

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Studebaker Corporation., U.S. District Court, D. Nebraska, 1965 Trade Cases ¶71,410, (May 7, 1965)

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United States v. Studebaker Corporation.

1965 Trade Cases ¶71,410. U.S. District Court, D. Nebraska. Civil Action No. 01863. Entered May 7, 1965. Case No. 1765 in the Antitrust Division of the Department of Justice.

Sherman Act

Restraint of Trade-Price Fixing—Allocation of Markets—Consent Decree.—A manufacturing firm was barred under the terms of a consent judgment from fixing prices or allocating markets in its sales of motor oil additives. The firm was also prohibited from canceling any distributor because of the persons to whom, the territories in which, or the prices at which such distributor sells the products.

For the plaintiff: William H. Orrick, Jr., Assistant Attorney General, William D. Kilgore, Jr., Harry G. Sklarsky, John L. Wilson, John E. Sarbaugh, Francis C. Hoyt, and Howard L. Fink.

For the defendant: Yale Holland and John R. Hupper.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on October 31, 1963, and defendant having filed its answer denying the substantive allegations of such complaint, and the parties by their respective 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 an admission by either 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 the consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims for relief against the defendant 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). "Studebaker" shall mean the defendant Studebaker Corporation, a Michigan corporation;
- (B). "Person" shall mean any individual, partnership, firm, corporation, association or other business or legal entity;
- (C). "Chemical Compounds Products" shall mean an* oil additive or fuel additive products now or hereafter marketed by Studebaker under the names STP, Top Oil, Diesel Blitz and Auto Blitz and any oil additive or fuel additive product similar in purpose to the additive products marketed under such names;
- (D). "Distributor" shall mean any person purchasing chemical compounds products from Studebaker for resale.

III

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The provisions of this final Judgment shall apply to Studebaker and to each of its subsidiaries, successors, assigns, officers, directors, servants, employees and agents, and to all persons in active concert or participation with Studebaker who receive actual notice of this Final Judgment by personal service or otherwise; *provided, however,* that this Final Judgment shall not apply to sales and activities outside the United States which do not affect interstate commerce or the foreign commerce of the United States, For purposes of this Final Judgment, Studebaker and its subsidiaries, officers, directors, agents, servants and employees, or any of them, shall be deemed to be one person.

IV

Studebaker is enjoined and restrained from:

(A) Entering into, maintaining, adhering to, enforcing or claiming any rights under any contract, agreement, understanding, plan or program with any other person to

(1) Fix, establish, determine, suggest, stabilize or adhere to prices, terms or conditions for the sale of any chemical compounds products to any third person;

(2) Allocate, or divide, customers, territories or markets for sale of any chemical compounds products;

(3) Limit or restrict the persons to whom or the territory within which chemical compounds products may be sold;

(B) Selling or offering to sell any chemical compounds products to any person upon any condition or understanding which limits or restricts the persons to whom, the prices at which, or the territory within which such products may be sold;

(C) Cancelling or threatening to cancel or otherwise taking any disciplinary action against any distributor because of the persons to whom, the territories in which or the prices at which such distributor has sold, sells or intends to sell any chemical compounds products.

V

Nothing in this Final Judgment shall prohibit Studebaker at any time after two years from the date of entry of this Final Judgment from exercising any legal rights it may have to “fair trade”, or authorizing others to “fair trade”, chemical compounds products under any federal or state legislation.

VI

Studebaker is ordered and directed within ninety (90) days from the date of entry of this Final Judgment to:

(A) Terminate and cancel any provisions or terms of any contract, agreement or understanding with respect to any chemical compounds products that are contrary to or inconsistent with any of the provisions of this Final Judgment;

(B) Serve by mail upon each distributor of chemical compounds products a conformed copy of this Final Judgment; and

(C) Send to each distributor of chemical compounds products a letter, in a form substantially identical to Exhibit A attached hereto and made a part hereof.

VII

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 defendant made to its principal office, be permitted, subject to any legally recognized privilege and with the right of such defendant to have counsel present:

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

(B) Subject to the reasonable convenience of defendant, and without restraint or interference from it, to interview officers or employees of such defendant, 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, the defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section VII 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.

VIII

Jurisdiction is retained by this Court 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 therein, for the enforcement of compliance therewith and for the punishment of violations thereof.

EXHIBIT A

(To be sent to each distributor of chemical compounds products)

In accordance with the terms of a decree entered by the United States District Court for the District of Nebraska in Omaha, Nebraska, with the consent of the parties, terminating the Government's civil antitrust law suit against Studebaker Corporation, we are sending this notice to you and all other distributors of "chemical compounds products" (as defined in the decree) of the Chemical Compounds Division of Studebaker Industries, Inc., a wholly-owned subsidiary of Studebaker Corporation.

The decree provides, among other things, that:

- (1) We cannot enter into any agreement with you preventing you from selling such products of the Chemical Compounds Division to any customer you choose, at any price you determine, or in any territory you wish; and
- (2) We cannot condition any sale of such products of the Chemical Compounds Division to you upon any limitation or restriction of the customers to whom, the prices at which or the territories within which, such products are to be resold by you.

A copy of the Court's decree is enclosed. You will note particularly that it provides that it is not an admission of any violation of law.

Chemical Compounds Division of Studebaker Industries, Inc.

By:

President