

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil Action No. 72-2075-J
)
CONVERSE RUBBER CORPORATION;)
ELTRA CORPORATION, and THE)
B. F. GOODRICH COMPANY,)
)
 Defendants.)

Entered: August 29, 1972

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on July 3, 1972, seeking to enjoin an alleged violation of Section 7 of the Clayton Act (15 U.S.C. § 18); and defendants, Converse Rubber Corporation, Eltra Corporation and the B. F. Goodrich Company, having appeared, and the plaintiff and the defendants by their respective attorneys having each consented to the making and entry of this Final Judgment;

NOW, THEREFORE, before any testimony has been taken and without trial or adjudication of any issue of law or fact herein, and without any admission by any party with respect to any such issue and upon the consent of plaintiff and defendants, the Court being advised and having considered the matter, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

[Jurisdiction]

This Court has jurisdiction over the subject matter and the parties consenting hereto. The complaint states a

claim upon which relief may be granted against defendants under Section 7 of the Act of Congress of October 15, 1914 (15 U.S.C. §18), commonly known as the Clayton Act, as amended.

II

[Definitions]

As used in this Final Judgment:

(A) "Canvas footwear" means footwear manufactured by attaching a canvas upper to a rubber or plastic sole by either the autoclave or the machine-made method, and commonly known as gym shoes, tennis shoes or sneakers;

(B) "Rubber Canvas Footwear" means canvas footwear manufactured by attaching a canvas upper to a rubber sole;

(C) "Canvas footwear production facility" or "production facilities" means Converse's present plants located at Malden, Mass.; Andover, Mass.; Bristol, R.I.; Presque Isle, Me.; Berlin, N.H.; and Canovanas, Puerto Rico;

(D) "Eligible purchaser" means any person intending to operate production facilities for the purpose of manufacturing canvas footwear to which plaintiff, after notice, does not object, or if plaintiff does object, of which the Court approves;

(E) "Goodrich Trademarks" means the trademarks "PF", "PF Flyer" and "Jack Purcell;"

(F) "Goodrich Patents" means those unexpired U.S. patents previously owned by the B. F. Goodrich Company pertaining to canvas footwear and registered under the following U.S. Patent Nos.:

2,943,405
2,900,953
2,994,972
3,508,289
3,568,638
2,879,452
2,937,744
3,259,299

(G) "Canvas footwear manufacturer" means any person engaged in the business of manufacturing canvas footwear in the United States, or which intends to enter the business of manufacturing canvas footwear in the United States, or which has canvas footwear manufactured for it in the United States;

(H) "Lumberton Plant" means the canvas footwear manufacturing plant at Lumberton, N.C., formerly operated by the B. F. Goodrich Company;

(I) "Lawrence Warehouse" means the warehouse facility at Lawrence, Kansas formerly leased by the B. F. Goodrich Company;

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

III

[Applicability]

The provisions of this Final Judgment applicable to defendant Converse Rubber Corporation ("Converse") shall apply also to its parent, Eltra Corporation, and shall also apply to each of Converse's subsidiaries, successors and assigns, and their officers, directors, agents and employees, and to those persons in active concert or participation with any of them who receive actual notice of this Final Judgment, by personal service or otherwise. Any person not a party hereto who acquires any assets by means of a divestiture pursuant to this Final Judgment shall not be considered to be a successor or an assign of Converse.

IV

[Divestiture - Conditions and Terms]

(A) Converse is ordered and directed, by June 30, 1974, to sell, as going canvas footwear manufacturing operation(s), to an eligible purchaser or purchasers a canvas footwear production facility or facilities demonstrably capable of producing annually approximately 7 million pairs of autoclave and machine-made canvas footwear, at least 4.5 million pairs of which shall be autoclave capacity capable of producing Goodrich trademarked footwear. Any sale pursuant to this Section IV shall be on terms and conditions which are fair and reasonable under the circumstances.

(B) If the divestiture requirements of Subsection (A) of this Section IV have not been met by June 30, 1974, Converse shall, unless the Court shall direct otherwise on application by Converse, place in the control of a Trustee, promptly after his appointment by this Court, upon application by either party hereto, at the cost and expense of Converse, its interest, at its option, in either (i) the Lumberton plant, or (ii) a canvas footwear production facility or facilities demonstrably capable of producing annually approximately 7 million pairs of autoclave and machine-made canvas footwear, at least 4.5 million pairs of which shall be autoclave capacity capable of producing Goodrich trademarked footwear, and which, when offered for sale, will be viable and in good operating condition for use as canvas footwear manufacturing operation(s). The Trustee shall have full authority to dispose of such production facility or facilities as going canvas footwear manufacturing operation(s), to an eligible purchaser or purchasers

subject to Court supervision after hearing the parties hereto on any issue presented. If the Trustee has been unable to make such disposition by June 30, 1976, the Trusteeship shall end, the production facility or facilities placed in his control shall revert to Converse, and Converse shall no longer be required by any provision of this Final Judgment to sell or divest itself of any of its production facilities.

(C) If Converse loses canvas footwear production capacity due to acts of God before the sale of canvas footwear production facilities pursuant to Subsections (A) and (B) of this Section IV, it shall only be required to dispose of such production facilities as will make its total reduction in production capacity approximately 7 million pairs annually. If the loss of production capacity due to acts of God approximates 7 million pairs, Converse shall be relieved of any obligation to sell production facilities under this Section IV.

(D) Converse further is ordered and directed to sell the Goodrich Trademarks, together with the then existing inventory of canvas footwear bearing the said Trademarks and the related dies or other tooling required to reproduce the Trademarks, as well as any models, patterns, or unique equipment essential to produce the Goodrich trademarked footwear, by selling one or all of the Trademarks to an eligible purchaser or purchasers at the time of the sale to such purchaser or purchasers of production facilities pursuant to Subsection (A) or (B) of this Section IV. In the event that eligible purchaser(s) of production facilities decline to purchase one or more of the Goodrich Trademarks, or that no production facilities can be sold pursuant to Subsection (A) or (B), Converse shall sell

the remaining Trademark(s) separately from production facilities, within one year following the sale of production facilities or, failing the sale of production facilities, before June 30, 1977, to a canvas footwear manufacturer or manufacturers approved by plaintiff or this Court. Should a Trademark be sold to a person which does not manufacture canvas footwear itself, Converse shall for a period of two years, if requested by such person, sell to such person at a competitive price up to fifty percent (50%) of the number of pairs of canvas footwear bearing such Trademark(s) sold by B. F. Goodrich during 1971. In this connection, Converse shall keep the Goodrich Trademarks alive, and shall continue to market rubber canvas footwear under the Goodrich Trademarks until at least six months after the sale of production facilities pursuant to Subsection (A) or (B) or until December 31, 1976, whichever is earlier.

(E) Converse is ordered and directed to grant to any eligible purchaser or purchasers of canvas footwear production facilities pursuant to subsections (A) or (B) of this Section IV, which so requests, non-exclusive, unrestricted and royalty free licenses or sublicenses under the Goodrich Patents. In addition, Converse is ordered and directed to grant non-exclusive, unrestricted and royalty free licenses or sublicenses under the Goodrich Patents to any other canvas footwear manufacturer, which may so request, with total pairage sales of canvas footwear not in excess of Converse's total pairage sales of canvas footwear for the immediately preceding calendar year. In this connection, the canvas footwear sales of any parent or subsidiary of the canvas footwear manufacturer requesting a license or sublicense shall be considered to be the sales of the firm making the request.

(F) Converse is ordered and directed, if so requested by J. C. Penney Company, Inc. ("Penney"), to continue to sell at a competitive price based on quality and service, for a maximum period of three years from the date of entry of this Final Judgment, Penney-branded canvas footwear to Penney in an amount equal to at least fifty percent (50%) to Penney's purchases in pairs of such footwear from B. F. Goodrich in 1971; provided, however, that Converse shall be immediately relieved of any obligation to supply Penney if an eligible purchaser of production facilities pursuant to Subsection (A) or (B) of this Section IV agrees to assume the obligation to supply Penney, and provided further that, if no eligible purchaser or purchasers of production facilities pursuant to Subsections (A) and (B) is willing to assume the obligation to supply Penney, Converse shall only be obligated to supply Penney during the selling season immediately following the sale of such production facilities.

(G) Converse is ordered and directed to offer, during a period of one year following the entry of this Final Judgment, to transfer such rights as it may have in the Lawrence Warehouse to Penney or its designee which has assumed Converse's obligation pursuant to Subsection (F) to supply canvas footwear to Penney.

(H) Following the entry of this Final Judgment and continuing until the completion of the divestiture as described in Subsection (A) of this Section IV or, failing such divestiture, until the provisions of Subsection (B) of this Section IV are complied with, Converse shall:

(i) Report to the Assistant Attorney General in charge of the Antitrust Division every ninety (90) days concerning the efforts made by it to comply with the above divestiture provisions. Such reports shall include offers received and the type of production capacity desired by the prospective purchaser. The first such report shall be rendered within ninety (90) days after entry of this Final Judgment; and

(ii) Report promptly to the Assistant Attorney General in charge of the Antitrust Division the name of any person making inquiry whom Converse does not believe to be a bona fide prospective eligible purchaser, as defined in Subsection (D) of Section II above.

V

[Future Acquisitions]

Converse is enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from acquiring all or any part of the stock or assets, other than goods in the normal course of business, of any person engaged in the United States in the manufacture and sale or the distribution of canvas footwear, except with the prior written consent of plaintiff, or if such consent is refused, then upon approval by this Court.

VI

[Inspection and Compliance]

(A) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, Converse shall permit duly authorized representatives of the Department

of Justice, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Converse at its principal office, subject to any legally recognized privilege:

(1) Access during the office hours of Converse, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Converse which relate to any matters contained in this Final Judgment;

(2) Subject to the reasonable convenience of Converse and without restraint or interference from it, to interview officers or employees of Converse, who may have counsel present, regarding such matters.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, Converse shall submit such reports in writing, with respect to the matters contained in this Final Judgment, as may from time to time be requested.

(C) No information obtained by the means provided in this Section VI 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 plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VII

[Jurisdiction Retained]

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, modification, or termination of any of the applicable provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

/s/ ANTHONY JULIAN
UNITED STATES DISTRICT JUDGE

Dated: August 29, 1972