UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA, Department of Justice Antitrust Division 1401 H Street, NW Suite 3000 Washington, DC 20530 Plaintiff, v. FRANKLIN ELECTRIC CO., INC., 400 E. Spring Street Bluffton, IN 46714 UNITED DOMINION INDUSTRIES LIMITED, 2300 One First Union Center 301 South College Street Charlotte, NC 28202-6039 and UNITED DOMINION INDUSTRIES, INC., 2300 One First Union Center 301 South College Street Charlotte, NC 28202-6039 Defendants.	Civil No: Filed: 5/31/00

VERIFIED COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable relief against the defendants and alleges as follows:

1. The United States seeks to prevent the proposed consolidation of the submersible turbine pump businesses of defendant Franklin Electric Co., Inc. ("Franklin Electric") and

defendant United Dominion Industries, Inc. ("UDI") into a joint venture controlled by Franklin Electric. Submersible turbine pumps ("STPs") are a critical component used in dispensing gasoline at service stations. Franklin Electric would own 75 percent of the newly created joint venture company; UDI would own 25 percent. Franklin Electric would also have the right to force UDI to sell its 25 percent interest to Franklin Electric. The joint venture eliminates all competition between the defendants in submersible turbine pumps used in service stations.

2. The proposed consolidation creates a monopoly. Franklin Electric (which sells under its brand name "FE Petro") and UDI (which sells under its brand name "Red Jacket") are the only firms that develop, manufacture and sell submersible turbine pumps used in service stations in the United States. Red Jacket was the dominant submersible turbine pump sold in the United States until Franklin Electric introduced new technology and began to take significant market share from Red Jacket in the 1990s. An October 1, 1999, Monthly Management Report from John Meyers, Vice President of Sales and Marketing at The Marley Company ("Marley"), the STP subsidiary of UDI, to Bob Moore, President and General Manager of Marley, notes that the FE Petro marketing pitch emphasized to customers, "you now have a choice." The report also states that, "[t]he company [Marley] cannot afford to go back to the old ways with regard to warranty or we will be punished by the industry who now have [sic] a choice."

3. Unless the proposed consolidation is blocked, the competition in submersible turbine pumps that customers have benefitted from will be eliminated. The proposed consolidation would likely result in higher prices, less innovation, lower quality and less service in the submersible turbine pump market.

I. JURISDICTION AND VENUE

4. This action is filed by the United States under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

5. UDI, through its subsidiary Marley, and Franklin Electric, through it subsidiary FE Petro, Inc. ("FE Petro"), develop, manufacture and sell submersible turbine pumps in the flow of interstate commerce. Defendants' activities in developing, manufacturing and selling submersible turbine pumps also substantially affect interstate commerce. This Court has subject matter jurisdiction over this action and jurisdiction over the parties pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22 and 28 U.S.C. §§ 1331, 1337(a), and 1345.

6. Franklin Electric is an Indiana corporation that does business within the Western District of Wisconsin. Venue is proper in this District pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391(d).

7. United Dominion Industries Limited is a Toronto, Ontario, Canada corporation that does business within the Western District of Wisconsin. Venue is proper in this District pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391(d).

8. UDI is a Delaware corporation that does business within the Western District of Wisconsin. Venue is proper in this District pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391(d).

II. THE DEFENDANTS

9. Franklin Electric is an Indiana corporation with its corporate headquarters and principal place of business in Bluffton, Indiana. Franklin Electric produces electric motors, pumps

and electronic drives and controls for motors. It is the world's largest producer of submersible motors. FE Petro, a subsidiary of Franklin Electric, produces submersible turbine pumps used in service stations at a plant in McFarland, Wisconsin. Franklin Electric produces motors for submersible turbine pumps at a plant in Siloam Springs, Arkansas. In 1999, Franklin Electric reported total sales of $293.2 million.

10. UDI, a wholly owned subsidiary of United Dominion Industries Limited, is a Delaware corporation with its corporate headquarters and principal place of business in Charlotte, North Carolina. UDI produces flow control products, pumps, agricultural machinery, test instruments, and construction products. Marley, a subsidiary of UDI, produces submersible turbine pumps used in service stations at a plant in Davenport, Iowa. In 1999, UDI reported total sales of $2.143 billion.

III. THE PROPOSED TRANSACTION

11. On or about January 12, 2000, Franklin Electric and UDI entered into an agreement to organize a new company in which Franklin Electric would own a 75 percent equity interest and Marley would own a 25 percent equity interest. Pursuant to the agreement, Franklin Electric would contribute 100 percent of the voting stock of FE Petro to the joint venture and UDI will contribute the principal assets used in its STP business to the joint venture. On formation of the joint venture, Franklin Electric will pay UDI about $50.3 million. Franklin Electric can force UDI to sell its share of the joint venture at anytime for $16.8 million and UDI can also force Franklin Electric to purchase UDI's share of the joint venture at any time also for $16.8 million.

IV. TRADE AND COMMERCE

A. Relevant Product Market

12. Submersible turbine pumps are used in service stations to transfer gasoline from underground storage tanks to above-ground island dispensers. STPs are critical equipment to supply gasoline to the American public. Over 90 percent of the service stations in the United States use STPs to pump gasoline.

13. Most service stations in the United States have between four and six dispensers and up to three underground storage tanks, one tank for standard-grade gasoline, one for high-grade gasoline and, in some cases, one tank for diesel fuel. On occasion, regular and premium grades of gasoline are mixed or blended at the dispenser to produce a mid-grade gasoline product. A standard underground tank at a service station stores about 10,000 gallons of fuel.

14. STPs are submerged in petroleum in the underground storage tanks at service stations and pump the gasoline through a pipe to the above-ground island dispensers where the gasoline is discharged through a hose and nozzle into the customer's vehicle. STPs must meet explosion proof standards established by Underwriter's Laboratories ("UL").

15. An STP consists mainly of a motor, pumping unit and discharge head connected in a long narrow cylindrical configuration to fit a narrow diameter four-inch opening in the tank. The cylinder portion inside the tank contains the actual pumping unit, the electric motor and the impeller which stirs the gasoline and forces it up the cylinder. The discharge head containing the manifold and the connection with the underground piping network is mounted on top of the tank. STPs are produced in 1/3, 3/4, 1.5, 3 and 5 horsepower sizes. A substantial and growing number of STPs are sold with variable speed drive or telescoping shaft features first introduced by

Franklin Electric. Variable speed drives monitor and adjust the pressure during peak use so that the same flow rate is maintained regardless of the number of different nozzles that are in use. The telescoping shaft permits the shaft to be adjusted to fit a variety of underground storage tank sizes.

16. STPs are marketed primarily through petroleum equipment distributors. They are also sold directly to major oil companies. Petroleum equipment distributors sell various products, including STPs, to service station owners and operators, independent firms known as jobbers that operate service stations, and the building contractors who construct or service the stations. Sales of STPs in the United States were about $30 million in 1999.

17. Suction pumps, which are used mostly in service stations outside the United States, are not an adequate substitute for STPs sold in the United States. Unlike STPs, suction pumps are located above ground in each dispenser. Suction pumps draw the gasoline from the storage tank using a suctioning technique. They operate by reducing pressure at the pump inlet and allow atmospheric pressure to push the gasoline from the tank into the pump where it is pushed through the hose and nozzle. In a suction pump system, each dispenser requires its own suction pump and separate piping from the dispenser to each storage tank, whereas STPs require only one main pipe with branches to each dispenser. Because of their superior performance and lower cost, STPs have virtually eliminated sales of suction pumps for gasoline service stations in the United States.

18. For the vast majority of service stations in the United States, STPs are much more economical than suction pumps. The average size service station in the United States has about six dual-side dispensers and three underground storage tanks. A typical six dispenser service

station would need at least eighteen suction pumps, one for each dispenser and each grade of gasoline, but only three STPs, one for each tank. In addition, suction pumps require about 50 percent more piping than STPs since a separate pipe must be connected from each tank to each dispenser containing the suction pump.

19. STPs are also preferred over suction pumps by service station owners and operators in the United States because they provide a greater flow rate and more flexibility in the location of the underground storage tanks. The pressurized system of an STP provides more power than the vacuum created by the suction pump system. In a suction pump system, the storage tanks must be located directly beneath the above-ground dispenser island, while the storage tanks may be located at a distance off to the side of the dispenser island in an STP system.

20. In addition, when the weather is hot, suction pumps are subject to vapor lock. Vapor lock occurs when gasoline vaporizes and breaks the vacuum required by suction pumps to pull the gasoline from the storage tank. Because STPs push gasoline through a pressurized system, their performance is not adversely affected by high temperatures.

21. A small but significant increase in the price of submersible turbine pumps for use in gasoline service stations in the United States would not cause a significant number of U.S. purchasers of STPs to substitute to suction pumps.

22. The development, production and sale of STPs for use in gasoline service stations is a line of commerce and relevant product market within the meaning of Section 7 of the Clayton Act.

B. The Relevant Geographic Market

23. The defendants, the only two U.S. manufacturers of STPs, compete with one

another throughout the United States. Franklin Electric and UDI are the only two companies providing STPs to customers in the United States. No imports of STPs are made into the United States and Franklin Electric and Marley account for over 98 percent of the development, manufacture and sale of STPs worldwide. There are no foreign producers whom STP customers could turn to in the face of a price increase on STPs.

24. A small but significant increase in the price of submersible turbine pumps for use in gasoline service stations in the United States would not cause a significant number of U.S. customers to purchase STPs produced outside the United States.

25. The United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects

1. The Proposed Transaction Creates a Monopoly That Will Harm Competition in the United States Market for Submersible Turbine Pumps

26. Franklin Electric and UDI are the only firms that develop, manufacture and sell STPs for use in gasoline service stations in the United States. The defendants currently compete against one another in product innovation, price and service for STP sales. Today, Marley has about a 60 percent market share and FE Petro has about a 40 percent share. The proposed joint venture will eliminate competition and create a monopoly in the United States for STPs which is likely to lead to higher prices, lower quality and service, and less innovation in the U.S. market in violation of Section 7 of the Clayton Act.

27. In response to Franklin Electric entering the U.S. STP gasoline service station market, Marley increased innovation and improved service benefitting consumers. The aggressive

competition between FE Petro and Marley has benefitted customers. FE Petro and Marley have competed directly in offering price discounts, volume rebates, and warranty and payment terms. The direct competition with FE Petro has constrained pricing decisions by Marley. A January 19, 1999, memorandum from the Red Jacket Sales and Marketing Team to John Meyers, Vice President of Sales and Marketing at Marley states, "with the many pricing actions implemented over the course of the last six months this message [matching FE Petro] has become clouded and confused. Let me state it once again clearly 'we are committed to matching FE Petro dollar for dollar in the market.'"

28. When Marley was the dominant firm, it did not invest significantly in innovation and did not respond aggressively to customer service demands. After FE Petro developed the variable speed and telescoping shaft features preferred by customers, Marley began to lose significant market share to FE Petro. Customers have benefitted from the price and innovation competition between FE Petro and Marley.

2. Entry is Not Likely to Deter the Exercise of Monopoly Power

29. Successful entry into the STP market would not be timely, likely or sufficient to deter any exercise of monopoly power resulting from the proposed transaction. A successful new entrant would require several years to design an STP product around patents held by the merging parties, build a competitive dealer network, overcome reputational barriers, obtain customer and regulatory approvals and find an acceptable source of motors for use in the STP. Entry is also less likely due to the relatively small size of the STP market and the time and investment required to enter.

V. THE PROPOSED ACQUISITION VIOLATES SECTION 7 OF THE CLAYTON ACT

30. The effect of the proposed joint venture between Franklin Electric and UDI may be substantially to lessen competition and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act.

31. The transaction will likely have the following effects among others:

a. Competition generally in the development, manufacture and sale of STPs in the United States would be substantially lessened;

b. Actual and potential competition between Franklin Electric and UDI in the development, manufacture and sale of STPs in the United States would be eliminated; and

c. The prices for STPs would likely increase and the quality, innovation and service currently provided with STPs would likely decline.

32. Unless restrained, the proposed acquisition will violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

VI. REQUESTED RELIEF

33. The plaintiff requests:

a. That defendants Franklin Electric's and UDI's proposed joint venture in the manufacture and sale of submersible turbine pumps and motors be adjudged and decreed to violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18;

b. That the defendants and all persons acting on their behalf be preliminarily

and permanently enjoined and restrained from entering into or carrying out any agreement, plan, or understanding the effect of which would be to combine any part of the submersible turbine pump manufacturing businesses of defendants;

c. That the plaintiff be awarded its costs of this action; and

d. That plaintiff receive such other and further relief as the case requires and the Court deems just and proper.

Dated: May _____, 2000.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

/s/
Joel I. Klein
Assistant Attorney General

/s/
J. Robert Kramer II
Chief, Litigation II Section

/s/
Donna E. Patterson
Deputy Assistant Attorney General

/s/
Willie L. Hudgins
DC Bar # 37127
Assistant Chief, Litigation II Section

/s/
Constance K. Robinson
Director of Operations and
Merger Enforcement

/s/
Joan Farragher (Ohio Bar #0009231)

Burney P.C. Huber
Maribeth Petrizzi
Bruce K. Yamanaga
Aaron D. Hoag
Rex Fujichaku
Chinita M. Sinkler
Tom Horton

_____/s/_____
United States Attorney for
the Western District of Wisconsin

Trial Attorneys
U.S. Department of Justice
Antitrust Division, Litigation II Section
1401 H Street, NW, Suite 3000
Washington, D.C. 20530
(202) 307-6355