

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMATEUR SOFTBALL ASSOCIATION
OF AMERICA;
ATHLEONE INDUSTRIES, INC.; and
H. HARRISON & SONS, INC.,

Defendants.

Civil Action No. 73-883-D

Filed: December 28, 1973

Entered: January 31, 1974

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on December 28, 1973, and Plaintiff and Defendants, by their respective attorneys, having each consented to the making and entry of this Final Judgment; without trial or adjudication of or finding on any issues of fact or law herein and without this Final Judgment constituting any evidence against or admission by any party with respect to any such issues;

NOW, THEREFORE, without any testimony having been taken and upon consent of the parties hereto it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter herein and of each of the parties hereto. The Complaint states claims upon which relief may be granted against the Defendants under Section 1 of the Act of Congress of July 2, 1890, as amended, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies" (15 U.S.C. §1), commonly known as the Sherman Act.

II

As used in this Final Judgment:

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

(B) "ASA" shall mean Defendant Amateur Softball Association of America;

(C) "Athlone" shall mean Defendant Athlone Industries, Inc.;

(D) "Harwood" shall mean Defendant W. Harwood & Sons, Inc.;

(E) "top grade softball" shall mean a softball meeting the specifications set forth in Rule 2, Section 2 of the ASA's 1972 Official Guide, or any subsequent modification thereof;

(F) "ASA Trademark" shall mean the official Trademark of the ASA (No. 883, 489) or any other trade or service mark which shall hereafter be adopted by the ASA;

(G) "ASA play" shall mean all regular season, invitational, tournament, or any other softball games officially sanctioned by the ASA.

III

The provisions of this Final Judgment applicable to any Defendant shall also apply to its parent company, if any, and its divisions, subsidiaries, successors, assigns, officers, directors, agents, servants and employees, and to all those persons in active concert or participation with any such Defendant who shall have received actual notice of this Final Judgment by personal service or otherwise. None of the provisions of this Final Judgment shall apply outside of the United States of America, its commonwealths, territories and possessions, to activities which do not in any way affect the foreign or domestic commerce of the United States.

IV

(A) Each Defendant is ordered and directed to:

- (1) terminate and cancel on or before the date of entry of this Final Judgment all trademark and service marks, including those which were originally entered into on March 26, 1969 involving the ASA Trademark, between it and any other Defendant; and

- (2) refrain from all references in printed material (e.g., advertisements, press releases, etc., pricing documents, correspondence, and forms), published after the date of entry of this Final Judgment, that the top grade softballs manufactured by Harwood and Athlete are the only approved or official softballs for use in ASA play.

(B) Each Defendant is enjoined and restrained, individually and collectively, from entering into, adhering to, enforcing, or claiming, either directly or indirectly, any rights under any contract, agreement, understanding, arrangement, plan or program with any other person to:

- (1) impose unreasonable or discriminatory requirements upon manufacturers with respect to the right to use or display the ASA trademark;
- (2) designate Harwood or Athlete, or both of them, as the only manufacturers of top grade softballs acceptable for use in ASA play; or
- (3) require, recommend, or coerce ASA member teams or commissioners to use and/or promote only Harwood's and/or Athlete's top grade softballs for ASA play.

(C) Each Defendant is enjoined and restrained, individually and collectively, from entering into, adhering to, enforcing, or claiming, either directly or indirectly, any rights under any contract, agreement, understanding, arrangement, plan or program with each other or with any third person to require, recommend, or coerce ASA member teams to use and/or promote only Harwood's and/or Athlete's top grade softballs for ASA play.

V

(A) ASA is enjoined and restrained from entering into, adhering to, or enforcing any agreement, understanding, arrangement, plan or program with any person which would:

- (1) exclude any manufacturer or supplier of top grade softballs from supplying top grade ASA play; or
- (2) restrict the use of top grade softballs by its member teams to those products of manufacturers who have entered into a trademark license agreement with the ASA.

(B) ASA is enjoined and restrained from:

- (1) prescribing any rules, regulations or standards which discriminate among manufacturers of top grade softballs; or
- (2) conditioning the use of any top grade softball in ASA play upon the fact that such softball's manufacturer has or does not have a license to use the ASA Trademark; or
- (3) refusing to license the ASA Trademark to any manufacturer upon the same terms and conditions as it may license any other such manufacturer.

VI

Nothing contained in this Final Judgment shall be deemed to prevent the ASA, through its rule making bodies, from prescribing and adopting reasonable rules and regulations, equipment standards, or other procedures by which the ASA and its members function. Provided, however, that nothing contained in this Section VI shall evade any of the provisions of this Final Judgment or to implement other activities in derogation hereof.

VII

(A) Within 30 days of the date of entry of this Final Judgment, Athlona and Harwood are ordered and directed to furnish a copy of this Final Judgment to each of their officers, directors, and sales managers, who have any responsibilities in the sporting goods area, and, for a period of five years from the date of entry of this Final Judgment, to each of their successors, within 30 days of such successor's appointment.

(B) Within 30 days of the date of entry of this Final Judgment, the ASA is ordered and directed to furnish a copy of this Final Judgment to each of its officers and executive committee members; to each of its state and metro commissioners; and to each domestic top grade softball manufacturer.

(C) In its next regularly scheduled Official Guide and Annual Report publications and in its next 12 regularly scheduled Balls and Strikers publications (noted conspicuously on the front page thereof) after the date of entry of this Final Judgment, ASA is ordered and directed to insert an announcement to ASA members that the top grade softballs of any manufacturer may be used in ASA play.

(D) Within 10 days of compliance with the provisions in Paragraphs (A) through (C) above, each Defendant shall file with this Court, and serve upon Plaintiff, an affidavit as to the fact and manner of such compliance.

VIII

(A) For a period of 10 years from the date of entry of this Final Judgment, ASA is ordered and directed to file with Plaintiff on each anniversary date of this Final Judgment, a report as to the status and terms of any licensing of its Trademark or Trademarks.

(B) For a period of ten (10) years from the date of entry of this Final Judgment, each Defendant is ordered to file with the

Plaintiff, on each anniversary date of such entry, a report setting forth the steps which it has taken during the prior year to advise the Defendant's appropriate officers, directors and employees of its and their obligations under this Final Judgment.

IX

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, 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 any Defendant made to its principal office, be permitted, subject to any legally recognized privilege, access during the 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 such Defendant relating to any matters contained in this Final Judgment; and subject to the reasonable convenience of such Defendant and without restraint or interference from it, to interview any officer, director, or employee of such Defendant, who may have counsel present, regarding any such matters. Any Defendant, upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal office, 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 obtained by the means provided in this Section IX shall be divulged by any representatives of the Department of Justice to any persons 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.

X

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, and for the enforcement of compliance herewith and the punishment of violations hereof.

/s/ FRED DAUGHERTY
UNITED STATES DISTRICT JUDGE

Dated: January 31, 1974