

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Bostitch, Inc., U.S. District Court, D. Rhode Island, 1958 Trade Cases ¶69,207, (Dec. 2, 1958)

United States v. Bostitch, Inc.

1958 Trade Cases ¶69,207. U.S. District Court, D. Rhode Island. Civil Action No. 2362. Dated December 2, 1958. Case No. 1395 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Resale Price Fixing—Restraint of Trade Under Sherman Act, Section 1—Consent Decree—Practices Enjoined—Agreement to Maintain Resale Prices.—A manufacturer of stitchers and staplers was enjoined by a consent decree from (1) entering into any agreement with its distributors to fix the prices, terms, or conditions for the sale of such products to third persons, and (2) entering into any agreement with any dealer, for a period of two years from the effective date of the decree, relating to resale price maintenance. The manufacturer was also enjoined from circulating to distributors information respecting prices, prior to the time when such information was generally announced to the trade.

Resale Price Fixing—Restraint of Trade Under Sherman Act, Section 1—Consent Decree—Practices Enjoined—Resale Price Control Through Refusal to Sell.—A manufacturer of stitchers and staplers was enjoined by a consent decree from refusing to enter into, or cancelling, any agreement or contract with any distributor for the sale or resale of any products because of such distributor's refusal to adhere to price fixing agreements or any other agreements prohibited by the decree. However, the manufacturer and its subsidiaries were permitted to choose and select distributors, dealers, and other customers.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Allocation of Markets and Customers.—A manufacturer of stitchers and staplers was enjoined by a consent decree from (1) limiting or restricting the territories in which any distributor, or the manufacturer, might sell such products, (2) limiting or restricting the customers to whom any distributor, or the manufacturer, might sell such products, and (3) refraining from competing in or for customers, markets, or territories for the sale of such products. However, the manufacturer was permitted to designate geographical areas in which its distributors should be primarily responsible for selling its products.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Restricting Use of Competitors' Products.—A manufacturer of stitchers and staplers was prohibited by a consent decree from limiting or restricting the right of any distributor to purchase, distribute, or sell products manufactured or sold by any source other than the manufacturer.

Department of Justice Enforcement and Procedure—Consent Decree—Specific Relief —Modification of Contracts.—A manufacturer of stitchers and staplers was ordered by a consent decree to modify any agreements with certain companies which related to products sold by the manufacturer, by terminating and cancelling provisions which were contrary to the terms of the decree. Also, the manufacturer was directed to mail to each of those companies, within thirty days, a true and complete copy of the decree.

Department of Justice Enforcement and Procedure—Consent Decree—Permissive Provision—Choosing Customers—Designating Sales Territories.—A manufacturer of stitchers and staplers was permitted by a consent decree to choose and select distributors, dealers and other customers and to designate geographical areas in which they should be primarily responsible for selling the manufacturer's products. Also, the manufacturer was permitted to terminate the franchises of distributors or stop selling to dealers who did not adequately represent it and promote the sale of its products in their respective areas.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; and W. D. Kilgore, Jr., Baddia J. Rashid, Philip L. Roache, Jr., Charles F. B. McAleer, Stanley R. Mills, Jr., and Joseph J. O'Malley, Attorneys, Department of Justice.

For the defendant: George C. Davis and Westcote H. Chesebrough.

Final Judgment

EDWARD W. DAY, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on June 19, 1958; the defendant, Bostitch, Inc., having appeared and filed its answer to the complaint denying the substantive allegations thereof; and the plaintiff and the defendant, by their attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without admission by either of them in respect to any such issue;

Now Therefore, before any testimony or evidence has been taken herein, and without trial or 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 hereof and of the parties hereto. The complaint states a claim against the defendant, under which relief 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" means any individual, partnership, firm, association, corporation or other business or legal entity.

(B) "Products" means any and all stitchers and staplers (including stapling hammers, stapling tackers, stapling pliers, stapling bottomers and auto-clench stapling machines), folder gluers or any fastening device similar to any of the foregoing, staples, staple removers, and any and all parts and accessories therefor, now or hereafter manufactured and/or sold by Bostitch, Inc. or by any of its subsidiaries, as subsidiaries are hereinafter defined.

(C) "Defendant" means Bostitch, Inc., a corporation organized and existing under the laws of the State of Rhode Island.

(D) "Subsidiary" means any existing or future corporation whose stock is directly or indirectly wholly owned by defendant.

(E) "Distributor" means any person (other than defendant and its wholly-owned subsidiaries) engaged in the purchase of products from Bostitch, Inc., for resale to third persons in the United States.

(F) "Dealer" means any person engaged in the purchase of products from a distributor or subsidiary or through an agent for resale to third persons in the United States.

(G) "United States" means the United States, its territories and possessions.

III.

[*Applicability*]

The provisions of this Final Judgment shall apply to the defendant and to each of its subsidiaries, successors, assigns, officers, directors, employees and agents, and to those persons in active concert or participation with the defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

[*Price-Fixing—Exclusive Dealing*]

Defendant is enjoined and restrained from directly or indirectly:

(A) Entering into, adhering to, maintaining, enforcing or claiming any rights under any agreement, contract or understanding with any distributor to:

- (1) Fix, establish, maintain, stabilize or adhere to prices, terms or conditions for the sale of products to third persons;
- (2) Fix, establish, maintain, stabilize or adhere to freight rates to be used in the sale of products to the United States Government, State, municipal or educational institutions;
- (3) Limit or restrict the territories in which or the customers to whom any distributor or the defendant may sell products;
- (4) Refrain from competing in or for customers, markets or territories for the sale of products;
- (5) Limit or restrict the right of any distributor to purchase, distribute or sell products manufactured or sold by any source other than defendant.

(B) Refusing to enter into or cancelling any agreement or contract with any distributor for the sale or resale of any products because of such distributor's refusal to agree or adhere to any agreement, contract or understanding contrary to or inconsistent with any of the provisions of subsection (A) of this Section IV.

(C) Circulating, exchanging or communicating to or with any distributor information respecting prices, freight rates or terms or conditions for the sale of products to third persons prior to the time when such information is generally announced to the trade.

(D) Entering into, adhering to, maintaining, enforcing or claiming any rights for a period of two years from the effective date of this Final Judgment under any contracts, agreements or understandings with any dealer relating to resale price maintenance.

[*Permissive Provision*]

Subject to subsections (A), (B), (C) and (D) above, Bostitch, Inc. and its subsidiaries may respectively exercise the right to choose and select distributors, dealers, and other customers and to designate geographical areas in which such distributors and dealers shall respectively be primarily responsible for selling products and may terminate the franchises of distributors or cease to sell to dealers, who do not adequately represent Bostitch, Inc. or its particular subsidiary and promote the sale of products in areas so designated as their primary responsibility.

V.

[*Specific Relief*]

(A) Defendant is ordered and directed to modify, within 30 days from the entry of this Final Judgment, any agreements with American Type Founders Co., Inc., Bostitch-McClain, Inc., and Henry W. Saari, Inc., relating to products, by terminating and cancelling any provisions thereof contrary to or inconsistent with any terms of this Final Judgment.

(B) Upon the modification, termination or cancellation of the agreements provided for in subsection (A) hereof, defendant is enjoined and restrained from entering into, adhering to or claiming any rights under any agreement, contract or understanding which is contrary to or inconsistent with any provision of this Final Judgment.

(C) Defendant is ordered and directed, within 30 days from the entry of this Final Judgment, to mail to each of the corporations listed in subsection (A) hereof, a true and complete copy of this Final Judgment.

VI.

[*Enforcement and Compliance*]

For the purpose of securing compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant

Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during the office hours of the defendant, to those parts of the books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant which relate to any matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of the defendant and without restraint or interference from the defendant, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters.

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Anti-trust, Division, the defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VII.

[*Jurisdiction Retained*]

Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time and from time to 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.

VIII

[*Effective Date*]

This Final Judgment shall become effective thirty (30) days from the date of entry hereof.