

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Sonoco Products Co., 1970 Trade Cases ¶73,008, (Jan. 22, 1970)

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United States v. Sonoco Products Co.

1970 Trade Cases ¶73,008. In the United States District Court for the Eastern District of South Carolina, Florence Division. Civil No. 67-520. Entered January 22, 1970. Case No. 1956 in the Antitrust Division of the Department of Justice.

Sherman Act

Monopoly—Attempt to Monopolize—Consent Decree—Practices Enjoined—Agreements Not to Compete—Price Discrimination.—A manufacturer of paper cones was enjoined by a consent decree from entering into, adhering to, renewing or carrying out any contract, agreement or understanding with any other person whereby either party will not engage in the manufacture or sale of cone board, cones or cone-making machinery or will in any way limit, reduce or restrict sales of cone board, cones or cone-making machinery. The manufacturer was also prohibited from preventing, restricting, limiting or inducing any other person to engage in similar activities, and was enjoined from engaging in any program, practice or course of activity to suppress or eliminate competition in the manufacture or sale of cone board, cones or cone-making machinery, including selling or offering to sell any cone at unreasonably low or discriminatory prices.

Monopoly—Attempt to Monopolize—Consent Decree—Specific Relief—Sale of Cone Board—Sale of Machinery—Patent Licenses—Production Aid.—A manufacturer of paper cones was required by a consent decree for a period of five years to sell cone board to any person submitting an order for it, and to sell, within three years, six of its cone-making machines located in its plant at Atlanta, Georgia. The decree required the manufacturer to issue to the purchaser or purchasers of the machines unrestricted and nonexclusive licenses, on a royalty-free basis, on all unexpired patents, if any, relating to the production or use of paper cones and paper cone machinery which are controlled by it, and to furnish specific production, aid to such licensees.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen., and Baddia J. Rashid, Director of Operations, Antitrust Div., Dept. of Justice, and William D. Kilgore, Lewis Bernstein, Charles R. Esherick, Wharey M. Freeze and Charles F. B. McAleer, Attys., Dept. of Justice.

For the defendant: Philip Wilmeth, Hartsville, S. C, H. Graham Morison and George B. Haddock, of Morison, Murphy, Abrams & Haddock, Washington, D. C.

Final Judgment

MARTIN, D. J.: Plaintiff, United States of America, having filed its complaint herein on *the 2nd day* of August, 1967, and the defendant having appeared and filed its answer to the complaint denying the substantive allegations thereof, and the parties hereto, by their respective attorneys, having consented to the making and 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 admission by any party in respect to any such issue:

Now, Therefore, before the taking of any testimony 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 of this action and of the parties hereto. The complaint states claims upon which relief may be granted against the defendant under Section 2 of the Act of Congress of July 2, 1890, as amended, entitled "An act to protect trade and commerce against unlawful restraint and monopolies," commonly known as the Sherman Act.

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II

[*Definitions*]

For the purpose of this Final Judgment:

- (A) "Cones" shall mean conical or truncated conical devices, having, a taper from base to apex of not less than 2, the principal use for which is as carriers for textile yarns and other textile filamentous material;
- (B) "Paper Cones" shall mean cones made of paper or paperboard;
- (C) "Cone Board" shall mean paperboard which is or has been produced for use in the manufacture of paper cones;
- (D) "Defendant" shall mean and include Sonoco Products Company and its subsidiaries and each of them.

III

[*Applicability*]

The provisions of this Final Judgment applicable to the defendant shall also apply to each of its directors, officers, agents, successors, and assigns, and to all other persons in active concert or participation with any of them who have received actual notice of this Final Judgment by personal service or otherwise. This judgment shall not apply to activities which do not affect the domestic or foreign commerce of the United States.

IV

[*Manufacturing and Sales Agreements*]

Defendant is enjoined and restrained from:

- (A) Entering into, adhering to, renewing, or carrying out any contract, agreement, or understanding with any other person where by either party will not engage in the manufacture or sale of cone board, cones, or cone-making machinery or will in any way limit, reduce, or restrict sales of cone board, cones, or cone-making machinery, provided, however, that this subsection (A) shall not prohibit the grant or receipt of otherwise lawful patent licenses;
- (B) Preventing, restricting, limiting, or inducing or attempting to prevent, restrict, limit, or induce any other person to refuse to sell or refrain from manufacturing or selling cone board, cones, or cone-making machinery or to limit, reduce, or restrict the manufacture or sale of cone board, cones, or cone-making machinery.

V

[*Price Cutting*]

Defendant is enjoined and restrained from:

- (A) Engaging in any program, practice, or course of activity to suppress or eliminate competition in the manufacture or sale of cone board, cones, or cone-making machinery;
- (B) Selling or offering to sell any cone at unreasonably low or discriminatory prices for the purpose of eliminating or preventing or destroying competition in the manufacture or sale of paper cones.

VI

[*Sale of Cone Board*]

For a period of five (5) years, following the entry of this Final Judgment, defendant is ordered and directed to offer to sell and to sell at reasonable prices, terms, and conditions, to any person submitting an order therefore, cone board for manufacture into paper cones, provided, however:

- (A) Defendant shall not be required to sell in any one month a total amount of cone board in excess of 4 percent of the total amount of cone board produced by defendant in the United States during the twelve month period immediately preceding entry of this Final Judgment;
- (B) Defendant shall not be required to sell to any other person any cone board of any type, grade, quality, design, or specifications different from the cone board which defendant is producing, or at the option of the purchaser had produced in the United States during the year preceding the entry of this Final Judgment;
- (C) Any person who places an order with defendant for cone board may be required by defendant to give defendant three weeks' advance notice of the date on which such person desires a shipment of cone board to be made to him specifying the type and quantity of cone board he wishes to have shipped to him on said date;
- (D) That defendant may require that shipments of cone board shall be of sufficient quantity to enable defendant to schedule production thereof without undue interference with efficient operation of its paper-making machines;
- (E) If at any time defendant is unable, for any reason, to produce enough cone board to fill orders from defendant's customers for cone board and products made by defendant from cone board, including orders from any other manufacturers of paper cones, then defendant may make a pro rata allocation on an equitable and nondiscriminatory basis of its production of cone board among all orders for cone board and cone board products on hand or received during the time said inability to produce enough paperboard to fill said orders exists.

VII

[*Production Aid*]

Defendant is ordered and directed to issue to the purchaser or purchasers of the machines referred to in paragraph VIII below unrestricted and non-exclusive licenses, on a royalty-free basis, on all unexpired patents, if any, relating to the production or use of paper cones and paper cone-making machinery which are owned or controlled by defendant at the time of entry of this Final Judgment or on which defendant at said time has a pending application for patent. Defendant is further ordered and directed to make available to any such licensee all plans, drawings, written instructions, and other material relating to the practice of the inventions in such patents and to make available on a reasonable fee basis to such licensee, for consultation and advice concerning said patents and the art covered thereby, persons employed by defendant having technical skill or knowledge concerning the subject of said patents.

VIII

[*Sale of Machinery*]

- (A) The defendant is ordered and directed to offer and to sell within a period of three (3) years from the date of entry of this Final Judgment six (6) paper cone-making machines (including two (2) super cone machines) which are now in use in its plant in Atlanta, Georgia.
- (B) Within ninety days after the effective date of this Final Judgment, defendant shall make known generally to the cone-making, textile, paper, and paper converting industry the fact that such machines are available for sale. No sale shall be made within one hundred twenty days after said effective date. Defendant shall afford bona fide prospective purchasers an opportunity to inspect such machines in its plant at Atlanta, Georgia, and to observe them in operation. In addition, defendant shall permit representatives of any buyer of a machine to be present when it is disassembled, and shall provide technical advice and assistance in the re assembly and installation of said machine in operating condition upon the premises of the buyer or buyers. Defendant shall provide, upon request of the buyer of any of said machines, for a period of sixty days after said installation, technical advice and consultation concerning the operation of said machine. Defendant may charge a buyer the costs and expenses of the engineers, mechanics, and technical assistants required to provide the aforesaid technical advice, consultation, and assistance.

(C) If requested by the buyer of any machine, defendant shall furnish to said buyer, at the cost of reproduction thereof, copies of any or all specifications, blue prints, and drawings relating to said machine and its respective parts as may be in the possession of defendant.

(D) Except as hereinabove specifically provided, defendant shall have no responsibility for the operation of said machines by the buyer or buyers. Defendant shall not be required to make any express or implied warranty or guarantee that the specifications, blueprints, and drawings referred to in subparagraph C above are accurate or that said specifications, blueprints, or drawings can be used successfully to make a machine capable of producing paper cones.

(E) If more than one buyer should make an offer to buy all or any of the machines, and if such offers are substantially similar in amounts, then defendant shall not sell more than four machines to any one of said buyers.

IX

[*Inspection and Compliance*]

For the purposes of determining or securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon 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 claim of privileges, (a) access during the office hours of defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession, custody, or control of defendant relating to any matters contained in this Final Judgment and (b) subject to the reasonable convenience of defendant, but without restraint or interference from it, to interview officers, directors, agents, or employees of the defendant, who may have counsel present, regarding any such matter. Upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be requested. No information obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch, 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.

X

[*Jurisdiction Retained*]

Jurisdiction is retained 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 enforcement of compliance therewith, and the punishment of any violation thereof.