

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | | |
|---------------------------|---|-------------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Civil No. <u>70-121</u> |
| v. |) | |
| |) | Entered: June 4 , 1970 |
| SIMMONS COMPANY, |) | |
| |) | |
| Defendant. |) | |

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint on **May 4**, 1970, and defendant having appeared herein, and plaintiff and defendant by their respective attorneys having consented to the making and entry of this Final Judgment without admission by either party in respect to any issue:

NOW, THEREFORE, before any testimony has been taken herein, 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

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims upon which relief may be granted against the defendant 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

As used herein:

(A) "Defendant" means the defendant Simmons Company, a corporation organized and existing under the laws of the State of Delaware;

(B) "Person" means any individual, corporation, partnership, firm or other legal or business entity;

(C) "Hospital furnishings" means the products manufactured or sold by Simmons which are usually sold to hospitals and related institutions, including, but not limited to, hospital beds, cribs, mattresses, and patient room furnishings;

(D) "Distributor" means any person engaged in selling or distributing hospital furnishings.

III

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

IV

The defendant is enjoined and restrained from directly or indirectly:

(A) Fixing or establishing the prices, terms, or conditions for the sale of hospital furnishings by any distributor to any third person;

(B) Suggesting the prices, terms or conditions for the sale of hospital furnishings by any distributor to any third person for a period of one (1) year from the date of entry of this Final Judgment after which one (1) year period defendant may suggest such prices, terms or conditions if defendant specifies in writing to such distributor that such furnishings may be sold at such prices, terms or conditions as the distributor may choose;

(C) Inducing any distributor to fix, establish, maintain or adhere to any prices or other terms or conditions for the sale of hospital furnishings to any third person;

(D) Requiring any distributor to provide or communicate to Simmons any pricing information on any bid on hospital furnishings prior to the award of such bid;

(E) Restricting or limiting the persons to whom, or the territories in which, any distributor may sell hospital furnishings;

(F) Requiring any distributor to offer only Simmons hospital furnishings where requests for bids specify "Simmons or equivalent."

V

For a period of three (3) years defendant shall notify the plaintiff of any cancellation of any distributorship together with the reasons therefore within sixty (60) days after such cancellation.

VI

For a period of ten (10) years the defendant is ordered and directed to:

(A) Furnish a copy of this Final Judgment to:

- (1) Each of its distributors within thirty
(30) days from the date of entry thereof;
and
- (2) Each of its new distributors upon or
before the execution of such distributor's
contract with defendant.

(B) Notify in writing:

- (1) Each of its distributors within thirty
(30) days from the date of entry thereof;
and
- (2) Each of its new distributors upon or
before the execution of such distributor's
contract with defendant,

that such distributor is free to establish his own prices,
terms or conditions of sale and is free to sell in any area
and to any person;

(C) Within thirty (30) days from the date of
entry of this Final Judgment submit a new contract not incon-
sistent with the terms of this Final Judgment to each of its
distributors;

(D) File with this Court, with a copy to the
plaintiff herein, a notice of compliance with this Section VI
within thirty (30) days following completion of the require-
ments of (A), (B), and (C).

VII

For a period of ten years from the date of entry of this Final Judgment, defendant is ordered and directed each year on the anniversary date of the final judgment to file a report with the plaintiff setting forth the steps which it has taken during the prior year to advise the defendant's appropriate officers, employees and agents of its and their obligations under the provisions of this Final Judgment.

VIII

Nothing contained in this Final Judgment shall prevent the defendant from availing itself of such rights, if any, as it may have pursuant to the Miller-Tydings Act, (15 U.S.C. 1) as amended by the McGuire Act, (15 U.S.C. 45(a)(2)) provided, however, that before the defendant may fair trade hospital furnishings in any state or territory, it shall first identify each such state or territory in writing to each of its distributors. If the defendant's right to fair trade hospital furnishings in any state or territory should be terminated by statute or law (including the decision or order of a court of last resort), defendant shall notify promptly each of its distributors of that fact and that it has ceased to exercise such right.

IX

For the purpose of determining or securing compliance with this Final Judgment, 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, on reasonable notice to the defendant, be permitted:

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

Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, said defendant shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means provided in this Section shall be disclosed 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, 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 is retained by this Court for the purpose of enabling any of the parties of 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 the amendment or modification of any of the provisions therein, for the enforcement of compliance therewith and for the punishment of violations thereof.

/s/ JOSEPH P. KINNEARY
UNITED STATES DISTRICT JUDGE

Dated: June 4, 1970