

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Technical Industries, Inc., U.S. District Court, M.D. Pennsylvania, 1975-2 Trade Cases ¶60,467, (Jul. 21, 1975)**

United States v. American Technical Industries, Inc.

1975-2 Trade Cases ¶60,467. U.S. District Court, M.D. Pennsylvania. Civil No. 73-24d Final consent judgment. Entered July 21, 1975 (Competitive impact statement and other matters filed with settlement: 40 *Federal Register* 18199, 29900). Case No. 2320, Antitrust Division, Department of Justice.

**Acquisitions—Artificial Christmas Trees—Injunctive Relief—Compulsory Patent Licensing—Acquisitions Ban—Consent Decree.**—The consent decree, the text of which appears at 1974-2 TRADE CASES ¶ 75,376, was entered as final on July 21, 1975 by HERMAN, D. J.

**Changes:** The reference in paragraph IV (D) to “the official Gazette of the *Patent Office*” now reads “*Official Gazette of United States Patent Office*” in the final document as entered.

**Entering, as final, consent decree, 1974-2 Trade Cases ¶ 75,376.**

## **Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Technical Industries, Inc., U.S. District Court, M.D. Pennsylvania, 1974-2 Trade Cases ¶75,376, (Dec. 3, 1974)**

United States v. American Technical Industries, Inc.

1974-2 Trade Cases ¶75,376. U.S. District Court, M.D. Pennsylvania. Civil No. 73-246. Filed, but not entered December 3, 1974. Case No. 2320, Antitrust Division, Department of Justice.

### **Clayton Act**

**Acquisitions—Artificial Christmas Trees—Injunctive Relief—Compulsory Patent Licensing—Acquisitions Ban—Consent Decree.**—A manufacturer of artificial Christmas trees would be required by a consent decree to offer royalty-free patent licensing for all patents owned or developed by a manufacturer it allegedly unlawfully acquired. Notice of the availability of the licenses and a manufacturing methods manual must be advertised in two trade journals. Suits against infringement occurring before entry of the decree are barred, as are future infringement actions unless prior written notice is given that royalty-free licenses are available. Future acquisitions of assets or stock of any artificial Christmas tree manufacturer are prohibited, and acquisition of any artificial Christmas tree patent is barred for 10 years, unless the patent is developed by one of the defendant's employees.

**For plaintiff:** Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, John J. Hughes, John A. Weedon, Leon W. Weidman, Edward S. Panek, Roger L. Currier, Walter L. Devany, and Norman E. Greenspan, Attys., Antitrust Div., Dept. of Justice.

**For defendant:** Charles H. Miller, of Marshal, Bratter, Greene, Allison & Tucker, New York, ? Y.

### **Proposed Final Judgment**

[ *Proposed final judgment* ] : Plaintiff, the United States of America, having filed its complaint herein on May 7, 1973; defendant American Technical Industries, Inc. having filed its answer denying the substantive allegations of the complaint; a motion by plaintiff for preliminary injunction against the further commingling or transfer of the assets of Masterpiece, Inc. having been granted after a hearing thereon; and the parties by their respective attorneys having consented to the entry of this Final Judgment without trial and without this Final Judgment constituting any evidence against, or any admission by, any party in respect to any issue of fact or law herein;

Now Therefore, without trial, and upon consent of the parties hereto it is hereby

Ordered, Adjudged and Decreed as follows:

#### **I**

[ *Jurisdiction* ]

This Court has jurisdiction of the subject matter hereof and the parties hereto. The complaint states claims upon which relief may be granted against the 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**

As used in this Final Judgment:

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

(B) "Artificial Christmas tree" means any tree made of polyvinyl chloride, polyethylene or aluminum which is used indoors during the Christmas season; and

(C) "Patent" means any United States Letters Patent presently granted and any United States Letters Patent which may be granted on any Application which is on file in the United States Patent Office on the date of entry of this Final Judgment, and any division, continuance, reissue or extension of any such patent covering, in whole or in part, the design, manufacture or assembly of artificial Christmas trees or machines or equipment necessary for the design, manufacture or assembly of artificial Christmas trees.

III

[ *Applicability* ]

The provisions of this Final Judgment applicable to the defendant shall also apply to its officers, directors, employees, and subsidiaries including but not limited to Masterpiece, Inc., now known as Masterpiece of Pennsylvania, Inc., its successors and assigns, and to any person in active concert or participation with any of them who receives actual notice of this Final Judgment by personal service or otherwise.

IV

[ *Patent Licensing* ]

American Technical Industries, Inc. is ordered and directed:

(A) To grant without charge to any applicant making written request therefor an unrestricted, nonexclusive, and royalty-free license for the design, manufacture, assembly, and sale in the United States of America of artificial Christmas trees or equipment to be used in the manufacture of artificial Christmas trees under the following patents and patent applications, which include all patents and patent applications owned or controlled by Masterpiece, Inc., now known as Masterpiece of Pennsylvania, Inc., and all American Technical Industries, Inc. patents or patent applications developed by Masterpiece, Inc. employees:

Patent Number	Description	Granted	Expires
3,223,454	Apparatus for Making Brushes	December 14, 1965	December 14, 1982
Des. 204,887	Christmas Tree	May 24, 1966	May 24, 1980
3,278,364	Artificial Christmas Tree	October 11, 1966	October 11, 1983
3,365,529	Artificial Tree Limb Tapering Method	January 23, 1968	January 23, 1985
3,459,243	Fully Automatic Cross-Limb Attaching Machine	August 5, 1969	August 5, 1986
3,458,893	Artificial Tree Limb Tapering Machine	August 5, 1969	August 5, 1986
3,594,260	Artificial Shrubbery and Method of Manufacturing the Same	July 20, 1971	July 20, 1988
3,665,577	Apparatus for Manufacturing Artificial Shrubs	May 30, 1972	May 30, 1989
3,746,601	Artificial Shrub Suitable for Indoor or Outdoor Use	July 17, 1973	July 17, 1990
Patent Application Serial Number	Description	Date Filed	
339,468	Collapsible Artificial Shrub	March 5, 1973	

Such license shall provide that the licensee is free to contest in any proceeding the validity and scope of the licensed patents. Any existing licensee under any of the above listed patents for the design, manufacture, assembly or sale of artificial Christmas trees in the United States of America shall have the right to apply for and receive a license under this Final Judgment in substitution for its existing license.

(B) To furnish promptly upon the granting of any license pursuant to Section IV (A) hereof, to any licensee who makes written request therefor, one copy of a written manual accurately and completely describing the methods of manufacture employed by American Technical Industries, Inc. in the production of artificial Christmas trees

under the patents licensed pursuant to said Section upon the payment by such licensee of a sum not in excess of \$50.00.

(C) Within thirty (30) days of the entry of this Final Judgment to withdraw from and terminate all suits or proceedings for the infringement of any patent covered by Section IV(A) of this Final Judgment if such suit is based on the design, assembly, manufacture or sale of artificial Christmas trees, provided that the obligation of American Technical Industries, Inc. to withdraw from or terminate any such suit shall be conditioned upon the withdrawal or termination of any counterclaim against American Technical Industries, Inc. or any of its subsidiaries.

(D) Within thirty (30) days of the entry of this Final Judgment to advise the United States Patent Office, Washington, D. C. for publication in the official Gazette of the *Patent Office* that licenses described in Section IV(A) of this Final Judgment are available on an unrestricted, nonexclusive and royalty-free basis to any person making written request therefor to American Technical Industries, Inc.

(E) Within thirty (30) days of the entry of this Final Judgment to advise by Certified Mail each domestic manufacturer of artificial Christmas trees known to American Technical Industries, Inc., and to advertise prominently once in each of the next issues of *Toys and Novelties* and *Toy & Hobby World*, two publications heretofore utilized by the defendant in advertising artificial Christmas trees that:

(1) The licenses described in Section IV (A) of this Final Judgment are available on an unrestricted, nonexclusive and royalty-free basis to any person making written request therefor to American Technical Industries, Inc.; and

(2) The written manual described in Section IV(B) hereof is available to each licensee at a cost not in excess of \$50.00.

Within ninety (90) days after the entry of this Final Judgment, a copy of each letter, the advertisement, and the completed manual will be furnished the plaintiff.

(F) Within ninety (90) days after the entry of this Final Judgment, American Technical Industries, Inc. shall furnish plaintiff an affidavit as to the fact and manner of its compliance with this Section IV.

## V

### [ *Infringement Suits/Acquisitions* ]

American Technical Industries, Inc. is enjoined and restrained from:

(A) Instituting or threatening to institute any action, based on the design, assembly, manufacture or sale of artificial Christmas trees, for the infringement of any patent covered by Section IV(A) hereof if the claimed infringement occurred:

(1) Prior to the entry of this Final Judgment; or

(2) Subsequent to the entry of this Final Judgment unless prior written notice is given that a license is available pursuant to the provisions of this Final Judgment.

(B) Making any disposition of any patent which may deprive American Technical Industries, Inc. of the power or authority to grant licenses as required in Section IV (A) of this Final Judgment, unless the party or parties acquiring such rights from American Technical Industries, Inc. agree to be bound by this Final Judgment.

(C) Acquiring directly or indirectly for a period of ten (10) years from the date of entry of this Final Judgment ownership or control of any patent other than a patent whose inventor is an employee of American Technical Industries, Inc.

(D) Acquiring any assets or stock of any person engaged in the manufacture or sale of artificial Christmas trees in the United States provided, however, that this injunction does not apply to transactions between American Technical Industries, Inc. and any subsidiaries thereof and provided further that American Technical Industries, Inc. or any of its subsidiaries, may purchase, license or lease machinery hereafter perfected by any third party

for the manufacture of artificial Christmas trees and sold by such third party in the regular course of its business and not as part of the disposition of any of its capital assets or the termination of its business on the same terms of purchase, lease or license as shall be available to all United States manufacturers of artificial Christmas trees.

## VI

### [ *Requests for Licenses* ]

Within ten (10) days of each of the first nine (9) anniversary dates of this Final Judgment, American Technical Industries, Inc. shall file with the Antitrust Division copies of all requests for licenses under Section IV(A) hereof and the disposition of each such request and all requests for written manuals under Section IV(B) hereof and the disposition of each such request.

## VII

### [ *Inspections* ]

For the purpose of securing or determining compliance with this Final Judgment:

(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, which may have counsel present, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant which relate to any matters contained in this Final Judgment;

(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 any 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 VII shall be divulged by a 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.

## VIII

### [ *Retention of Jurisdiction* ]

Jurisdiction of this cause is retained by the 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 modification of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.