

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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)	
UNITED STATES OF AMERICA,)	Civil Action No. 96-08426
)	Filed: June 20, 1996
Plaintiff,)	
)	15 U.S.C. § 1
v.)	15 U.S.C. § 4
)	
ANCHORSHADE, INC.,)	
)	
Defendant.)	
)	
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COMPETITIVE IMPACT STATEMENT

The United States of America, pursuant to Section 2 of the Antitrust Procedures and Penalties Act (APPA), 15 U.S.C. § 16(b), submits this Competitive Impact Statement in connection with the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE OF THE PROCEEDING

On June 20, 1996, the United States filed a civil antitrust complaint under Section 4 of the Sherman Act, as amended, 15 U.S.C. § 4, alleging that the defendant AnchorShade, Inc. engaged in a combination and conspiracy, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, to fix the price of outdoor umbrellas sold by AnchorShade, Inc. to dealers throughout the United States. The complaint alleges that, in furtherance of this conspiracy, AnchorShade, Inc.:

(a) obtained agreements from dealers to maintain the minimum resale price as a condition of receiving outdoor umbrellas from AnchorShade, Inc.;

(b) permitted dealers to discount in order to meet competition, but only if they obtained written approval in advance from AnchorShade, Inc.

The complaint also alleges that the combination and conspiracy is illegal, and seeks to enjoin AnchorShade, Inc. from continuing or renewing the alleged combination or conspiracy and from engaging in any combination or conspiracy or adopting any practice or plan having a similar purpose or effect.

The United States and AnchorShade, Inc. have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent.

The Court's entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify or enforce the Final Judgment, or to punish violations of any of its provisions.

II

DESCRIPTION OF PRACTICES GIVING RISE TO THE ALLEGED VIOLATION OF THE ANTITRUST LAWS

AnchorShade, Inc., a Florida corporation, is a seller in the United States of outdoor umbrellas that are used on boats to provide shade for protection against sun or weather.

AnchorShade, Inc. sells outdoor umbrellas to dealers, who sell them to consumers.

AnchorShade, Inc. further stipulated that AnchorShade, Inc. would terminate its relationship with any dealer who sold its outdoor umbrellas below the stated resale price.

In December 1992, AnchorShade, Inc. entered into outright, written agreements with certain dealers which required them to sell its outdoor umbrellas to consumers at a resale price not lower than \$169. The agreements further required a dealer that wanted to discount, in order to meet competition, to obtain advance written permission from AnchorShade, Inc. These agreements went well over the line established in the case law (see, Business Electronics Corp. v. Sharp Electronics Corp., 485 U.S. 717 (1988), Monsanto Co. v. Spray-Rite Service Corp., 465 U.S. 752 (1984), United States v. Colgate & Co., 250 U.S. 300 (1919)), and served to keep prices artificially high.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The parties have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment states that it shall not constitute an admission by either party with respect to any issue of fact or law.

The proposed Final Judgment enjoins any direct or indirect continuation or renewal of the type of conspiracy alleged in the complaint. Specifically, Section IV enjoins and restrains the defendant from entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any dealer to fix, stabilize, or maintain the resale prices at which outdoor umbrellas sold or distributed by the defendant may be sold or offered for sale in the United States by any dealer.

The proposed Final Judgment not only bars AnchorShade, Inc.'s unlawful practice, but also contains additional provisions that are remedial in nature. Section IV provides that the

defendant is prohibited for five years from announcing to the public or to any present or potential dealer of its outdoor umbrellas that defendant has or is adopting, promulgating, suggesting, announcing or establishing any resale pricing policy for outdoor umbrellas that provides that: (1) defendant will sell only to a dealer that prices its outdoor umbrellas at or above defendant's suggested resale price, and/or (2) defendant will terminate any dealer for pricing below defendant's suggested resale price.

Additionally, the defendant is prohibited for a period of five years from the date of entry of the Final Judgment from (1) threatening any dealer with termination or terminating any dealer for pricing below the defendant's suggested resale price, and (2) discussing with any present or potential dealer any decision regarding termination of any other dealer for any reason directly or indirectly related to the latter dealer's pricing below defendant's suggested resale price.

Section V of the proposed Final Judgment is designed to ensure that AnchorShade, Inc.'s dealers are aware of the limitations imposed on it by the Final Judgment. Section V requires the defendant to send notice and copies of the Final Judgment to each dealer who purchased outdoor umbrellas from the defendant from January 1, 1992 to the date of entry of the Final Judgment. In addition, the defendant is required to send notices and copies of the Final Judgment to every other dealer who purchases outdoor umbrellas from AnchorShade, Inc. within ten years of the date of entry of the proposed Final Judgment.

Section VI requires the defendant to set up an antitrust compliance program. The defendant is also required to furnish a copy of the Final Judgment to each of its officers and directors and each of its nonclerical employees, representatives or agents with supervisory or direct responsibility for the sale or advertising of outdoor umbrellas in the United States.

In addition, the proposed Final Judgment provides a method for determining and securing the defendant's compliance with its terms. Section VIII provides that, upon request of the Department of Justice, the defendant shall submit written reports, under oath, with respect to any of the matters contained in the Final Judgment. Additionally, the Department of Justice is permitted to inspect and copy all books and records, and to interview officers, directors, employees and agents of the defendant.

Section IX makes the Final Judgment effective for ten years from the date of its entry.

Section XI of the proposed Final Judgment states that entry of the Final Judgment is in the public interest. Under the provisions of the APPA, entry of the proposed Final Judgment is conditional upon a determination by the Court that the proposed Final Judgment is in the public interest.

The United States believes that the proposed Final Judgment is fully adequate to prevent the continuation or recurrence of the violation of Section 1 of the Sherman Act alleged in the Complaint, and that the disposition of this proceeding without further litigation is appropriate and in the public interest.

IV

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any

private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the defendant.

V

PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED FINAL JUDGMENT

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the responses of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

Ralph T. Giordano
Chief, New York Office
Antitrust Division
United States Department of Justice
26 Federal Plaza, Room 3630
New York, New York 10278

Under Section X of the proposed Final Judgment, the Court will retain jurisdiction over this matter for the purpose of enabling any of the parties to apply to the Court for such further

orders or directions as may be necessary or appropriate for the construction, implementation, modification or enforcement of the Final Judgment, or for the punishment of any violations of the Final Judgment.

VI

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The only alternative to the proposed Final Judgment considered by the United States was a full trial on the merits and on relief. Such litigation would involve substantial cost to the United States and is not warranted because the proposed Final Judgment provides appropriate relief against the violations alleged in the Complaint.

VII

DETERMINATIVE MATERIALS AND DOCUMENTS

No materials or documents were determinative in formulating the proposed Final Judgment. Consequently, the United States has not attached any such materials or documents to the proposed Final Judgment.

Dated:

Respectfully submitted,

PATRICIA L. JANNACO

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