

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

LYMAN GUN SIGHT CORPORATION;
W. R. WEAVER; M. JACKSON STITH;
JOHN UNERTL; NATIONAL RIFLE
ASSOCIATION OF AMERICA; POPULAR
SCIENCE PUBLISHING COMPANY, INC.;
and HENRY HOLT AND COMPANY, INC.,

Defendants.

Civil Action

No. 890-56

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on February 29, 1956; the defendants having appeared and filed their answers to the complaint denying the material allegations thereof; and the plaintiff and the defendants, by their attorneys, having severally 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 an admission by any party hereto in respect of 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 the 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 all the parties hereto. The complaint states a claim upon which relief against the defendants may be granted under Section 1 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

As used in this Final Judgment:

(A) "Manufacturing defendants" means defendants Lyman Gun Sight Corporation, W. R. Weaver and John Unertl;

(B) "Publishing defendants" means defendants National Rifle Association of America, Popular Science Publishing Company, Inc., and Henry Holt and Company, Inc.;

(C) "Scopes" means all telescopic sights, utilizing optical glasses, to be secured or mounted on rifles for the purpose of aiming more accurately than would be possible with metallic sights. Scopes usually contain a reticule in the form of cross hairs, a dot or a post;

(D) "Manufacturer's suggested prices" means any prices determined by a manufacturing defendant and suggested to any jobber or dealer as prices to be charged by a person or persons other than such defendant on sales of scopes manufactured by such defendant;

(E) "Consumer advertisements" means any advertisements by a manufacturing defendant in any outdoors magazine or in any sales literature sent directly to consumers which suggest prices to be charged by a person or persons other than defendant on sales of scopes manufactured by such defendant;

(F) "Person" means an individual, partnership, firm, corporation, or any other legal entity [for the purpose of this definition a manufacturing defendant, its subsidiaries, officers, directors, agents and employees shall be deemed to be one person];

(G) "Fair trade agreement" means any resale price maintenance contract, or supplement thereto, pursuant to which the resale price of scopes is fixed, established or maintained under state fair trade laws in accordance with either Section 1 of the Sherman Act or Section 5(a) of the Federal Trade Commission Act, as amended;

(H) "Jobber" means any person who purchases scopes from manufacturers thereof and resells them to other distributors or retailers;

(I) "Dealer" means any person who buys scopes from manufacturers or jobbers and retails them to the ultimate consumer;

(J) "Off-list dealer" means any person who, in making sales to ultimate consumers, fails to adhere to manufacturer's suggested prices or prices in manufacturer's consumer advertisements;

(K) "Outdoors magazine" means any periodical having interstate circulation and devoted, principally, to outdoors activities such as marksmanship, hunting and fishing.

III

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its subsidiaries, successors and assigns and to each of its or their officers, directors, agents and employees, and to all persons in active concert or participation with any defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

The manufacturing defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or furthering any contract, agreement, understanding or concerted plan of action with or among themselves, with any publisher of any outdoors magazine, with any jobber or dealer in scopes or with any other person:

(A) to maintain or stabilize resale prices on scopes;

(B) to coerce or compel dealers to observe, or adhere to manufacturer's suggested prices or prices in consumer advertisements;

(C) to coerce or compel jobbers to observe, or adhere to manufacturer's suggested prices or prices in consumer advertisements;

(D) to refuse to sell scopes to off-list dealers;

- (E) to coerce or induce jobbers to refuse to sell scopes to off-list dealers;
- (F) to coerce or induce publishers of outdoors magazines to reject advertisements offering scopes for sale by off-list dealers or by any other person;
- (G) to establish cooperative means and methods to accomplish the exclusion from outdoors magazines of advertisements offering scopes for sale by off-list dealers or by any other person;
- (H) to cause, initiate or enforce boycotts against advertisements for the sale of scopes by off-list dealers or by any other person.

V

The manufacturing defendants are jointly and severally enjoined and restrained from:

- (A) coercing or compelling dealers to observe, or adhere to, manufacturer's suggested prices or prices in consumer advertisements;
- (B) coercing or compelling jobbers to observe, or adhere to, manufacturer's suggested prices or prices in consumer advertisements for scopes;
- (C) coercing or compelling jobbers to refuse to sell scopes to off-list dealers;
- (D) coercing or compelling publishers of outdoors magazines to reject advertisements offering scopes for sale by off-list dealers;
- (E) establishing cooperative means and methods to accomplish the exclusion from outdoors magazines of advertisements offering scopes for sale by off-list dealers;
- (F) causing, initiating or enforcing boycotts against advertisements for the sale of scopes by off-list dealers.

VI

The manufacturing defendants are jointly and severally ordered and directed to cancel forthwith all fair trade agreements to which such defendants are now a party, and any such defendant who is a party thereto shall give notice to plaintiff, within ninety days from the date of entry of this Final Judgment, that such fair trade agreements have been cancelled.

VII

The manufacturing defendants are jointly and severally enjoined and restrained, for a period of seven years from the date of entry of this Final Judgment, from entering into, adhering to, or enforcing any fair trade agreement. After this seven year period of time, nothing contained in this Final Judgment shall prevent any manufacturing defendant from entering into, adhering to, or enforcing any fair trade agreement, valid and enforceable in the state where to be enforced, or from taking any lawful action permitted or required by any such fair trade law.

VIII

The manufacturing defendants are jointly and severally enjoined and restrained for a period of two years commencing ninety days from the date of entry of this Final Judgment from:

- (A) publishing any manufacturer's suggested prices, or
- (B) engaging in any consumer advertisements unless any reference therein to prices is limited to suggesting that scopes manufactured by such defendant may be purchased from persons other than defendant for approximately a stated number of dollars and advising that local dealers should be consulted to determine the actual prices for such scopes.

IX

In the event that any manufacturing defendant during the period of seven years from the date of entry of this Final Judgment shall elect (subject to Section VIII herein) to engage in consumer advertisements, such defendant during the time of the publication of such consumer advertisements is ordered and directed either to sell scopes or cause jobbers to sell scopes to any off-list dealer with satisfactory credit standing, who makes application in writing to such defendant, without discrimination as to availability, price, terms and conditions of sale, or credit requirements; provided, however, that nothing contained in this Section IX shall be interpreted to prevent such defendant or a jobber of such defendant from giving to any person, purchasing scopes for resale, functional or quantity discounts otherwise lawful.

X

Each of the manufacturing defendants is ordered and directed within ninety days after the date of entry of this Final Judgment to mail a true and complete copy of this Final Judgment to each jobber and dealer on such defendant's current distribution list for sales or advertising materials relating to scopes, or with whom such defendant has in effect on the date of entry of this Final Judgment a fair trade agreement relating to scopes.

XI

Defendant M. Jackson Stith shall become subject to all provisions in Sections I - X, and XV and XVI of this Final Judgment if and when he either engages in the manufacture of scopes, or sells scopes manufactured exclusively for him which he sells under his own name.

XII

The publishing defendants are jointly and severally enjoined and restrained from entering into, adhering to or claiming any rights under any contract, agreement, understanding or common course of

conduct with any manufacturer, jobber or dealer of scopes or any publisher of outdoors magazines whereby any publishing defendant refuses to accept, publish, carry or run advertisements for scopes offered by any dealer, jobber, off-list dealer or other person at prices less than the manufacturer's list prices therefor, if the advertisements otherwise meet the reasonable standards uniformly applied by the defendants.

XIII

Each publishing defendant is enjoined and restrained, for a period of ten years commencing ninety days from the date of entry of this Final Judgment, from refusing to publish or threatening to refuse to publish advertisements for scopes from any dealer, jobber, off-list dealer or other person advertising such scopes for sale, where the advertiser and the advertisements meet the reasonable standards uniformly applied by the defendant without regard to the fact that the advertiser offers scopes for sale at prices less than the manufacturer's list prices therefor.

XIV

Each of the publishing defendants is ordered and directed within ninety days after the date of entry of this Final Judgment to mail a true and complete copy of this Final Judgment to each off-list dealer who has been refused, since March 1, 1949, advertising of scopes by such defendant.

XV

For the purpose of securing compliance with this Final Judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to the defendants made to their principal offices, be permitted:

(a) reasonable access, during the office hours of said defendants, to

all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of or under the control of said defendants relating to any of the matters contained in this Final Judgment; and (b) subject to the reasonable convenience of said defendants and without restraint or interference from them, to interview the officers and employees of defendants, who may have counsel present, regarding any such matters. For the purpose of securing compliance with this Final Judgment, any defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice made to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment. No information obtained by the means provided in this Section XV shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of such Department except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XVI

Jurisdiction is retained by this Court 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 termination of

any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Dated: Washington, D. C.

November 8, 1957

/s/ F. Dickinson Letts
United States District Judge

We hereby consent to the making and entry of the foregoing Final Judgment.

For the Plaintiff:

/s/ Victor R. Hansen
Assistant Attorney General

/s/ W. D. Kilgore, Jr.

/s/ Baddia J. Rashid

/s/ Max Freeman

/s/ James L. Minicus

/s/ William H. Crabtree

/s/ Forrest A. Ford

For the Defendants:

Lyman Gun Sight Corporation

By /s/ Rodney J. McMahon
General Counsel for Lyman
Gun Sight Corporation

M. Jackson Stith

By /s/ Alan Y. Cole

National Rifle Association of
America

By /s/ J. J. Wilson

Henry Holt and Company, Inc.

By Saterlee, Warfield & Stephens

By /s/ William E. Stockhausen

/s/ Webb C. Hayes, III

W. R. Weaver

By Cahill, Gordon, Reindel & Ohl
By /s/ Jerrold G. Van Cise

John Unertl

By /s/ Gerald L. Phelps

Popular Science Publishing
Company, Inc.

By Parker, Duryee, Benjamin,
Zuning & Malone, Attys.

By /s/ Vincent J. Malone

By /s/ Arthur B. Carton, Atty.