

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )  
 )  
Plaintiff, ) Civil Action  
 )  
v. ) No. 7198  
 )  
UNITED SHOE MACHINERY CORPORATION )  
 )  
Defendant. )

SUPPLEMENTAL JUDGMENT, February 20, 1969,  
as modified by the COURT, February 24, 1969.

This Court having fully considered the opinion dated May 20, 1968 of the Supreme Court of the United States in this case and the parties having consented to the entry of this Supplemental Judgment (Judgment) herein, without this Judgment constituting an adjudication or finding on any issue of fact or law in this case and without this Judgment constituting evidence or admission by any party with respect to any such issue, and this Court being of the view that this Judgment satisfies the mandate of the Supreme Court,

Now, therefore, without any such adjudication or finding, and on consent of the parties hereto, it is hereby

Ordered, Adjudged And Decreed:

I

For the purposes of this Judgment:

(A) "Shoe machine model" shall mean shoe machines to which defendant has given or gives a separate model designation.

(B) "Productive assets" for a shoe machine model shall mean the jigs, dies and fixtures principally used to manufacture the model; copies of the manufacturing and assembling data for such model; copies of the know-how, designs and processes used in the manufacture and assembly of such model; and such similar assets as are necessary to manufacture and assemble the model.

(C) "Shoe machine assets" for a shoe machine model shall mean the inventory and entire leased population of the model, the productive assets for such model, and the inventory of parts allocable for use in or with such model.

(D) "Unique shoe machine product" with respect to a shoe machine model shall mean a product which is essential to the operation of the model and which is not generally available from a source other than defendant.

(E) "Shoe machine patent" shall mean any United States Letters patent, covering a shoe machine, a shoe machine part, or a design or process for the manufacture of a shoe machine or shoe machine part.

(F) "Unique shoe machine product patent" shall mean any United States Letters patent, covering a unique shoe machine product or a design or process for the manufacture of a unique shoe machine product.

(G) "Base year" shall mean the year ended February 29, 1968.

(H) "Prior Decree" shall mean the Final Decree dated February 18, 1953 of this Court in this case, and orders entered thereunder.

(I) "Shoe machinery market" shall mean the market for shoe machinery used in shoe factories in the United States in the manufacture or repair of footwear, including vulcanized rubber footwear, but shall not include dry thread sewing machines.

(J) "Commercial basis" shall mean the selling or leasing or otherwise placing of any shoe machine model in any shoe factory, excluding, however, a total of two or less experimental machines of any one model for which no charge is made.

(K) "Purchaser" as used in Section III shall mean any person who acquires divested assets under any of the methods specified in Section III (G).

II

The provisions of this Judgment shall apply to defendant, its subsidiaries, and their respective officers, directors, agents, employees, successors and assigns, exclusive of any eligible purchaser of divested assets. Nothing in this Judgment shall impose any obligation to do or omit any action outside the United States. The obligations of defendant under this Judgment are as described herein and shall not apply by implication to activities other than the manufacture, distribution or sale of shoe machinery or unique shoe machine products.

III

(A) Defendant is ordered and directed, within twenty-four months from the date of entry

of this Judgment, to divest itself of shoe machine assets for particular shoe machine models, which models accounted for \$8,500,000 in gross revenues to defendant from lease and sale of shoe machinery in the United States during the base year. Based upon estimates agreed to by the parties, an \$8,500,000 reduction in revenues would be sufficient to reduce defendant's share of the shoe machinery market during the base year to no more than 33 percent.

(B) The assets to be divested shall consist of the following:

(1) All shoe machine assets for particular shoe machine models, which models accounted for gross revenues to defendant from lease and sale of shoe machinery in the United States of not less than \$6,375,000 in the base year. The models with respect to which shoe machine assets are to be divested under this subsection (1) shall be selected in defendant's discretion from those listed on attached Schedule A, except that defendant must divest not less than six of the models designated by an asterisk; and

(2) The entire leased population of particular shoe machine models (whether or not defendant retains other shoe machine assets relating to such models), which models accounted for not more than \$2,125,000 of gross revenues to defendant from lease and sale of shoe machinery in the United States in the base year, or shoe machine assets for shoe machine models, which models accounted for not more than \$2,125,000 of such gross revenues, or any combination of the two. Defendant shall have the discretion under this subsection (2) in selecting the assets to be divested.

(C) Divestiture of the shoe machine assets under Section III (B) shall be made only to an eligible purchaser or purchasers, defined as (1) a person (a) who is not directly or indirectly a shoe manufacturer; (b) who intends as a viable competitor to utilize acquired productive assets, if any, principally for the production of shoe machines for lease or sale to others, or who intends as a viable competitor to lease or sell acquired leased machines, if any, principally in the shoe machinery market; or (2) any person to whom plaintiff consents. Plaintiff shall be deemed to consent to a person if within 60 days after receipt of written notice of defendant's intention to divest assets to such person, plaintiff does not advise defendant in writing of its refusal to consent. The requirements of this Section III (C) shall be applied to the ultimate recipient of the divested assets under subsection III (G). New Corporation referred to in subsection III (G) (2) or any other corporation the stock of which is owned by stockholders of defendant may be regarded as an eligible purchaser only if it otherwise meets the requirements of this Section III (C).

(D) If the purchaser of the productive assets for a shoe machine model does not purchase all of the leased population for such model, such leased population as is not so purchased shall be divested to another eligible purchaser or purchasers.

(E) No single otherwise eligible purchaser shall acquire the shoe machine assets (1) for more than three models designated by an asterisk on Schedule A; nor (2) for models which accounted in the base year for substantially more than one-half of defendant's lease and sale revenues generated by machines on Schedule A to be divested, unless (i) plaintiff consents, or (ii) in the absence of such consent, unless defendant establishes to the satisfaction of this Court either:

(a) That during a reasonable period of time, not less than six months nor more than one year from the date of the first published notification of the availability of the assets to be divested under this Judgment, defendant has not received from eligible purchasers bona fide offers, pending or renewed, covering in the aggregate substantially the same assets as are covered by defendant's proposed divestiture or divestitures, and meeting all the requirements of this Section III; or

(b) That defendant's proposed divestiture or divestitures are likely to provide a shoe machinery market substantially as competitive as the market that would be provided were defendant to accept such bona fide offers.

Plaintiff shall be deemed to have given its consent to a divestiture transaction if, within 60 days after receipt of written notice of defendant's intention to enter into the said transaction, plaintiff does not advise defendant in writing of its refusal to consent to such transaction. Nothing contained in this Section III (E) shall prohibit any divestiture to a single eligible purchaser without approval by plaintiff or this Court so long as defendant divests to others or retains the obligation to divest to others shoe machine assets for models listed on Schedule A which accounted in the base year for lease and sale revenues of more than \$3,187,500, including not less than three models designated by an asterisk on Schedule A.

(F) Defendant shall use its best efforts to obtain offers and to negotiate in good faith with all persons who express bona fide interest in purchasing shoe machine assets for any or all of the shoe machine models selected for divestiture. Subject to the provisions of Section III (E), defendant may, upon 60 days' notice to the plaintiff, consummate any divestiture to an eligible purchaser or purchasers. The time period set forth in Section III (A) shall be tolled during the pend-

any proceeding under this Judgment which delays the consummation of any divestiture transaction proposed by defendant.

(G) Subject to the other terms of this Judgment defendant may employ one or more of the following means or any combination thereof:

(1) Transferring all or some of the assets to be divested in return for cash, property, or other consideration; or

(2) Transferring all or some of the assets to be divested to one or more existing or newly-formed corporations (hereinafter collectively or individually "New Corporation") in exchange for the stock of New Corporation, followed by:

(a) sale or exchange of the stock or assets of New Corporation; or

(b) distribution of the stock or assets of New Corporation (i) to holders of defendant's common stock on a pro rata basis, or (ii) to such holders of defendant's common stock as may elect to exchange shares of such stock, or (iii) to holders of transferable rights to purchase such stock or assets, or (iv) a combination of any or all of clauses (i), (ii) and (iii).

(H) Should defendant, by enforcement or settlement of any security arrangement or in any other way, thereafter regain ownership or control through stock or otherwise of any of the assets divested, defendant shall, within a reasonable period of time, dispose of such stock or assets to a purchaser eligible under Section III (C).

#### IV

(A) In any divestiture of productive assets for a shoe machine model, defendant may retain any assets used in the production of the model if such assets are not used principally for such purpose or are not requested by the purchaser, provided that defendant shall furnish at a reasonable price, at the request of a purchaser of the productive assets for such model, such reasonable means of producing such model as are satisfactory to the plaintiff.

(B) In any divestiture of productive assets for a shoe machine model, defendant shall, to the extent that it has the power to do so, without modifying pre-existing rights of other persons, furnish to the purchaser of the productive assets for such model:

(1) an assignment of any shoe machine patent principally relating to such model or to parts therefor or of any patent for a unique shoe machine product with respect to such model and principally used with the said model, provided that such assignment shall be subject to defendant's right to retain a royalty-free license to make, use and sell, limited to defendant and its subsidiaries, if such license is necessary to produce retained or new machine models, parts or products consistent with the provisions of Section V hereof, and further provided that if any patent for rod cement or for the box toe applying machine listed on Schedule A would otherwise come within this Section IV (B) (1), defendant shall not assign such patent but shall grant to the purchaser a royalty-free license, and shall issue no other license under such patent for two years, after which defendant shall make such patent available for licensing under Section VII (A) of this Judgment.

(2) A royalty-free license under any other shoe machine patent relating to the manufacture of such shoe machine model or parts therefor, or under any other patent for a unique shoe machine product with respect to such model.

(C) At the request of a purchaser of the productive assets for a shoe machine model:

(1) Defendant shall for a period of up to two years following the date of purchase furnish, at a reasonable price, service for shoe machines of that model and training for personnel of the purchaser in performance of such service, in assembling techniques, and in other similar matters.

(2) Defendant shall for a period of up to ten years following the date of purchase furnish, at a reasonable price, replacement parts for shoe machines of that model and products usable in or with such machines provided that defendant may decline to furnish (i) commonly available standardized parts; (ii) products other than a unique shoe machine product with respect to such model; or (iii) parts which can be manufactured by such productive assets as are acquired by the purchaser pursuant to this Judgment.

V

(A) Defendant is hereby enjoined and restrained, for five years from the date of purchase of productive assets for a shoe machine model, from offering for sale, lease or otherwise in the United States:

- (1) such model;
- (2) a modification of any model retained by the defendant at the date of purchase if the modification would make the retained model the substantial equivalent of such model;
- (3) any other new model which defendant has not offered for sale, lease or otherwise prior to the date of purchase which in whole or in significant part is the substantial equivalent of such model in function and operation.

(B) Section V (A) (3) shall not apply if:

(1) Defendant offers to furnish to the purchaser the following items to the extent necessary to enable the purchaser to manufacture, assemble and sell such new model by a date that (a) in the case of new models which in whole or major part are the substantial equivalent of the divested model in function and operation, is no later than two years before the date such new model is first offered by defendant on a commercial basis, and (b) in the case of new models which in significant but less than major part are the substantial equivalent of the divested model in function and operation, is no later than the date such new model is first offered by defendant on a commercial basis:

(a) For a reasonable royalty, a license under (i) shoe machine patents, (ii) applications on file for shoe machine patents, and (iii) patents issued under such applications, which license is necessary for such new model, and such license to conform to the provisions of Section VII (B) hereof; and

(b) For reasonable payment, productive assets for such new model, and if the purchaser is otherwise unable to manufacture such new model, reasonable assistance (excluding financial assistance), satisfactory to plaintiff, in obtaining assets required for such purpose; and

(c) For reasonable payment, replacement parts and any unique shoe machine product for such new model, provided that defendant may decline to furnish commonly available standardized parts; and

(2) Defendant offers to sell to the purchaser, for a period beginning with the date such new model is offered on a commercial basis and ending five years from the date of purchase, machines of such new model at a price not greater than defendant's offering price, current at the time of sale, for such machines to shoe manufacturers, less a reasonable distributor's discount;

(C) Defendant shall, in any agreement for the divestiture of productive assets, include a covenant incorporating in substance the terms of this Section V.

VI

Defendant shall not offer in the United States, for five years from the date of entry of this Judgment, machines which are manufactured or distributed by any foreign corporation that is a subsidiary of or one controlled by defendant and which perform any of the same operations on a shoe as any of the shoe machine models for which productive assets have been divested.

VII

(A) Upon written request made during a period ending ten years from the date of entry of this Judgment, or eight years following completion of the divestiture required by Section III of this Judgment, whichever first occurs, defendant shall grant, to the extent that it has the power to do so, without modifying pre-existing rights of other persons, to any applicant, engaged or intending in good faith to engage in the business of manufacturing shoe machinery or unique shoe machine products, or both, and intending in good faith to use any license hereunder substantially but not necessarily exclusively for such purpose, a non-exclusive license to make, use and sell under any:

(1) shoe machine patent, or

(2) unique shoe machine product patent which is held by defendant at the time of the request or under which defendant at such time has the right to issue sublicenses.

(B) Any license granted by defendant pursuant to subsection (A) shall be unrestricted and shall be for the full term of the patents or licenses licensed, except that such licenses:

(1) If the applicant so requests, may be for a term less than the full term of the patent or license and convey less than all of the rights to make, use and sell under the patent or license;

(2) may provide that a reasonable royalty or reasonable royalties under the patent shall be paid;

(3) may contain reasonable provisions for periodic reports to defendant by the licensee as to the amount of royalty due and payable;

(4) may contain a reasonable provision for periodic inspection of books and records of the licensee by an independent auditor or other person acceptable to the licensee who shall report to the defendant only the amount of royalty due and payable;

(5) may contain a provision that the license shall be nontransferable and shall not include the right to sublicense;

(6) may contain a reasonable provision for marking all items made, used or sold under the license in accordance with applicable statutory provisions;

(7) may contain a reasonable provision for cancellation of the license upon failure of the licensee to pay the royalties due or to comply with such conditions as may be imposed under this Section VII;

(8) may contain a provision that, for a period of two years from the date of issuance of the license, defendant shall have the right to cancel the license if defendant establishes to the satisfaction of this Court that, at the time of issuance of the license, the licensee did not have the intent in good faith to engage in the business of manufacturing shoe machinery or unique shoe machine products, or both, and to use the license substantially but not necessarily exclusively for such purpose; and

(9) shall contain a provision giving the licensee the right to cancel the license after one year from the date of the license upon giving defendant 30 days' written notice.

(C) (1) Upon receipt of a written application pursuant to subsection (A), defendant shall advise the applicant in writing within thirty days of the royalty it deems reasonable for the license requested in the application, and shall furnish the applicant with a copy of this Judgment. If defendant and the applicant are unable to agree upon what constitutes a reasonable royalty within ninety days from the date the written application for the license was received by defendant, either defendant or the applicant, with written notice thereof to the other and to plaintiff herein, may apply to this Court for a determination of a reasonable royalty.

(2) Upon application to the defendant in accordance with this Section VII and pending completion of any proceedings thereunder, said applicant shall have the right, subject to payment of interim royalties to be determined by this Court, to make, use and sell under the patent or license to which the application for license pertains, and upon determination of an interim royalty rate, defendant shall then issue to said applicant a license pursuant to subsection (A) providing for the periodic payment of royalties at such interim rate from the date of application to defendant; and any final order by this Court may provide for such readjustments, including refunds or retroactive royalties, as this Court may order after final determination of a reasonable royalty. No determination of a reasonable royalty under this Section VII shall affect any previously negotiated royalty under other licenses for the same patent or patents.

(3) If said applicant fails to accept within a reasonable time any license terms determined by this Court under this Section VII or fails to pay the royalties agreed upon or established by this Court, such failure shall be grounds for the dismissal by this Court of said applicant's application with costs to be paid by the applicant together with any royalties found by this Court to be due to defendant. As to said applicant, defendant shall have no further obligation or duty under this Judgment with respect to the patent or patents involved.

(D) Upon written request made within the period specified in Section VII (A), any recipient of a license granted pursuant to subsection (A) hereof shall be entitled to receive from defendant know-how relating to a shoe machine, a shoe machine part, a design or process, or a unique shoe machine product covered by the license. Defendant may charge a reasonable fee for such know-how, such reasonable fee to be determined, in case of disagreement, pursuant to the procedures of subsection (C) hereof. With respect to any information provided pursuant to this subsection (D), defendant may reasonably protect against unauthorized disclosure by requiring the licensee to agree not to disclose the information to persons other than those who are entitled to make, have made for use or sell under the license and who agree not to make any further disclosure.

(E) Nothing in this Section VII shall apply to or confer any rights with respect to existing licenses under defendant's patents. Nor shall anything in this Judgment prohibit defendant from making a bona fide sale or assignment from time to time of any patent held by it, provided that, if defendant, in any sale or assignment of a patent covered by this Section VII, retains rights under such patent, defendant shall be required also to retain the authority to sublicense such retained rights under this Section VII.

### VIII

Until the obligations to issue licenses under Section VII (A) cease to apply, defendant is ordered and directed:

(A) commencing sixty days after the date of entry of this Judgment, to insert every six months in a publication or publications of general circulation in the shoe manufacturing and shoe machinery manufacturing industries the patent numbers and brief descriptions of all patents and

patent licenses subject to Section VII (A), except that after the first such insertion, subsequent insertions may be limited to those patents and patent licenses obtained during the preceding six-month period; and

(B) to maintain a cumulative listing of all shoe machinery patents and patent licenses subject to Section VII (A), which upon written request shall be furnished to any person.

#### IX

Defendant shall, commencing one year after the date of entry of this Judgment or promptly following the date of closing of last purchase agreement covering divestiture, whichever is earlier, offer its shoe machinery for sale to persons who intend to resell or to lease it to others, and offer to furnish installation, service, repair and parts of machinery so sold, upon prices and terms no less favorable than those offered by defendant to shoe manufacturers. Notwithstanding the provisions of Paragraph 16 of the Prior Decree, defendant shall repurchase, upon reasonable mutually satisfactory terms to be determined at the time of repurchase, any of such machinery which may be returned to such person by lessees or purchasers on conditional sales contracts which such person may elect to resell to defendant.

#### X

For the purpose of securing compliance with Sections II through IX of this Judgment only, and not for the purpose of securing compliance with the Prior Decree or for any other different purpose:

(A) Any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to defendant made to its principal office, be permitted subject to any legally recognized privilege:

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

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

(B) Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such reports in writing with respect to the matters contained in this Judgment as from time to time may be requested for the purpose of securing compliance with this Judgment and for no other purpose.

No information obtained by the means provided for in this Section X shall be divulged by any representative of the Department of Justice to any persons other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which plaintiff is a party for the purpose of securing compliance with this Judgment or as otherwise required by law.

#### XI

The provisions of the Prior Decree and of this Judgment shall terminate and shall have no further force and effect as follows:

(A) Paragraphs 8, 9, 10, 12, 13, 15, 17, 18, 20, 21 and 23 of the Prior Decree and any orders thereunder shall terminate on the date of closing of the last purchase agreement covering divestiture;

(B) Paragraphs 6, 7 and 11 of the Prior Decree and any orders thereunder shall terminate five years from the date of closing of the last purchase agreement covering divestiture;

(C) Paragraph 14 of the Prior Decree and any orders thereunder shall terminate in accordance with the time period set forth in Section VII of this Judgment with respect to the licensing of patents;

(D) Section III of this Judgment and any orders thereunder shall terminate upon the completion of divestiture in accordance with the terms thereof;

(E) Sections IV, V, VI, VII and VIII of this Judgment and any orders thereunder shall terminate in accordance with the time periods set forth in the provisions of the respective Sections; and;

(F) All other Paragraphs of the Prior Decree and all other Sections of this Judgment and any orders thereunder shall terminate ten years from the date of closing of the last purchase agreement covering divestiture, provided that plaintiff may apply to this Court for the continuation of any provision covered by this Section XI (F), such application to be made not later than nine years from the date of closing of the last purchase agreement covering divestiture. This Court may grant such application if plaintiff establishes to the satisfaction of this Court that adequate competitive conditions in the shoe machinery market had not been brought about.

XII

The provisions of this Judgment shall not be construed as nor shall they operate as a finding that the defendant has violated the antitrust laws at any time after February 18, 1953, since no such issue was before this Court.

XIII

Jurisdiction of this cause is retained by this Court for the purpose of enabling any of the parties to this 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 Judgment or the Prior Decree, for the modification of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

XIV

Defendant shall pay the taxable costs of this proceeding.

Schedule A

| <u>Operation<br/>Code Number</u> | <u>Model</u> | <u>Machine Name</u>                   |
|----------------------------------|--------------|---------------------------------------|
| * 20007-284                      | (A)          | USM Vamp Preforming                   |
| 20012-648                        | (A)          | USM Roll Top Folding                  |
| * 20012-673                      | (C)          | USM Thermo Cementing & Folding        |
| 20014-0672                       | (A)          | USMC Thermo Cement & Fold             |
| 20031-0208                       | (A)          | USMC Lacing                           |
| 30010-0669                       | (B)          | Unishank Moulding                     |
| 31106-0749                       | (C)          | Goodyear Insole Rib Attach            |
| 31106-0751                       | (B)          | Goodyear Insole Rib Attach            |
| 32116-0722                       | (A)          | Untd Marginal Sole Rgh                |
| * 32121-782                      | (C)          | USM Rod Sole Cementing                |
| * 32121-791                      | (B)          | USM Rod Sole Cementing                |
| 32121-0787                       | (A)          | USMC Rod Sole Cementing <sup>1/</sup> |
| 40001-0785                       | (A)          | USM Insole Tacking                    |
| 40006-0301                       | (B)          | USMC Pulling Over                     |
| 40008-0217                       | (D)          | USMC Heel Seat Lasting <sup>2/</sup>  |
| 40008-0218                       | (E)          | USMC Heel Seat Lasting <sup>2/</sup>  |
| 40008-0727                       | (F)          | UNTD Heel Seat Lasting                |
| 41103-012                        | (C)          | USM Backpart Mould & Assemble         |
| * 41104-0621                     | (B)          | USM Thermo Box Toe Aply               |

---

1/ If this is divested, either model B or model C (Operation Code Numbers 32121-791 and 32121-782) must also be divested, but not necessarily to the same purchaser.

2/ If either is divested, model F (Operation Code Number 40008-0727) must also be divested, but not necessarily to the same purchaser.



Schedule A (continued)

| <u>Operation<br/>Code Number</u> | <u>Model</u> | <u>Machine Name</u>        |
|----------------------------------|--------------|----------------------------|
| 41107-0598                       | (D)          | USMC Staple Side Lasting   |
| 41108-0734                       | (A)          | UNTD Tack Side Lasting     |
| 42104-0531                       | (A)          | UNTD Auto Wlt Toe Lasting  |
| 50006-0584                       | (A)          | Goodyear Sole Laying       |
| 50006-0594                       | (C)          | USMC Cement Sole Attach    |
| 50006-0729                       | (C)          | UNTD Cem Sol & Br Fl At    |
| * 50006-120                      | (A)          | USM Duopress               |
| * 50006-121                      | (B)          | USM Duopress               |
| * 50007-737                      | (A)          | USM Auto Edge Shaping      |
| 50007-0320                       | (C)          | USMC Rough Rounding        |
| 50007-0330                       | (B)          | USMC Rough Rounding        |
| 50010-765                        | (A)          | USM High Speed Stitching   |
| * 50011-620                      | (A)          | USM Seat Mould & Fastening |
| 50013-0714                       | (A)          | United Auto Leveling       |
| 54101-0435                       | (D)          | USMC Sole Stitching        |
| * 61105-0783                     | (A)          | USMC Heel Nailing          |
| 71010-0666                       | (F)          | USMC Twin Edge Setting     |