

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action
	:	No. 2001
GENERAL SHOE CORPORATION,	:	
	:	Filed February 17, 1956
Defendant.	:	

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on the 29th day of March 1955, and defendant, General Shoe Corporation, having appeared and filed its answer to such complaint denying the substantive allegations thereof; and no testimony having been taken and said plaintiff and defendant having severally consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, without admission in respect to any issue, and without any findings of fact, and the Court having considered the matter and being duly advised,

NOW, THEREFORE, before any testimony has been taken 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

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states a claim against defendant General Shoe Corporation under Section 15 of the Act of Congress of October 15, 1914, entitled "An Act to Supplement Existing Laws against Unlawful Restraints and Monopolies and for Other Purposes," commonly known as the Clayton Act, as amended.

II

As used in this Final Judgment:

(A) "General" shall mean that General Shoe Corporation, a corporation organized and existing under the laws of the State of Tennessee;

(B) "Defendant General" shall mean General and all of its subsidiaries;

(C) "Subsidiary" shall mean in respect to any corporation including General, a second corporation a majority of whose outstanding voting stock is owned or directly or indirectly controlled by such first corporation;

(D) "Shoe manufacturer" shall mean any corporation engaged in the business of manufacturing shoes;

(E) "Large shoe manufacturer" shall mean any shoe manufacturer which, with its subsidiaries, affiliates, successors and assigns, produced in the preceding year more than three million (3,000,000) pairs of shoes;

(F) "Shoe retailer" shall mean any corporation which sells shoes at retail and which receives at least 25% of its income from the sale of shoes;

(G) "Affiliated retail outlet" shall mean any outlet or department where shoes are sold at retail and which is owned, operated or leased by defendant General;

(H) "Independent retail outlet" shall mean any outlet or department where shoes are sold at retail and which is not an affiliated retail outlet (the fact that an outlet buys shoes from defendant General shall not affect its status as an independent retail outlet);

(I) "Shoe wholesaler" shall mean any corporation which sells shoes at wholesale and which receives at least 25% of its income from the sale of shoes;

(J) "Patents" shall mean any, some or all claims in the following United States Letters Patent:

(1) Letters Patent owned by defendant General on the date of entry of this Final Judgment;

(2) Letters Patent which may be granted on applications for Letters Patent which applications are on file in the United States Patent Office and owned by defendant General on the date of entry of this Final Judgment;

(3) Letters Patent which may be granted on applications for Letters Patent which applications are filed and owned by defendant General in the United States Patent Office within a period of five (5) years following the date of entry of this Final Judgment;

(4) Letters Patent which may be acquired by defendant General or under which General acquires the right to grant licenses within a period of five (5) years following the date of entry of this Final Judgment, and reissues and extensions thereof;

(5) Divisions, continuations, reissues or extensions of the Letters Patent described above in clauses (1), (2) and (3)

which relate to the manufacture of shoes or the machinery for such manufacture.

III

The provisions of this Final Judgment applicable to defendant General shall apply to such defendant, its officers, agents, servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise, but shall not apply to transactions solely between General and said officers, agents, servants, employees, subsidiaries, or any of them when acting in such capacity. The provisions of this Final Judgment shall relate only to activities or operations of defendant General within the continental limits of the United States. General is ordered and directed to take such steps as are necessary to secure compliance by

its officials, subsidiaries, and such other persons, described above, with the terms of this Final Judgment

IV

(A) Until October 1, 1956, defendant General is enjoined and restrained from acquiring, directly or indirectly, any shares of stock or assets of, or any controlling or ownership interest in, any shoe manufacturer, shoe retailer or shoe wholesaler;

(B) After October 1, 1956, defendant General is enjoined and restrained, for a period of five (5) years from the date of entry of this Final Judgment, from acquiring, directly or indirectly, any shares of stock or assets of, or any controlling or ownership interest in, any shoe manufacturer, shoe retailer or shoe wholesaler except (1) with the approval of the plaintiff or (2) after an affirmative showing to the satisfaction of this Court, upon thirty(30) days notice to the plaintiff, that such acquisition will not substantially lessen competition or tend to create a monopoly in the manufacture, distribution or sale of shoes;

(C) After October 1, 1956 nothing contained in this Section IV shall prevent the defendant General from acquiring, directly or indirectly, any shares of stock or assets of, or any controlling or ownership interest in, any shoe manufacturer, shoe retailer or shoe wholesaler where:

(1) such corporation to be acquired faces imminent bankruptcy or will not be able to continue in business and has made bona fide efforts to sell its shares of stock or assets or other controlling or ownership interest to not less than three (3) other potential purchasers without receiving any reasonable offers from them or any other person; or

(2) such acquiring will only result in the defendant General's obtaining the ownership or control of an independent outlet which is the substantially equivalent replacement of an affiliated retail outlet which the defendant has lost or is losing by reason of loss of lease or acquisition.

Provided, however, that:

(a) the making of the exceptions contained in paragraphs (1) and (2) in this subsection (C) shall not be in derogation of the exceptions contained in subsection (B) above, and

(b) defendant General shall, at least fifteen (15) days before making any acquisition under subsections (C)(1) and (2) of this Section IV, submit to the plaintiff a written report outlining the facts on which it bases its conclusion that such acquisition constitutes an exception under said subsections;

(D) As used in this Section IV the term "assets" shall not be deemed to include items (such as shoes, materials, findings, machinery and equipment) bought and sold in the normal course of business;

(E) Nothing herein contained shall prohibit defendant General from leasing or subleasing, in the normal course of business, properties which at the time are not being used for the manufacture, distribution or sale of shoes;

(F) In any proceeding instituted under this Section IV neither the terms nor the entry of this Final Judgment shall be deemed to preclude either party from offering evidence as to acquisitions by defendant General prior to the entry of this Final Judgment, or as to activities of competitors.

V

Defendant General is ordered and directed, within two (2) years from the date of entry of this Final Judgment, to sell or otherwise divest itself of any and all capital stock owned or controlled by it, directly or indirectly, in any shoe manufacturer or shoe retailer other than a subsidiary of defendant General. If defendant General has not sold or divested itself of said stock at the expiration of said two (2) year period, defendant General shall then submit to this Court, for its approval, a plan for sale or divestiture of such stock so as to protect defendant General's investment therein but which (a) will divorce from defendant General any power or right to affect the affairs of said manufacturer or retailer and (b) will provide for the sale or divestiture of such stock within a reasonable time.

For each of its five (5) fiscal years (1955-1956 through 1959-1960) following the date of entry of this Final Judgment, defendant General is ordered and directed to purchase shoes produced by manufacturers other than itself and such purchases shall be at least twenty percent (20%) of the total volume of shoes sold by defendant General's affiliated retail outlets, provided, however, that defendant General may average such purchases over any two consecutive fiscal years.

VII

For five (5) years from the date of entry of this Final Judgment defendant General is enjoined and restrained from:

(A) Operating any affiliated retail outlet on a low profit margin for the purpose of injuring any independent retail outlet or outlets;

(B) Knowingly receiving quantity or other discounts on purchases of any supplies, parts or component units used in the manufacture, distribution or sale of shoes which are not available to other shoe manufacturers under like or similar conditions;

(C) Requiring any independent retail outlet to buy from defendant General all or any specified portion of its requirements for shoes.

VIII

(A) For five (5) years from the date of entry of this Final Judgment, General is ordered and directed:

(1) In so far as it now has or may acquire the power or authority to do so, to grant to any shoe manufacturer, not a large shoe manufacturer, making written request therefor, a nonexclusive and unrestricted license or sublicense to make, use and sell in the United States for the life of the patent, under any, some or all of its patents, without any limitation or condition whatsoever except that:

(a) a reasonable and nondiscriminatory royalty may be charged and collected;

(b) reasonable provision may be made for periodic inspection of the books and records of the licensee by

an independent auditor or other person acceptable to both the licensee and licensor, who shall report to the licensor only the amount of the royalty due and payable and no other information;

(c) the license may be nontransferable;

(d) reasonable provision may be made for cancellation of the license upon failure of the licensee to pay the royalties or to permit the inspection of its books and records as provided in this Section VIII;

(e) the license must provide that the licensee may cancel the license at any time after one (1) year from the initial date thereof by giving thirty (30) day's notice in writing to the licensor.

(2) Upon receipt of any written application for a license under any patent, to advise the applicant of the royalty it deems reasonable for the patent or patents to which the application pertains. If General and the applicant are unable to agree upon what constitutes a reasonable royalty, General may apply to this Court for a determination of a reasonable royalty, giving notice thereof to the applicant and the Attorney General, and shall make application forthwith upon request of the applicant. In any such proceeding the burden of proof shall be upon General to establish the reasonableness of any royalty requested. Pending the completion of any such court proceeding, the applicant shall have the right to make, use and sell under the patent or patents to which its application pertains, without the payment of royalty or other compensation, but subject to the following provisions: General may, with notice to the Attorney General, apply to this Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty. If this Court fixes such interim

royalty rate, a license shall then issue providing for the periodic payment of royalties at such interim rate from the date of the making of such application by the applicant, and whether or not such interim rate is fixed, any final order may provide for such adjustments including retroactive royalties, as this Court may order after final determination of a reasonable and nondiscriminatory royalty, and such royalty rate shall apply to the applicant and to all other licensees under the same patent or patents;

(B) Nothing herein shall prevent any applicant from attacking at any time the validity or scope of any of the patents nor shall this Final Judgment be construed as imputing any validity or value to any of said patents.

IX

(A) Under written application therefor from any licensee under Section VIII herein, General is ordered and directed to furnish, within a reasonable time:

(1) A written manual, and such supplements thereto as are hereinafter provided for in subparagraph (2) of this paragraph (A) describing any special methods of manufacture used by General in connection with the licensed patents on the date of issuance of such manual in its commercial manufacture of shoes;

(2) On or about the first of July in each of the four calendar years commencing January 1, 1957, supplements to said manuals referred to in paragraph (1) above, bringing such manuals up to date.

(B) The furnishing of such manual and supplements shall be unconditional except that General may make a reasonable initial charge not to exceed \$100 for the manual, plus a reasonable charge not to exceed \$10, for each supplement. The furnishing of a manual or supplements thereto under paragraphs (1) and (2) of this Section IX shall not confer upon the recipient a license under any patents which cover any subject matter contained in said manual or supplements.

X

(A) For a period of five (5) years from the entry of this Final Judgment, after receipt of a written request, General is ordered and directed to send to the plant of any recipient of a manual under Section IX hereof, a person technically qualified in the special methods of manufacturing shoes under the licensed patents then being used by General to supplement, explain or demonstrate the technical information contained in said manual and supplements for the purpose of assisting such recipient to adapt to his commercial manufacture of shoes, the methods and processes described in said manual and supplements. For each such person General may charge an amount not to exceed his traveling and living expenses and the actual cost to General for the time involved. This Section shall not require General to send any such person outside of the continental limits of the United States;

(B) During a period of five (5) years from the entry of this Final Judgment any recipient of a manual under Section IX hereof shall, upon written application, and at his own expense, be permitted to visit a plant of defendant General using such special methods for the purpose of observing and being advised as to such special methods then being used by General in its commercial manufacturing of shoes, provided, however, that such visits may be restricted as follows:

- (1) to not more than three officers or employees of the recipient at any one time;
- (2) to not more than four such visits per year; and
- (3) to a certain specifically designated time in any calendar month.

XI

Nothing contained in this Final Judgment shall be construed to impose upon defendant General any responsibility or liability to others except to furnish the matters and/or services specifically described in other Sections of this Final Judgment, and General shall not be deemed to have made any representation by furnishing such matters and/or services other than that such matters and/or services

conform to those used by General in its commercial manufacturing of shoes, nor shall said Sections be construed to create in any one other than the plaintiff herein any rights or claims against defendant General that do not otherwise exist.

XII

For the purpose of securing compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Anti-trust Division, and on reasonable notice to General made to its principal office, be permitted (1) access during the office hours of General to those parts of the books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of General which relate to any of the subject matters contained in this Final Judgment, and (2) subject to the reasonable convenience of General and without restraint or interference from it to interview officers or employees of defendant General, who may have counsel present. Upon written request General shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section XII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized employee of the Department except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XIII

Jurisdiction is retained for the purpose of enabling either party 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 or carrying out of this Final Judgment, for the

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

Dated: 17th day of February 1956

William E. Miller
United States District Judge

We hereby consent to the making and entry of this Final
Judgment for the Plaintiff:

/s/ Stanley N. Barnes
Assistant Attorney General

/s/ James J. Coyle

/s/ W. D. Kilgore, Jr.

/s/ Charles F. B. McAleer

/s/ Ephraim Jacobs

/s/ Edward G. Gruis
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