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United States v. Blaw-Knox Co.

1954 Trade Cases ¶67,750. U.S. District Court, W.D. Pennsylvania. Civil Action No. 9683. Dated May 10, 1954. Case No. 1104 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decree—Practices Enjoined—Allocation of Territories—Restriction of Imports.—A manufacturer of cast metal rolls was enjoined by a consent decree from entering into arrangements with any foreign manufacturer which would result in the following: (1) allocating territories; (2) restricting imports or exports; (3) restraining competition, or leaving any person free from competition in the manufacture and sale of such rolls; (4) referring orders for cast metal rolls to any manufacturer or distributor thereof; (5) subletting or subcontracting the manufacture of cast metal rolls; (6) exchanging information with any person respecting the price or conditions of any proposed transaction relating to such rolls; (7) requiring or prohibiting the use of any trade-mark by either the defendant or any foreign manufacturer where either might otherwise legally use such trade-mark; (8) restricting the issuance of any license under any patent relating to cast metal rolls in such a manner as to prevent defendant from carrying out this decree; and (9) prohibiting the defendant from furnishing secret processes relating to cast metal rolls to any person unless such person is a foreign manufacturer and the defendant permits such person to use the secret processes in the United States and its territories and to sell the rolls manufactured by their use in such places. The defendant was also enjoined from referring orders for cast metal rolls to any foreign manufacturer, from using a sales agent in common with any foreign manufacturer except for a specific sale of cast metal rolls.

Consent Decree—Permissive Provisions.—In an action against a manufacturer of cast metal rolls, a consent decree provided that nothing contained therein shall prohibit the defendant from contracting with any foreign manufacturer to communicate to the latter secret processes upon the condition that: (1) The secret processes may be used only for a designated purpose; (2) the defendant will not communicate such secret processes to any other manufacturer within a designated foreign area; and (3) cast metal rolls manufactured in accordance with such processes shall not be sold except for use in a designated foreign area. However, such contracts were ordered to provide that the foreign manufacturer shall be free to use the processes and to sell the rolls made by their use in the United States, and, upon the request of a foreign manufacturer, the defendant was to grant a non-exclusive license to vend such cast metal rolls under any applicable patent which the defendant may own or control.

Consent Decree—Applicability of Provisions.—A consent decree provided that the provisions of the decree applicable to the named defendant, a manufacturer of cast metal rollers, shall apply to said defendant, its officers, directors, agents, employees, servants, managers, representatives, subsidiaries, successors and assigns, and to all other persons acting under, through or for such defendant, but shall not apply to transactions solely between the defendant and a subsidiary thereof of which the defendant owns more than 50 per cent of the voting stock and which the defendant manages and over which it has effective working control.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; William D. Kilgore, Jr.; Marcus A. Hollabaugh; William L. Maher; Donald G. Balthis; Max Freeman; Larry L. Williams; and John W. McIlvaine, United States Attorney for the Western District of Pennsylvania.

For the defendant: Thorp, Reed & Armstrong, C. A. Thorp, Jr., William C. O'Neil.

Final Judgment

WALTER S. GOURLEY, District Judge [*In full text*]: Plaintiff, United States of America, having filed its Complaint herein on June 27, 1951; defendant, Blaw-Knox Company, having appeared and filed its Answer to the Complaint, denying the substantive allegations thereof; plaintiff and defendant Blaw-Knox Company, by their attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issues of fact or law herein, and without admission by either of the parties in respect to any such issues; 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 issues of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

The Court has jurisdiction of the subject matter hereof and of the parties hereto. The Complaint states a cause of action against the defendant Blaw-Knox Company 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

[*Definitions*]

As used in this Final Judgment:

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

(B) "Blaw-Knox" means defendant Blaw-Knox Company, a corporation organized and existing under the laws of the State of Delaware, the successor, by statutory merger consummated December 31, 1952, to all the assets and liabilities of Blaw-Knox Company, a New Jersey corporation;

(C) "Armstrong-Whitworth" means Armstrong Whitworth (Metal Industries) Ltd., formerly named Sir W. G. Armstrong Whitworth & Company (Iron Founders) Limited, a company organized and existing under the laws of England, with registered offices at Western Road, Jarrow, County Durham, England;

(D) "Jarrow" means Jarrow Metal Industries, Limited, a company organized and existing under the laws of England, with registered offices at Western Road, Jarrow, County Durham, England;

(E) "Cast metal rolls" means ferrous products cast in cylindrical form, which generally have a working surface in the central section thereof, and bearing portions on each end, which are used as a component part of a rolling mill for rolling ferrous and non-ferrous metals;

(F) "Foreign manufacturer" means any person engaged outside of the United States, its territories, or possessions in the manufacture of cast metal rolls.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to defendant Blaw-Knox shall apply to said defendant, its officers, directors, agents, employees, servants, managers, representatives, subsidiaries, successors and assigns, and to all other persons acting under, through or for such defendant, but shall not apply to transactions solely between Blaw-Knox and a subsidiary or subsidiaries thereof of which defendant Blaw-Knox owns directly or indirectly more than 50% of the voting stock and which defendant Blaw-Knox manages and over which it has effective working control.

IV

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[*Agreements Terminated*]

(A) Defendant Blaw-Knox is ordered and directed to terminate and cancel, within 90 days from the date of entry of this Final Judgment, each of the following agreements which shall not theretofore have been terminated or cancelled:

- (1) Agreement dated July 11, 1935 between Blaw-Knox and Armstrong-Whitworth, including the agreement dated February 14, 1933 attached thereto as a part thereof;
- (2) All parole agreements amending or modifying the aforesaid written agreements, and particularly a certain parole agreement thereto evidenced in two certain letters to J. Theodore Goddard from Armstrong-Whitworth dated respectively August 31, 1936 and December 14, 1936;
- (3) Agreement and single page supplement thereto, each dated May 17, 1938, between Blaw-Knox, Armstrong-Whitworth, and Jarrow; and single page supplement thereto of the same date signed by John Jarvis, now deceased;

Provided, however, that defendant Blaw-Knox may receive payment for, or give credit for, any amounts which shall have accrued for payment or for credit at any time under any of the said agreements on account of sales thereunder of cast metal rolls prior to the date of the termination required by this subsection (A).

(B) Defendant Blaw-Knox is enjoined and restrained from entering into, adopting, performing, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under any contract, agreement, understanding, plan or program which has as its purpose or effect the continuing or renewing of any provision of any of the agreements listed in subsection (A) of this Section which is inconsistent with any provision of this Final Judgment.

V

[*Foreign Agreements Prohibited*]

(A) Defendant Blaw-Knox is enjoined and restrained from entering into, adhering to or claiming any rights under any contract, agreement or understanding with any foreign manufacturer which has the purpose or effect of:

- (1) Allocating, dividing, reserving or protecting territories or markets for the manufacture, sale or distribution of cast metal rolls;
- (2) Limiting, restraining or preventing importation into or exportation from the United States, its territories and possessions, of cast metal rolls;
- (3) Eliminating, limiting, restraining or preventing competition, or leaving any person free from competition, in the manufacture, sale or distribution of cast metal rolls;
- (4) Referring or causing to be referred any order or inquiry for cast metal rolls to any manufacturer or any distributor of cast metal rolls;
- (5) Subletting or subcontracting generally the manufacture of cast metal rolls;
- (6) Exchanging with any person information respecting the price, terms of conditions of any proposed transaction with any prospective customer relating to cast metal rolls;
- (7) Requiring or compelling defendant Blaw-Knox or, any foreign manufacturer to use any trade name or trademark or restraining: defendant Blaw-Knox or any foreign manufacturer from the use of any trade name or trademark to :the use of which either might otherwise be legally entitled in the manufacture, sale or distribution of cast metal rolls;
- (8) Limiting, restraining or preventing the issuance of any license under any patent relating to the manufacture, use or sale of cast metal rolls in such a manner as to prevent defendant Blaw-Knox from carrying out the provisions of subsection (B) of Section VII of this Final Judgment;

- (9) Prohibiting defendant Blaw-Knox from furnishing secret and or specialized processes relating to cast metal rolls to any person, except as otherwise permitted by subsection (A) of Section VII of this Final Judgment;
- (B) Defendant Blaw-Knox is enjoined and restrained from conditioning any contract, agreement or understanding with any foreign manufacturer upon, or from requiring in connection therewith, any of the acts or restraints set forth in subsection (A) of this Section V.

VI

[*Other Practices Enjoined*]

Defendant Blaw-Knox is enjoined and restrained from:

- (A) Referring any orders for cast metal rolls to any foreign manufacturer; this, however, shall not be deemed to prevent Blaw-Knox from informing a prospective purchaser, from whom it has received an order or inquiry for cast metal rolls which Blaw-Knox is unable to supply, that a particular foreign manufacturer might be able to supply such cast metal rolls.
- (B) Requiring, appointing, designating, employing, using or continuing the requirement, appointment, designation, employment or use of:
- (1) A sales or distribution agent or representative common to both defendant Blaw-Knox and any foreign manufacturer for the sale or distribution of cast metal rolls, except for a specific sale;
 - (2) Defendant Blaw-Knox as the agent, sales representative or distributor for a foreign manufacturer of cast metal rolls, except for a specific sale;
 - (3) Any foreign manufacturer as the agent, sales' representative or distributor of defendant Blaw-Knox for the manufacture, sale or distribution of cast metal rolls, except for a specific sale.
- (C) Disclosing or communicating to any foreign manufacturer other wise than by general; price lists or in connection with a bona: fide order or proposed order of manufacture, purchase or sale, between defendant Blaw-Knox and such foreign manufacturer, any information as to prices, terms of conditions of any proposed transaction with any prospective customer relating to cast metal rolls.
- (D) Reserving or protecting for any foreign manufacturer any market or territory for the manufacture, distribution or sale of cast metal rolls.

VII

[*Permissive Provisions*]

- (A) Nothing in this Final Judgment shall prohibit defendant Blaw-Knox from entering into, performing or requiring the performance of any contract with any foreign manufacturer whereby defendant Blaw-Knox communicates to such foreign manufacturer secret; and/or specialized processes upon the condition or under terms the; purpose or effect of which is that:
- (1) The secret and/or specialized processes may be used only for a designated purpose;
 - (2) Defendant Blaw-Knox will not communicate such secret and/or specialized processes to any other manufacturer within a designated foreign area;
 - (3) Cast metal rolls manufactured by such foreign manufacturer in accordance with such secret and/or specialized processes shall not be sold except for use in a designated foreign area.
- (B) In the event that defendant Blaw-Knox does so make a contract to communicate and does communicate its secret and/or specialized processes for the manufacture of cast metal rolls to any foreign manufacturer, said defendant Blaw-Knox is ordered and directed: (1) to include in such contract a provision that the foreign manufacturer shall be free to use such secret and/or specialized processes in the United States, its territories and possessions, and to sell cast metal rolls manufactured by the use of such secret and/or specialized processes in the interstate and foreign commerce of the United States, its territories and possessions, and

(2) to grant to such foreign manufacturer, upon the latter's request, a non-exclusive license or licenses upon reasonable and non-discriminatory terms to vend such cast metal rolls under any patent or patents which said defendant may own or control and which are applicable to or necessary for the manufacture, use, sale or distribution of such cast metal rolls.

VIII

[*Publication*]

Defendant Blaw-Knox is ordered and directed to send, within ninety days from the date of entry of this Final Judgment, a copy thereof to each person who is a party to an agreement, the termination and cancellation of which is ordered in Section IV of this Final Judgment.

IX

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment and for no other purpose, 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, and on reasonable notice to defendant Blaw-Knox made to its principal office, be permitted (1) access, during the office hours of defendant Blaw-Knox, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendant Blaw-Knox relating to any matters contained in this Final Judgment; and (2) subject to the reasonable convenience of defendant Blaw-Knox and without restraint or interference from said defendant, to interview officers or employees of defendant, Blaw-Knox, who may have counsel present, regarding any such matter. Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, defendant Blaw-Knox 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. Information obtained by the means permitted in this Section IX shall not 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

[*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 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. It is expressly provided, in addition to the foregoing, that the plaintiff may, upon reasonable notice, at any time after two years from the date of entry of this Final Judgment, apply to this Court for the elimination or modification of subsection (A) of Section VII hereof.