

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Beatrice Foods Co., Olsonite Corp., Bemis Manufacturing Co., and Standard Tank & Seat Co., U.S. District Court, E.D. Michigan, 1977-2 Trade Cases ¶61,739, (Nov. 3, 1977)

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United States v. Beatrice Foods Co., Olsonite Corp., Bemis Manufacturing Co., and Standard Tank & Seat Co. 1977-2 Trade Cases ¶61,739. U.S. District Court, E.D. Michigan, Southern Division, Civil No. 4-71922, Entered November 3, 1977, (Competitive impact statement and other matters filed with settlement: 42 *Federal Register* 41671).

Case No. 2392, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Exchange of Information: Toilet Seats: Consent Decree.— Four major manufacturers of toilet seats were enjoined by a consent decree from entering into any agreement to fix the price, discount, markup or any other term or condition related to sales of toilet seats and from exchanging information concerning any price, discount, markup or any other term or condition with respect to those sales.

Exchange of Information: Bona Fide Sales: Legal Proceedings: Toilet Seats: Consent Decree.— The provisions of a consent decree enjoining four manufacturers of toilet seats from exchanging information concerning any price, discount, markup or any other condition with respect to toilet seats sales did not apply to proposed or actual bona fide purchases or sales or to the exchange of information between counsel in connection with bona fide prospective or actual legal proceedings.

For plaintiff: John H. Shenefield, Actg. Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Joseph H. Widmar, Arthur A. Feiveson, H. Arthur Rosenthal, and Kenneth L. Jost. **For defendants:** Earl A. Jinkinson, of Winston & Strawn, Chicago, Ill., for Beatrice Foods Co.; A. Stewart Kerr, of Kerr, Wattles & Russell, Detroit, Mich., for Olsonite Corp.; Robert G. Cutler, of Dykema, Gossett, Spencer, Goodnow & Trigg, Detroit, Mich., for Bemis Manufacturing Co.; Miles W. Kirkpatrick, of Morgan, Lewis & Bockius, Philadelphia, Pa., for Standard Tank & Seat Co.

Final Judgment

Keith, D. J.: Plaintiff, United States of America, having filed its complaint herein on June 19, 1974, and the plaintiff and the defendants, by their respective attorneys, having consented to the entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or admission by any party with respect to any issue of fact or law herein:

Now, Therefore, without any testimony being taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of all parties hereto, it is hereby

Ordered, Adjudged and Decreed:

I.

[Jurisdiction]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under [Section 1 of the Sherman Act](#) (15 U. S. C. §1).

II.

[Definitions]

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As used in this Final Judgment:

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

(B) "Toilet seat shall mean any toilet seat which is manufactured from any material and sold with or without the toilet seat cover as the case may be.

III.

[Applicability]

The provisions of this Final Judgment are applicable to all defendants herein and shall also apply to each of said defendants' officers, directors, agents, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

[Price Fixing; Information]

Each defendant is enjoined and restrained from:

(A) Entering into, adhering to, maintaining or claiming any rights, under, directly or indirectly, any contract, agreement, understanding, plan, program, combination or conspiracy with any other manufacturer of toilet seats to raise, fix, stabilize or maintain the price, discount, markup or any other term or condition with respect to the sale of any toilet seat to any third person; and

(B) Furnishing to or requesting from any other manufacturer of toilet seats any information concerning any price, discount, markup, or any other term or condition with respect to the sale of any toilet seat, which sale occurs after the date of this Final Judgment, unless the information in question previously has been published and/or announced and made generally available to the trade.

V.

[Purchase and Sale; Legal Proceeding]

Nothing contained in Section IV (B) of this Final Judgment shall apply to any negotiation or communication between a defendant and any other defendant, or other defendant, or other manufacturer or seller of toilet seats, or any of their agents, distributors or representatives or any other person whose purpose is (1) a proposed or actual bona fide purchase or sale of toilet seats, or (2) the exchange of information between counsel in connection with bona fide prospective or actual legal proceedings.

VI.

[Compliance]

(A) Each defendant shall take affirmative steps (including written directives setting forth corporate compliance policies, distribution of this Final Judgment and meetings to review the terms and the obligations it imposes) to advise each of its officers, directors, managing agents and employees who have responsibility for or authority over the establishment of prices, bids, discounts or markups by which said defendant sells or proposes to sell toilet seats of its and their obligations under this Final Judgment and of the criminal penalties for violation of Section IV of this Final Judgment.

(B) In addition, each defendant shall, for a period of five (5) years from the date of this Final Judgment, cause a copy of this Final Judgment to be distributed at least once each year to each of the persons identified in subparagraph (A) above.

(C) Defendants are ordered and directed, within one hundred and twenty (120) days after the entry of this Final Judgment, to serve upon plaintiff affidavits concerning the fact and the manner of their compliance with the provisions of subparagraph (A) above.

VII.

[Reports]

For a period of five (5) years from the date of entry of this Final Judgment, each defendant shall file with this Court and with plaintiff, on the anniversary date of this Final Judgment, a sworn statement by an officer or responsible executive, designated by that defendant to perform such duties, setting forth all steps it has taken during the preceding year to discharge its obligations under Paragraph VI (A) and (B) above. Said report shall be accompanied by copies of all written directives issued by said defendant during the prior year with respect to compliance with the terms of this Final Judgment.

VIII.

[Notice]

(A) Each defendant is ordered to include with its next price list stating the terms and conditions of sale for toilet seats, or with any other document stating the terms and conditions of sale for toilet seats, a conspicuously placed notice acceptable to plaintiff which shall fairly and fully apprise the readers thereof of the substantive terms of this Final Judgment. This notice shall be sent by each defendant to all its usual toilet seat customers who would be sent such price lists in the normal course of business. The notice must also state that a copy of this Final Judgment may be obtained from the defendant upon request.

(B) The notice required by subsection (A) shall in no circumstances be sent later than one hundred and eighty (180) days after the effective date of this Final Judgment. If any defendant has not disseminated a new price list stating the terms and conditions of sale for toilet seats or any other document stating the terms and conditions of sale for toilet seats within said one hundred and eighty (180) days, then this defendant is required to send a separate mailing the notice required by subsection (A) to all those customers who would be furnished notice of any price changes in the normal course of business.

(C) Each defendant shall submit an affidavit to the plaintiff within one hundred and ninety-five (195) days after the effective date of this Final Judgment setting forth the manner in which it has complied with this section.

IX.

[Inspections]

(A) For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, any duly authorized representative 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, subject to any legally recognized privilege:

(1) 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 Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, directors, agents, partners or employees of such defendant, who may have counsel present, regarding any such matters.

(B) A defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, 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 IX 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 the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

X.

[Retention of Jurisdiction]

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 modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

XI.

[Public Interest]

Entry of this Final Judgment is in the public interest.