

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA, :
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 Plaintiff, :
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 v. : Civ. No. N 82-305 (PCD)
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 NEWELL COMPANIES, INC., : Filed: April 4, 1985
 :
 Defendant. : Entered: July 16, 1985
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FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on June 14, 1982, and the defendant, Newell Companies, Inc., 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 such issue;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

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

II

As used in this Final Judgment:

(A) "The defendant" means Newell Companies, Inc., including each division, subsidiary and affiliate thereof, except Judd.

(B) "Judd" means the business of Judd Drapery Hardware, a Newell Company, having its headquarters in Wallingford, Connecticut, including the assets and capital stock acquired by the defendant on April 24, 1981 from The Stanley Works, wherever such assets are currently located, and such other assets as are used by or in connection with the operation of Judd Drapery Hardware, but not including those assets which were acquired from The Stanley Works and were located at Roxton Pond, Canada.

(C) "Drapery hardware" means products used to hang draperies or curtains, including adjustable traverse, curtain, cafe and sash rods and various functional and decorative accessories such as hooks, rings, supports, brackets and tiebacks.

(D) "Person" means any individual, partnership, firm, corporation, association or any other business or legal entity.

(E) "Eligible purchaser" means any person not owned or controlled by the defendant, directly or indirectly, and approved by the plaintiff or the Court, which certifies in writing its intention to purchase and operate Judd as a viable and ongoing business engaged in the manufacture and sale of drapery hardware, reasonably demonstrates to the plaintiff or the Court that it will have the capability of doing so, and agrees to supply any information in its possession, custody, or control requested by the plaintiff in accordance with Section V (D) of this Final Judgment.

III

The provisions of this Final Judgment shall apply to the defendant, its officers, directors, agents and employees, and to its subsidiaries, affiliates, successors and assigns, and to each of their respective officers, directors, agents and employees, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

(A) The defendant is hereby ordered and directed to divest, as a viable and ongoing business engaged in the manufacture and sale of drapery hardware in the United States, all of its ownership in and control over Judd to an eligible purchaser. Provided that nothing in the Final Judgment obligates the defendant to finance the sale of Judd or any of Judd's assets to any purchaser.

(B) At the request of a prospective eligible purchaser, the defendant shall sell to such purchaser less than all of Judd's assets but only with the written approval of the plaintiff and only if such assets are capable of being operated as a viable and ongoing business engaged in the manufacture and sale of drapery hardware in the United States. In the event that the plaintiff approves a sale to an eligible purchaser pursuant to this paragraph (B), such sale shall fully discharge the defendant's obligations under Section IV (A) of this Final Judgment.

V

(A) Subject to Section V (D) of this Final Judgment, Louis Klein, Jr., previously selected by the plaintiff and the defendant in accordance with the attached agreement, and herein approved by the Court, shall act as an independent broker with full power and authority to carry out the divestiture ordered in Section IV of this Final Judgment.

(B) The independent broker shall commence efforts to find an eligible purchaser and to effect divestiture immediately upon the filing of this Final Judgment with the Court. The independent broker shall at all times thereafter use its best efforts to effect divestiture. The defendant shall in good faith devote its best efforts to assist the independent broker in promoting the sale of Judd, including providing to a potential eligible purchaser access to Judd's plant, machinery, books and records and the opportunity to interview Judd personnel. The defendant shall promptly notify the independent broker of any contact it has had with any person that has made an offer or expressed an interest or desire to acquire Judd, together with full details of the same.

(C) Thirty (30) days from the date of entry of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed, the independent broker shall submit an affidavit to the plaintiff describing in detail the fact and manner of compliance with this Final Judgment. Each affidavit shall include the name, address and telephone number of each person who, during the preceding thirty (30) days, has contacted or been contacted by the independent broker or the defendant in relation to the proposed sale of Judd, or has made an offer, expressed an interest or desire, or entered into negotiations, to acquire Judd, together with full details of same. The

independent broker shall maintain full records of all efforts made to divest Judd, including summaries of all meetings and conversations; such records shall be made available to the plaintiff at its request.

(D) At least forty-one (41) days prior to the proposed closing of any sale pursuant to this Final Judgment, the independent broker shall furnish in writing to the plaintiff and the defendant the terms and conditions of the proposed sale together with the name and address of the proposed eligible purchaser and a description of its business. The defendant shall advise the plaintiff and the independent broker in writing no later than thirty-one (31) days prior to the scheduled closing date whether it has any objection to the proposed sale. If the defendant does so object, such objection shall be sufficient to bar the sale unless the Court approves the sale. The plaintiff may apply to the Court for approval of such sale within ten (10) days of notice of the defendant's objection, unless the plaintiff requested additional information. The plaintiff shall advise the defendant and the independent broker in writing no later than thirty-one (31) days prior to the scheduled closing date whether it has any objection to the proposed sale or that it requests additional information. If the plaintiff does so object, the defendant may apply to the

Court for approval of such sale within ten (10) days of notice of the plaintiff's objection. If the plaintiff requests additional information from the defendant, the independent broker, or the proposed eligible purchaser: such information must be furnished within ten (10) days of the receipt of the request, unless the plaintiff shall agree otherwise in writing; and the plaintiff shall have ten (10) days from the date all such information is received by it in which to object to the proposed sale or to apply to the Court for approval of such sale. If the plaintiff does not so object, the sale may be consummated. If the plaintiff does so object, such objection shall be sufficient to bar the sale unless the Court approves the sale. The defendant may apply to the Court for approval of such sale within ten (10) days of notice of the plaintiff's objection. The time period set forth in Section VI of this Final Judgment shall be tolled from the time either the plaintiff or the defendant files its application with the Court, pursuant to this section, until the conclusion of any proceeding in any Court under this section relating to the approval of a proposed sale.

VI

Subject to the provisions of Section V (D) of this Final Judgment, if the independent broker has not effected divestiture within one hundred eighty (180) days following the entry of this Final Judgment, the obligation of the defendant to divest shall then be terminated and the requirement of divestiture considered satisfied: Provided, however, that upon application and a proper showing to the Court that there is a potential eligible purchaser that has made an offer, expressed a serious interest or desire, or entered into negotiations, to acquire Judd, the obligation of divestiture may be extended by the Court for such additional period of time as may be reasonably necessary to complete negotiations and effect the sale.

VII

Until the divestiture required by this Final Judgment has been accomplished, all of the provisions of the Stipulation and Hold Separate Order entered by this Court on August 17, 1982 shall remain in effect and the defendant shall comply therewith.

VIII

At the option of the eligible purchaser, and on its request within thirty (30) days following the closing date of the sale of Judd, the defendant shall:

(A) at its expense, undertake to transport promptly to a location selected by the eligible purchaser some or all of the assets of Judd listed in the attached Schedule A, which the defendant previously transferred from Judd's operation in Wallingford, Connecticut. However, the method of transportation shall be at the purchaser's discretion, reasonably exercised, and the expense of the transportation shall not be more than the expense which the defendant would incur in transporting the assets to Wallingford, Connecticut; and (B) use its best efforts for a period to be selected by the eligible purchaser but not to exceed three (3) months to provide assistance to aid the eligible purchaser in assembling, hiring and providing the necessary training for re-establishing a staff of field service representatives that is capable of satisfactorily servicing Judd's customers.

IX

The defendant is enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from acquiring any of the assets or stock of, or from merging with, any person engaged in whole or in part in the manufacture or sale of drapery hardware in the United States without the prior written consent of the plaintiff, or if such consent is refused, then upon approval by this Court

after an affirmative showing by the defendant that the effect of any such acquisition will not be substantially to lessen competition or tend to create a monopoly in any line of commerce in any section of this country. Nothing herein contained shall preclude the defendant from acquiring drapery hardware manufacturing property or equipment from any source in the ordinary course of its business.

X

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 shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted:

- (1) Access during office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and
- (2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees and agents of the defendant, who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant 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 means provided in Sections V (C) or (D) or Section X of this Final Judgment 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, 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 the defendant to the plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by the plaintiff to the

defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

XI

Jurisdiction of this action is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.

XII

This Final Judgment will expire on the tenth anniversary of the date of entry, or with respect to any particular provision, on any earlier date specified.

XIII

Entry of this Final Judgment is in the public interest.

Dated:

/s/ Judge Peter C. Dorsey
PETER C. DORSEY
United States District Judge