

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil Action No. 4-69
) Civ. 243
)
 TORO MANUFACTURING CORPORATION,) Entered: November 12, 1971
)
 Defendant.)

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on July 11, 1969; defendant Toro Manufacturing Corporation, having appeared and filed its answer denying the substantive allegations thereof; and the plaintiff and the defendant, by their attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without admission by either party with respect to any such issue;

NOW, THEREFORE, without trial or adjudication of any issue of fact or law, and upon the consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states claims upon which relief may be granted against the defendant under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended (15 U.S.C. Section 4), commonly

known as the Sherman Act, in order to prevent and restrain continuing violations by the defendant, as therein alleged, of Sections 1 and 3 of the Sherman Act (15 U.S.C. Sections 1 and 3).

II

As used in this Final Judgment:

(A) "Person" shall mean any individual, partnership, firm, association, corporation or other business or legal entity;

(B) "Toro" shall mean the defendant, Toro Manufacturing Corporation and any other person owned or controlled by Toro;

(C) "Lawn care products" shall mean any mechanical product for lawn care or snow removal purposes, and parts thereof, manufactured, assembled, distributed or sold by defendant Toro under any of its brands, names or trademarks; including, but not limited to mowers, tractors, riders, snow throwers and blowers, and institutional equipment.

III

The provisions of this Final Judgment applicable to Toro shall also apply to each of its officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all persons in active concert or participation with the defendant who receive actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment, the defendant and its officers, directors, employees and subsidiaries, when acting in such capacity, shall be deemed to

be one person. The provisions of this Final Judgment shall not apply to acts or transactions of defendant Toro outside the United States which do not affect the interstate or foreign commerce of the United States.

IV

Toro is enjoined and restrained from entering into, adhering to, maintaining, enforcing, or claiming any rights under any contract, combination, agreement, understanding, plan or program with any distributor, dealer, or any other person:

(A) To limit or restrict, by allocation or otherwise, territories or markets in which, or the persons or classes of persons to whom, any distributor, dealer or other person sells or may sell lawn care products;

(B) To fix, establish, maintain or adhere to prices, discounts, allowances or other terms or conditions for the sale of lawn care products to any third person.

V

For a period of five years following the date of entry of this Final Judgment, defendant Toro is enjoined and restrained from suggesting or recommending to any distributor, dealer or other person, and is enjoined and restrained from advertising, any prices, discounts, allowances or other terms or conditions for the retail sale of lawn care products (except parts other than parts for institutional equipment) in Alabama, Alaska, District of Columbia, Hawaii, Kansas,

Mississippi, Missouri, Montana, Nebraska, Nevada,
Rhode Island, Texas, Utah, Vermont and Wyoming.

VI

Nothing contained in this Final Judgment shall be deemed to prohibit defendant Toro from lawfully exercising such legal rights, if any, as it may have under (a) the Miller-Tydings Act (15 U.S.C. §1) and (b) the McGuire Act (15 U.S.C. §45(a)(2)); provided, however, that before the defendant may fair trade lawn care products in any state or territory it shall first identify each such state or territory in writing to each of its dealers and distributors. In the event that the defendant's right to fair trade lawn care products in any state or territory should be abrogated or impaired, defendant is ordered and directed to notify forthwith each of its dealers and distributors of that fact, together with all information pertinent hereto as will adequately advise each dealer and distributor of the extent of such abrogation or impairment.

VII

Toro is ordered and directed:

(A) Within ninety (90) days after the date of entry of this Final Judgment to revise its contracts and agreements with its distributors and dealers which are inconsistent with any provision of this Final Judgment;

(B) Subject to the provisions of Section VI of this Final Judgment, to advise each of its distributors and dealers,

within ninety (90) days after the date of entry of this Final Judgment that such distributors and dealers may sell lawn care products at such prices as, and to whomever and wherever, they please;

(C) Within ninety (90) days after the date of entry of this Final Judgment to mail a copy of said Judgment to each of its distributors and dealers;

(D) To file with this Court, and serve upon the plaintiff, within one hundred and eighty (180) days after the date of the entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subsections (A), (B) and (C) of this Section VII.

VIII

For the purpose of securing or determining compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Toro made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during office hours of Toro, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody, or under the control of Toro relating to any matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of Toro, and without restraint or interference from it, to interview officers, directors, agents or employees of Toro, who may have counsel present, regarding any such matters.

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, made to such principal office, Toro shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means permitted in this Section VIII 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 plaintiff, except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX

Jurisdiction is retained 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 or carrying out of this Final Judgment, for the modification or vacation thereof, for the enforcement of compliance therewith, and for the punishment of any violation thereof.

/s/ MILES W. LORD
Miles W. Lord
United States District Judge

Dated: November 12, 1971