

United States District Court ruling

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE GILLETTE COMPANY,

WILKINSON SWORD, INC.,

STORA KOPPARBERGS BERGSLAGS AB, and

EEMLAND MANAGEMENT SERVICES BV,

Defendants.

Civil Action No.
90-0053-TFH

FILED
JUL 25 1990

Clerk, U.S. District Court
District of Columbia

FINAL JUDGMENT

WHEREAS:

1. Plaintiff, the United States of America, having filed its Complaint herein on January 10, 1990, and plaintiff and defendants The Gillette Company ('Gillette'), Wilkinson Sword, Inc. ('Wilkinson'), and Eemland Management Services BV ('Eemland'), collectively referred to herein as the defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

2. The defendants having agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

3. Eemland having consented to the jurisdiction of this Court solely for the purposes of this Final Judgment;

4. By agreements dated December 20, 1989, and thereafter, Gillette having contracted with Eemland and others to acquire securities of Eemland as well as Eemland's wet shaving razor blade assets in the United States and other areas of the world outside of the European Community;

5. By agreement dated January 24, 1990, the defendants having amended portions of their agreements that had provided for Gillette to acquire Eemland's wet shaving razor blade assets in the United States, to provide for Eemland to retain those assets;

NOW, THEREFORE, before the taking of any testimony 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 of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against each of the defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II.

As used in this Final Judgment, the term:

1. 'Gillette' means defendant The Gillette Company, each division, subsidiary, affiliate, successor, or assign thereof, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them, at any time during the existence of this Final Judgment.

2. 'Eemland' means defendant Eemland Management Services BV, each division, subsidiary, affiliate, successor, or assign thereof, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them, at any time during the existence of this Final Judgment. Eemland includes its wholly-owned subsidiary, Wilkinson.

3. 'Wilkinson' means defendant Wilkinson Sword, Inc., each division, subsidiary, affiliate, successor, or assign thereof, and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them, at any time during the existence of this Final Judgment.

4. 'Affiliate' of a legal entity means a person controlled, directly or indirectly, by a common parent of that legal entity.

5. 'Asset' means any asset of any type, including but not limited to real, personal, tangible, and intangible (e.g., intellectual) property.

6. 'Person' means any natural person, corporation, firm, company, sole proprietorship, partnership, association, institute, or other business or legal entity.

7. 'Security' means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, or any other interest or instrument commonly known as a 'security', or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

8. 'Surplus Eemland production asset' means any asset that Eemland previously had used but no longer is using or planning to use for the production of wet shaving razor blades for sale in the United States or the European Community, the sale of which will not impair Eemland's ability to compete in the sale of wet shaving razor blades in the United States.

9. 'United States wet shaving razor blade supplier' means any producer of wet shaving razor blades for sale in the United States, or any of its affiliates or subsidiaries that markets, distributes, or sells wet shaving razor blades in the United States.

10. 'Wet shaving razor blades' means razor blades designed for use in shaving wet hair, which are sold either in packages of disposable blades or as part of disposable or reuseable razors.

III.

This Final Judgment applies to each of the defendants and to each such defendant's officers, directors, employees, agents, divisions, subsidiaries, affiliates, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

1. Gillette shall not, without the prior written consent of plaintiff, acquire any additional interest in any securities of Eemland, with the exception of: (a) interest that accrues as debt pursuant to the terms of Eemland's agreements with Gillette dated December 21, 1989 (Non-Institutional Mezzanine Facility Agreement and Intercreditor Agreement) and January 22, 1990 (Supplemental Agreement); and (b) the conversions referred to in Sections VII.2 and 3 of this Final Judgment.

2. Gillette shall not, without the prior written consent of plaintiff, retain or acquire any interest in any assets that at any time during the twelve (12) months immediately preceding the acquisition, Eemland had owned or leased and used in the production of wet shaving razor blades for sale in the United States or the European Community, or in the marketing, distribution, or sale of wet shaving razor blades in the United States; provided, however, that nothing in this Final Judgment shall prevent Gillette from:

a. acquiring any interest in any surplus Eemland production assets, provided that Eemland provides to plaintiff thirty (30) days advance written notification of the proposed acquisition, describing in detail the assets and explaining why the assets constitute surplus Eemland production assets, and plaintiff does not within thirty (30) days after receiving that notification, unless the time is extended by Eemland or Gillette, request additional information pursuant to Section IV.6 of this Final Judgment;

b. acquiring non-exclusive patent or know-how licenses from Eemland, or retaining any intellectual property rights it acquired from Eemland that pertain to the United States but that are not divisible from rights relating to other areas, as long as Eemland has an irrevocable, royalty-free, exclusive license to those rights for the United States;

c. acquiring or retaining any Eemland production facilities or assets in Zimbabwe or Brazil pursuant to the agreements referred to in paragraph 4 of the preamble to this Final Judgment.

3. Gillette shall not, without the prior written consent of plaintiff, act as an agent for Eemland in the production of wet shaving razor blades for sale in the United States, or in the marketing, distribution, or sale of wet shaving razor blades in the United States.

4. If no notification is filed pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (15 U.S.C. § 18a), as amended, for any acquisition described in Section IV.4.a. or b. of this Final Judgment:

a. Gillette shall not, without first providing plaintiff with thirty (30) days prior written notification, acquire from any other person, other than Eemland, any interest in any assets that at any time during the twelve (12) months immediately preceding the acquisition any United States wet shaving razor blade supplier, other than Eemland, had owned or leased and used in the production of wet shaving razor blades for sale in the United States, or in the marketing, distribution, or sale of wet shaving razor blades in the United States; provided, however, that nothing in this Section IV.4 of this Final Judgment shall prevent Gillette from acquiring, or require Gillette to provide such notice before acquiring, any such assets if that supplier certifies to Gillette that it had revenues of less than \$5 million (adjusted for inflation since December 31, 1989 in accordance with the United States Consumer Price Index) from the sale of wet shaving razor blades in the United States in the twelve (12) months immediately preceding the acquisition;

b. Gillette shall not, without first providing plaintiff with thirty (30) days prior written notification, acquire or accumulate ten (10) percent or more of the equity securities, or any other securities with voting rights, of any other United States wet shaving razor blade supplier, other than Eemland, that at any time during the twelve (12) months immediately preceding the acquisition had produced wet shaving razor blades for sale in the United States, or had marketed, distributed, or sold wet shaving razor blades in the United States; provided, however, that nothing in this Section IV.4 of this Final Judgment shall prevent Gillette from acquiring, or require Gillette to provide such notice before acquiring, any such securities if that supplier certifies to Gillette that it had revenues of less than \$5 million (adjusted for inflation since December 31, 1989 in accordance with the United States

Consumer Price Index) from the sale of wet shaving razor blades in the United States in the twelve (12) months immediately preceding the acquisition.

5. The notification required by Section IV.4 of this Final Judgment shall: (a) state the details of the proposed acquisition, including for each party to the proposed acquisition its name and address, its role in the proposed acquisition, and the unit and dollar volume of its sales of wet shaving razor blades in the United States in the preceding twelve (12) months, the date of the proposed acquisition, a description of the assets or securities proposed to be acquired, and the dollar value of the consideration to be paid by Gillette for the acquisition; and (b) include a copy of the agreement for the proposed acquisition, and of Gillette's most recent business, marketing, or strategic plans relating to its wet shaving razor blade business in the United States.

6. Within thirty (30) days after receipt of Eemland's written notification pursuant to proviso a. of Section IV.2 of this Final Judgment, unless Gillette or Eemland shall agree to extend the time, plaintiff may request from any defendant information and documents relevant to the proposed acquisition. If plaintiff makes such a request, Gillette shall not make the proposed acquisition unless plaintiff consents to the proposed acquisition or this Court permits the proposed acquisition. Production of the requested information and documents shall be accompanied by a written certification of the completeness of the production. Within thirty (30) days after receipt of complete production by each defendant of the additional information and documents plaintiff sought from it, unless Gillette or Eemland shall agree to extend the time, plaintiff shall inform Gillette and Eemland in writing whether plaintiff objects to the classification of the assets as surplus Eemland production assets. If plaintiff does not so object to the classification of these assets as surplus Eemland production assets within that time period, nothing in this Final Judgment shall prevent Gillette from making the proposed acquisition. If plaintiff so objects to this classification, Gillette or Eemland may petition this Court to permit the proposed acquisition. Gillette or Eemland shall have the burden of showing by the preponderance of the evidence that the assets constitute surplus Eemland production assets.

V.

1. Eemland shall not transfer to Gillette any additional interest in any securities of Eemland, or any interest in any assets of Eemland except in accordance with the provisions of Sections IV.1 and 2, respectively, of this Final Judgment.

2. Eemland shall not, without the prior written consent of plaintiff, transfer to Gillette any interest in any rights in any trademarks in the United States or the European Community that, at any time during the twelve (12) months immediately preceding the acquisition, Eemland used in the sale of wet shaving razor blades.

3. Eemland shall not, without the prior written consent of plaintiff, consent to the revocation of any license from Gillette that grants Eemland any rights in any intellectual property that relates to wet shaving razor blades: (a) in the United States or the European Community; or (b) if the revocation would impair the ability of Eemland to compete in the sale of wet shaving razor blades in the United States or the European Community.

4. Eemland shall not, without the prior written consent of plaintiff, use Gillette as an agent for Eemland in the production of wet shaving razor blades for sale in the United States, or in the marketing, distribution, or sale of wet shaving razor blades in the United States.

VI.

1. Gillette and Eemland shall not agree or communicate in an effort to persuade the other to agree, directly or indirectly, regarding present or future prices or other terms or conditions of sale, volume of shipments, future production schedules, marketing plans, sales forecasts, or sales or proposed sales to specific customers, for wet shaving razor blades sold or to be sold in the United States; provided, however, that nothing in this Section VI.1 of this Final Judgment shall prevent Gillette and Eemland from entering into bona fide agreements between them for the purchase and sale of wet shaving razor blades, if: (a) Gillette and Eemland notify plaintiff in writing of each such agreement within three (3) days after such agreement has been entered, providing a detailed description of the transaction and a copy of each such

agreement; (b) in connection with such a transaction there are not communications with each other, directly or indirectly, regarding present or future prices or terms or conditions of sale for wet shaving razor blades sold to others in the United States; and (c) the purchase and sale transaction does not impair Eemland's ability to compete in the sale of wet shaving razor blades in the United States.

2. Gillette shall not use or attempt to use, directly or indirectly, its position as a holder of Eemland's securities to exert any influence over Eemland in the conduct of Eemland's wet shaving razor blade business.

3. Gillette shall, within sixty (60) days of the entry of this Final Judgment, provide to Eemland a proxy to cast all voting rights that Gillette may have or acquire as a securities holder of Eemland in the exact proportion as the votes cast by other securities holders. Gillette shall not participate in the management of Eemland and shall not suggest or nominate, individually or as part of a group, any candidate for election to Eemland's Board of Directors, or serve as a manager, officer, director, advisor, or consultant, or in any comparable position with or for Eemland.

4. Gillette shall not, without the prior written consent of plaintiff, use or attempt to use its creditor position in Eemland: (a) to prevent or restrict Eemland's ability to refinance or obtain additional credit or capital; (b) to initiate any action the effect of which reasonably could be expected to cause Eemland to become insolvent or bankrupt; or (c) in the event of a proposed reorganization of Eemland because of insolvency or bankruptcy concerns, to vote against any reorganization plan proposed or supported by Eemland.

5. In the event that Gillette or Eemland seeks the written consent of plaintiff prior to taking any action that is otherwise prohibited by this Final Judgment without that consent, that defendant must provide to plaintiff written notification revealing the details of the proposed action along with a statement that the written notification is being made pursuant to this Section VI.5 of this Final Judgment. Within thirty (30) days after receipt of this written notification, unless that defendant shall agree to extend the time, plaintiff may request from any defendant information and documents relevant to the proposed action. Production of the requested information and documents shall be accompanied by a written certification of the completeness of the production. Within thirty (30) days after receipt of the written notification, or of complete production by each defendant of the additional information and documents plaintiff sought from it, whichever occurs later, unless the defendant seeking to take the proposed action shall agree to extend the time, plaintiff shall inform that defendant in writing whether plaintiff consents to the proposed action. If plaintiff does not consent to the proposed action, the defendant seeking to take that proposed action may petition this Court for approval to take that action. The petitioning defendant shall have the burden of showing by the preponderance of the evidence that the proposed action would not substantially lessen competition in the sale of wet shaving razor blades in the United States.

VII.

1. Each defendant shall provide written notice to plaintiff no later than thirty (30) days subsequent to the effective date of any action whereby the defendant: (a) changes its name or principal place of business; (b) liquidates or otherwise ceases operation; or (c) is acquired or merges with another firm.

2. Gillette shall provide written notice revealing all details to plaintiff no later than two (2) days after receiving notification of any event that causes or would cause any of Gillette's securities of Eemland to convert to voting shares in Eemland, or that otherwise causes Gillette to have any voting interest in Eemland.

3. Eemland shall provide written notice revealing all details to plaintiff no later than two (2) business days after receiving notification from Gillette of Gillette's intentions to convert any securities of Eemland to voting shares in Eemland or otherwise to have any voting interest in Eemland.

VIII.

Each defendant is ordered and directed to:

1. Within thirty (30) days after the date of entry of this Final Judgment and annually thereafter, furnish a copy of this Final Judgment (accompanied by a translation into the recipient's language, where necessary) to its president or chief executive officer, and to each of its officers, directors, and supervisory employees (whether located in the United States or elsewhere) then responsible for making pricing or marketing decisions for wet shaving razor blades in the United States.
2. Furnish a copy of this Final Judgment (accompanied by a translation into the recipient's language, where necessary) to each successor to any of those persons described in Section VIII.1 hereof, within thirty (30) days after such successor assumes that position.
3. File with this Court and serve upon plaintiff, within sixty (60) days from the date of entry of this Final Judgment, a statement as to the facts and manner of its compliance with Section VIII.1 hereof, and the measures that it has taken to assure compliance with Section VIII.2 hereof.

IX.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

1. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants Gillette or Wilkinson made to its principal office, be permitted:
 - a. access during office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant, which may have counsel present, relating to any matters contained in this Final Judgment;
 - b. subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees and agents of the defendant, who may have counsel present, regarding any such matters.
2. Upon receipt of a written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, Eemland (but not its Wilkinson subsidiary) shall:
 - a. provide within sixty (60) days to the Department of Justice in Washington, D.C., copies of any books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Eemland, relating to any matters contained in this Final Judgment;
 - b. subject to the reasonable convenience of Eemland and without restraint or interference from it, permit duly authorized representatives of the Department of Justice to interview officers, employees and agents of the defendant, who may have counsel present, regarding any such matters.
3. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to any defendant's principal office, the defendant shall submit such written reports (in the English language or accompanied by an English language translation) under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.
4. Nothing in Section IX of this Final Judgment shall require any defendant to take any action in any country that is prohibited by the government of that country pursuant to provisions of that country's laws, provided that the defendant has exercised its best efforts to obtain permission to take that action from the appropriate person or governmental authority.

5. No information or documents obtained by the means provided in Sections IV, V, VI, or IX 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 United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

6. If at the time information or documents are furnished by any defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, 'Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,' then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

X.

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, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XI.

This Final Judgment will expire on the tenth anniversary of its date of entry, provided that, at that time, Gillette no longer has any interest in any securities of Eemland. If, at that time, Gillette has any such interest in Eemland: (a) only Sections IV and V of this Final Judgment will expire at that time: and (b) the rest of this Final Judgment will expire at such time as Gillette no longer has any such interest in Eemland.

XII.

Entry of this Final Judgment is in the public interest.

Dated: 25 July 1990

(signed) Thomas F. Hogan

United States District Judge