

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Standard, Inc., Kohler Co., Crane Co., Wallace-Murray Corp., Universal-Rundle Corp., Rheem Manufacturing Co., Borg-Warner Corp., Briggs Manufacturing Co., and Plumbing Fixture Manufacturers Assn., U.S. District Court, W.D. Pennsylvania, 1971 Trade Cases ¶73,549, (May 18, 1971)**

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United States v. American Standard, Inc., Kohler Co., Crane Co., Wallace-Murray Corp., Universal-Rundle Corp., Rheem Manufacturing Co., Borg-Warner Corp., Briggs Manufacturing Co., and Plumbing Fixture Manufacturers Assn.

1971 Trade Cases ¶73,549. U.S. District Court, W.D. Pennsylvania Civil No. 66-1184. Entered May 18, 1971. Case No. 1921, Antitrust Division, Department of Justice.

**Sherman Act**

**Price Fixing—Plumbing Fixtures—Consent Decree.**—Eight manufacturers of plumbing fixtures were prohibited by a consent decree from agreeing on prices, terms or conditions for the sale of plumbing fixtures, from agreeing to exchange information concerning bids, prices, terms, or conditions for the sale of plumbing fixtures, and from agreeing to limit, restrict, discontinue or otherwise refrain from manufacturing any plumbing fixtures. In addition, the manufacturers must not communicate any past, present, or future plumbing fixture pricing information to any competitors and may not belong for a period of ten years to any trade association comprised exclusively of plumbing fixture manufacturers. Each manufacturer within one year must independently issue new prices, terms and conditions for the sale of plumbing fixtures. A defendant trade association must be dissolved.

**Price Fixing—Plumbing Fixtures—Record of Meetings.**—Eight manufacturers of plumbing fixtures were required by a consent decree for ten years to maintain a record of all meetings, formal or informal, attended by any of its officers, directors or employees having managerial or supervisory authority in connection with the sale or pricing of any plumbing fixtures and similar representatives of any other manufacturer whenever there is any discussion concerning (1) prices, bids, discounts or terms or conditions of sale of any plumbing fixture to any third person, or (2) the limitation, restriction or discontinuance of manufacturing any plumbing fixtures. Records must include the date and place of the meeting, the names of all persons in attendance, and a list of the topics or subjects discussed.

**For plaintiff:** Richard W. McLaren, Asst. Atty. Gen., Baddia J. Rashid, Harry N. Burgess, Charles D. Mahame, Jr., John C. Fricano, Charles F. B. McAleer, and Rodney O. Thorsoti, Dept. of Justice.

**For defendants:** William E. Willis, of Sullivan & Cromwell, New York, N. Y., for American Standard, Inc.; Norman Pacun, Gen. Counsel, New York, N. Y., for Crane Co.; Fred A. Freund, of Kaye, Scholer, Fierway, Hays & Handler, New York, N. Y., for Wallace-Murray Corp.; Frank C. McAleer, of Arnstein, Gluck, Weitzenfeld & Minow, Chicago, 111., for Universal-Rundle Corp.; Ralph L. McAfee, of Cravath, Swaine & Moore, New York, N. Y., for Rheem Mfg. Co.; George A. Raftery, of O'Brien Driscoll, Raftery, Rosenbloom & Grainger, New York, N. Y., for Briggs Mfg. Co.; Patrick T. Ryan, of Drinker Biddle & Reath, Philadelphia, Pa., for Plumbing Fixture Mfrs. Assn.; Gilbert J. Helwig, of Reed, Smith, Shaw & McClay, Pittsburgh, Pa., for Kohler Co.; and Charles W. Houchins, for Borg-Warner Corp.

**Final Judgment**

ROSENBERG, D. J.: Plaintiff, United States of America, having filed its Complaint herein on October 6, 1966, and the Court having entered an order with the consent of the parties by their respective attorneys amending the

complaint on May 17, 1971, and the parties 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 evidence or admission by any party with respect to any such issue:

Now, Therefore, before any testimony has been taken herein and 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

### [ *Jurisdiction* ]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants 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* ]

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

(B) "Plumbing fixtures" shall mean any enameled cast iron and vitreous china plumbing fixtures, including but not limited to bathtubs, lavatories, sinks, water closets and urinals;

(C) "Manufacturer" shall mean any person engaged in the manufacture of any plumbing fixture;

(D) "Subsidiary" shall mean a corporation controlled by a defendant, or one in which 50% or more of the outstanding common stock entitled to vote is owned or controlled by the defendant.

## III

### [ *Applicability* ]

The provisions of this Final Judgment applicable to any defendant shall apply also to its subsidiaries, successors and assigns and to their respective officers, directors, agents and employees, and to all other 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; provided, however, that this Final Judgment shall not apply to transactions or activity, (i) solely between a defendant and its directors, officers, employees, parent company, subsidiaries, or any of them, when acting in such capacity; or (ii) outside the United States except sales by a defendant to or for the use of the plaintiff or any agency thereof unless such transaction or activity is required by the laws of the jurisdiction in which the sale takes place.

## IV

### [ *Prices, Terms of Sale* ]

Each of the defendants is enjoined and restrained from directly or indirectly entering into, adhering to, maintaining or engaging in any agreement, understanding, plan, program or concert of action with any other manufacturer to:

(A) Fix, stabilize, maintain or adopt prices, discounts, or terms or conditions for the sale of any plumbing fixtures to any third person;

(B) Exchange information concerning bids, prices, discounts or terms or conditions at or upon which any plumbing fixtures have been sold or are to be offered or sold to any third person;

(C) Limit, restrict, discontinue or otherwise refrain from manufacturing any plumbing fixtures.

## V

### [ *Information Exchange, Trade Association Activities* ]

Each of the defendants is enjoined and restrained from directly or indirectly:

(A) Communicating to any other manufacturer any information concerning past, present or future prices, discounts or terms or conditions for the sale of any plumbing fixture for any project or job except in connection with bona fide negotiations for the purchase or sale of plumbing fixtures between the parties to such communications; and

(B) Continuing to be a member of, contributing anything of value to, or participating in any of the activities of any trade association or other organization with knowledge that any of the activities of such association or other organization would be inconsistent with any of the provisions of this Final Judgment if the association or other organization were a defendant herein.

## VI

### [ *Record of Meetings* ]

(A) Each defendant shall maintain for a period of ten (10) years from the entry of this Final Judgment a record of all meetings, formal or informal, attended by any of its officers, directors or employees having managerial or supervisory authority in connection with the sale or pricing of any plumbing fixtures, and similar representatives of any other manufacturer whenever at such formal or informal meeting there is any discussion concerning (i) prices, bids, discounts or terms or conditions of sale of any plumbing fixture to any third person; or (ii) any discussion concerning the limitation, restriction or discontinuance of manufacturing any plumbing fixtures; said record shall include the date of and place of the meeting, the names of all persons in attendance, and a list of the topics or subjects which were discussed at each such meeting.

(B) The defendant association is hereby ordered dissolved.

(C) Each defendant is enjoined for a period of ten (10) years from the date of entry of this Final Judgment, from belonging to or organizing any association composed exclusively of manufacturers.

(D) Each defendant is ordered and directed each year on the anniversary date of the Final Judgment for the next ten (10) years to file a report with the plaintiff setting forth in reasonable detail 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.

## VII

### [ *Independent Pricing* ]

Each of the defendants is ordered and directed, not later than one year following the effective date of this Final Judgment, individually and independently:

(A) To review and determine the prices, discounts, or terms and conditions of sale for plumbing fixtures contained in such defendant's published price announcements and price books;

(B) To announce such prices determined under (A) above; provided, however, that the price review and determination referred to in (A) above shall not be required with respect to any plumbing fixture as to which such defendant, within one (1) year following the effective date of this Final Judgment files with this Court, with a copy sent to the Assistant Attorney General in charge of the Antitrust Division, an affidavit stating that such defendant, prior to the effective date of this Final Judgment and subsequent to October 6, 1966, reviewed, determined and announced the prices, discounts, or terms and conditions of such plumbing fixture in accordance with the requirements of this section and provided, further, that nothing contained in this subsection shall prevent any such defendant from deviating from, modifying or otherwise changing the prices announced or affirmed in accordance with this section.

## VIII

### [ *Affidavits of Officers*]

Each defendant shall for a period of five (5) years from the effective date of this Final Judgment, within ninety (90) days of each publication of that defendant's price books, or price sheets, which change, amend or add to the prices, discounts, or terms and conditions of sale for plumbing fixtures contained therein, execute an affidavit by one of its officers or other employees with authority to initiate such action that said changes, amendments or additions were individually and independently arrived at by that defendant and were not the result of any agreement or understanding with any other manufacturer; and further, that each defendant retain in its files the aforesaid affidavits for five (5) years after the date of execution of such affidavit.

## IX

### [ *Compliance and Inspection*]

For the purpose of determining or securing compliance with this Final Judgment, duly authorized representatives 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:

(A) 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

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

Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, each defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be requested. No information obtained by means provided 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 for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

## X

### [ *Jurisdiction Retained*]

Jurisdiction is retained 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 or directions as may be necessary or appropriate for the construction of 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 the punishment of violations thereof.