

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Ford Motor Company and The Electric Autolite Company., U.S. District Court, E.D. Michigan, 1971 Trade Cases ¶73,445, (Dec. 18, 1970)

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United States v. Ford Motor Company and The Electric Autolite Company.

1971 Trade Cases ¶73,445. U.S. District Court, E.D. Michigan, Southern Division. Civil Action No. 21911. Dated December 18, 1970. Case No. 1634, Antitrust Division, Department of Justice.

Clayton Act

Acquisition—Automotive Accessories Manufacturer by Automobile Manufacturer—Divestiture—

Judgment.—An automobile manufacturer was required by a litigated judgment in an antimerger suit to divest itself of all of its interest in the trademark, trade name and U. S. battery and spark plug production facilities of an automotive accessory manufacturer, with the exception of a specified battery plant. From the date of divestiture of the spark plug assets, as a unit, the automobile manufacturer was prohibited from manufacturing spark plugs in the United States for ten years; was required to purchase one-half of its total annual requirements of spark plugs from the person acquiring the spark plug assets for five years; and was not permitted to use or market a private label spark plug for five years. In addition, the automobile manufacturer was prohibited from selling spark plugs to its dealers at less than the prevailing jobbers' selling prices for ten years after divestiture, and to the extent that it sells the trademarked plugs to its dealers, these plug must be packaged and numbered identically as those obtained by dealers from independent jobbers. As a condition to acquiring the spark plug assets, the purchaser must agree to carry out all wage and pension obligations of the seller as of the date of acquisition. Should the automobile manufacturer remove its non-plug operations from the divested plant to other factories owned by it, to the extent that new jobs are thereby created at these factories, it must offer employment to those displaced by the transfer and bear the cost of relocating those employees who accept such offers of transfer. The automobile manufacturer was prohibited from acquiring or building new battery plants and from expanding its remaining plant for a period of five years.

Judgment subsequent to opinion on relief, [1970 Trade Cases ¶ 73,254](#).

Final Judgment

FREEMAN, D. J.: Plaintiff, the United States of America, having filed its complaint herein on November 27, 1961; full trial on all issues of liability and relief being had; and the parties having briefed the court on all issues of fact and law:

Now, Therefore, it is hereby Ordered, Adjudged and Decreed as follows:

I.

[Jurisdiction]

This Court has jurisdiction of the subject matter hereof and of the parties hereto.

The acquisition in 1961 by Ford Motor Company of a battery plant in Owosso, Michigan, a spark plug plant in Fostoria, Ohio, and the tradename and trademark "Autolite", from the defendant The Electric Autolite Company, violated [Section 7 of the Clayton Act](#).

II.

[Definitions]

As used in this Final Judgment:

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

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(B) "Ford" means Ford Motor Company, a Delaware corporation;

(C) "Subsidiary" means any person controlled by, or more than fifty per cent of whose voting stock is directly or indirectly controlled by, defendant.

III.

[*Applicability*]

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

IV.

[*Divestiture of Assets*]

No later than eighteen (18) months after this Judgment is not subject to further appeal, Ford shall divest itself of all of its interest in the tradename and trademark "Autolite" and all of its facilities in the United States for the production of automotive batteries and spark plugs, except a battery plant located at Shreveport, Louisiana. Said production facilities shall be divested in going, viable and operating condition.

The assets to be divested shall include the tradename and trademark "Autolite" and the spark plug and battery production facilities which were acquired from The Electric Autolite Company by Ford in 1961, and all improvements, betterments, replacements and additions made thereto by Ford since such acquisition up to the date of divestiture.

Divestiture of the facilities for the production of automotive batteries may be made separately but in any event, the tradename and trademark "Autolite" and the facilities for the production of spark plugs (hereinafter referred to as Autolite assets) shall be disposed of as a unit.

V.

[*Manufacture of Spark Plugs*]

For a period of ten (10) years from the date of divestiture of the Autolite assets, Ford is enjoined from manufacturing spark plugs in the United States.

VI.

[*Purchase and Marketing of Spark Plugs*]

For a period of five (5) years from the date of divestiture of the Autolite assets:

(A) Ford shall purchase from, and the person acquiring the divested Autolite assets shall furnish and sell to Ford, at least one-half of Ford's annual requirements of spark plugs, such spark plugs to be labeled with the "Autolite" name and/or trademark, to conform to Ford's designs, specifications, quality standards and delivery requirements and to be priced competitively. For the purpose of this paragraph, Ford's annual requirements shall be the annual total number of spark plugs needed by Ford for installation in vehicles and engines manufactured and/or sold in the United States and all spark plugs needed by Ford for export from the United States and for resale to dealers, warehouse distributors, jobbers, national accounts or others in the United States.

(B) Ford shall not use or market in, or import into, the United States any spark plugs bearing a tradename or trademark owned by or licensed to Ford. The restriction contained in this sub-section VI (B) shall not apply to any spark plugs bearing the tradename and/or trademark "Autolite" which are manufactured by or for Ford outside of the United States and are installed, in vehicles and engines imported into and sold by Ford in the United States.

VII.

[*Price to Dealers*]

For a period of ten (10) years from the date of divestiture of the Autolite assets, Ford is enjoined from at any time selling spark plugs in the United States to its franchised automobile dealers at a price less than its prevailing minimum suggested jobbers' selling price. To the extent that Ford sells "Autolite" branded spark plugs to its franchised automobile dealers in the United States, such spark plugs shall be packaged and numbered identically as those sold by Ford to purchasers other than its franchised dealers in the United States.

VIII.

[*Employee Rights*]

(A) The person acquiring the Autolite assets shall, as a condition of purchase, submit to the jurisdiction of this Court for entry of further orders as this Court may deem appropriate and agree to carry out all wage and pension obligations of Ford as may exist at the Fostoria, Ohio plant as of the date of acquisition.

(B) Should Ford remove to other of its factories operations at the Fostoria, Ohio plant not relating to the manufacture of spark plugs, then to the extent that new jobs are thereby created at such other Ford factories, Ford shall offer employment at such other factories to those employees at the Fostoria, Ohio plant who would be displaced by such removal. Ford shall bear the cost of relocating those employees who accept such offers of transfer.

IX.

[*Maintenance of Assets*]

Ford shall use its best efforts to maintain the assets to be divested until the time of divestiture thereof as going and viable, at standards of operating performance prevailing at the time of entry of this Final Judgment.

X.

[*Terms of Divestiture*]

No divestiture shall be made directly or indirectly, to any person who is at the time of divestiture (a) an officer, director, employee, or agent of Ford, or (b) who beneficially owns, or has power to vote, or controls, or has rights to own or control, more than one per cent (1 %) of the outstanding shares of stock of Ford, or (c) in whom Ford has a financial interest whether by any equity interest or otherwise other than as may arise out of a customer or supplier relationship, provided, however, that this provision shall not apply to an interest arising out of the conversion of a debt interest acquired incident to a sale or other credit transaction and disposed of within a reasonable period of time.

If divestiture is accomplished in whole or in part by distribution of stock, defendant Ford shall require that any officer or director of Ford, or any stockholder of Ford beneficially owning or controlling, or having rights, in excess of an aggregate of one per cent (1 %) of defendant's outstanding shares entitled to vote, shall within six (6) months of receipt of divested stock dispose of all divested stock to a person not described in this Section X.

XI.

[*Divestiture by Sale*]

(A) If defendant proceeds with divestiture by sale, then not less than sixty (60) days prior to the closing date designated in any contract for the sale of the assets or stock to be divested, defendant shall advise plaintiff in writing of the name and address of the proposed purchaser together with the terms and conditions of the proposed sale, and such other information concerning the transaction as plaintiff may request. At the same time, defendant shall also make known to plaintiff in writing the names and addresses of any other person or persons who have made an offer in writing, or expressed in writing a desire, to purchase any such assets together with the terms and conditions thereof.

(B) Not more than thirty (30) days after the receipt of the information required by subsection (A), above, including specifically the additional information which the plaintiff may request, plaintiff shall advise defendant in writing whether it objects to the proposed sale. If plaintiff does not object to the proposed sale, it may be consummated, but if objection is made, then the proposed sale shall not be consummated until plaintiff's objection is withdrawn or defendant obtains approval by the Court.

XII.

[*Public Sale*]

If divestiture is accomplished in whole or in part by means of sale of stock in the spark plug or battery business to the public, defendant Ford shall prohibit each of its officers, directors, employees, agents of Ford or stockholders described in Section X of this Judgment from initially acquiring, or in the case of any such officer, director, employee or agent from owning, any such stock so long as he remains in any such position.

XIII.

[*Future Acquisitions*]

(A) Ford is perpetually enjoined from reacquiring control over any of the divested assets.

(B) For a period of ten (10) years from the date of divestiture of the Autolite assets, Ford is enjoined from acquiring or holding, directly or indirectly, any assets of or stock or other beneficial interest in any person engaged in the manufacture in the United States of automotive spark plugs, except that Ford's insurance subsidiaries and the pension and profit sharing trusts of Ford and its subsidiaries may acquire and hold in the aggregate up to two per cent (2 %) of such assets, stock or other beneficial interests in any such person.

(C) For a period of five (5) years from the date of sale of the Owosso, Michigan battery plant, Ford is enjoined from acquiring or holding any assets or stock or other beneficial interest in any person engaged in the United States in the manufacture of automotive batteries and from building any new battery plant in the United States or expanding the battery plant owned by Ford, located at Shreve-port, Louisiana, except that Ford's insurance subsidiaries and the pension and profit sharing trusts of Ford and its subsidiaries may acquire and hold in the aggregate up to two per cent (2 %) of such assets, stock or other *beneficial interests* in any such person.

XIV.

[*Compliance and Inspection*]

For the purpose of securing or determining compliance with this Final Judgment:

(A) Any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to defendant Ford, made to its principal office, be permitted subject to any legally recognized privilege:

(1) Reasonable access during the office hours of defendant, which may have counsel present, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant which relate to any matters contained in this Final Judgment;

(2) Subject to the reasonable convenience of defendant, to interview officers or employees of defendant, who may have counsel present, regarding any such matters.

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

(C) No information obtained by the means provided for in this Section 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 United States, except in the course of legal proceedings to which plaintiff is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XV.

[Jurisdiction Retained]

Jurisdiction of this cause is retained by this Court for the purpose of enabling any of the parties to apply at any time for such further orders or 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 thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

XVI.

[Costs]

Defendant Ford shall pay all of plaintiff's taxable costs herein.