

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Lead Pencil Co., Joseph Dixon Crucible Co., Eagle Pencil Co., and Eberhard Faber Pencil Co., U.S. District Court, D. New Jersey, 1954 Trade Cases ¶67,676, (Feb. 5, 1954)

United States v. American Lead Pencil Co., Joseph Dixon Crucible Co., Eagle Pencil Co., and Eberhard Faber Pencil Co.

1954 Trade Cases ¶67,676. U.S. District Court, D. New Jersey. Civil Action No. 73-54. Filed February 05, 1954. Case No. 1184 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decree—Practices Enjoined—Price Fixing—Allocation of Markets or Customers—Exportation Agreements—Secret Exchange of Notices of Proposed Changes in Prices or Sales Terms.—Four lead pencil manufacturers consent to the entry of a decree prohibiting them from contracting among themselves or with any other manufacturer in the United States, or through any trade association of pencil manufacturers to fix prices, discounts, or other terms for the sale of pencils. They are further enjoined from agreeing to allocate markets, orders, or customers for the manufacture or distribution of pencils and from agreeing to refrain from exporting or importing pencils from or into the United States. The communication to any other manufacturer or trade association of information regarding intended changes in prices or sales terms before the proposed changes are generally announced to the trade is also forbidden.

Consent Decree—Practices Enjoined—Price Fixing—Collusive Bidding—Interests in Foreign Corporation.—A consent decree orders four lead pencil manufacturers to refrain from (1) fixing prices or sales terms upon which any dealer may sell pencils in the United States to a third party; (2) fixing prices, or conditions of any dealer's bid which may be submitted in response to an invitation for a bid to supply pencils in the United States; (3) appointing any dealer an agent of any defendant for the submission of invited bids for pencils; (4) refusing to sell pencils on customary trade terms to any dealer because he has submitted his own bid in competition with a defendant's bid, provided that the dealer is a regular wholesaler or retailer of the defendant's pencils. Under an additional provision of the decree, two defendants are enjoined from renewing a previously dissolved joint interest in a foreign corporation.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; Worth Rowley, and Richard B. O'Donnell, Special Assistants to the Attorney General; William D. Kilgore, Jr., John S. James, Harry N. Burgess, Alfred Karsted, Mary G. Jones, and Stanley Blecher, Attorneys.

For the defendants: Cleary, Gottlieb, Friendly & Hamilton, by R. C. Barnard, for American Lead Pencil Co.; Carey, Schenck & Jardine, by Robert Carey, for Joseph Dixon Crucible Co.; Donovan, Leisure, Newton & Irvine, by Ralstone R. Irvine, for Eagle Pencil Co.; and Crawford & Reed, by John Howley, for Eberhard Faber Pencil Co.

Final Judgment

SMITH, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on January 26, 1954, and each of the defendants having appeared herein, and the plaintiff and the said defendants by their respective attorneys having severally consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of any such issue, and the Court having considered the matter and being duly advised

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent as aforesaid of all the parties hereto

It is hereby ordered, adjudged and decreed as follows:

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter hereof and of all the parties hereto. The complaint states a cause of action against the defendants and each of them 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, commonly known as the Sherman Act.

II

[*Definitions*]

As used in this Final Judgment:

- (a) "Lead pencils" means wood-cased lead pencils;
- (b) "Person" means any individual, partnership, firm, corporation, association or other business or legal entity;
- (c) "Manufacturer" means a person as herein defined engaged in the manufacture and sale of lead pencils;
- (d) "Dealer" means any person other than a manufacturer regularly engaged in the wholesale or retail sale or distribution of lead pencils;
- (e) "United States" names the continental United States, its territories and possessions.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to a defendant shall apply to such defendant, its officers, agents, servants, employees and attorneys, and to those persons in active concert or participation with any defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Practices Enjoined*]

The defendants and each of them, are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or furthering, or claiming any rights under, any contract, combination, agreement, understanding or arrangement among themselves or with any other manufacturer in the United States, or with or through any trade association or other central agency of manufacturers of lead pencils, directly or indirectly, to:

- (a) Fix, determine, establish, maintain or adhere to prices, discounts or other terms or conditions for the sale of lead pencils to any person; or
- (b) Allocate, pro-rate or divide markets, fields, contracts, orders or customers for the manufacture, distribution or sale of lead pencils; or
- (c) Refrain from exporting or importing lead pencils from or into the United States.

V

[*Dissemination of Price Information*]

The defendants are jointly and severally enjoined and restrained from directly or indirectly circulating, exchanging or communicating to or with any other manufacturer or to or through any trade association or central organization of manufacturers, any information regarding the price or prices, terms or conditions, or intended or proposed changes in price or prices, terms or conditions, for the sale in the United States of lead pencils prior to the time that such price or prices, terms or conditions or changes in such price or prices, terms or conditions are published and generally announced to the trade.

VI

[*General Prohibitions—Modification*]

(A) The defendants are jointly and severally enjoined and restrained from, directly and indirectly:

(1) Fixing, determining or controlling in any manner the price or prices, terms or conditions upon which any dealer may sell lead pencils in the United States to third persons;

(2) Fixing, determining or controlling in any manner the price or prices, terms or conditions of any bid which may be submitted by any dealer, in response to any invitation for bids to supply lead pencils in the United States;

(3) Appointing or designating any dealer as an agent of or for any such defendant for the submission of any bid in response to any invitation for bids to supply lead pencils in the United States;

(4) Refusing to sell lead pencils upon normal and customary trade terms and conditions to any dealer because such dealer, in competition with a bid submitted by such defendant, has submitted its own bid on the same invitation to bid and has been awarded a contract for the sale of lead pencils, provided that such dealer is regularly engaged in the wholesale or retail sale or distribution of lead pencils of such defendant.

(B) Upon the expiration of three (3) years after the date of the entry of this Final Judgment the defendants, or any of them, may apply to this Court to be relieved from the prohibitions contained in subsections (A) (3) and (4) of this Section VI and may be so relieved upon a showing made to the satisfaction of this Court that the prohibitions therein contained work an undue burden or hardship upon such defendant or defendants.

VII

[*Dissolution of Interests in Foreign Corporation*]

Defendants Eagle Pencil Company, and American Lead Pencil Company, having submitted to this court due proof of the dissolution of the joint interests heretofore held by them in Reber, S. A., a Mexican corporation, such dissolution of said joint interests is hereby made of record and said defendants Eagle Pencil Company, and American Lead Pencil Company are jointly and severally enjoined and restrained from renewing said joint interest in said corporation.

VIII

[*Rights Under Other Acts Preserved*]

(a) Nothing contained in this Final Judgment shall be construed as denying to any defendant any rights which such defendant may have under the Act of Congress of August 17, 1937, commonly known as the Miller-Tydings Act, or under the Act of Congress of July 14, 1952, commonly known as the McGuire Act;

(b) Without in any manner adjudicating, determining or passing upon the legality or illegality of any of the acts or practices of the Pencil Industry Export Association and without, in any manner imputing any legality or illegality to any of the acts or practices of said Export Association, nothing contained in this Final Judgment shall be construed as denying to the defendants or any of them, any rights which they may have under the Act of Congress of April 10, 1918, commonly known as the Webb-Pomerene Act.

IX

[*Inspection 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 its principal office, be permitted, (a) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment, and (b) subject to the reasonable convenience of said

defendant and without restraint or interference from it to interview officers or employees of said defendant, who may have counsel present, regarding any such matters, and (c) upon such request the said defendant 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 necessary to the 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 Department 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

[*Effective Date*]

This Final Judgment shall become effective ninety (90) days after the date of its entry.

XI

[*Jurisdiction Retained*]

Jurisdiction is retained 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 and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment or for the modification of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.