

For a period of ten years from its effective date, the Order would also prohibit Shell, Montedison and Montell from acquiring, without prior Commission approval, stock or other interest in any company engaged in, or assets used for, the research and development, manufacture for sale, or sale or licensing of polypropylene technology, catalyst technology or polypropylene catalyst anywhere in the world or the manufacture or sale of polypropylene polymers in the United States or Canada.

The purpose of this analysis is to invite public comment concerning the Consent Order and any other aspect of the joint venture or Montedison license agreements. This analysis is not intended to constitute an official interpretation of the Consent Agreement and Order or to modify its terms in any way.

Donald S. Clark,
Secretary.

[FR Doc. 95-2061 Filed 1-26-95; 8:45 am]

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[File No. 941 0126]

**Sensormatic Electronics Corporation;
Proposed Consent Agreement With
Analysis To Aid Public Comment**

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, Sensormatic Electronics Corporation, a Florida-based manufacturer of electronic-article surveillance systems from acquiring patents and other exclusive rights for manufacturer installed disposable anti-shoplifting labels from Knogo Corporation. In addition, the consent agreement would require Sensormatic, for ten years, to obtain Commission approval before acquiring certain rights in connection with Knogo's SuperStrip, or any significant acquisition of entities engaged in, or assets used for, the research, development or manufacture of disposable labels, or acquisitions of patents or other intellectual property for such purposes.

DATES: Comments must be received on or before March 28, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Ann Malester, Arthur Strong or Melissa Heydenreich, FTC/S-2224, Washington, DC 20580. (202) 326-2682, 326-3478 or 326-2543.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Sensormatic Electronics Corporation ("Sensormatic") of certain assets of the Knogo Corporation ("Knogo"), and it now appearing that Sensormatic, hereinafter sometimes referred to as "proposed respondent," is willing to enter into an agreement containing consent order to cease and desist from making certain acquisitions, and providing for other relief:

It is hereby agreed by and between Sensormatic, by its duly authorized officer and its attorney, and counsel for the Commission that:

1. Proposed respondent Sensormatic is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its offices and principal place of business located at 500 NW. 12th Avenue, Deerfield Beach, Florida 33442.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceedings unless and until it is accepted by the Commission. If this agreement is accepted by the

Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) Issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order**I**

It is ordered that, as used in this order, the following definitions shall apply:

A. "Respondent" or "Sensormatic" means Sensormatic Electronics Corporation, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Sensormatic Electronics Corporation, their directors, officers, employees, agents, and representatives, and their successors and assigns.

B. "Knogo" means Knogo Corporation, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Knogo, their directors, officers, employees, agents, and representatives, and their successors and assigns.

C. "KNA" means Knogo North America, Inc., the successor corporation to Knogo Corporation's business and assets in the United States and Canada to be formed pursuant to the Contribution and Divestiture Agreement between Knogo Corporation and Knogo North America, Inc., its subsidiaries, divisions, and groups and affiliates controlled by Knogo North America, Inc., their directors, officers, employees, agents, and representatives, and their successors and assigns.

D. "Commission" means the Federal Trade Commission.

E. "Acquisition" means the transaction described in the Agreement and Plan of Merger among Sensormatic, Knogo, and KNA, dated August 14, 1994.

F. "Hard goods EAS systems" means electronic article surveillance systems and components designed principally to protect against shoplifting of hard goods merchandise (e.g., books, audio recordings, health and beauty aids, groceries, and home center merchandise), by means of electronic hardware capable of detecting disposable labels attached to such merchandise, whether the systems or components generate, detect, or employ radio frequency, electromagnetic, microwave, acoustic magnetic, or other electronic signals. Such systems and components may include electronic signal transmitters and receivers, signal processing equipment, computer software, label activation equipment, label deactivators, automatic and manual label applicators, and other related devices.

G. "Disposable labels" means labels that can be affixed to or embedded in retail merchandise and used in conjunction with hard goods EAS systems.

H. "Source labelling" means the process by which manufacturers, packagers, or independent wholesalers apply disposable labels to retail merchandise or its packaging.

I. "SuperStrip" means:

1. The material, described in Exhibit A attached hereto and made a part hereof, used or intended for use in disposable labels; and

2. Disposable labels incorporating such material.

J. "SuperStrip Technology" means all existing patents, inventions, trade secrets, know-how, concepts, designs, technical information, processes, and intellectual property relating to the design, manufacture, or use of SuperStrip.

K. "SuperStrip Improvements" means all improvements, modifications, developments, revisions, or enhancements of SuperStrip or SuperStrip Technology, whether or not covered by a patent or otherwise protected against disclosure or unauthorized use by law.

L. "Supply Agreement" means Exhibit B to the Contribution and Divestiture Agreement, attached as Exhibit C to the Agreement and Plan of Merger among Sensormatic, Knogo, and KNA, dated August 14, 1994, that requires Sensormatic to purchase products and materials for hard goods EAS systems from KNA upon the terms and conditions set forth therein.

M. "United States" means the fifty states, the District of Columbia, and Puerto Rico.

II

It is further ordered that:

A. As of the date this order becomes final, respondent shall not hold, possess, receive, or otherwise obtain, or have held, possessed, received, or otherwise obtained, the SuperStrip Technology from Knogo or KNA. Provided, however, that no provision of this Order shall prohibit an acquisition by respondent from Knogo or KNA of: (1) a non-exclusive license of the SuperStrip Technology to practice and use SuperStrip and SuperStrip Technology in the United States and Canada; and (2) ownership of, or other exclusive or non-exclusive legal or equitable rights to practice and use, SuperStrip, SuperStrip Technology, and SuperStrip Improvements outside of the United States and Canada.

B. Respondent shall comply with the terms and conditions of the Supply Agreement.

III

It is further ordered that, for a period of ten (10) years from the date this order

becomes final, respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any legal or equitable rights to practice and use SuperStrip, SuperStrip Technology, or SuperStrip Improvements in the United States and Canada other than: (1) Rights to manufacture in the United States for export only; or (2) a non-exclusive license that is also offered to other manufacturers of hard goods EAS systems or disposable labels in connection with adoption of a retail segment standard;

B. Acquire any stock, share capital, equity or other interest in any person or concern, corporate or non-corporate, engaged at the time of such acquisition in, or within the two (2) years preceding such acquisition engaged in, the research, development, or manufacture of disposable labels designed or used for source labelling; provided, however, that individual employees or directors of respondent and each pension, benefit, or welfare plan or trust controlled by respondent may acquire, for investment purposes only, an interest of not more than one (1) percent of the stock or share capital of such person or concern; or

C. Acquire any patents, intellectual property, or other tangible or intangible assets, other than a non-exclusive license, used in or previously used in (and still suitable for use in) the research, development, or manufacture of disposable labels designed or used for source labelling.

Provided, however, that an acquisition pursuant to Paragraph III.B. or III.C. shall be exempt from the prior approval requirements of this Paragraph III if: (1) The stock, share capital, equity, or assets are acquired from a person or concern that had less than \$2 million in annual sales in the United States of disposable labels in either of the two (2) most recent calendar years preceding such acquisition; (2) the acquisition is of assets relating solely to the manufacture of, improvements of, or accessories to Sensormatic products that are in existence as of the time of the acquisition; (3) the acquisition is of assets from or an interest in a joint venture in which respondent is one participant and in which no other joint venture participant was at the time of the commencement of the venture engaged in the research, development, or manufacture of disposable labels in the United States; (4) the acquisition is of rights or other assets to be used solely in commercial or industrial (i.e., non-retail) applications; or (5) the

acquisition is of rights or other assets (other than United States or Canadian marketing rights to patents, trade secrets and other intellectual property) to be used solely for products sold outside the United States and Canada.

IV

It is further ordered that within sixty (60) days after the date this order becomes final, one year (1) from the date this order becomes final, and annually for the next nine (9) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this order.

V

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

VI

It is further ordered that, for the purpose of determining or securing compliance with this order, subject to any legally recognized privilege and upon written request with reasonable notice, respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five (5) days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent, who may have counsel present regarding such matters.

Exhibit A—SuperStrip Material

SuperStrip I

SuperStrip I is covered by Patent numbers 5,029,291 (docket number 85.151) and 5,304,987 (docket number 85.168) and one invention disclosure (as described in docket number 85.184). These patents and disclosure describe a new type of oxidized magnetic material with an asymmetrical hysteresis curve

and the ability to become magnetically deactivated. SuperStrip I material is produced by a process, as described in Knogo's patent, that involves the cutting of amorphous magnetic material into short, tag-length segments and annealing these segments for several hours in the presence of a magnetic field.

SuperStrip II

SuperStrip II is a modified version of Knogo's standard magnetic tag. Short deactivation segments are electroplated onto the soft part of the magnetic strip in a continuous process instead of being mechanically cut and adhered to the strip. A U.S. patent application (docket number 85.180) filed by Knogo is pending with respect to this process.

SuperStrip III

SuperStrip III, which is the subject of a pending U.S. patent application (docket #85.191) filed by Knogo is a recent development involving the melt-spin casting of a specially formulated amorphous magnetic material in such a way as to produce a unique hysteresis curve in a manner similar to that of SuperStrip I, but without the use of any additional processing steps beyond casting the material.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a proposed Consent Order from Sensormatic Electronics Corporation ("Sensormatic"), which prohibits Sensormatic from acquiring certain patents from Knogo Corporation ("Knogo") for the practice and use of SuperStrip technology ("SuperStrip") in the United States and Canada.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

On August 14, 1994, Sensormatic and Knogo entered into an agreement whereby Sensormatic agreed to acquire through a merger all of Knogo's assets outside of North America, along with patents related to SuperStrip; the agreement also obligated Sensormatic and Knogo North America, Inc. ("Knogo/NA"), a successor corporation to Knogo's business and assets in the United States and Canada, to grant

royalty-free cross-licenses to one another for any improvements to patents or trade secrets related to SuperStrip ("SuperStrip Improvements"). The proposed complaint alleges that the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the market for the research and development of disposable labels developed or used for source labelling and the research and development of processes to manufacture disposable labels in the United States and Canada.

Knogo has been developing SuperStrip for possible use as a disposable source label with electronic article surveillance systems, which are installed in retail stores as theft prevention devices. Disposable source labels would be imbedded in goods or packaging at the manufacturing or distribution level, and they would obviate the need for retailers to install labels themselves. Sensormatic has been developing one of its proprietary technologies for potential use as a source label.

The proposed Consent Order would remedy the alleged violation by prohibiting Sensormatic from acquiring the SuperStrip patents and intellectual property in the United States and Canada. The proposed order allows Sensormatic to acquire a non-exclusive license to use the technology for products manufactured or sold in the United States and Canada, and it allows Sensormatic to acquire exclusive rights to such technology outside the United States and Canada. Finally, the proposed Consent Order would require Sensormatic to comply with the terms and conditions of a supply agreement between Sensormatic and Knogo/NA.

The proposed Order will also prohibit Sensormatic, for a period of ten (10) years, from acquiring, without Federal Trade Commission approval, other legal or equitable rights to use the SuperStrip technology or SuperStrip Improvements, any stock in any concern engaged in the research, development, or manufacture of disposable labels designed or used for source labelling, or any patents or other intellectual property used in the research, development, or manufacture of disposable labels designed or used for source labelling. The prior approval provisions contain several provisos, which exempt certain acquisitions from the prior approval requirements.

Under the provisions of the Consent Order, Sensormatic is also required to provide to the Commission a report of its compliance with the Order within

sixty (60) days after the date this Order becomes final, one (1) year from the date this order becomes final, and annually thereafter for the next nine (9) years. The Consent Order also requires Sensormatic to notify the Commission at least thirty (30) days prior to any change in the structure of Sensormatic resulting in the emergence of a successor.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donal S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part in Sensormatic Electronics Corp., File No. 941-0126

Today the Commission accepts for public comments a consent order that would settle allegations that Sensormatic Electronics Corporation's acquisition of Knogo Corporation's patents related to SuperStrip and the agreement to cross-license improvements to SuperStrip violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. I find reason to believe the transaction violates the law and concur in accepting the consent order for publication. I dissent, however, from the allegations in the complaint defining the relevant market and from paragraph II(B) of the order, which requires that Sensormatic adhere to a private supply contract.

Sensormatic and Knogo produce and sell electronic article surveillance (EAS) systems and components, used by retailers to protect against shoplifting. EAS systems provide a warning when a special label attached to merchandise by the retailer triggers an electronic signal on hardware located at the store's exit unless the label has been neutralized by store employees at the time of sale. Because Sensormatic proposes to acquire only those assets of Knogo located outside North America, the competitive analysis of the transaction does not focus on the production and sale of existing EAS systems and labels to retailers in the United States and Canada.

Sensormatic, Knogo, and other firms, however, are also engaged in research and development to perfect a new "source labelling" system. In such a system, manufacturers would apply the EAS label to the merchandise or its packaging, which would eliminate the need for retailers manually to affix a label to each protected item of merchandise. No source labelling system is currently in use, but Knogo

has developed and patented SuperStrip technology for use in labels, potentially including source labels, and other firms are developing their own source labelling technologies.

I concur that the relevant market involves competition in research and development, but question the market definition in paragraph 11 of the complaint, which is narrowly limited to the research and development of "disposable labels developed or used for source labelling" and processes to make them. In a Section 7 case, the Commission has the burden of proving the relevant product market, and distinguishing research and development of source labelling from other improvements in EAS systems may be difficult or impossible. I would not limit the product market to research and development in source labelling but would define the market as research and development in EAS systems and components, including source labelling.

I also dissent from paragraph 12 of the complaint, which limits the geographic market to the United States and Canada. Successful research and development yields intellectual property that can move freely across international boundaries. A foreign firm can license intellectual property without establishing a manufacturing or sales presence in the United States. Limiting the geographic market to the United States and Canada excludes from the market the potentially important research activity of at least one European firm. Even if domestic firms are familiar with particular technologies and have a sizable base of equipment already installed in retail stores, research and development may yield an improvement significant enough to overcome the advantages of current market leaders. The market should not be so narrowly defined as to presume that only North American firms could effect a significant breakthrough that might alter the current competitive balance.

Applying Section 7 analysis to the products and geographic markets as I would define them, I find reason to believe the transaction would violate the law. The proposed acquisition would significantly increase the concentration in the already highly concentrated world market for EAS system research and development. The proposed transaction, the transfer of patents from Knogo to Sensormatic and the agreement to grant royalty-free cross licenses on any improvements to SuperStrip, likely would diminish competition in research and development of new EAS systems and

components. Accordingly, I concur in paragraph II(A) of the order.

Finally, I dissent from paragraph II(B) of the order, which provides that Sensormatic "shall comply with the terms and conditions" of a supply agreement between Sensormatic and Knogo North America, Inc., the successor corporation to Knogo's North American business. The supply agreement is a long, highly detailed commercial contract that was negotiated as part of the acquisition in question. The complaint contains no allegations establishing a relationship between this contract and the state of competition in any antitrust market. Absent a demonstrable link between the contract and competition, the contract provides no basis for liability and compliance with the contract does not appear necessary to effect relief.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94M-0414]

Pilkington Barnes Hind USA; Premarket Approval of Precision UV™ (Vasurfilcon A) Hydrophilic Contact Lens for Extended Wear

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Pilkington Barnes Hind, USA, Sunnyvale, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Precision UV™ (vasurfilcon A) Hydrophilic Contact Lens for extended wear. The device is to be manufactured under an agreement with Allergan Medical Optics, Irvine, CA, which has authorized Pilkington Barnes Hind, USA to incorporate information contained in its approved premarket approval application (PMA) for the lidofilcon B nonultraviolet absorbing lens material and all related supplements that lead to the approval of the vasurfilcon A material. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 30, 1994, of the approval of the application.

DATES: Petitions for administrative review by February 27, 1995.