

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Harvey Hubbell, Inc., The Ohio Brass Co., and The OB Merger Co., U.S. District Court, D. Connecticut, 1982-1 Trade Cases ¶64,516, (Dec. 29, 1981)

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United States v. Harvey Hubbell, Inc., The Ohio Brass Co., and The OB Merger Co.

1982-1 Trade Cases ¶64,516. U.S. District Court, D. Connecticut, Civil Action No. N-78-292, Entered December 29, 1981, (Competitive impact statement and other matters filed with settlement: 47 *Federal Register* 47899).

Case No. 2652, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions and Mergers: Divestiture: Acquisition Ban: Trademark Use Ban: Underground Power Systems: Consent Decree.— Divestiture of a manufacturing facility and other assets, as an ongoing business, was ordered by a consent decree agreed to by a manufacturer of underground power distribution products. Related provisions regarding appointment of a trustee, sale procedures, disclosure of information and contractual releases were included in the decree. A ten-year ban on acquisitions in the industry without government approval and a five-year ban on the use of a trademark were also included in the decree.

For plaintiff: William F. Baxter, Asst. Atty. Gen., Mark P. Leddy, Ralph T. Giordano, Gary A. Kimmelman, and Bruce E. Repetto, Attys., Antitrust Div., Dept. of Justice, New York, N. Y. For defendants: Charles E. Koob, of Simpson Thacher & Bartlett.

Final Judgment

Daley, D. J.: Plaintiff, United States of America, having filed its complaint herein on August 25, 1978, and the defendants, Harvey Hubbell Incorporated, The Ohio Brass Company and The OB Merger Company, having appeared and filed their answer to the complaint denying the material allegations thereof, and the plaintiff and the defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of or finding on any issue of fact or law herein, and without this Final Judgment constituting any evidence against or admission by any party with respect to any issue of fact or law herein,

Now, Therefore, before the taking of any testimony and upon the consent of the parties hereto, it is hereby Ordered, Adjudged and Decreed, as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Act of Congress of October 15, 1914, commonly known as the Clayton Act (15 U. S. C. §18), as amended.

II

[*Definitions*]

As used in this Final Judgment:

- (A) "Hubbell" means Harvey Hubbell, Incorporated and each of its subsidiaries;
- (B) "Ensign" means the Ensign Electric Division of Hubbell;

(C) “Underground Power Distribution Products” means those 11 products listed in the attached Schedule A, which products are used primarily by coal mining companies for underground mines to transmit, utilize, regulate and distribute electrical power in connection with the use of underground mining equipment;

(D) “Person” means any individual, partnership, firm, corporation, association or any other business or legal entity;

(E) “Eligible Purchaser” means any one or more persons proposing to purchase the assets listed in the attached Schedule A as an ongoing business, to which the plaintiff after notice pursuant to Section IX of this Final Judgment does not object, or if the plaintiff does object, of which the Court approves.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to the defendants, and to each of their directors, officers, employees, agents, subsidiaries, partnerships, successors and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Divestiture*]

(A) Hubbell is hereby ordered and directed to divest, as an ongoing business, to an Eligible Purchaser within 12 months of the date of entry of this Final Judgment all of its rights, title, interest and obligations in the assets listed in the attached Schedule A. Divestiture shall be accomplished in such a way as to reasonably ensure that the assets can be operated by the Eligible Purchaser as a viable ongoing business engaged in the manufacture and sale of underground power distribution products in the United States.

(B) With the prior written approval of the plaintiff, and at the request of a prospective Eligible Purchaser, Hubbell may sell to it, as an ongoing business, less than all of the assets listed in the attached Schedule A. In the event that the plaintiff approves the sale to an Eligible Purchaser pursuant to this paragraph (B) such sale shall fully discharge the obligations of Hubbell under Section IV of this Final Judgment.

(C) At the request of a prospective Eligible Purchaser, Hubbell may, in addition to those assets listed in the attached Schedule A, sell to such Eligible Purchaser any other assets of Ensign.

V

[*Trustee*]

If Hubbell does not comply with Section IV above within 12 months from the date of entry of this Final Judgment, the Court shall, on application of the plaintiff on notice to Hubbell with an opportunity to be heard, appoint a trustee for the purpose of effecting said divestiture in accordance with the provisions of this Final Judgment. The Trustee shall serve at the cost and expense of Hubbell on such terms and conditions as the Court may set.

VI

[*Sale Procedures*]

In accomplishing the divestiture ordered by Section IV of this Final Judgment, Hubbell shall make known, by usual and customary means, including periodic advertising as appropriate, the availability of the assets listed in the attached Schedule A for sale as an ongoing business. Hubbell shall notify any person expressing an interest in purchasing the assets listed in the attached Schedule A that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Hubbell shall also furnish to all bona fide prospective Eligible Purchasers who so request, all necessary information regarding the assets listed in the

attached Schedule A, as well as the operations of Ensign and shall permit them to make such inspection as may be necessary.

VII

[Information Disclosures]

At the option of an Eligible Purchaser, Hubbell shall use its best efforts to provide it with such engineering, installation, marketing, and supply information as may be reasonably necessary to enable it to operate the assets listed in the attached Schedule A as a viable, ongoing business. At the option of an Eligible Purchaser, Hubbell shall also provide it with the name and address of each officer and employee of Ensign together with the job description, annual compensation, accrued sick leave, and accrued vacation pay of each.

VIII

[Contractual Releases]

Hubbell shall release, free and clear, from any employment contract any officer or employee whose primary responsibilities involve the design, manufacture, marketing, distribution, sale or repair of any of the 11 products listed in the attached Schedule A, who requests such a release in order to become associated with the Eligible Purchaser which, pursuant to this Final Judgment, acquires the assets listed in the attached Schedule A. That Eligible Purchaser shall have the right, but not the obligation, to offer employment to any such officer or employee.

IX

[Compliance]

Thirty days after the date of entry of this Final Judgment and every 30 days thereafter until Hubbell has complied with Section IV above, Hubbell shall submit written reports to the plaintiff, describing the steps which have been taken to comply with this Final Judgment. Each report shall include the name and address of each person who, during the preceding 30 days, made an offer, expressed a desire, or entered into negotiations to acquire the assets listed in Schedule A together with full details of same.

At least 60 days prior to the closing date of any divestiture made pursuant to Section IV of this Final Judgment, Hubbell or the Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the plaintiff of the proposed divestiture. If a Trustee is responsible, it shall similarly notify Hubbell. The notice shall set forth the details of the proposed transaction and list the name and address of each person not previously reported who offered or expressed a desire to acquire the assets listed in Schedule A, together with full details of same. Within 30 days thereafter, the plaintiff may request additional information concerning the proposed divestiture. Within 30 days after receipt of the notice or within 30 days after receipt of the additional information, the plaintiff shall notify Hubbell and the Trustee, if there is one, in writing, if it objects to the proposed divestiture. If the plaintiff does not object within the periods specified, then the divestiture may be consummated. Upon objection by the plaintiff, the proposed divestiture shall not be consummated unless approved by the Court. If there is a Trustee, the Court shall provide Hubbell with the opportunity for a hearing on the proposed divestiture should Hubbell raise an objection within 30 days after the Trustee has furnished Hubbell notice of the sale.

X

[Hold-Separate Order]

The provisions of the Stipulation and Order (the "Hold Separate Order") entered on August 28, 1978 shall remain in effect until the divestiture ordered by Section IV of this Final Judgment is consummated.

XI

[Acquisition Ban]

Hubbell is enjoined and restrained for a period of 10 years from the date of entry of this Final Judgment from acquiring any of the assets or stock of, or from merging with, any person engaged in whole or in part in the manufacture or sale of underground power distribution products without the prior written consent of the plaintiff.

XII

[Trademark Use]

Hubbell is enjoined and restrained for a period of 5 years from the date of divestiture pursuant to this Final Judgment from using the trademark "Ensign" or the trade name "Ensign Electric" in any form in conjunction with the manufacture, distribution or sale of any product which is listed in the attached Schedule A and is divested pursuant to this Final Judgment.

XIII

[Reacquisition of Assets]

Nothing contained in this Final Judgment shall be deemed to prohibit Hubbell from accepting and enforcing a bona fide lien, mortgage, deed of trust or other form of security interest received by Hubbell to secure full payment of the consideration for which the assets listed in the attached Schedule A are divested. If Hubbell, by enforcement or settlement of any such bona fide lien, mortgage, deed of trust or other form of security interest, reacquires ownership, possession or control of any asset included in Schedule A, it shall promptly notify the plaintiff in writing, and shall dispose of such assets within 12 months from the date of reacquisition in accordance with the terms of this Final Judgment.

XIV

[Inspections]

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

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

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to Hubbell at its principal office in Orange, Connecticut, Hubbell shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information or documents obtained by the means provided in this Section XIV 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 the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law. If at the time information or documents are furnished by Hubbell to the plaintiff, Hubbell represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26 (c)(7) of the Federal Rules of Civil Procedure, and Hubbell marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days' notice

shall be given by the plaintiff to Hubbell prior to divulging such material in any legal proceeding (other than a Grand Jury Proceeding) to which Hubbell is not a party.

XV

[Retention of Jurisdiction]

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 or 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 hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XVI

[Public Interest]

Entry of this Final Judgment is in the public interest.

Schedule A

This Schedule A is annexed to and made part of the Final Judgment in Civil Action No. N78-292.

(A) All of the tangible and intangible assets held or used by Hubbell in connection with the design, manufacture, marketing, distribution, sale, repair and rework of the eleven (11) Ensign products specifically listed below, including, but not limited to, blueprints, designs, specifications, patents, patent applications, goodwill, licenses, know-how, tooling, furniture, machinery and equipment, work in progress, contracts inventory, and customer and vendor lists, wherever located:

1. Alternating current power center.
2. Direct current power center.
3. Combination power center.
4. Sectionalizing equipment.
5. Distribution center.
6. Underground disconnect switch house.
7. Circuit breaker.
8. DC breaker, excluding E. J. Contractors.
9. Portable outdoor substation.
10. Portal circuit breaker.
11. Motor starters, excluding E. J. Contractors, centrifugal switches, push buttons, wobble switches and ground check monitors.

Hubbell shall be permitted to use, deplete, or replace any and all inventory in the ordinary course if its business prior to the consummation of the divestiture.

(B) The real estate and structure located in Huntington, West Virginia, known as Ensign Plant No. 1, together with the improvements thereon, and the adjacent parking area.