

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Allegheny Ludlum Steel Corporation, et al., U.S. District Court, D. New Jersey, 1948-1949 Trade Cases ¶62,330, (Oct. 25, 1948)

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United States v. Allegheny Ludlum Steel Corporation, et al.

1948-1949 Trade Cases ¶62,330. U.S. District Court, D. New Jersey. Civil No. 4583. October 25, 1948.

Sherman Antitrust Act

Consent Judgment—Agreements in Restraint of Trade—Acts Enjoined.—A consent judgment entered in a civil suit charging 18 stainless steel companies with entering into a combination in restraint of trade in violation of the Sherman Act enjoins defendants from: entering into agreements to fix, maintain, determine or adhere to prices or other terms of sale; printing, publishing, circulating, quoting or using any prices, price lists, discounts, differentials of any other term or condition of sale to be required of others in connection with the purchase or sale of stainless steel products pursuant to or resulting from any agreement or plan among defendants; conferring as to prices or extras to be quoted or charged to others for stainless steel products; preparing, circulating, exchanging or using “advance information” or any other information concerning prices and conditions of sale; publishing, quoting or charging prices on any basis other than (1) F.O.B. at the actual place of manufacture or origin of shipment, or (2) on a basis which at destination at no time shall be higher than the F.O.B. price at the actual place of manufacture or origin of shipment, plus actual transportation and other delivery charges, with every purchaser having an option to purchase F.O.B. at the actual place of manufacture or origin of shipment. A defendant is ordered to grant to any applicant a non-exclusive license under certain patents at reasonable and non-discriminatory royalties, and a nonexclusive grant of immunity from suit under any foreign patents owned or controlled by that defendant corresponding to the domestic patents.

For plaintiff: Herbert A. Bergson, Assistant Attorney General; Isaiah Matlack, United States Attorney; Manuel M. Gorman, Sigmund Timberg, J. Francis Hayden, Samuel Flatow, Special Assistants to the Attorney General.

For defendants: Carpenter, Gilmour & Dwyer, James S. Carpenter, Jr.; Stryker, & Homer, Stryker; John A. Hartpence; Pitney Hardin Ward & Brennan, Charles B. Hardin; C. Laud; Riker, Marsh & Scherer, Riker, Emery & Danzig; Cravath, Swaine & Moore, Hoyt A. Moore; Minton & Dinsmore, V. Lane.

Final Judgment

The complainant, the United States of America, having filed a complaint herein on January 19, 1945; the defendants having appeared and filed their answers to such complaint, denying the substantive allegations thereof; plaintiff and the defendants, by their attorneys herein, having severally consented to the entry of this final judgment herein, without any trial or adjudication of any issue of fact or law herein, and without an admission by any party in respect of any such issue;

Now, therefore, before any testimony has been taken herein and without trial or adjudication of any issue of fact or law herein, and upon the consent of plaintiff and each of the defendants, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

[*Jurisdiction*]

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That this Court has jurisdiction of the subject matter herein and of all the parties hereto; that the complaint states a cause of action against each of the defendants herein 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”, as amended.

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Definitions

As used in this judgment the term:(a) "Stainless steel" means a steel with high corrosion or heat resistant qualities, or both such qualities, which consists of an alloy of iron and chromium (known as straight chrome stainless steel), or of an alloy of iron and both chromium and nickel (known as chrome nickel stainless steel), with or without the addition of supplementary alloying agents, such as molybdenum, columbium, titanium, selenium, and others.

(b) "Stainless steel products" means bars, double bevels, single bevels, ingots, wire, structural, plates, sheets, hot rolled strip, cold rolled strip, billets and similar products made of stainless steel;

(c) "Free machining patents" means United States Letters Patent Nos. 1,835,960, 1,846,140, 1,961,777, 2,009,713, and any division, continuation, reissue or extension thereof and any additional patents or patent rights covering or pertaining to improvements upon the inventions, processes, methods or apparatus covered by the aforementioned patents, or any division, continuation, reissue or extension thereof.

III

Reference to any defendant herein shall be deemed in each case to include the directors, officers, employees, agents, successors and assigns of that defendant, and any wholly owned or controlled subsidiary thereof, and any person acting or claiming to act under, through, or for them or any of them.

[*Acts Enjoined*]

IV

Each of the defendants is individually restrained and enjoined from:

(a) Entering into, creating, performing or giving effect to any contract, agreement, understanding, plan or program among or with any of the defendants (1) to fix, maintain, determine or adhere to prices, discounts, charges, differentials, including freight rate factors or applicators, or terms or conditions of sale to be quoted or charged to or required of others in the purchase or sale of any stainless steel products; (2) to establish, enforce, provide or use any price list, extra list, base price list or any classification of stainless steel products into base prices and extras, or activities in connection therewith; or (3) to use, enforce, or adhere to any formula or any designated means or source for determining prices, charges, discounts, classifications as base price or extras, or any other element or term, condition or differential, including freight rate factors or applicators, in connection with the sale or pricing of stainless steel products to others;

(b) Printing, publishing, circulating, quoting or using any prices, price lists, or extra lists, cash or courtesy discounts, transportation charges, differentials, including freight rate factors or applicators, or any other term or condition of sale to be quoted or charged to, or required of, others for or in connection with, the purchase or sale of stainless steel products pursuant to or resulting from any agreement or understanding, plan or program among or with any of the defendants;

(c) Conferring or consulting as to or discussing prices or extras to be quoted or charged to others for stainless steel products or any terms or conditions of sale thereof at any meeting of representatives of any of the defendants, or by any correspondence or communications among or with any of the defendants and from exchanging among or with any of the defendants any information as to prices, extras, or differentials including freight rate factors or applicators to be quoted or charged to, or required of, others for stainless steel products or any proposed terms or conditions for sale to others of such products;

(d) Preparing, circulating, exchanging or using so-called A. I. s, or Advance Information, or any other information concerning the prices and terms or conditions of sale which any defendant proposes or intends to quote on a bid to any prospective purchaser, or has quoted or charged to any purchaser on a bid, for any sale of stainless steel products, or to disclose to any competitor bids or quotations made to others for stainless steel products;

(e) Compiling, printing, publishing or circulating as defendant's list of prices for stainless steel products, or as defendant's list of extras, or as terms and conditions of sale, for stainless steel products any prices, extras, or terms or conditions of sale applicable to any type or grade of stain less steel or stainless steel products not now or are hereafter being manufactured, sold or ofered for sale by such defendant or any affiliated company;

(f) Publishing, printing, quoting or charging prices for stainless steel products on any basis other than (1) F. O. B. at the actual place of manufacture or origin of shipment of said products, or (2) on a basis, which at destination at no time shall be higher than the F. O. B. price at the actual place of manufacture or origin of shipment of said products plus actual transportation and other delivery charges, with every purchaser having an option to purchase F. O. B. at the actual place of manufacture or origin of the shipment of said products;

(g) Instituting or threatening to institute, or maintaining any suit, counterclaim or proceeding, judicial or administrative, for infringement of any free machining patent, alleged to have occurred prior to the date of the entry of this judgment.

[*Patent Licensing*]

V

Defendant, The Carpenter Steel Company, its officers, directors, agents, employees, successors and assigns, are hereby ordered and directed:

(a) To grant to any applicant upon each written request therefore a non-exclusive license to manufacture, use and sell under any one or more free machining patents without any condition or restriction what so ever except (1) a reasonable and non-discriminatory royalty may be charged and collected, and (2) where such royalty is charged, provision may be made for inspection of the books and records of the licensee by an independent auditor who may report to the defendant licensor only the amount of royalty due and payable and no other information;

To grant to any applicant making written request therefore to the extent that the defendant, The Carpenter Steel Company has or acquires the power to do so, a nonexclusive grant of immunity from suit under any foreign patents owned or controlled by defendant, The Carpenter Steel Company, corresponding to free ma chining patents, to import into and sell or use and to have imported, sold or used in any country, products made in the United States, without any condition or restriction whatsoever, except that a reasonable and non-discriminatory royalty may be charged and collected, and where such royalty is charged, provision may be made for inspection of the books and records of the licensee by an independent auditor who may report to the defendant licensor only the amount of royalty due and payable and no other information;

(c) To include in each license issued pursuant to this Section V, a provision under which the licensee may cancel such license any time after one year from the date of issuance of such license.

[*Webb-Pomerene Act*]

VI

Nothing in this judgment shall have any effect with respect to activities or operations, authorized or permitted by the Act of Congress of April 10, 1918, commonly called the Webb-Pomerene Act.

[*Practices, Proceedings Not Affected*]

VII

Nothing contained herein shall be deemed to adjudicate the legality of any act or practice not prohibited herein, nor to bar or affect any proceeding under any law of the United States involving or relating to any act or practice not prohibited herein.

[*Inspection for Compliance Purposes*]

VIII

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For the purpose of securing compliance with this judgment authorized representatives of the Department of Justice shall, on written request of the Attorney General, or an Assistant Attorney General, be permitted, subject to any legally recognized privilege, (1) upon reasonable notice to any defendant corporation made to its principal office, reasonable 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 judgment, and (2) subject to the reasonable convenience of the defendants and without restraint or interference from the defendants, to interview officers or employees of the defendants, who may have counsel present, regarding any such matters, and (3) upon any such request said defendants shall submit such reports with respect to the licensing of stainless steel patents as may from time to time be appropriate for the purpose of enforcement of this judgment; Provided, however, that information obtained by the means permitted in this paragraph shall not be divulged by any representatives 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 proceeding for the purpose of securing compliance with this judgment in which the United States is a party or as otherwise required by law.

[*Jurisdiction Retained*]

IX

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this judgment, for the modification of any of the provisions thereof or the enforcement of compliance therewith and for the punishment of violations thereof;