

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Harvey Hubbell, Inc., U.S. District Court, D. Connecticut, 1972 Trade Cases ¶74,018, (Jul. 21, 1972)

[Click to open document in a browser](#)

United States v. Harvey Hubbell, Inc.

1972 Trade Cases ¶74,018. U.S. District Court, D. Connecticut. Civil Action No. B-285. Entered July 21, 1972. Case No. 2160, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions—Relief—Divestiture—Electrical Equipment—Consent Decree.—A consent decree required the divestiture of an acquired pin and sleeve device manufacturer by the acquiring specification grade manufacturer. The acquisition, the government alleged, eliminated competition in these two types of electrical equipment. The decree requires the sale of the acquired firm to a government or court approved purchaser, but if no divestiture is made within 18 months, sale of the stock through an underwriter or a distribution to stockholders is required within 12 months. The acquired firm is to be maintained as a going concern, and reports must be submitted to the government. Future acquisitions of any firm engaged in the manufacture of these electrical devices were banned for 10 years, except with government permission.

For plaintiff: Walker B. Comegys, Acting Asst. Atty. Gen., Baddia J. Rashid, Bernard M. Hollander, Norman H. Seidler, Ralph T. Giordano, Raymond Brenner and Elliott H. Moyer, Dept. of Justice.

For defendant: Carter, Ledyard & (Milburn, by Louis L. Stanton, Jr., New York, N. Y. (Pullman, Comley, Bradley & Reeves, by Dwight F. Fanton, Bridgeport, Conn, and Wilmer, Cutler & Pickering, by Arnold M. Lerman, Washington, D. C, of counsel).

Final Judgment

ZAMPANO, D. J.: Plaintiff, United States of America, having filed its complaint herein on April 28, 1971, and defendant, Harvey Hubbell, Incorporated, having appeared and filed its answer to the complaint denying the substantive allegations thereof, and plaintiff and defendant 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 any 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 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 of the parties consenting hereto. The complaint states a claim upon which relief may be granted against defendant under Section 7 of the Act of Congress of October 15, 1914 (15 U. S. C. § 18), commonly known as the Clayton Act, as amended.

II

[*Applicability*]

The provisions of this Final Judgment shall apply to defendant, its subsidiaries, successors and assigns, and to each of their respective officers, directors, agents and employees, 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.

©2018 CCH Incorporated and its affiliates and licensors. All rights reserved.

Subject to Terms & Conditions: http://researchhelp.cch.com/License_Agreement.htm

None of the provisions of this Final Judgment shall apply to any person who acquires any assets of defendant divested pursuant to this Final Judgment.

III

[Definitions]

As used in this Final Judgment:

(A) "Eligible Purchaser" means any person to which plaintiff, after notice, does not object, or if plaintiff does object, of which the Court approves;

(B) "Pin-and-Sleeve Devices" means electrical (but not electronic) pin-and-sleeve plugs, connectors and receptacles, including explosion-proof and non-hazardous types, designed to handle current levels of up to 600 amperes and 600 volts, usually installed in areas where equipment is subject to severe physical use, or in corrosive, wet or otherwise unfavorable environments;

(C) "Specification Grade Devices" means electrical products including all types of blade plugs, receptacles and connectors, switches, sockets and wall outlets, which serve primarily to connect (as distinguished, for example, from devices designed to monitor or control) electrical (but not electronic) circuits and which are usually installed in commercial, institutional or industrial buildings;

(D) "Interested Party" means (i) George R. Wepler, Robert W. Stewart, Jr., and James R. Johnstone as trustees under a Trust Indenture dated September 2, 1957 made by Louie E. Roche, and any successor trustee thereunder, and (ii) George R. Wepler, Robert W. Stewart, Jr., and James R. Johnstone as trustees under a Trust Indenture dated August 23, 1957 made by Harvey Hubbell, and any successor trustee thereunder;

(E) "Pyle-National Business" means: (1) all of the business conducted by The Pyle-National Company and its domestic and foreign subsidiaries immediately prior to the acquisition of The Pyle-National Company by defendant, and (2) the manufacturing, marketing and distribution organizations and operations connected with such business and all of the tangible and intangible assets now held or used in connection therewith including, but not limited to, property, plant and office facilities, machinery and equipment, inventories, work in progress, tooling, trademarks and trade names, patents and patent applications, goodwill, know-how, contracts, customer lists, licenses and blueprints, and (3) all of the operations of defendant's Ralco Division pertaining to the manufacture of connectors and fittings other than cord grips, and the machinery and equipment, inventories, work in progress, tooling, trademarks and trade names, patents and patent applications, customer goodwill, know-how, contracts, customer lists, licenses and blueprints connected with such operations. "Pyle-National Business" shall include explosion-proof lighting and lighting designed primarily for military application but shall not include: (1) the business, organizations, operations or the tangible or intangible assets primarily related to any other lighting business, including gyalites and Vaportight lighting, (2) the Pyle-National Plant in Aiken, South Carolina, nor (3) the plant and assets held by the Pyle-National subsidiary, The Kostner Corporation, in or near Maulden, South Carolina;

(F) "New Company" means a corporation organized by defendant to which the Pyle-National Business is transferred in exchange for the stock of New Company;

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

IV

[Divestiture]

(A) Defendant is ordered and directed to divest itself of the Pyle-National Business by (i) a sale of the Pyle-National Business to an Eligible Purchaser, or (ii) a sale of all of the; stock of New Company to an Eligible Purchaser;

(B) In accomplishing the divestiture ordered by paragraph (A) of this section, defendant shall make known the availability for sale of the Pyle-National Business by customary and usual means, including periodic advertising

as appropriate, that such divestiture is required under this Judgment. Defendant shall also furnish to all bona fide prospective Eligible Purchasers who so request, necessary and appropriate information regarding the Pyle-National Business and shall permit them to make such inspection as may be reasonably necessary.

V

[*Sale of Stock*]

If after continuous bona fide efforts to do so, defendant does not make divestiture pursuant to Section IV(A) within 18 months from the date of entry of this Final Judgment, it is further ordered and directed, within twelve (12) months thereafter, to divest itself of the Pyle-National Business either by the means set forth in Section IV(A) or by:

- (A) A sale or sales of all of the stock of New Company to the public through an underwriter or underwriters; or
- (B) Distribution of all of the stock of New Company to (i) holders of defendant's common stock on a pro rata basis or (ii) holders of defendant's common stock and/or preferred stock who shall elect to exchange shares of such stock for common shares of New Company or (iii) holders of transferable rights distributed to the holders of defendant's common stock on a pro rata basis to purchase the stock of New Company.

VI

[*Going Concern*]

Defendant shall use its best efforts to maintain the Pyle-National Business, until the divestiture thereof, as a going viable enterprise, at standards of operating performance prevailing at the time of entry of this Final Judgment.

(B) If divestiture is made pursuant to Section V(A) of this Final Judgment, defendant shall prohibit any of its officers or directors from directly or indirectly acquiring in divestiture or thereafter any of the stock of New Company so long as such officer or director remains in any such position. Defendant shall also arrange that none of the stock of New Company is initially sold to any Interested Party.

(C) If divestiture is made pursuant to Section V(B) of this Final Judgment, defendant shall require that any of its officers or directors, or any Interested Party, who receive any of the stock of New Company or any transferable rights to purchase such stock shall within twelve (12) months of receipt thereof sell such stock or transferable rights, or stock resulting from exercise of such rights, to a person not an officer or director of defendant or an Interested Party.

VIII

[*Reports*]

Defendant shall submit written reports to the Assistant Attorney General in charge of the Antitrust Division every sixty (60) days, describing in detail the efforts made by it to comply with the provisions of Section IV(A), IV(B), V(A) and V(B) of this Final Judgment. Each report shall include the name and address of each person who, during the preceding sixty (60) days, has made an offer in writing, or expressed in writing a desire, to purchase the Pyle-National Business or New Company. The first such report shall be submitted within sixty (60) days after the date of entry of this Final Judgment.

IX

[*Acquisitions*]

Defendant is enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from acquiring all or any part of the stock or assets, other than goods or service in the normal course of business, of any person engaged in the United States in the manufacture and sale of pin-and-sleeve devices or specification grade devices, except with the prior written consent of plaintiff, or if such consent is refused, then

upon approval by this Court after an affirmative showing by defendant that the effect of any such acquisition of stock or assets will not be to substantially lessen competition or tend to create a monopoly in any line of commerce in any section of the country.

X

[*Obligations*]

(A) Nothing contained in this Final Judgment shall be deemed to prohibit defendant from accepting and enforcing a bona fide lien, mortgage, deed of trust or other form of security interest received by defendant to secure full payment of the consideration for which the Pyle-National Business is divested. If defendant, 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 property or asset of the Pyle-National Business, it shall promptly notify plaintiff in writing, and shall dispose of such property or asset by sale or otherwise to an Eligible Purchaser within eighteen (18) months from the date of reacquisition.

(B) Without limiting the scope of the divestitures required hereunder, nothing contained in this Final Judgment shall be deemed to prohibit defendant from engaging fully in the cord grip business and using therein any duplication of presently existing know-how, drawings, bills of materials, or engineering or manufacturing data.

XI

[*Inspection and Compliance*]

For the purpose of securing or determining compliance with this Final Judgment, and subject to any legally recognized privilege:

(A) Any authorized representative or 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 upon reasonable notice to defendant at its principal office be permitted:

(1) Access during the office hours of defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of defendant that relate 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 matters contained in this Final Judgment.

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

No information obtained by the means provided in this Section XI 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 for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XII

[*Jurisdiction Retained*]

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

Dated: