seven (7) years following the date of divestiture under Section IV.B, or by the trustee.~~

J. Pacific Dunlop shall remove the formers currently in place at the Canton facility and replace them with new formers of a quality substantially equivalent to the current formers and suitable for the manufacture of all products currently manufactured at the Canton facility. Pacific Dunlop has ordered such new formers and will install them as soon as they are received. At the option of the purchaser or purchasers, the closing of the divestiture of the Canton facility may be deferred until the new formers are installed.

K. Pacific Dunlop or the trustee shall be entitled to require the issuance of a royalty free perpetual license to Pacific Dunlop to use, after the divestiture provided for in the Final Judgment, any and all know-how, trade secrets, and other intellectual property provided to the purchaser or purchasers of Ansell Granet and the Canton facility, except for the name "Granet" and other divested Ansell Granet trademarks, copyrights, trade dress, and trade names.

L. Defendants shall take all reasonable steps to accomplish quickly the divestiture and all other obligations contemplated by this Final Judgment.

V

APPOINTMENT OF TRUSTEE

A. In the event that Pacific Dunlop has not divested all of its interests required by Sections IV.A and IV.B by six (6) months from the filing of this Final Judgment the Court shall, on application of the plaintiff, appoint a trustee to effect the remainder of the divestiture required by Sections IV.A and IV.B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the assets required to be divested pursuant to Sections IV.A and IV.B. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the rights of Pacific Dunlop in Sections IV.I and IV.K, and subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Pacific Dunlop shall not object to a sale by the trustee pursuant to the provisions of this Final Judgment on any grounds other than the trustee's malfeasance. Any such objections by Pacific Dunlop must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has provided the notice required under Section VI.

B. If Pacific Dunlop has not divested all of its interests required by Sections IV.A and IV.B by five (5) months from the filing of this Final Judgment, plaintiff and Pacific Dunlop shall immediately notify each other in writing of the



names and qualifications of not more than two (2) nominees for the position of the trustee who shall effect the required divestiture. Plaintiff and Pacific Dunlop shall attempt to agree upon one of the nominees to serve as the trustee. If plaintiff and Pacific Dunlop are able to agree on a trustee within thirty (30) days of the exchange of names, plaintiff shall notify the Court of the person upon whom plaintiff and Pacific Dunlop agreed, and the Court shall appoint such person as the trustee. If plaintiff and Pacific Dunlop are unable to agree within that time period, plaintiff shall furnish the Court the names of each party's nominees. The Court may hear plaintiff and Pacific Dunlop as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

C. The trustee shall serve at the cost and expense of Pacific Dunlop, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining money shall be paid to Pacific Dunlop and the trust shall then be terminated. The compensation of such trustee shall be reasonable and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Pacific Dunlop shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business or businesses to be divested, and Pacific Dunlop shall develop financial or other information relevant to such business or businesses as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Upon the request of the trustee, Becton, Dickinson shall provide reasonable assistance and records and documents within its possession or control to aid the trustee in accomplishing the divestiture of the Canton facility. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with plaintiff and Pacific Dunlop and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been

accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to plaintiff and Pacific Dunlop, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment.

## VI

### NOTIFICATION

A. Pacific Dunlop or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify plaintiff of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Pacific Dunlop. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in the Canton facility or Ansell Granet, together with full details of the same. Within fifteen (15) days after receipt of the notice, plaintiff may request additional information concerning the proposed divestiture, the proposed purchaser, and any other potential purchaser. Pacific Dunlop or the trustee shall furnish the additional information within fifteen (15) days



after receipt of the request. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information, whichever is later, plaintiff shall notify in writing Pacific Dunlop and the trustee, if there is one, if it objects to the proposed divestiture. If plaintiff fails to object within the period specified, or if plaintiff notifies in writing Pacific Dunlop and the trustee, if there is one, that it does not object, then the divestiture may be consummated, subject only to Pacific Dunlop's limited right to object to the sale under Section V.A. Upon objection by the plaintiff the proposed divestiture shall not be accomplished. Upon objection by Pacific Dunlop under Section V.A, the proposed divestiture shall not be accomplished unless approved by the Court.

B. On the date of entry of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed, Pacific Dunlop shall deliver to plaintiff a written report as to the fact and manner of compliance with Section IV of this Final Judgment. Each such report shall include, for each person who during the period preceding the delivery of the report made an offer, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in the Canton facility or Ansell Granet, the name, address, and telephone number of that person and a detailed description of each

previously unreported contact with that person during that period. Pacific Dunlop shall maintain full records of all efforts made to divest the Canton facility and Ansell Granet.

## VII

### FINANCING

Defendants shall not finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment without the prior consent of the plaintiff.

## VIII

### PRESERVATION OF ASSETS

A. Pacific Dunlop shall preserve, hold, and continue to operate as going businesses the Canton facility and Ansell Granet. Pacific Dunlop shall discontinue any efforts to integrate the operation of Ansell Granet into the operation of any other business unit owned or affiliated with Pacific Dunlop. Pacific Dunlop shall use all reasonable efforts to maintain the Canton facility and Ansell Granet as viable and active competitors in the market for the production and sale of industrial gloves.

B. Pacific Dunlop shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans (except such loans as are currently outstanding or replacements or substitutes therefore), assets required to be divested pursuant to Sections IV.A and IV.B, except that any component of such assets as is replaced in the ordinary course of business with a newly purchased component may be sold or

otherwise disposed of, provided the newly purchased component is so identified as a replacement component for one to be divested.

C. Pacific Dunlop shall provide and maintain sufficient working capital to maintain the Canton facility and Ansell Granet as viable, ongoing businesses.

D. Pacific Dunlop shall preserve the assets required to be divested pursuant to Sections IV.A and IV.B except those replaced with newly acquired assets in the ordinary course of business, in a state of repair equal to their state of repair as of the date of this Final Judgment, ordinary wear and tear excepted. Defendants shall preserve the documents, books and records of the Canton facility and Ansell Granet, and Pacific Dunlop shall continue to maintain such documents, books, and records until the dates of divestiture.

E. Except in the ordinary course of business, Pacific Dunlop shall refrain from terminating or reducing one or more current employment, salary, or benefit agreements for one or more management, engineering, or other technical personnel employed in connection with the Canton facility or Ansell Granet, and shall refrain from transferring any employee employed at the Canton facility or Ansell Granet without the prior approval of plaintiff.

F. Defendants shall refrain from taking any action that would jeopardize the sale of the Canton facility or Ansell Granet.



## IX

### COMPLIANCE INSPECTION

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

A. Duly authorized representatives of the Department of Justice, including consultants and other persons retained by the Department, shall, upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal offices, be permitted:

1. access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, which may have counsel present, relating to any matters contained in this Final Judgment; and

2. subject to the reasonable convenience of defendants and without restraint or interference from them, to interview their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendants at their principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give ten (10) days notice to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendants are not a party.

X

#### RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction,

implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XI

TERMINATION

This Final Judgment will expire on the fifth anniversary of the completion of the divestitures required herein.

XII

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: 5/16/90

Court approval subject to  
procedures of Antitrust  
Procedures and Penalties Act,  
15 U.S.C. § 16

Jan E. DuBois  
UNITED STATES DISTRICT JUDGE