

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Radiator & Standard Sanitary Corp., U.S. District Court, W.D. Pennsylvania, 1960 Trade Cases ¶69,810, (Sept. 20, 1960)

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United States v. American Radiator & Standard Sanitary Corp.

1960 Trade Cases ¶69,810. U.S. District Court, W.D. Pennsylvania. Civil No. 14469. Dated September 20, 1960. Case No. 1275 in the Antitrust Division of the Department of Justice.

Clayton Antitrust Act

Acquisitions—Horizontal—Plumbing Fixtures—Consent Decree.—A manufacturer of plumbing fixtures was, for a period of five years, prohibited by a consent decree from acquiring, directly or indirectly, any interest in any business or plant or any shares or stock of any corporation engaged in the United States in the manufacture, distribution or sale of plumbing fixtures, plumbing fittings, or steel kitchen cabinets. The manufacturer was not restrained from acquiring in good faith the stock or assets of a distributor if such distributor had been unable to pay its indebtedness in the ordinary course of business and faced imminent bankruptcy or would not be able to continue in business.

Divestiture—Assets and Improvements—Sales Efforts and Conditions—Consent Decree.—A manufacturer of plumbing fixtures was ordered to divest itself of an acquired company manufacturing similar products, together with assets or improvements added since the horizontal acquisition of the manufacturer. The manufacturer was ordered to make an effort in good faith to divest itself and, if the property could not be sold, the court would determine whether the final judgment could be modified. In addition the defendant was ordered to sell plants which were part of the acquired company but not now used in the business.

For the plaintiff: Robert A. Bicks, Assistant Attorney General; William D. Kilgore, Jr.; Hubert I. Teitelbaum, United States Attorney; George D. Reycraft and John M. Toohey, Attorneys, Department of Justice.

For the defendant: Kirkpatrick, Pomeroy, Lockhart & Johnson, by Robert L. Kirkpatrick; Sullivan & Cromwell, by Inzer B. Wyatt.

Final Judgment

WILLSON, Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on March 30, 1956, and defendant having appeared and filed its answer to such complaint, denying the substantive allegations thereof; and

Plaintiff and defendant having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without any admission by plaintiff or defendant in respect to any such issue,

Now, therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties thereto, 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 pursuant to Section 15 of the Act of Congress of October 15, 1914, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, and the complaint states a claim upon which relief may be granted under Section 7 of said Act.

II

[*Definitions*]

As used in this Final Judgment:

- (a) "American-Standard" shall mean defendant American Radiator & Standard Sanitary Corporation, a corporation organized and existing under the laws of the State of Delaware;
- (b) "Youngstown" shall mean the Youngstown Kitchens Division of American-Standard consisting of (1) the contract stamping business carried on at Salem, Ohio, and the real property, manufacturing equipment, and inventory being used in said business at the time of entry of this Final Judgment and (2) the kitchens business carried on at Warren, Ohio, and the name "Youngstown Kitchens" and the real property, manufacturing equipment, and inventory being used in said business at the time of entry of this Final Judgment;
- (c) "Mullins" shall mean Mullins Manufacturing Corporation which was a New York corporation and was merged with defendant;
- (d) "In-Sink-Erator" shall mean In-Sink-Erator Mfg. Co., a corporation organized and existing under the laws of the State of Wisconsin;
- (e) "Plumbing fixtures" shall mean enamelled steel or cast iron fixtures, to-wit: bathtubs, sinks, lavatories, laundry trays and sink and laundry tray combinations;
- (f) "Plumbing fittings" shall mean adjuncts to plumbing fixtures as defined herein subject to selection by the purchaser and generally installed with the fixture, consisting of bath and shower fittings (such as tub fillers, faucets, drains and overflows), lavatory fittings (such as faucets, pop-ups and other drains and combination centerset fittings), and sink fittings (such as faucets and strainers);
- (g) "Person" shall mean any individual, partnership, corporation, association or other legal entity.

III

[*Applicability*]

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

None of the provisions of this Final Judgment shall apply to any person who acquires Youngstown in whole or in part from defendant whether the acquisition is pursuant to this Final Judgment or otherwise, if the acquisition is by a person approved by this Court after hearing.

IV

[*Acquisition of Interests*]

Defendant is enjoined and restrained, for a period of five years from the date of entry of this Final Judgment, from acquiring, directly or indirectly, any shares of stock of any corporation, or any interest in any business or plant, engaged in the United States in the manufacture, distribution or sale of plumbing fixtures, plumbing fittings or steel kitchen cabinets. Defendant is not restrained by this Final Judgment from acquiring in good faith the stock or assets of a distributor if such distributor has been unable to pay its indebtedness to defendant in the ordinary course of business and faces imminent bankruptcy or will not be able to continue in business. If at any time defendant desires to make any acquisition prior to five years from the date of entry of this Final Judgment which would or might be otherwise prohibited by this Final Judgment, it may submit disclosure of the facts with respect to such proposed acquisition and the reasons therefor to the plaintiff. If the plaintiff shall not object to the proposed acquisition within thirty days after receipt of such notice, such acquisition shall be deemed not to be a violation of this Final Judgment. In the event the plaintiff shall object defendant may apply to this Court for permission to make such acquisition, which may be granted upon a showing by the defendant to the satisfaction of this Court that the acquisition would not substantially lessen competition or tend to create a monopoly in respect of plumbing fixtures, plumbing fittings or steel kitchen cabinets.

V

[*Divestiture*]

A. Defendant shall, subject to the terms of this Final Judgment, divest itself of Youngstown, including all assets or improvements which may have been added by defendant since its acquisition of Youngstown and which are being used in the business of Youngstown at the time of entry of this Final Judgment. Defendant may retain the dies (which were not owned by Mullins at January 30, 1956) now being used for the stamping at Salem of steel bathtubs for sale by defendant and defendant may retain any finished tubs or stampings made from said dies. The contract stamping business at Salem and the kitchens business at Warren may be sold separately, at different times and to different persons.

B. Any proposal by plaintiff or defendant for the sale by defendant of Youngstown, in whole or in part, shall be subject to the approval of this Court, after hearing both plaintiff and defendant in regard thereto. Any such proposal of sale shall have the objective of maintaining Youngstown, in the form or forms in which it is divested, as an operating factor in competition.

C. Defendant is ordered and directed from the time of entry of this Final Judgment to make a bona fide effort to divest itself of Youngstown by sale, to make known the availability of Youngstown for sale by ordinary and usual means for the sale of a business as a going concern, and to promote the expeditious sale of Youngstown. Defendant shall furnish to bona fide prospective purchasers of Youngstown such information regarding Youngstown and permit them to have such access to, and to make such inspection of, Youngstown's properties as are reasonably necessary.

Defendant shall render monthly reports to the Assistant Attorney General in charge of the Antitrust Division, concerning its efforts to divest itself of Youngstown.

The sale shall be at a price and upon terms which are acceptable to this Court.

Plaintiff or defendant may apply to this Court for approval of any offer by any person to purchase Youngstown or the contract stamping part thereof or the kitchens business part thereof. Any such offer to purchase shall be approved by this Court, after hearing plaintiff and defendant in regard thereto, unless the Court shall find that the effect of such offer, if accepted, may be substantially to lessen competition or tend to create a monopoly in respect of plumbing fixtures, plumbing fittings, or steel kitchen cabinets, or unless the Court shall find that the offer is unreasonable or inadequate.

D. Defendant is ordered and directed, until the time of divestiture of Youngstown as above provided or until the further order of this Court, to maintain in substantially their physical condition at the time of entry of this Final Judgment the properties and assets at Salem, Ohio, being used for the stamping and enamelling of metal and the properties and assets at Warren, Ohio, being used for the manufacture and sale of kitchen sinks, kitchen cabinets and kitchen equipment, and to continue the operation of said properties and assets at Salem and Warren, Ohio, as operating factors in competition. Nothing herein contained is intended to restrict or interfere with the operation by defendant of said properties and assets at all times under management decisions made in good faith in an effort to improve operating results.

E. If defendant has not divested itself of Youngstown by June 1, 1961 (this being at least one year and a half after the date established to the satisfaction of this Court as the commencement of bona fide efforts by defendant to sell Youngstown), then upon application to this Court by defendant, and a showing by defendant to the satisfaction of this Court of its bona fide efforts to sell Youngstown, and that there is no reasonable expectation that Youngstown can be sold within a reasonable additional period of time, or upon application by plaintiff, the Court shall determine whether any provision of this Final Judgment should be modified or vacated and may modify or vacate any provision hereof.

VI

[*Additional Divestiture*]

A. Defendant shall, subject to the terms of this Final Judgment, divest itself of the so-called "Liberty Plant" in Warren, Ohio, and the so-called "Plant No. 3" in Salem, Ohio. These plants were owned by Mullins and since the merger of Mullins and defendant have been owned by defendant but are not now being used in the business of Youngstown Kitchens Division or otherwise in the business of defendant. The Liberty Plant and Plant No. 3 may be sold separately, at different times and to different persons.

B. Defendant is ordered and directed from the time of entry of this Final Judgment to make a bona fide effort to divest itself of the Liberty Plant and Plant No. 3 by sale, to make known their availability for sale and to promote their expeditious sale. Defendant shall furnish to bona fide prospective purchasers of the Liberty Plant or of Plant No. 3 such information and permit them to have such access to, and to make such inspection of, the Liberty Plant or of Plant No. 3 or both as are reasonably necessary. Defendant is not required to sell the Liberty Plant and Plant No. 3 except at a price and upon terms which are reasonable under all the circumstances.

C None of the provisions of this Final Judgment shall apply to any person who acquires the Liberty Plant or Plant No. 3 from defendant.

D. If defendant has not divested itself of the Liberty Plant and of Plant No. 3 by June 1, 1961, then upon application to this Court by defendant, and a showing by defendant to the satisfaction of this Court of its bona fide efforts to sell the Liberty Plant and Plant No. 3, and that there is no reasonable expectation that the Liberty Plant or Plant No. 3 can be sold with a reasonable additional period of time, or upon application of plaintiff, the Court shall determine whether any provision of this Final Judgment should be modified or vacated and may modify or vacate any provision hereof.

VII

Defendant is ordered and directed to divest itself of any shares of stock, or any other interest, owned by defendant in In-Sink-Erator.

VIII

[*Enforcement and Compliance*]

For the purpose of securing compliance with this Final Judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to defendant, at its principal office, be permitted:

(a) access, during the office hours of defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of defendant relating to any of the matters contained in this Final Judgment; and

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

Defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment.

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

IX

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling either party 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 or for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.