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EEOC v. Braun Electric Company

Judge Lawrence J. O'Neil

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EEOC v. Braun Electric Company

Keywords

EEOC, Equal Employment Opportunity Commission, Braun Electric Company, 1:12-CV-01592 LJO JLT, Sex, Female, Hostile Work Environment

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10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF CALIFORNIA**

12 U.S. EQUAL EMPLOYMENT OPPORTUNITY)
13 COMMISSION,)
Plaintiff,)
14)
15 vs.)
16 BRAUN ELECTRIC COMPANY , AND DOES)
17 1-10, INCLUSIVE,)
18 Defendant)

Case No: 1:12-CV-01592 LJO JLT

CONSENT DECREE

19
20 Plaintiff U.S. Equal Employment Opportunity Commission (the “EEOC” or
21 “Commission”) and Defendant Braun Electric Company (“Braun” or “Defendant”) hereby
22 stipulate and agree to entry of this Consent Decree (“Decree”) to resolve the Commission’s
23 complaint against Defendant in U.S. Equal Employment Opportunity Commission v. Braun
24 Electric Company, et al., Case No. 1:12-CV-1592 LJO JLT (the “Action”). On September 30,
25 2012 Plaintiff filed this Action in the United States District Court, Eastern District of California,
26 for violations of the Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et
27 seq. (“Title VII”). The Action alleges Defendant discriminated against women by subjecting
28 these employees to a hostile work environment based on their sex (female).

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I. PURPOSES AND SCOPE OF THE DECREE

A. The parties to the Decree are EEOC and Defendant (collectively, the “Parties”). The Parties agree that this Action should be fully and completely resolved by entry of this Consent Decree. This Decree shall be binding on and enforceable against Defendant and their parents, subsidiaries, officers, directors, agents, successors, and assigns.

B. The Parties have entered into this Decree for the following purposes:

- 1. To provide appropriate monetary and injunctive relief;
- 2. To ensure that Defendant’s employment practices comply with federal law;
- 3. To ensure a work environment free from discrimination, especially as it relates to unlawful harassment;
- 4. To ensure training for Defendant’s managers and employees with respect to the pertinent laws regarding disability discrimination; and
- 5. To provide an appropriate and effective mechanism for handling complaints of disability discrimination in the workplace.

II. RELEASE OF CLAIMS

A. This Decree fully and completely resolves all issues, claims and allegations raised by the EEOC against Defendant in this Action.

B. Nothing in this Decree shall be construed to preclude any party from bringing suit to enforce this Decree in the event that any party hereto fails to perform the promises and representations contained herein.

C. Nothing in this Decree shall be construed to limit or reduce Defendant’s obligation to comply fully with Title VII or any other federal employment statute.

D. This Decree in no way affects the EEOC’s right to bring, process, investigate, or litigate other charges that may be in existence or may later arise against Defendant in accordance with standard EEOC procedures. This Decree shall in no way hinder or affect an individual’s right to file a charge with the EEOC or applicable state agency, participate in a federal or state investigation, or the EEOC’s investigation and determinations into such charges.

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III. JURISDICTION

A. The Court has jurisdiction over the Parties and the subject matter of this Action. The Action asserts claims that, if proven, would authorize the Court to grant the equitable relief set forth in this Decree.

B. The terms and provisions of this Decree are fair, reasonable, and just.

C. This Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights or privileges of any person.

D. The Court shall retain jurisdiction of this action during the duration of the Decree for the purposes of entering any order, judgment, or decree that may be necessary to implement the relief provided herein.

IV. EFFECTIVE DATE AND DURATION OF DECREE

A. The provisions and agreements contained herein are effective immediately upon the date which this Decree is entered by the Court (“the Effective Date”).

B. Except as otherwise provided herein, this Decree shall remain in effect for three (3) years after the Effective Date.

V. MODIFICATION AND SEVERABILITY

A. This Decree constitutes the complete understanding of the Parties with respect to the matters contained herein. No waiver, modification, or amendment of any provision of this Decree will be effective unless made in writing and signed by an authorized representative of each of the Parties.

B. If one or more of the provisions of the Decree are rendered unlawful or unenforceable, the parties shall make good faith efforts to agree upon appropriate amendments to this Decree in order to effectuate the purposes of the Decree. In any event, the remaining provisions will remain in full force and effect unless the purposes of the Decree cannot, despite the Parties’ best efforts, be achieved.

C. By mutual agreement of the Parties, this Decree may be amended or modified in the interests of justice and fairness in order to effectuate the provisions of the Decree.

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VI. COMPLIANCE AND RESOLUTION

A. The Parties agree that if the EEOC has reason to believe that Defendant has failed to comply with any provision of this Decree, the EEOC may bring an action before this Court to enforce the Decree. Prior to initiating such action, the EEOC will notify Defendant and its legal counsel of record, in writing, of the nature of the dispute. This notice shall specify the particular provision(s) that the EEOC believes Defendant has breached. Defendant shall have thirty (30) days to attempt to resolve or cure the breach. However, the parties may agree to extend this period upon mutual consent.

B. After thirty (30) days have passed with no resolution or agreement to extend the time further, the EEOC may petition this Court for resolution of the dispute, seeking all available relief, including an extension of the term of the Decree for such period of time that the Court finds the Decree was not complied with and/or any other relief that the Court may deem appropriate.

VII. MONETARY RELIEF

A. In settlement of this lawsuit, Defendant shall pay a total of \$82,500.00. Allocation of the monetary relief shall be at the sole discretion of the EEOC.

B. On the Effective Date, the EEOC shall inform Defendant the amount of monetary relief allocated by the EEOC. Within seven (7) days after being informed of the allocation, Defendant shall forward to each of the claimants via certified mail, a check for the full amount in the amounts specified by the EEOC.

C. Defendant shall prepare and distribute Form 1099 or equivalent tax reporting forms to claimants identified by the EEOC and shall make the appropriate reports to the Internal Revenue Service and other tax authorities. Within three (3) business days of the issuance of the settlement check, Defendant shall submit a copy of the check and related correspondence to Anna Y. Park, Regional Attorney, U.S. Equal Employment Opportunity Commission, 255 East Temple Street, 4th Floor, Los Angeles, California, 90012.

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1 **VIII. TITLE VII COMPLIANCE**

2 A. Anti Discrimination

3 Defendant, its officers, agents, management, successors, and assigns, shall not : (a)
4 discriminate against persons on the basis of gender in the terms and conditions of employment;
5 (b) engage in or being a party to any action, policy, or practice that is intended or is known to
6 them to have the effect of harassing or intimidating any employee on the basis of gender; and (c)
7 create, facilitate, or permit the existence of a work environment that is hostile to female
8 employees.

9 B. Retaliation

10 Defendant, its officers, agents, management, successors, assigns and all those in active
11 concert or participation with them, or any of them, shall not engage in, implement or permit any
12 action, policy or practice with the purpose of retaliating against any current or former employee
13 or applicant of Defendant or its successors, or either of them, because he or she has in the past, or
14 during the term of this Decree, (a) opposed any practice made unlawful under Title VII; (b) filed
15 a charge of discrimination alleging such practice; (c) testified or participated in any manner in
16 any investigation (including, without limitation, any internal investigation undertaken by
17 Defendant or its successors) or proceeding in connection with this Action or relating to any claim
18 of a Title VII violation; (d) was identified as a possible witness or claimant in this Action; (e)
19 asserted any rights under this Decree; (f) sought and/or received any relief in accordance with
20 this Decree; or are associated with an employee who has engaged in the activities set forth in
21 Section VI(B).

22 **IX. INJUNCTIVE RELIEF**

23 A. Equal Employment Opportunity Monitor

24 Within thirty (30) days after the Effective Date, Defendant shall retain an Equal
25 Employment Opportunity Monitor (“Monitor”) with demonstrated experience in the area of
26 employment discrimination and sexual harassment issues, to implement and monitor Defendant’s
27 compliance with Title VII and the provisions of this Decree. The Monitor shall be subject to the
28 EEOC’s approval, which shall not be unreasonably withheld. If the EEOC does not approve

1 Defendant's proposed Monitor, the EEOC shall provide Defendant with a list of at least three
2 suggested candidates acceptable to the EEOC. If Defendant does not agree to any of the
3 suggested candidates proposed by the EEOC, Defendant shall provide the EEOC with a list of at
4 least three suggested candidates acceptable to Defendant. The parties will work in good faith to
5 make a final selection of a Monitor. Defendant shall bear all costs associated with the selection
6 and retention of the Monitor and the performance of his/her duties.

7 The Monitor's responsibilities shall include assisting Defendant with:

- 8 a. Compliance with the terms of the Decree;
- 9 b. Maintaining policies and procedures that effectively carry out its obligations
10 under Title VII and this Decree;
- 11 c. Engaging the appropriate person to train all employees on their rights and
12 responsibilities under Title VII and this Decree, including but not limited to
13 Defendant's responsibility to provide a workplace free of discrimination and
14 training on Defendant's anti-discrimination and harassment policies;
- 15 d. Conducting a prompt, thorough, and objective investigation into complaints of
16 harassment, including interviewing percipient witnesses where appropriate
17 and monitoring situation after discipline;
- 18 e. Establishing procedures to promptly and effectively handle complaints of
19 discrimination, harassment, and retaliation, including but not limited to:
 - 20 i. Effectively investigating all complaints of sexual
21 harassment/discrimination and retaliation, including holding managers,
22 supervisors and human resources personnel accountable for failing to
23 remedy or report incidents of harassment witnessed by the individual;
 - 24 ii. Properly communicating with complainants regarding the complaint
25 procedure, status of the investigation, results of the investigation, and
26 any remedial action taken; and
 - 27 iii. Adequately monitoring the workplace after complaints of sexual
28 harassment/discrimination.

1 f. Preparing an annual report to the EEOC on Defendant's progress and its
2 compliance under this Decree and ensuring that all reports required by this
3 Decree are accurately compiled and timely submitted.

4 B. Policies and Procedures

5 Defendant shall review, implement, distribute and post its companywide policies and
6 procedures against employment discrimination prohibited by Title VII (the "Policy"). Defendant
7 shall post its companywide policies and procedures on an intranet website and ensure that the
8 policies and procedures are placed in areas (company vehicles or trailers) accessible to
9 employees.

10 1. Within sixty (60) days of the Effective Date, Defendant, with the assistance of its
11 Monitor, shall review and, if necessary, revise its policy on harassment, discrimination, and
12 retaliation. The policy shall include:

- 13 a. A clear explanation of prohibited conduct under the Policy, including an
14 explanation that harassment and discrimination on the basis of race, color,
15 national origin, sex, age, disability, creed/religion, or any other protected class,
16 and retaliation is prohibited with a particular emphasis that the company will not
17 tolerate any incidents of sexual harassment or gender discrimination;
- 18 b. An assurance that employees who make complaints of harassment/discrimination
19 or provide information related to such complaints will be protected against
20 retaliation;
- 21 c. A clearly described complaint process that provides alternative confidential
22 avenues for complaints, including the ability to report to the Equal Employment
23 Opportunity Commission or the applicable state agency (i.e. California
24 Department of Fair Employment and Housing).
- 25 d. Assurances that Defendant will make every effort to maintain the confidentiality
26 of complaints of sexual harassment to the extent possible.
- 27 e. Assurances that the complaint process will include a prompt, thorough, and
28 objective investigation;

- f. That there will be communication with the complainant regarding the results of the investigation and whether any remedial action was taken.
- g. An instruction that supervisors and managers shall report to human resource personnel incidents of harassment or discrimination that they witness or are aware of; and
- h. Assurances that Defendant will take immediate and appropriate corrective action if it determines that harassment/discrimination and/or retaliation has occurred.

2. Distribution of Policy

- a. Within ten (10) days of the Effective Date of this Decree, Defendant shall provide to the EEOC a copy of its Policy. Within thirty (30) days of the Effective Date and annually thereafter, Defendant shall ensure that it has made the Policy available, as described in the Section IX.B.
- b. Within thirty (30) days of the hire date of any person hired after the initial distribution but within the term of the Decree, Defendant shall ensure that it has distributed the Policy to that person. Within ten (10) days of the Effective Date, Defendant shall ensure that it has made the Policy available to all employees electronically. Any employees who do not have electronic access to the Policy on a regular basis will be provided a paper copy of the policy within the 10 day period. Within thirty (30) days of the Effective Date, Defendant shall submit to the EEOC a statement confirming the posting of the Policy.

C. Posting of Notice of Consent Decree and Settlement

Within thirty (30) days of the Effective Date and for the duration of the Decree, Defendant shall ensure that it has posted the Notice of Consent Decree and Settlement (attached to this Decree as Attachment A) in a conspicuous place accessible at all of Defendant's facilities. Within thirty (30) days of the Effective Date and annually thereafter, Defendant shall submit to the EEOC a statement confirming the posting of the Notice of Consent Decree and Settlement.

D. Training

- 1. Non Managerial Training

1 Within sixty (60) days of the Effective Date and annually thereafter, Defendant shall
2 provide training, lasting at least one hour in duration to all of Defendant's non-supervisory
3 employees, covering the Policy, Defendant's complaint process, and federal laws regarding
4 employment discrimination with a particular emphasis on gender discrimination, sexual
5 harassment, and retaliation. The training shall be in person and have interactive components.
6 Where an employee is unable to attend the scheduled training, Defendant shall provide the live
7 training at an alternative session within sixty (60) days of the training. Supervisors will be made
8 aware of the non-supervisory training and may, but are not required, to attend. All persons
9 required to attend such training shall verify their attendance in writing.

10 At the time of hire of any non managerial employee hired after the annual training but
11 within the term of the Decree, Defendant shall provide a videotape training regarding
12 employment discrimination with a particular emphasis on gender discrimination, sexual
13 harassment, and retaliation. All persons required to attend such training shall verify their
14 attendance in writing.

15 2. Managerial Training

16 Within ninety (90) days of the Effective Date, Defendant shall provide two-hours of
17 training to managers, supervisors, hiring officials, and human resources/compliance staff
18 members regarding unlawful harassment. The live and interactive training shall cover: the
19 Policy, Defendant's complaint process and procedures, procedures and steps supervisors and
20 managers shall take in responding to incidents of discrimination or harassment they become
21 aware of, and federal laws regarding employment discrimination. Where an employee is unable
22 to attend the scheduled training, Defendant shall provide the live training at an alternative
23 session within sixty (60) days of the training. All persons required to attend such training shall
24 verify their attendance in writing. An additional two (2) hour training shall be provided to
25 managers, supervisors, hiring officials, and human resources/compliance staff members again
26 approximately twenty-four (24) months following the training that will occur in the 90 days
27 following the Effective Date.

28

1 At the time of hire of any managerial employee hired after the bi-annual training but
2 within the terms of the Decree, Defendant shall provide a videotape training regarding the
3 Policy, Defendant's complaint process and procedures, procedures and steps supervisors and
4 managers shall take in responding to incidents of discrimination or harassment they become
5 aware of, and federal laws regarding employment discrimination. All persons required to attend
6 such training shall verify their attendance in writing.

7 3. Human Resource Training

8 Within ninety (90) days of the Effective Date and annually thereafter, training shall be
9 provided to employees who handle claims of harassment or discrimination. The live and
10 interactive one hour training shall cover: Defendant's Policy, working with the Monitor to fulfill
11 obligations under Section IX.A of the Decree, Defendant's complaint process and procedures,
12 suggested tools and methods for investigating incidents of discrimination or harassment,
13 effective remedial measures in response to incident of harassment (i.e. discipline, monitoring,
14 training), and federal laws regarding employment discrimination.

15 Within ninety (90) days of the Effective Date and annually thereafter, Defendant shall
16 produce to the EEOC documents verifying the occurrence of all training sessions conducted as
17 required under this Decree, including the written training materials used, a description of the
18 training provided, a list of the individuals who conducted the training, and a list of the names and
19 job titles of attendees at each training session.

20 The EEOC shall have the right to attend the trainings described in the Decree. Thirty
21 (30) days prior to any training, Defendants shall provide written notice to EEOC including the
22 time, location, name and contact information of the trainer. The written notice shall be sent via
23 U.S. Mail to the attention of Anna Y. Park, Regional Attorney, U.S. Equal Employment
24 Opportunity Commission, 255 East Temple Street, 4th Floor, Los Angeles, California, 90012.

25 E. Reporting

26 Defendant through the Monitor shall prepare an annual report on Defendant's progress
27 and its compliance under this Decree. During the duration of the Decree, Defendant shall
28 maintain all records and data relating to Defendant's compliance with the terms of the Decree,

1 including but not limited to complaints of discrimination, investigations conducted into the
2 complaints, resolution of the complaints. Defendant shall make the records available to the
3 EEOC within thirty (30) days of the EEOC's request.

4 Defendant through the Monitor shall provide the following annual reports to the EEOC:

5 1. The attendance lists for all training sessions required under this Decree
6 that occurred during the previous twelve months;

7 2. Acknowledgments of receipt of the Policy for all employees hired during
8 the previous twelve months;

9 3. A general description of all gender discrimination, harassment, and/or
10 retaliation complaints made since the submission of the immediately preceding report hereunder.
11 This description shall include the names of the individuals alleging discrimination or retaliation;
12 the general nature of the complaint; the first names of the alleged perpetrators of discrimination
13 or retaliation, including whether the alleged perpetrator has been the subject of any previous
14 complaints of harassment or discrimination; the dates of the alleged discrimination or retaliation;
15 a statement as to whether each complaint was resolved; and the identity of the person(s) who
16 investigated and/or resolved each complaint. If no results have been reached as of the time of the
17 report, the result shall be included in the next report;

18 4. Verification that the Notice of Consent Decree and Settlement and Policy
19 has continued to be posted in a conspicuous place accessible to all employees;

20 5. Verification that Defendant has a centralized system/method of tracking
21 complaints; and

22 6. Whether any revisions of Defendant's policies and procedures regarding
23 discrimination and harassment have been revised, including a copy of the revised policies or
24 procedures.

25 **VIII. MISCELLANEOUS PROVISIONS**

26 A. During the term of this Decree, Defendant shall provide any potential successor-
27 in-interest with a copy of this Decree within a reasonable time of not less than thirty (30) days
28 prior to the execution of any agreement for acquisition or assumption of control of any of all of

1 Defendant's facilities, or any other material change in corporate structure. Defendant shall
2 simultaneously inform the EEOC of any such agreement for acquisition, assumption of control,
3 or other material change in corporate structure.

4 B. During the term of this Decree, Defendant shall assure that each of its owners and
5 Human Resources Manager are aware of any term(s) of this Decree which may be related to his
6 or her job duties.

7 C. Unless otherwise stated, all notices, reports and correspondence required under
8 this Decree shall be delivered to the attention of Anna Y. Park, Regional Attorney, U.S. Equal
9 Employment Opportunity Commission, 255 East Temple Street, 4th Floor, Los Angeles,
10 California, 90012; facsimile number (213) 894-1301.

11 D. This Decree may be signed in counterparts. A facsimile signature shall have the
12 same force and effect of an original signature or copy thereof.

13 **IX. COSTS AND ATTORNEYS' FEES**

14 Defendant shall bear all costs associated with its administration and implementation of its
15 obligations under this Decree, including but not limited to the distribution of the settlement
16 money. Each party shall bear its own costs of suit and attorneys' fees.

17 All parties, through the undersigned, respectfully apply for and consent to the entry of
18 this Consent Decree Order.

19 Respectfully Submitted,

20 U.S. EQUAL EMPLOYMENT
21 OPPORTUNITY COMMISSION
22 Anna Y. Park

23 Date: _____

23 By: _____

24 Anna Y. Park
24 Attorneys for Plaintiff EEOC

25 DOWLING AARON INCORPORATED
26 Daniel Klingenberger

27 Date: _____

27 By: _____

28 Daniel Klingenberger
28 Attorneys for Defendant Braun Electric

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ORDER

GOOD CAUSE APPEARING:

The Court hereby finds that compliance with all provisions of the foregoing Decree is fair and adequate. The Court hereby retains jurisdiction for the term of the foregoing Consent Decree, and the provisions thereof are hereby approved.

IT IS SO ORDERED.

Dated: October 15, 2014

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE