

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Herff Jones Co.; John Roberts Manufacturing Company, Inc.; John T. Waugh; and Robert G. Waugh., U.S. District Court, S.D. Indiana, 1967 Trade Cases ¶72,099, (Jun. 14, 1967)

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United States v. Herff Jones Co.; John Roberts Manufacturing Company, Inc.; John T. Waugh; and Robert G. Waugh.

1967 Trade Cases ¶72,099. U.S. District Court, S.D. Indiana, Indianapolis Division. Civil Action No. JP65-C-465. Entered June 14, 1967. Case No. 1875 in the Antitrust Division of the Department of Justice.

## Clayton and Sherman Acts

**Acquisitions—Divestiture—Common Officers—Consent Decree.**—A manufacturer of class rings, which acquired another class ring manufacturer with the conditional approval of the court and the government, was required by the terms of a consent decree to divest itself of the acquired firm and to refrain from unapproved similar acquisitions for 10 years. Also, the decree prohibited two individuals alleged to have conspired to effect the merger from continuing as officers of any two similar firms simultaneously, and barred the firms from having common officials or employees.

For the plaintiff: Donald F. Turner, Assistant Attorney General; Gordon D. Spivack, William D. Kilgore, Jr., Donald G. Balthis, Walter L. Devany, Leonard E. Dimare, and Joseph A. Licari, Jr., Attorneys, Department of Justice.

For the defendants: Harry T. Ice and Claude M. Warren for Herff Jones Co.; James M. Sneed for John Roberts Mfg. Co., Inc., John T. Waugh and Robert G. Waugh.

## Final Judgment

HOLDER, District Judge: Plaintiff, United States of America, having filed its complaint herein on October 4, 1965, and the defendants, by their attorneys, having appeared and filed their answer denying the material allegations of the complaint; the parties, by their respective 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 this Final Judgment constituting any evidence or admission by any party in respect to any such issue of fact or law herein;

Now, Therefore, before the taking of any testimony, 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 parties and subject matter of this action. The complaint states claims upon which relief may be granted against all defendants 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 (15 U. S. C. Sec. 1), and under Section 7 of the Act of Congress of October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act, as amended (15 U. S. C. Sec. 18).

II

[ *Definitions* ]

As used in this Final Judgment:

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- (A) "Herff" means the defendant Herff Jones Co.;
- (B) "Roberts" means the defendant John Roberts Manufacturing Company, Inc.;
- (C) "Waugh" means the defendants John T. Waugh and Robert G. Waugh, and each of them;
- (D) "Person" means any individual, partnership, firm, corporation, or any other business or legal entity; and
- (E) "Class rings" means rings manufactured for ultimate sale to students of institutions of learning which symbolize students' attendance at or graduation from such institutions of learning, and which are made of carat gold, with or without colored center stones, normally bearing the name, crest, symbol, or other emblem of such institution and the year of the student's graduation class.

### III

#### [ *Applicability* ]

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

### IV

#### [ *Future Acquisitions* ]

The defendant Herff is enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from acquiring any stock or assets of any person engaged in the manufacture, distribution or sale of class rings in the United States, except upon the defendant's giving sixty (60) days' prior written notice of all relevant facts regarding such proposed transaction to the plaintiff herein and, where the plaintiff advises such defendant in writing within thirty (30) days of actual receipt of such notice that it objects to such proposed transaction, upon application by the defendant to this Court, and after establishing to the satisfaction of this Court that the effect of such proposed transaction will not be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the country.

### V

#### [ *Divestiture* ]

Within six (6) months from the date of entry of this Final Judgment, Herff shall dispose of all legal and equitable right, title and interest in, and to all the shares of stock of Roberts in a manner acceptable to the plaintiff herein. It is now contemplated that such disposition be accomplished by returning the stock of Roberts to the former owners of Roberts as of December 6, 1965. As part of such disposition, there shall be no common stockholders between Herff and Roberts. After such disposition the Waugh's neither directly nor indirectly shall simultaneously hold any of the shares of stock of Herff and Roberts.

### VI

#### [ *Restrictions on Officers* ]

(A) The Waugh's are enjoined and restrained from continuing as officers, directors, managers, or otherwise in the employ of both Herff and Roberts simultaneously, or in the employ of any two class ring manufacturers simultaneously.

(B) Herff and Roberts, are each enjoined and restrained from continuing any individual as a director, officer, or employee who is simultaneously a director, officer, or employee of the other corporate defendant.

### VII

#### [ *Effect of Conditional Approval* ]

The Entry of this Court of December 9, 1965, as amended January 31, 1967 (copies attached hereto and incorporated by reference herein) in this action shall not prevent the defendants from complying with the terms of this Final Judgment. Upon the filing with the Clerk of this Court by Herff of an affidavit that it has completed the divestiture required by Section V, the Entry of December 9, 1965, as amended January 31, 1967, shall be of no further force or effect.

## VIII

### [ *Inspection and Compliance* ]

For the purpose of securing compliance with this Final Judgment and no other purpose, duly authorized representatives of The Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to said defendant's principal office, be permitted (1) access, during the office hours of said defendant who may have counsel present, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant regarding the subject matters contained in this Final Judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference from said defendant, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters.

Each defendant, upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and upon notice made to said defendant's principal office, shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided in this Section VIII 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 of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

## IX

### [ *Jurisdiction Retained* ]

Jurisdiction is retained for the purpose of enabling any of the parties 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 modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.

### **Entry for December 9, 1965**

HOLDER, D. J.: Plaintiff having filed its complaint herein, a temporary restraining order having been issued, defendants having moved for dissolution of such temporary restraining order and making certain representations in connection therewith, plaintiff having opposed said motion, and the parties having appeared by their counsel; now, therefore, with the consent of defendants and, in view of the representation of the defendants and the particular facts of this case, without objection by plaintiff,

It is ordered, Adjudged and Decreed that:

- (1) The temporary restraining order issued herein on October 5, 1965, as there after modified and continued, be and the same hereby is dissolved under the conditions set forth herein.
- (2) The consolidated hearing herein set for December 13, 1965, be and the same hereby is continued until *further order of the court*, at which time the case will be heard on the application of the plaintiff for a permanent injunction.
- (3) Pending final determination of this action on its merits or unless otherwise ordered by this Court upon good cause shown and after notice to all parties, the defendants may proceed to close and consummate the

transactions and transfers contemplated by the Agreement and Plan of Reorganization, dated September 10, 1965, subject to the following conditions:

(a) Herff Jones Co. (Herff) will receive and hold the shares of the capital stock of John Roberts Manufacturing Company, Inc. (Roberts) to be acquired from its shareholders and shall not enter into any plan of merger, consolidation or other form of reorganization, or alienate, pledge or encumber such shares in any way, pending final determination of this case on its merits, that would result in the loss of the separate identities of said two companies; and Roberts shall be operated as an independent subsidiary of Herff;

(b) Roberts shall have management completely independent of the management of Herff, under the control of a board of directors, none of which officers or directors shall be officers or directors of Herff or of any of Herff's affiliates or subsidiaries; said officers and board of directors of Roberts shall act solely in the best interests of Roberts and shall use in good faith their best efforts to promote and maintain the business operations of Roberts in vigorous competition with all other companies including Herff engaged in the manufacture, sale or distribution of jewelry; and said board of directors and officers shall not, other than in the normal course of business dealings of the nature that existed prior to June 3, 1965, communicate with or inform Herff of its business plans and operations, other than to provide Herff with monthly summary statistical reports, profit and loss statements, and balance sheets, copies of which shall be furnished to the plaintiff at the same time they are furnished to Herff so that the plaintiff may apply to the Court for such relief, if any, as it may deem appropriate; except as otherwise specifically provided in this Order, Herff may exercise all its rights as a shareholder and creditor of Roberts;

(c) Title to all assets, tangible and intangible, including but not limited to plant, dies, molds, machinery, other equipment and facilities, trade secrets, manufacturing processes, patents, good will, etc. of Roberts shall remain in said company and shall not be removed, sold, transferred, encumbered or otherwise disposed of except those products produced for sale by Roberts in the normal and ordinary course of its business; provided, that assets may be encumbered in connection with loans from lending institutions, which loans are incurred in the normal and regular course of business of Roberts;

(d) Dividends or other distributions to Herff as the result or by reason of its ownership of the stock of Roberts shall in no event exceed the net earnings of Roberts subsequent to July 1, 1965, determined in accordance with accounting practices and standards generally followed by manufacturers of jewelry;

(e) No business dealings shall exist between Herff and Roberts other than in the nature of such lawful business dealings as existed prior to June 3, 1965; and either Roberts or Herff when performing services for the other shall receive compensation therefor at the same rate as it was then receiving or as heretofore received from other non-related companies for similar services or at such lower rate as such services may be obtained from other parties;

(f) Subject to the physical limitations of its plant and equipment and facilities, Roberts shall continue to offer its production services at nondiscriminatory rates and terms, but subject to such credit restrictions that it considers necessary in any particular instance, to jewelry manufacturers and distributors insofar as it heretofore has done so; provided that Roberts shall report within thirty (30) days after the end of each month to the plaintiff all services performed hereunder during the preceding month for any company, including Herff; and

(g) No commitments for loans to Roberts shall be made by Herff after the date of this Order unless ten (10) days in advance of any such proposed commitment the plaintiff shall be furnished with a copy of the proposed commitment and any agreements pursuant thereto so that the plaintiff may apply to the Court for such relief, if any, as it may deem appropriate.

Pending final determination of this action upon its merits, or unless otherwise ordered by the Court upon good cause shown and after notice to all the parties:

(a) Defendants Herff and Roberts shall report to plaintiff within sixty (60) days following the calendar quarter ending December 31, 1965, and each calendar quarter thereafter, the volume of sales in units and dollars of each jewelry product;

(b) Defendants Herff and Roberts shall permit authorized representatives of the Department of Justice to have access during the business hours of such companies to all records of such companies relating to any matters contained in this Order and pertaining to this cause, and shall permit said representative to interview, subject to the reasonable convenience of the defendants, the officers or employees of such companies who may have counsel present, regarding any matters contained in this Order and relating to this cause. Said access and interviews shall be granted only upon the written request of the Attorney General or Assistant Attorney General in charge of the Antitrust Division and upon reasonable notice to such company made at its principal office, and is subject to legally recognized privileges.

(c) Defendants Herff and Roberts, upon request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports as may reasonably be requested relating to this Order or this cause.

(d) No information obtained by this means provided in this paragraph 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 plaintiff is a party, for the purpose of securing compliance with this Order or as otherwise required by law.

(5) If any defendant is dismissed as a party to this cause prior to final determination of the cause, such defendant shall continue to be subject to such discovery as is provided for by the Federal Rules of Civil Procedure to the same extent as if it or he were still a defendant.

(6) Information provided in the reports or financial information pursuant to this Order shall not be divulged to persons outside of the Executive Branch of the government or except in the course of legal proceedings to which the United States is a party or as otherwise required by law.

**Entry on Stipulation to Amend Entry of December 9, 1965, Dated January 31, 1967**

NOLAND, D. J.: The Court having received the Stipulation of the parties to amend the Entry of December 9, 1965 in this cause, and being duly advised in the premises, now orders that such Entry be amended by adding at the end of Paragraph 3(b) of such Entry the following language which shall be a part of such Paragraph:

“Provided, however, nothing contained in this order shall prohibit Roberts from employing John T. Waugh or Robert G. Waugh or Charles Parker, or prohibit all or any of them for six (6) months from the date of this amendment from serving as members of the board of directors of Herff while so employed, but none or all of them shall serve as officers or employees of both Herff and Roberts simultaneously and should any one or more or all of them be hired by Roberts, they shall not again serve as officers or employees of Herff while the Entry of December 9, 1965, as amended, remains in force.”