

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
) CIVIL ACTION NO. 79-C-1144
 v.)
) Filed: March 22, 1979
 EMERSON ELECTRIC CO.; and)
 SKIL CORPORATION,)
)
 Defendants.)

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the defendants named herein, and complains and alleges as follows:

COUNT ONE

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 15 of the Clayton Act (15 U.S.C. § 25) in order to prevent and restrain violation by the defendants, as hereinafter alleged, of Section 7 of said Act, as amended (15 U.S.C. § 18).

2. Skil Corporation transacts business and is found within the Northern District of Illinois.

3. Emerson Electric Co. transacts business within the Northern District of Illinois.

II

DEFENDANTS

4. Emerson Electric Co. (hereinafter referred to as "Emerson") is made a defendant herein. Emerson is a corporation organized and existing under the laws of the State of Missouri, with its principal place of business in St. Louis, Missouri.

5. Emerson is engaged in the business of designing, manufacturing, and selling a wide range of electric motors and products powered by electric motors, professional and hardware tools and equipment, and numerous other electrical-electronic products for commercial, industrial and consumer uses.

6. Emerson's operations and its growth through acquisition are as follows:

| <u>Division/Subsidiary</u> | <u>Year of Acquisition</u> | <u>Products</u> |
|----------------------------|----------------------------|---------------------------------------|
| Ridge Tool Co. | 1966 | Professional plumbing and other tools |
| Special Products Division | | Stationary Power Tools |
| Beaird-Poulan | 1973 | Chain Saws |
| Dremel | 1976 | Portable Electric Tools for Hobbyists |
| Louisville Ladder | 1973 | Commercial ladders, scaffolding |
| Upland Tool | 1976 | Consumer hand tools |

| <u>Division/Subsidiary</u> | <u>Year of Acquisition</u> | <u>Products</u> |
|----------------------------|----------------------------|---|
| Weed Eater | 1977 | Monofilament line lawn trimmers |
| Vernco | 1977 | Shop vacuum cleaners, console humidifiers |
| In-Sink-Erator | 1968 | Garbage disposals |
| Day-Brite | 1960 | Commercial lighting fixtures |
| Emerson Chromalox | | Fans, electric heating systems |
| Artolier | 1964 | Residential lighting |
| Statitrol | 1977 | Smoke detectors |
| U.S. Electrical Motors | 1962 | Large integral HP motors |
| E.L. Weigand | 1968 | Electric heating elements |
| Browning | 1969 | Mechanical power transmission equip. |
| Rosemount | 1976 | Pressure/temp. sensors and transmitters |
| Brooks Instrument | | Flowmeters |
| Industrial Controls | | Large elec. power supp., motor drives |
| WER Industrial | 1972 | DC motor drives and controls |
| Rittenhouse | 1964 | Electric door chimes and transformers |
| McPhilben Lighting | 1966 | Lighting equipment |
| Omega Lighting | | Recessed lighting fixtures |
| Harris Calorific | 1973 | Gas Welding equipment |
| ACDC Electronics | 1975 | Electronic components |

| <u>Division/Subsidiary</u> | <u>Year of Acquisition</u> | <u>Products</u> |
|----------------------------|----------------------------|---|
| Commercial Cam | 1971 | Cams and Specialty machines |
| Emerson Canada | 1967 | |
| Varec | 1975 | Vapor recovery & gas controls; micro computer |
| Emerson Motor | | Appliance, hermetic, specialty motors |
| White-Rodgers | 1962 | Thermostats |
| Therm-O-Disc | 1968 | Thermostats |
| Alco Controls | | Solenoid valves |
| Fusite | 1972 | Hermetic motor terminals |
| Micro Devices | 1976 | Circuit protection devices |
| Elettro. Olmo | 1976 | Appliance motors |
| Tuttle Electric | 1976 | Open-coil elec. heating elements |
| A.B. Chance | 1975 | Electric utility equipment |
| Electronics and Space | | Defense |

7. In 1978, Emerson had 89 domestic manufacturing locations in 33 states and Puerto Rico, and 35 manufacturing locations in 13 foreign countries. Emerson's fiscal 1978 net sales exceeded \$2.17 billion. In 1977, Emerson was the 166th largest U.S. industrial corporation with more than \$1.1 billion in assets.

8. Emerson manufactures the products described in paragraph 6 above in a total of 33 states and regularly sells

and ships substantial quantities of these products to customers located throughout the United States. Emerson has been and is engaged in interstate commerce.

9. Skil Corporation (hereinafter referred to as "Skil") is made a defendant herein. Skil is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Chicago, Illinois.

10. Skil is an international manufacturer of an extensive line of portable power tools including portable electric tools as defined in paragraphs 14 and 15 herein, and portable electric tools for industrial use as defined in paragraph 22 herein, and portable electric tools for consumer use as defined in paragraph 27 herein. Skil also manufactures and sells many accessories, including saw blades, carbide bits and abrasive belts and discs. Skil maintains a substantially integrated network of manufacturing operations to produce most of the component parts contained in its products. These portable tools are marketed through industrial and consumer channels of distribution. Until the recent sale of certain assets connected with its chain saw business as alleged herein in paragraph 34, Skil also manufactured and sold gasoline chain saws.

11. Skil has a domestic service network of 76 company-owned product service centers and 427 authorized service outlets and operates manufacturing and warehouse facilities in Illinois, New York, New Jersey, Arkansas, California,

Puerto Rico and seven foreign countries. In 1977, Skil's net sales exceeded \$163.7 million.

12. Skil manufactures portable electric tools in Illinois, New York, and California and regularly sells and ships substantial quantities of these products to customers located throughout the United States. Skil has been and is engaged in interstate commerce.

13. On or about January 2, 1979, Emerson and Skil entered into an agreement whereby Emerson will acquire over 50 percent of the capital stock of Skil. This acquisition is scheduled to be consummated on or about March 23, 1979.

III

TRADE AND COMMERCE

14. As used herein, the term "portable electric tools" means hand held tools powered by a universal electric motor including circular saws, rotary hammers, drills, sanders, polishers, grinders, reciprocating saws, jig saws, routers, planes and screwdrivers.

15. Portable electric tools are of two types: those manufactured and sold for industrial use, and those manufactured and sold for consumer use. Each type is commonly distributed through distinct retail distribution channels to industrial users and to consumers for home usages.

16. Total 1977 sales of portable electric tools in the United States' exceeded 18 million units valued at approximately \$525 million. The manufacture and sale of portable electric

tools in the United States is concentrated with the shares of the two largest firms amounting to approximately 47 percent and the four largest firms amounting to approximately 72 percent of total dollar sales. Skil, with approximately \$67 million in 1977 portable electric tool sales, has a 13 percent share and ranks third in the manufacture and sale of portable electric tools.

17. In 1977, total sales of accessories and replacement parts for portable electric tools amounted to \$275 million. Skil had \$29 million in 1977 accessory and part sales.

18. Emerson manufactures and sells a wide variety of tools and other products, hereinbefore listed in paragraph 6 above, which are complementary to and may be marketed through some of the same channels of distribution and advertised in some of the same media as Skil's portable electric tool line. Through its Ridge Tool Co. subsidiary, Emerson sells a highly respected line of hand tools and other tools and equipment for use by plumbing and electrical contractors. Ridge also sells a limited line of portable electric tools manufactured by another company. In addition, Emerson's Special Products Division manufactures and sells a line of stationary power tools for home workshop use which are sold by Sears, Roebuck & Co. under the "Craftsman" brand name. Emerson manufactures and sells through its Vernco division universal electric motor powered shop vacuum cleaners. Emerson's Dremel division manufactures and sells a line of

universal electric motor powered portable hobbyist tools and accessories. Emerson's Weed Eater subsidiary manufactures and sells monofilament line lawn trimmers powered by a universal electric motor.

19. Emerson is one of only a few companies with the financial resources, technical expertise, existing channels of distribution, and incentive to expand its product line into the manufacture and sale of portable electric tools. During the past three years, Emerson has hired a number of persons with engineering or marketing skills in the portable electric tool industry. Emerson is in the process of developing a line of portable electric tools for industrial use which it intends to introduce in the near future. Emerson is perceived as a likely entrant into the manufacture and sale of portable electric tools by other persons and firms engaged in the manufacture and sale of portable electric tools.

IV

VIOLATION ALLEGED

20. The effect of the proposed acquisition of Skil by Emerson may be substantially to lessen competition or tend to create a monopoly in the aforesaid interstate trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

- (a) Emerson will be eliminated as a significant additional competitor in the manufacture and sale of portable electric tools;

- (b) Concentration in the manufacture and sale of portable electric tools may be substantially increased; and,
- (c) Competition generally in the manufacture and sale of portable electric tools may be substantially lessened.

COUNT TWO

21. Plaintiff here repeats and realleges the allegations of paragraphs 1 through 19 with the same force and effect as though set forth in full.

V

TRADE AND COMMERCE

22. As used herein, "portable electric tools for industrial use" means portable electric tools as described in paragraph 14 above purchased for industrial and professional use, such as industrial plant maintenance, automotive repair operations, and use by construction tradesmen. Portable electric tools for industrial use are designed and built for more frequent or continuous use applications requiring greater durability, are higher priced, and are sold through different distribution channels than consumer portable electric tools as defined in paragraph 27 below.

23. Total 1977 sales of portable electric tools for industrial use in the United States exceeded 4 million units valued at approximately \$260 million. The manufacture and

sale of portable electric tools for industrial use in the United States is concentrated with the shares of the two largest firms amounting to approximately 40 percent and the four largest firms amounting to approximately 65 percent of total dollar sales. Skil, with approximately \$33 million in 1977 sales of portable electric tools for industrial use, has a 13 percent share and ranks third in the manufacture and sale of portable electric tools for industrial use.

24. Emerson's line of portable electric tools will be marketed through existing distribution channels of its Ridge Tool Co. subsidiary. Emerson's stated objective is to position Ridge as a significant manufacturer of portable electric tools for industrial use, achieving a 5 to 10 percent market share by 1983.

VI

VIOLATION ALLEGED

25. The effect of the proposed acquisition may be substantially to lessen competition or tend to create a monopoly in the aforesaid interstate trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

- (a) Emerson will be eliminated as a significant additional competitor in the manufacture and sale of portable electric tools for industrial use;
- (b) Concentration in the manufacture and sale of portable electric tools for industrial use may be substantially increased; and,

- (c) Competition generally in the manufacture and sale of portable electric tools for industrial use may be substantially lessened.

COUNT THREE

26. Plaintiff here repeats and realleges the allegations of paragraphs 1 through 19 with the same force and effect as though set forth in full.

VII

TRADE AND COMMERCE

27. As used herein, "portable electric tools for consumer use" means portable electric tools as described in paragraph 14 above purchased for occasional or intermittent applications such as home use. Portable electric tools for the consumer market are designed and built for less frequent use, are less durable, are lower priced, and are sold through different distribution channels than industrial portable electric tools.

28. Total 1977 sales of consumer portable electric tools in the United States exceeded 13.8 million units valued at approximately \$265 million. The manufacture and sale of portable electric tools for consumer use in the United States is concentrated with the shares of the two largest firms amounting to approximately 59 percent and the four largest firms amounting to approximately 84 percent of total dollar sales. Skil, with approximately \$34 million in

1977 consumer portable electric tool sales, has a 13 percent share and ranks third in the manufacture and sale of consumer portable electric tools.

29. Although Emerson's present plans are to concentrate on the manufacture and sale of portable electric tools designed for industrial use, it has the capability and incentives to manufacture and sell portable electric tools designed for consumer use. Such tools could be marketed through the same channels of distribution used by its Vernco and Dremel divisions and Weed Eater subsidiary. Emerson is perceived as a likely entrant into the manufacture and sale of portable electric tools by other persons and firms engaged in manufacturing and selling such tools.

VIII

VIOLATION ALLEGED

30. The effect of the proposed acquisition may be substantially to lessen competition or tend to create a monopoly in the aforesaid interstate trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

- (a) Emerson will be eliminated as a potential competitor in the manufacture and sale of portable electric tools for consumer use;
- (b) Concentration in the manufacture and sale of portable electric tools for consumer use may be maintained and increased; and,

- (c) Competition generally in the manufacture and sale of portable electric tools for consumer use may be substantially lessened.

COUNT FOUR

31. Plaintiff here repeats and realleges the allegations of paragraphs 1 through 13 with the same force and effect as though set forth in full.

IX

TRADE AND COMMERCE

32. Emerson manufactures and sells and Skil has manufactured and sold gasoline chain saws as hereinbefore alleged in paragraphs 6 and 10. Skil has heretofore also manufactured and sold electric chain saws. Chain saws are distributed through industrial tool channels of distribution to logging companies, construction companies, and similar professional users, and to consumers through the same channels of distribution as are consumer portable electric tools.

33. The manufacture and sale of gasoline chain saws in the United States is concentrated, with the two largest firms accounting for approximately 37 percent, and the four largest firms accounting for over 62 percent of total dollar sales in 1977. Emerson, through its Beaird-Poulan division, with over 14 percent of total dollar sales, ranks third in the manufacture and sale of gasoline chain saws. Skil had approximately 4 percent of total dollar sales in 1977.

Total manufacturers' sales of gasoline chain saws in 1977 exceeded 2.5 million units valued at approximately \$260 million.

34. Pursuant to the aforesaid agreement of purchase and sale between Emerson and Skil, Skil has recently sold certain assets of its gasoline chain saw business to National Union Electric Co. of Bloomington, Illinois (hereinafter referred to as "National"). National is a subsidiary of A.B. Electrolux, a Swedish corporation which, through subsidiaries, is a major international manufacturer of chain saws. In addition, Skil ceased manufacturing and selling chain saws. The assets sold do not include the Skil name, electric chain saw business, personnel, service centers, or manufacturing plant facilities. Skil also retains the right to take back a royalty free license under patents sold to National. Skil retains the ability to manufacture and sell gasoline chain saws.

35. Emerson's Beaird-Poulan division manufactures gasoline chain saws in Shreveport, Louisiana and Nashville, Arkansas and regularly sells and ships substantial quantities of these products throughout the United States. Emerson has been and is engaged in interstate commerce.

36. Skil manufactured gasoline chain saws in Illinois and Arkansas and regularly sold and shipped substantial quantities of these products throughout the United States. Skil has been engaged in interstate commerce.

X

VIOLATION ALLEGED

37. The effect of the proposed acquisition and acquisition agreement may be substantially to lessen competition or to tend to create a monopoly, in violation of Section 7 of the Clayton Act, in the following ways, among others:

- (a) Competition in the manufacture and sale of gasoline chain saws between Emerson and Skil has been and will continue to be eliminated;
- (b) Competition in the manufacture and sale of gasoline chain saws in the United States generally may be substantially lessened; and,
- (c) Concentration in the manufacture and sale of gasoline chain saws will be significantly increased.

COUNT FIVE

38. Plaintiff here repeats and realleges the allegations of paragraphs 1 through 13, and 32 through 36 with the same force and effect as though set forth in full.

XI

TRADE AND COMMERCE

39. Gasoline chain saws manufactured and sold in the United States for occasional use are of a lighter weight, less durable and less expensive type than gasoline chain saws intended for professional use. The substantial growth in the manufacture and sale of gasoline chain saws for

occasional use during the past ten years is expected to continue.

40. Total 1977 retail sales of gasoline chain saws for occasional use in the United States were approximately 1.35 million units valued at approximately \$171 million. The manufacture and sale of gasoline chain saws for occasional use in the United States is concentrated with the shares of the two largest firms amounting to approximately 42 percent and the four largest firms amounting to approximately 69 percent of total dollar sales. In 1977, Emerson's Beaird-Poulan division, with 23 percent of total dollar sales, ranked first in the manufacture and sale of gasoline chain saws for occasional use. In 1977, Skil had an 8 percent market share and ranked fourth or fifth in the manufacture and sale of chain saws for occasional use.

XII

VIOLATION ALLEGED

41. The effect of the proposed acquisition and acquisition agreement may be substantially to lessen competition or to tend to create a monopoly, in violation of Section 7 of the Clayton Act, in the following ways, among others:

- (a) Competition in the manufacture and sale of gasoline chain saws for occasional use between Emerson and Skil has been and will continue to be eliminated;
- (b) Competition in the manufacture and sale of gasoline chain saws for occasional use in the United States generally may be substantially lessened; and,

- (c) Concentration in the manufacture and sale of gasoline chain saws for occasional use will be significantly increased.

PRAYER

1. That pending a final adjudication of this litigation, a temporary restraining order and a preliminary injunction be issued against defendants and all persons acting on their behalf preventing and restraining them from taking any further action to carry out the aforesaid acquisition agreement or any similar agreement, the effect of which would be to consolidate the business of Skil with Emerson.

2. That the aforesaid acquisition of Skil's capital stock by Emerson be adjudged to be a violation of Section 7 of the Clayton Act.

3. That Emerson and Skil and all persons acting on their behalf be enjoined from carrying out the aforesaid acquisition agreement or any similar plan or agreement, the effect of which would be to consolidate or in any way combine the business of Emerson and Skil.

4. That plaintiff have such other and further relief as the Court deems just and proper.

5. That plaintiff recover the costs of this suit.

JOHN H. SHENEFIELD
Assistant Attorney General

JOHN L. BURLEY

WILLIAM E. SWOPE

JAMES J. KUBIK

JOHN E. SARBAUGH

Attorneys,
Department of Justice

STEVEN M. KOWAL

THOMAS P. SULLIVAN
United States Attorney

WILLIAM T. CLABAULT

Attorneys,
Department of Justice

Room 2634 Everett M. Dirksen Bldg.
Chicago, Illinois 60604
Telephone: (312) 353-7537

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

AFFIDAVIT OF JAMES J. KUBIK

James J. Kubik, first being duly sworn, deposes and says:

1. I am an attorney employed by the United States Department of Justice representing the plaintiff United States of America in the civil action entitled United States of America v. Emerson Electric Co. and Skil Corporation;

2. I have been actively engaged in the preparation of this legal proceeding;

3. I have read the foregoing Complaint, know the contents, and am personally familiar with the subject matter thereof;

4. I am informed and believe that the facts alleged therein are true and correct;

5. The sources of my information are documents submitted to the Department of Justice by defendants Emerson Electric Co. and Skil Corporation and information obtained from trade and industry sources and from publications.

JAMES J. KUBIK

Subscribed and sworn to before me
this _____ day of March, 1979.

Notary Public
Cook County, Illinois

My commission expires _____.