

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
-v-)
)
UNIROYAL, INC.,)
)
Defendant.)

Civil Action No. 72-Civ-2793
Filed: June 29, 1972
Entered: August 15, 1972

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on June 29, 1972, and plaintiff and defendant, by their attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or admission by any party with respect to any such issue:

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby
ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto. The complaint states claims upon which relief may be granted against the defendant under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

For purposes of this Final Judgment:

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

(B) "Decision to purchase" shall include any decision, and any stage in the process of decision, as to the selection of suppliers, the allocation of purchases among suppliers, the purchase of any goods or services, the placing of any firm on a bidders' list, the designation of any firm as a qualified bidder, the selection of a winning bidder or the continuance or discontinuation of purchases from any supplier.

(C) "Supplier" includes but is not limited to both actual and potential suppliers of any goods, commodities or services; lessors as well as sellers; contractors; in-plant cafeteria and vending operators; banks; insurance companies; and transportation companies. The term also includes suppliers of suppliers;

(D) "Customer" includes but is not limited to both actual and potential customers for any goods, commodities or services; lessees as well as purchasers; contractors; in-plant cafeteria and vending operators; banks; insurance companies; and transportation companies. The term also includes customers of customers;

(E) The terms "purchase" and "sale" include but are not limited to both actual and potential purchases or sales, increases in purchases or sales and potential increases in purchases or sales. The terms "purchase" and "sale" shall include the purchase or sale of transportation service or any arrangement covering the use of any transportation company's services. The terms "purchase" and "sales" cover both products and services and any combination thereof, including construction and engineering service, and any transfer of any property interest including but not limited to leaseholds, bank deposits, and arrangements for in-plant feeding or vending service;

(F) "Trade relations" shall mean and include any policy, program or activity which involves the use of purchases to influence or assist sales to suppliers or the consideration of sales to particular suppliers as a factor in any decision to purchase from such suppliers.

III

The provisions of this Final Judgment shall apply to defendant and its officers, directors, agents, employees, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall also apply to all subsidiaries of defendant in which defendant has a majority stock ownership and to all subsidiaries of the defendant which it controls or can control. However, this Final Judgment shall not apply to any transaction which occurs outside the United States and its territories and possessions and which does not affect the interstate or foreign commerce of the United States.

IV

Defendant is hereby enjoined and restrained from:

- (A) Practicing trade relations;
- (B) Using its purchases to promote or maintain its sales to its suppliers;
- (C) Purchasing products, goods or services from, or entering into or adhering to any contract, agreement or understanding with any supplier on the condition or understanding that purchases by the defendant from such supplier will be based or conditioned upon defendant's sales to such supplier;
- (D) Selling products, goods or services to, or entering into or adhering to any contract, agreement or understanding with any customer on the condition or understanding that defendant's purchases of products, goods or services from such customer will be based or conditioned upon defendant's sales to such customer;
- (E) Communicating:
 - (1) to any person that defendant will consider its sales to any customer or supplier as a factor in any decision to purchase from said customer or supplier;

(2) to any supplier or customer that it should consider defendant's purchases from it as a factor in any decision to purchase.

(F) Communicating to any prime contractor or subcontractor that in awarding subcontracts or purchasing material from material suppliers preference is to be given to any such subcontractor or material supplier based or conditioned upon defendant's sales to such subcontractor or material supplier;

(G) Comparing or exchanging statistical data with any supplier or contractor to ascertain, facilitate or further any relationship between purchases by defendant from such supplier or contractor and sales by defendant to such supplier or contractor;

(H) Discussing with any supplier or customer any relationship between purchases by defendant from such supplier or customer and sales by defendant to such supplier or customer;

(I) Communicating in its dealings with any of its customers or suppliers, the fact of purchases by defendant or any business entity in which defendant has an ownership interest, to promote sales to any such customer or supplier;

(J) Directing, recommending or suggesting that any business entity, in which defendant has any ownership interest, purchase from any of the defendant's customers in order to reciprocate for purchases made by, or promote sales by defendant to such customers;

(K) Communicating to particular suppliers the fact of purchases from such suppliers by one of defendant's subsidiaries or divisions to promote sales to such suppliers by any other subsidiary or division of the defendant;

(L) Agreeing with any supplier that such supplier will purchase from defendant's customers in order to reciprocate for purchases made by the defendant from such supplier;

(M) Agreeing with any supplier that such supplier shall attempt to persuade other companies to buy from the

defendant in order to reciprocate for purchases made by the defendant from such supplier;

(N) Holding any meeting for the purpose of promoting sales at which both purchasing and sales personnel of the defendant and any representative of a customer or supplier are present, or using sales personnel to introduce customers to purchasing personnel or using purchasing personnel to introduce sales personnel to a supplier;

(O) Using the purchases of a foreign subsidiary to promote the defendant's domestic sales or using the defendant's domestic purchases to promote the sales of a foreign subsidiary.

V

Defendant is enjoined and restrained from:

(A) Preparing or maintaining statistical compilations for any supplier or any class or grouping of suppliers which compare purchases from such suppliers with sales by defendant to any such supplier or suppliers;

(B) Giving or showing any vendor report, commodity purchase report or supplier list to any sales personnel, or providing sales personnel with the dollar amount of purchases from any supplier, or otherwise providing sales personnel with an identification of any person as a supplier of defendant where such sales personnel have sales responsibilities with respect to such person;

(C) Giving or showing to any purchasing agent any customer list or sales report which identifies customers, or providing purchasing personnel with the dollar amount of defendant's sales to any customer or otherwise providing purchasing personnel with an identification of defendant's customers by any means other than by a document generally circulated to all employees of the defendant for the purpose of disseminating news of a public nature;

(D) Referring any list of bids to personnel with sales responsibilities for recommendation as to purchases;

(E) Considering the sales of a foreign subsidiary to any customer or supplier as a factor in any decision to purchase from such customer or supplier where the purchases are made in the commerce of the United States.

VI

Defendant is hereby ordered and directed to:

(A) Refrain from assigning any trade relations duty or function to any employee;

(B) Withdraw from all personnel with sales responsibilities any lists or compilations respecting defendant's purchases and withdraw from all personnel with purchasing responsibilities any lists or compilations respecting defendant's sales;

(C) Refrain from belonging to and prohibit its officers and employees from belonging to or participating in the activities of, or contributing anything of value to the Trade Relations Association, Inc. or to any association or group whose activity, program or objectives are to promote trade relations;

(D) Defendant by its president shall issue, in a form satisfactory to plaintiff, within sixty (60) days after the entry hereof, to each of its officers and employees having sales or purchasing responsibilities, and shall adopt, maintain and enforce as its own corporate policy a memorandum instructing officers and employees that:

1. all officers and employees with purchasing responsibilities are required to adhere to the policy that, consistent with the over-all objective of maintaining adequate and reliable

sources of supply, all purchasing decisions must be based upon considerations of price, quality, service and financial responsibility, unless the contrary is required, requested or permitted by any state or federal official acting in the course of his official duties; and no purchasing decision inconsistent with such policy will be excused because consideration or recognition was given to the fact that a particular supplier buys or uses, or does not buy or use, to any degree the products or services made or sold by the defendant, or by any customer or potential customer of the defendant and a decision to place any firm on any bidding list or to designate any firm as a qualified bidder shall be considered a purchasing decision.

2. all officers and employees are prohibited from influencing, requesting or suggesting to any officer or employee with purchasing responsibilities to make any exception to the foregoing policy on the basis of any firm's purchase or use, or failure to purchase or use, products or services made or sold by the defendant, or by any customer or potential customer of the defendant.
3. all directors, officers, and employees are prohibited from communicating to any supplier that the defendant unilaterally made a decision to purchase from such supplier even though the offer of a competing supplier was of equal or greater value with respect to price, quality, and service.

(E) Take all necessary and appropriate actions to inform its present and future personnel of the provisions of this Final Judgment, and to enforce compliance therewith throughout the term of this Final Judgment, and shall furnish a copy of this Final Judgment to each present and future officer, and to each present and future employee having managerial, purchasing or sales responsibilities, together with a written notice signed by its chief executive officer, in a form satisfactory to plaintiff.

VII

Defendant is ordered and directed:

(A) To prohibit all its employees with purchasing responsibility from seeking information as to whether a supplier is a customer and from discussing with any supplier the defendant's sales to such supplier;

(B) To prohibit all its officers and employees from influencing, requesting or suggesting to any officer or employee with purchasing responsibilities to consider sales to any other person as a factor in any decision to purchase from such person;

(C) To prohibit all its officers and employees having sales responsibilities from seeking information as to whether any customer is a supplier;

(D) To prohibit all its employees with responsibility for data processing, data collecting, or analysis of purchase or sales information from communicating sales information to purchasing personnel or purchase information to sales personnel;

(E) To furnish, within sixty (60) days after the entry hereof, a copy of this Final Judgment to each customer to whom it has sold more than \$50,000 of products, goods or services during any of its fiscal years 1969 through 1971.

Also to furnish a copy of this Final Judgment to each supplier from whom it has purchased more than \$50,000 products, goods or services during any such year. The copy of this Final Judgment shall be accompanied with a written notice satisfactory to the plaintiff;

(F) To file with the plaintiff, on each anniversary date of this Final Judgment, a report setting forth the steps which it has taken during the prior year to advise its officers, directors and appropriate employees of its and their obligations under this Final Judgment.

VIII

Nothing contained in this Final Judgment shall:

(A) Prohibit defendant from entering into arrangements (whether tolling, purchase and sale or otherwise) for the use of its products or goods in their conversion or fabrication into other forms thereof for its own use or for resale or from converting products or goods for others; provided, however, that defendant shall not specify the use of any of its own goods or products as a component of any item which it may purchase for resale when the identity of defendant as the manufacturer of such component is not readily identifiable in the item purchased;

(B) Prohibit defendant from contracting for construction or maintenance work or for the manufacture, installation or supplying of equipment or facilities for its own use on the condition that defendant's products or goods are to be used in the performance of such contracts;

(C) Prohibit defendant from offering, in connection with the sale of its products or goods, to purchase back unsold merchandise or to purchase from or convert for purchasers of its products or goods, by-products thereof, such as scrap, generated by them in their operations in an amount and of a kind which does not exceed the amount and kind of by-products,

such as scrap, normally generated by them in the use of defendant's products or goods. Such purchasers shall not be obligated to sell such by-products to defendant or to have them converted by defendant as a condition of defendant's sale to such purchasers;

(D) Prohibit defendant from exchanging (by purchase and sale or otherwise) materials or products of like or substantially like kinds or prohibit defendant from making exchanges of any products in instances where defendant is prevented from making sales for cash by the requirements of any domestic or foreign governmental agency.

IX

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose:

(A) Any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant, made to its principal office, be permitted subject to any legally recognized privilege:

- (1) access during the office hours of defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody or under the control of defendant relating to any matters contained in this Final Judgment; and
- (2) subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers or employees of defendant, who may have counsel present, regarding any such matters;

(B) Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such reports in writing with

respect to the matters contained in this Final Judgment as from time to time may be requested.

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

X

Jurisdiction is retained for the purpose of enabling either 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 of any of the provisions contained herein, for the enforcement of compliance therewith, and the punishment of the violation of any of the provisions contained herein.

XI

This Final Judgment shall terminate and cease to be effective ten (10) years from the date of entry of this Final Judgment.

Dated: Aug. 15 , 1972

/s/ HAROLD R. TYLER, JR.
UNITED STATES DISTRICT JUDGE