

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

_____)	
In the Matter of)	
)	
Keystone Holdings, LLC,)	
a corporation, and)	Docket No. C-4314
)	
Compagnie de Saint-Gobain,)	
a corporation.)	
_____)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Keystone Holdings, LLC, of the Advanced Ceramics Business of Respondent Compagnie de Saint-Gobain, and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure

described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Keystone Holdings, LLC, is a limited liability company organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal executive offices located at 16000 Table Mountain Parkway, Golden, Colorado.

2. Respondent Compagnie de Saint-Gobain is a corporation organized, existing, and doing business under and by virtue of the laws of France, with its offices and principal place of business located at Courbevoie, France, Les Miroirs, 18 Avenue d’Alsace, 92096 La Defense Cedex, France.

3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in the Order, the following definitions shall apply:

DEFINITIONS OF PERSONS

- A. "Commission" means the Federal Trade Commission.
- B. “Saint-Gobain” or “Respondent Saint-Gobain” means Compagnie de Saint-Gobain, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Compagnie de Saint-Gobain, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- C. “Governmental Entity” means any federal, provincial, state, county, local, or other political subdivision of the United States or any other country, or any department or agency thereof.
- D. "Keystone" or "Respondent Keystone" means Keystone Holdings, LLC, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries (including, but not limited to, CoorsTek, Inc.), divisions, groups and affiliates controlled by Keystone Holdings, LLC, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.

- E. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or Governmental Entity, and any subsidiaries, divisions, groups or affiliates thereof.

GENERAL DEFINITIONS

- F. “Acquisition” means the proposed acquisition of the Advanced Ceramics Business by Keystone from Saint-Gobain pursuant to the Purchase Agreement (June 25, 2010) by and between CoorsTek, Inc., on the one hand, and Saint-Gobain Performance Plastics Europe, S.A., Saint-Gobain Abrasives, Inc., Saint-Gobain do Brasil Produtos Industriais e para Construcoes Ltda., and Société Européenne des Produits Réfractaires, S.A., on the other hand, as amended by as amended by the Supplement and Amendment No. 1 to the Purchase Agreement (December 2, 2010).
- G. “Advanced Ceramics Business” means the assets and business of Saint-Gobain that Respondent Keystone proposes to acquire pursuant to the Purchase Agreement (June 25, 2010) and the Amended Purchase Agreement.
- H. “Alumina Wear Tiles” or “AW Tiles” means sintered dense high-grade alumina ceramic tile that is used primarily, but not necessary solely, to line material-handling equipment to protect against abrasion and premature wear caused by the materials that pass through the equipment. AW Tile is comprised of tiles including, but not limited to, pre-engineered tile linings, iso-pressed monolithic shapes, and standard rectangular, pipe, tongue & groove and hex tiles.
- I. “Amended Purchase Agreement” means the Supplement and Amendment No. 1 to the Purchase Agreement (December 2, 2010) between CoorsTek, Inc., and Saint-Gobain (as defined in the Purchase Agreement).
- J. “Saint-Gobain AW Tile Business” means all of Respondent Saint-Gobain’s right, title, and interest prior to the Acquisition in all tangible and intangible property of any kind relating to the research, development, marketing and sale anywhere in the world, of AW Tiles produced or manufactured in North America, including, but not limited to, the:
1. Latrobe Facility;
 2. Saint-Gobain AW Tile Business Books and Records;
 3. Saint-Gobain AW Tile Business Intellectual Property;
 4. Saint-Gobain AW Tile Business Contracts;
 5. Saint-Gobain AW Tile Business Inventories; and,
 6. Complementary AW Tile Assets;
- Provided, however, the Saint-Gobain AW Tile Business does not include:*
1. The CoorsTek AW Tile Business; and,
 2. The Advanced Ceramics Business.

- K. “Saint-Gobain AW Tile Business Agreements” mean the Complementary AW Tile Intellectual Property License, the Complementary AW Tile Products Supply Agreement, and the Technical Services Agreement.
- L. “Saint-Gobain AW Tile Business Books and Records” means all Books and Records relating to the research, development, marketing and sale anywhere in the world, of AW Tiles produced or manufactured in North America.
- M. “Saint-Gobain AW Tile Business Contracts” means all contracts relating to the research, development, marketing and sale anywhere in the world, of AW Tiles produced or manufactured in North America.
- N. “Saint-Gobain AW Tile Business Inventories” means:
1. All supplies and inventory of finished AW Tiles, and,
 2. All supplies and inventory of AW Tiles in production, raw materials, and supplies held for use in the research, development, marketing and sale anywhere in the world, of AW Tiles produced or manufactured in North America.
- O. “Complementary AW Tile Products” means the “Products” as defined and addressed in the Complementary AW Tile Products Supply Agreement.
- P. “Complementary AW Tile Assets” means:
1. A Complementary AW Tile Intellectual Property License; and,
 2. A copy of all Books and Records relating to the research, development, marketing and sale anywhere in the world, of Complementary AW Tile Products;
- provided, however,* that Complementary AW Tile Assets do not include Books and Records relating to the marketing and sale of Complementary AW Tile Products to any Person who has not purchased any Complimentary AW Tile Products or AW Tiles from an employee of or agent for the Saint-Gobain AW Tile Business since January 1, 2008.
- Q. “Complementary AW Tile Intellectual Property License” means Section 7.17 of the Purchase Agreement as amended by the Amended Purchase Agreement.
- R. “Complementary AW Tile Products Supply Agreement” means Exhibit N to the Purchase Agreement as amended by the Amended Purchase Agreement.
- S. “CoorsTek AW Tile Business” means the assets and business of Keystone relating to the research, development, production, manufacture, marketing, sale, and use of AW Tiles and related products anywhere in the world prior to the acquisition of Advanced Ceramics Business.

- T. “Facility Assets” means:
1. All real property interests, including rights, title, and interests in and to owned or leased property, together with all easements, rights of way, buildings, improvements, and appurtenances;
 2. All applicable federal, state, and local regulatory agency registrations, permits, and applications, and all documents related thereto, necessary for the operations of, and conduct of business at, such applicable facility, to the extent held by Respondent Saint-Gobain and with respect to which the transfer thereof is permitted by law; and
 3. All fixtures, equipment, machinery, tools, vehicles, personal property, or tangible property of any kind located at such applicable facility that is owned or leased by Respondent Saint-Gobain, or that Respondent Saint-Gobain has the legal right to use, or to have the custody or control of, that is related to:
 - a. The research, development, production, manufacture, marketing, and sale of AW Tiles; and
 - b. Compliance by the Saint-Gobain AW Tile Business with any statute, ordinance, regulation, rule, or other legal requirement (including, but not limited to, environmental laws) of any Governmental Entity.
- U. “Intellectual Property” means Patents, Know-how, and trade marks.
- V. “Know-how” means know-how, trade secrets, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, development and other similar information.
- W. “Latrobe Facility” means all of Respondent Saint-Gobain’s right, title, and interest in the Facility Assets:
1. Located at the real property in Latrobe, Pennsylvania, legally described in Exhibit A to this Decision and Order; and
 2. Related to the research, development, marketing and sale anywhere in the world, of AW Tiles produced or manufactured in North America.
- X. “Material Confidential Information” means any material non-public information relating to the Saint-Gobain AW Tile Business either prior to or after the Acquisition Date of Divestiture, including, but not limited to, all customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets, and:
1. Obtained by Respondent Keystone prior to the Acquisition Date; or,
 2. Obtained by Respondent Keystone after the Acquisition Date, in the course of performing Respondent Keystone’s obligations under any Saint-Gobain AW Tile Business Agreement;
- Provided, however,* that Material Confidential Information shall not include:

1. Information that is in the public domain when received by Respondent Keystone;
 2. Information that is not in the public domain when received by Respondent Keystone and thereafter becomes public through no act or failure to act by Respondent Keystone;
 3. Information that Respondent Keystone develops or obtains independently, without violating any applicable law or this Order; and
 4. Information that becomes known to Respondent Keystone from a third party not in breach of applicable law or a confidentiality obligation with respect to the information.
- Y. “Patents” means patents and/or all related patent applications, if any, and wherever located, and includes all reissues, divisions, continuations, continuations-in-part, substitutions, reexaminations, restorations, and/or patent term extensions thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.
- Z. “Purchase Agreement” means the Purchase Agreement (June 25, 2010) by and between CoorsTek, Inc., on the one hand, and Saint-Gobain Performance Plastics Europe, S.A., Saint-Gobain Abrasives, Inc., Saint-Gobain do Brasil Produtos Industriais e para Construcoes Ltda., and Societe Europeenes des Produits Refractaires, S.E., on the other hand.
- AA. “Technical Services Agreement” means Section 7.16 of the Purchase Agreement as amended by the Amended Purchase Agreement.

II

IT IS FURTHER ORDERED that:

- A. Respondent Keystone shall not acquire, directly or indirectly, without the prior approval of the Commission:
1. Any interest in the Saint-Gobain AW Tile Business;
 2. Any interest in tangible or intangible assets owned or controlled by Respondent Saint-Gobain at the time of the Acquisition relating to the research, development, marketing and sale anywhere in the world, of AW Tiles produced or manufactured in North America;
- provided, however* Respondent Keystone and Respondent Saint-Gobain may in the ordinary course of business engage in the purchase and sale of AW Tiles from and to one another.
- B. Respondent Keystone shall comply with all terms of all of the Saint-Gobain AW Tile Business Agreements, which agreements are incorporated into and made a

part of this Order. Any breach by Respondent Keystone of any term of any of the Saint-Gobain AW Tile Business Agreements shall constitute a violation of this Order. Any modification of the Saint-Gobain AW Tile Business Agreements without the prior approval of the Commission shall constitute a failure to comply with this Order.

- C. The purpose of the remedy provided by this Order and by the Saint-Gobain AW Tile Business Agreements is to preserve Respondent Saint-Gobain as an independent, viable and effective competitor in the relevant market in which the Saint-Gobain AW Tile Business was engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III

IT IS FURTHER ORDERED THAT:

- A. For a period of five (5) years from the date this Order becomes final, Respondent Saint-Gobain shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, without providing advance written notification to the Commission:
1. Lease or sell the Latrobe Facility, or sell, assign, or otherwise convey substantially all of its right, title, and interest in the Saint-Gobain AW Tile Business, to any Person other than a subsidiary or an affiliate of Respondent Saint-Gobain; or,
 2. Close the Latrobe Facility, or cease operations or production of AW Tiles at the Latrobe Facility.
- B. Respondent shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (the "Waiting Period"). The Notification required by Paragraph III.A.1. to the Commission shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the Department of Justice, and notification is required only of Respondent Saint-Gobain and not of any other party to the transaction. Early termination of the Waiting Period in this Paragraph III.B. may be requested and, where appropriate, may be granted by letter from the Bureau of Competition.

Provided, however, that prior notification shall not be required by this Paragraph III.B. for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

- C. The prior notification required by Paragraph III.A.2. shall be addressed to the Secretary of the Commission, shall affirmatively state that Respondent Saint-Gobain has provided the notice pursuant to this Paragraph III.A., and shall include:
1. The name, telephone number, email address, and street address of an officer of or agent for Respondent for Commission staff to contact to discuss the notified action; and,
 2. A description in reasonable detail of the circumstances relevant to the contemplated closure of, or the cessation of operations or production of AW Tiles at, the Latrobe Facility.

Provided, however, that prior notification shall not be required by this Paragraph III.C. if Respondent Saint-Gobain in good faith closes the Latrobe Facility, or ceases operations or production of AW Tiles at the Latrobe Facility, for any period of six (6) months or less in furtherance or implementation of plans for maintenance, construction, capital projects, or expansion of capacity at the Latrobe Facility; and,

Provided further that Respondent may provide less than thirty (30) days prior notice, or no prior notice, if Respondent Saint-Gobain in good faith closes (or determines to close) the Latrobe Facility, or ceases (or determines to cease) operations or production of AW Tiles at the Latrobe Facility, due to a force majeure event, for reasons related to health and safety, in compliance with environmental regulations or laws, in response to a request by a Government Entity, related to a labor strike, or like causes, but in such circumstance Respondent Saint-Gobain shall provide the written notice described in this Paragraph III.C. as soon as practicable following its closure of (or determination to close), or cessation of (or determination to cease) operations or production at, the Latrobe Facility.

IV

IT IS FURTHER ORDERED THAT:

- A. Either before or after the Acquisition Date, Respondent Keystone shall:
1. Not provide, disclose, or otherwise make available any Material Confidential Information to any Person except as required or permitted by this Order; and
 2. Not use any Material Confidential Information for any reason or purpose other than as required or permitted by this Order.

- B. Respondent Keystone shall devise and implement measures to protect against the storage, distribution, and use of Material Confidential Information that is not permitted by this Order. These measures shall include, but not be limited to, restrictions placed on access by Persons to information available or stored on any of Respondent Keystone's computers or computer networks.
- C. Notwithstanding Paragraph IV.A. of this Order, Respondent Keystone may use Material Confidential Information:
1. For the purpose of performing Respondent Keystone's obligations under this Order and the Saint-Gobain AW Tile Business Agreements;
 2. For uses or applications in Respondent Keystone's businesses that do not compete with the Saint-Gobain AW Tile Business, if such use or application by Respondent Keystone is not competitively significant to the Saint-Gobain AW Tile Business, *provided, however*, that Respondent Saint-Gobain must consent to any use of competitively sensitive information regarding the Saint-Gobain AW Tile Business;
 3. To ensure compliance with legal and regulatory requirements;
 4. To perform required auditing functions;
 5. To provide accounting, information technology, and credit-underwriting services;
 6. To provide legal services associated with actual or potential litigation and transactions;
 7. To monitor and ensure compliance with financial, tax reporting, governmental environmental, health, and safety requirements; or,
 8. As otherwise provided by this Order.

V

IT IS FURTHER ORDERED THAT sixty (60) days from the date this Order becomes final, on the first anniversary of the date this Order becomes final, and thereafter annually on the anniversary of the date this Order becomes final until the earlier of the expiration of the last to expire of the AW Tile Business Agreements or the termination of this Order, Respondent Keystone shall file verified written reports with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order. Each report shall describe in reasonable detail the provision of all products and services under any AW Tile Business Agreement, and identify and describe any claims or disputes between Respondent Keystone and Respondent Saint-Gobain

about whether either of them has complied fully with its obligations under any such agreement.

VI

IT IS FURTHER ORDERED THAT: that Respondents Keystone and Saint-Gobain shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondent Keystone or Respondent Saint Gobain;
- B. Any proposed acquisition, merger or consolidation of Respondent Keystone or Respondent Saint-Gobain; or,
- C. Any other change in Respondent Keystone or in Respondent Saint-Gobain, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VII

IT IS FURTHER ORDERED THAT for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent Keystone made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, Respondent Keystone shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of Respondent Keystone and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of such Respondent Keystone related to compliance with this Order, which copying services shall be provided by such Respondent Keystone at the request of the authorized representative(s) of the Commission and at the expense of the Respondent Keystone; and;
- B. to interview officers, directors, or employees of such Respondent Keystone, who may have counsel present, regarding such matters.

VIII

IT IS FURTHER ORDERED that this Order shall terminate on February 7, 2021.

By the Commission.

Donald S. Clark
Secretary

ISSUED: February 7, 2011