

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Type Founders Co., Inc., U.S. District Court, D. New Jersey, 1958 Trade Cases ¶69,065, (Jun. 20, 1958)

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United States v. American Type Founders Co., Inc.

1958 Trade Cases ¶69,065. U.S. District Court, D. New Jersey. Civil Action No. 698-58. Dated June 20, 1958. Case No. 1396 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing.—A company engaged in the manufacture and distribution of printing presses and printing equipment was prohibited by a consent decree from entering into any agreement with any distributor having a place of business in the United States, or with any domestic or foreign manufacturer, to fix prices or other terms for the sale of such products in, or exported from, the United States.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Allocation of Territories and Markets.—A company engaged in the manufacture and distribution of printing presses and printing equipment was prohibited by a consent decree from entering into any agreement with any distributor having a place of business in the United States to limit or restrict the territories in which, or the customers to whom, any such distributor might sell such products.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Restricting Use of Competitors' Products.—A company engaged in the manufacture and distribution of printing presses and printing equipment was prohibited by a consent decree from entering into any agreement with any distributor having a place of business in the United States to limit or restrict the right of any such distributor to purchase, distribute, or sell products from any source other than the company. The company was further prohibited from selling or offering to sell products for use or resale in the United States on the condition or understanding that the purchaser not purchase, distribute, or sell products from any source other than the company.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Agreements to Control Imports and Exports.—A company engaged in the manufacture and distribution of printing presses and printing equipment was prohibited! by a consent decree from entering into any agreement with any domestic or foreign manufacturer (1) restricting or preventing any foreign manufacturer from exporting to and selling products in the United States to ultimate consumers, except where the company has an exclusive distributorship for such products in the United States, or (2) restricting or preventing the company from exporting products from the United States.

Department of Justice Enforcement and Procedure—Consent Decree—Contingent Provision.—A consent decree entered against a company engaged in the manufacture and distribution of printing presses and printing equipment provided that, in the event the company should engage in the manufacture of a specific product or products, the company would be prohibited from entering into any understanding (1) to fix prices for the sale of such product or products in or exported from the United States, (2) to allocate customers or markets for the manufacture, distribution, or sale of such product or products, (3) to restrict or limit imports of such product or products into or exports of such product or products from the United States, (4) to refrain from selling such product or products or otherwise refrain from doing business in such product or products, or (5) to refrain from competing in or for any customer, territory, or market for the manufacture, distribution, or sale of such product or products.

Department of Justice Enforcement and Procedure—Consent Decree—Permissive Provisions.—A consent decree entered against a company engaged in the manufacture and distribution of printing presses and equipment provided that the company, subject to certain provisions of the decree, could choose its distributors and customers and designate geographical areas in which such distributors should be primarily responsible for selling the company's products and could terminate the franchise of any distributor who does not adequately

represent the company. The purchase by the company of products under a requirements contract, reasonable in time, was excluded from a prohibition of the decree. The decree further provided that nothing contained therein should be construed to (1) require the company to violate any law or decree of any court of competent jurisdiction in a foreign nation, (2) prevent the company from entering into or adhering to any fair trade contract otherwise permitted under the Miller-Tydings and McGuire acts, or (3) prohibit a covenant, reasonable in time and space, not to compete in the manufacture or sale of products if such covenant is ancillary to the lawful sale of a business or a department of a business.

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

For the defendant: Stroock and Stroock and Lavan by Samuel Hoffman; Victor H. Kramer; and Kresteller, Zucker, Lowenstein and Cohen by Melvin B. Cohen.

Final Judgment

MENDIN MORRILL, District Judge [*In full text*] : Plaintiff, United States of America, having filed its complaint herein on June 20, 1958; defendant, American Type Founders Co., 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 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

[*Sherman Act*]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states claims against the defendant, American Type Founders Co., Inc., upon which relief may be granted under Sections 1 and 3 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) "Printing presses and printing equipment" means (1) letter presses and offset presses for making printed impressions on paper or other material from an inked surface, and the equipment and accessories used in connection therewith and as a part thereof and (2) the Solna Vertico 1400 Step and Repeat Machine and the Solna Gatherer; but type and type-setting equipment are neither "printing presses" nor "printing equipment".

(B) "Products" means printing presses and printing equipment;

(C) "Defendant" means the defendant American Type Founders Co., Inc., a corporation organized and existing under the laws of the State of Delaware;

(D) "United States" means the United States and its territories and possessions;

(E) "Person" means an individual, partnership, firm, association, corporation or other business or legal entity;

(F) "Vickers" means Vickers-Armstrongs, Limited, a holding company organized and existing under the laws of the United Kingdom;

(G) "Engineers" means Vickers-Armstrongs (Engineers), Ltd., a company organized and existing under the laws of the United Kingdom;

(H) "Mann" means George Mann & Co., Ltd., a company organized and existing under the laws of the United Kingdom;

(I) "A/B Printing" means A/B Printing Equipment, a company organized and existing under the laws of Sweden;

(J) "Honolulu Paper" means Honolulu Paper Company, Limited, a corporation organized and existing under the laws of the Territory of Hawaii;

(K) "Heinsohn" means A. E. Heinsohn Printing Machinery & Supplies, a partnership with its office and principal place of business in Denver, Colorado.

III

[*Applicability of Decree*]

The provisions of this Final Judgment shall apply to the defendant and to each of its subsidiaries, successors, assigns, officers, directors, servants, 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

[*Agreements with Distributors*]

Defendant is enjoined and restrained from, directly or indirectly:

(A) Entering into, adhering to, maintaining or claiming any rights under any contract, agreement or understanding with Honolulu Paper, Heinsohn or any other distributor having a place of business in the United States to:

(1) Fix, establish, maintain or adhere to prices, terms or conditions for the sale of products in or exported from the United States to third persons;

(2) Limit or restrict the territories in which or the customers to whom any such distributor may sell products;

(3) Limit or restrict the right of any such distributor to purchase, distribute or sell products from any source other than defendant;

(B) Selling or offering to sell products for use or resale in the United States on the condition or understanding that the purchaser not purchase, distribute or sell products from any source other than defendant.

Subject to the terms of subsections (A) and (B) of this Section IV and of Section VI below defendant may exercise its right to choose and select its distributors and customers and to designate geographical areas in which such distributors shall respectively be primarily responsible for selling defendant's products and may terminate the franchises of distributors who do not adequately represent defendant and promote the sale of all defendant's products in areas so designated as their primary responsibility.

V

[*Agreements with Manufacturers*]

Defendant is enjoined and restrained from, directly or indirectly, entering into, adhering to, maintaining or claiming any rights under any contract, agreement or understanding with any domestic or foreign manufacturer:

(A) Fixing, establishing, maintaining, or adhering to prices, terms or conditions for the sale of products in or exported from the United States to third persons;

(B) Restricting or preventing any foreign manufacturer from exporting to and selling products in the United States to ultimate consumers, except where defendant has an exclusive distributorship for said products in the United States from such foreign manufacturer;

(C) Restricting or preventing defendant from exporting products from the United States;

(D) Under which any person refrains from engaging in the manufacture of products; provided, however, that this sub section shall not be deemed to prohibit (1) the purchase by defendant of products under a requirements contract, reasonable in time, or (2) the enforcement of any rights defendant may have under a contract with Van Vlaanderen Machine Company, dated September 7, 1956.

VI

[*Contingent Prohibitions*]

In the event that defendant shall engage in the manufacture of a specific product or products, then defendant is enjoined and restrained from, directly or indirectly, entering into, adhering to, maintaining or claiming any rights under any contract, agreement or understanding with any other person to:

- (A) Fix, establish, maintain or adhere to prices, terms or conditions for the sale of said specific product or products in or ex ported from the United States to any third person;
- (B) Allocate or divide customers, territories or markets for the manufacturer, distribution or sale of said specific product or products;
- (C) Restrict or limit imports of said specific product or products into or export of said specific product or products from the United States;
- (D) Refrain from selling said specific product or products to, or otherwise refrain from doing business in said specific product or products with any person;
- (E) Refrain from competing in or for any customer, territory or market for the manufacture, distribution or sale of said specific product or products.

For the purposes of this Section VI of this Final Judgment (1) the manufacture by defendant of parts of products for the purpose of servicing products in the hands of consumers shall not constitute the manufacture of any product and. (2) the occasional assembling of component parts into any product by defendant shall not constitute the manufacture of any product so long as said parts are not manufactured by, or under a running contract for, defendant.

VII

[*Notice of Judgment*]

Defendant is ordered and directed within 60 days from the effective date of this Final Judgment:

- (A) To cease adhering to any provision in any contract with Vickers, Engineers, Mann, A/B Printing, Honolulu Paper and Heinsohn, relating to products, which is contrary to or inconsistent with any term of this Final Judgment;
- (B) To mail to each of the companies listed in (A) above, a true and complete copy of this Final Judgment, and to advise each of them in writing of the effect of this Final Judgment, and particularly VII(A) above, on any contract to which each may now be a party with defendant.

VIII

[*Permissive Provisions*]

Nothing contained in this Final Judgment shall be construed

- (A) To require defendant to do, or omit to do, any act in a foreign nation in violation of any law or decree of any court of competent jurisdiction of said foreign nation; provided that defendant shall have the bur den of demonstrating that any act or omission by it otherwise in violation of this Final Judgment was done or omitted be cause of the requirements of the laws or decrees of courts of competent jurisdiction of a foreign nation;
- (B) To prevent the defendant from entering into or adhering to any fair trade contract, otherwise permitted by the acts of Congress commonly known as the Miller-Tydings and McGuire acts.

(C) To prohibit a covenant, reasonable in time and space, not to compete in the manufacture or sale of products if said covenant is ancillary to the lawful sale of a business or of a department thereof.

IX

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment duly authorized representative 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 all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant relating 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 such written request 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 IX 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

X

[*Jurisdiction Retained*]

Jurisdiction is retained by this Court 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, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

[*Effective Date*]

This judgment shall become effective sixty (60) days from the date of entry hereof.