

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Hamilton Manufacturing Co., Charles Bruning Co., Inc., Defiance Sales Corp., Dieterich-Post Co., Eugene Dietzgen Co., B. K. Elliott Co., Keuffel & Esser Co., The Frederick Post Co., and L. L. Ridgway Co., Inc., U.S. District Court, E.D. Wisconsin, 1960 Trade Cases ¶69,882, (Dec. 20, 1960)

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United States v. Hamilton Manufacturing Co., Charles Bruning Co., Inc., Defiance Sales Corp., Dieterich-Post Co., Eugene Dietzgen Co., B. K. Elliott Co., Keuffel & Esser Co., The Frederick Post Co., and L. L. Ridgway Co., Inc.

1960 Trade Cases ¶69,882. U.S. District Court, E.D. Wisconsin. Civil No. 60-C-57. Filed December 20, 1960. Case No. 1515 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Conspiracy—Boycott—Refusal to Deal—Price Fixing and Pricing Practices—Consent Decree.—A drafting products manufacturer and its principal distributors were ordered in a consent decree to terminate all contracts which fixed or attempted to fix resale prices for the manufacturer's drafting furniture and were prohibited from entering into similar contracts for a period of three years. The defendants were also prohibited from entering into, adhering to, maintaining, reviving or claiming any rights under any contract, agreement or understanding among themselves or with any other person to, (1) fix prices, terms, or conditions for the sale of drafting furniture to any third person (lawful resale price contracts not restricted), (2) limit or restrict the person to whom, or the terms or conditions on which any person may resell such furniture, (3) boycott, (4) refuse to stock or offer for sale drafting furniture other than that of the manufacturer, (5) refuse to extend discounts to any third person on the manufacturer's furniture. The defendants were also ordered to mail each wholesaler and retailer on their current distribution lists, a true and complete copy of this consent decree.

Conspiracy—Exclusive Dealing—Consent Decree.—A drafting products manufacturer and its principal distributors were prohibited in a consent decree from selling or offering to sell the manufacturer's drafting furniture on the expressed or implied condition that the purchaser buy all or any portion of his other requirements from the defendants or that the purchaser not buy or deal in drafting furniture manufactured or sold by any other person. The manufacturer was individually prohibited from refusing to enter into or cancelling any contract with a wholesaler or any retailer because of his refusal to agree or adhere to any contract contrary to this consent decree and from impeding or restricting, or the attempt to do so, the free choice of any wholesaler in the selection of customers for the manufacturer's products.

For the plaintiff: Robert A. Bicks, Assistant Attorney General, William D. Kilgore, Jr., Lewis Bernstein, Philip L. Roache, Jr., Charles F. B. McAleer, Joseph J. O'Malley and Allan J. Réniche, Attorneys, Department of Justice.

For the defendants: A. F. Rankin for Hamilton Mfg. Co., Steven E. Keane for Charles Bruning Co., Inc., James P. Brody for B. K. Elliott Co. and Defiance Sales Corp., W. Donald McSweeney and Kenneth K. Luce for Eugene Dietzgen Co., Henry M. Thullen and Ray T. McCann for Frederick Post Co., Kneeland A. Godfry for L. L. Ridgway Co., Inc., and T. L. Tolan, Jr., for Dieterich-Post Co.

Final Judgment

TEHAN, District Judge [*In full text*] : Plaintiff, United 'States of America, having filed its complaint herein on April 25, 1960, the defendants having appeared, and the plaintiff and the defendants,¹ 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 evidence or an admission by any party hereto in respect of any such issue;

Now, therefore, before the taking of any testimony and without trial of adjudication of any issue of fact or law herein, 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 herein and of the parties hereto. The complaint states a claim upon which relief against the defendants may be granted under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

- (A) "Person" shall mean any individual, partnership, corporation, association or other legal entity;
- (B) "Hamilton" shall mean the defendant Hamilton Manufacturing Company;
- (C) "Drafting furniture" shall mean all furniture and equipment suitable for use in drafting, including but not limited to, drafting tables, drawing tables, drawing boards and files;
- (D) "Hamilton drafting furniture" shall mean drafting furniture manufactured or sold by defendant Hamilton;
- (E) "Wholesaler" shall mean any person who purchases drafting furniture for resale to persons other than consumers;
- (F) "Retailer" shall mean any person who purchases drafting furniture for resale to consumers.

III

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall also apply to such defendant's officers, directors, agents, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

[*Price-fixing Contracts Termination*]

The defendants are ordered and directed within thirty (30) days from the date of entry of this Final Judgment to terminate and cancel all contracts or agreements which fix or maintain or purport to fix or maintain resale prices of Hamilton drafting furniture and the defendants are each enjoined and restrained from entering into, adhering to or enforcing, directly or indirectly, the same or any other such contracts or agreements having a similar purpose or effect as to Hamilton drafting furniture for a period of three (3) years from the date of entry of this Final Judgment; provided, however, that any defendant may, at any time after termination of eighteen (18) months from the date of entry of this Final Judgment, apply to this Court, with reasonable notice to the Attorney General and opportunity for him to be heard, for modification or elimination of the restrictions of this Section IV for good cause shown.

V

[*Practices Prohibited*]

The defendants are each enjoined and restrained from entering into, adhering to, maintaining, reviving or claiming any rights under any contract, agreement or understanding among themselves or with any other person to:

(A) Fix, establish, maintain or adhere to prices, discounts or other terms or conditions for the sale of Hamilton drafting furniture to any third person;

(B) Limit or restrict the person to whom, or the terms or conditions on which any person may resell Hamilton drafting furniture;

(C) Boycott or otherwise refuse to do business with any person or to maintain a system requiring any mutual approval of third persons to whom either may sell Hamilton drafting furniture;

(D) Refuse to stock or offer for sale, or prevent or attempt to prevent any other person from stocking or offering for sale, drafting furniture manufactured or sold by persons other than Hamilton;

(E) Refuse to extend discounts on Hamilton drafting furniture to any third person.

The provisions of subsection (A) of this Section V, however, shall not restrict the right of any defendant to exercise such lawful rights which it may have to enter into resale price maintenance agreements, as to Hamilton drafting furniture, as provided in Section IV above.

VI

The defendants are each enjoined and restrained from:

(A) Selling or offering to sell any Hamilton drafting furniture on the condition expressed or implied, that the purchaser thereof buy all or any portion of his other requirements from such defendants or any of them; or

(B) Selling or offering to sell Hamilton drafting furniture on the condition or understanding, expressed or implied, that the purchaser not buy or deal in drafting furniture manufactured or sold by any other person.

VII

Defendant Hamilton is enjoined and restrained from:

(A) Refusing to enter into or cancelling any contract with a wholesaler or any retailer for the sale or distribution of Hamilton drafting furniture because of his refusal to agree or adhere to any contract, agreement or understanding contrary to any of the provisions of this Final Judgment;

(B) Impeding or restricting or attempting to impede or restrict, directly or indirectly, the free choice of any wholesaler in the selection of his customers for Hamilton drafting furniture.

VIII

[*Notification of Wholesalers and Retailers*]

Defendants are each ordered and directed to mail, within ninety (90) days from the date of entry of this Final Judgment, a true and complete copy of this Final Judgment to each wholesaler and retailer on such defendant's current distribution lists.

IX

[*Enforcement and Compliance*]

For the purpose of 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 any defendant, made to the principal office of such defendant, be permitted (1) access during the office hours of the defendant to books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant relating to any subject matter contained in this Judgment and (2) subject to the reasonable

convenience of the defendant and without restraint or interference from it to interview officers and employees of the defendant, who may have counsel present, regarding any such matters. Upon such written request, said 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 necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means provided in this Section IX 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 plaintiff 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 any party hereto 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 amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Footnotes

- 1 The provisions of this decree do not apply to Keuffel & Esser Company.