

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Permatex Company, Inc., U.S. District Court, E.D. New York, 1966 Trade Cases ¶71,754, (Jun. 1, 1966)

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United States v. Permatex Company, Inc.

1966 Trade Cases ¶71,754. U.S. District Court, E.D. New York. Civil No. 66 C 395. Entered June 1, 1966. Case No. 1898 in the Antitrust Division of the Department of Justice.

Sherman Act

Refusal to Sell—Class of Business—Maintenance Chemical Products—Consent Judgment—A

manufacturer of maintenance chemical products was prohibited by a consent judgment from entering into any agreement with any of its distributors or jobbers to restrict or limit the persons to whom they may sell the manufacturer's products and from refusing to sell to any person because of the price at which the person has sold the manufacturer's products.

For the plaintiff: Donald F. Turner, Assistant Attorney General; Gordon B. Spivack; Harry G. Sklarsky; and John D. Swartz.

For the defendant: Herbert J. Miller, Jr.; Murray S. Monroe; Norman H. Seidler; John H. Clark; Harry N. Burgess; Charles F. B. McAleer; Joseph J. Calvert.

Final Judgment

ROSLING, District Judge: Plaintiff, United States of America, having filed its complaint herein on April 28, 1966, and defendant having filed its answer denying the substantive allegations of such complaint, 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 an admission by either party with respect to any such issue;

Now, Therefore, without the taking of any testimony and without trial or adjudication of any fact or law herein, and upon the consent of the parties hereto, separately filed May 27, 1966 it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims for relief against the defendant 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) "Permatex" means the defendant Permatex Company, Inc., a New York corporation;
- (B) "Person" means any individual, partnership, firm, corporation, association or other business or legal entity;
- (C) "Permatex product" means any product now, or hereafter, manufactured or sold by Permatex;

(D) "Distributor" means any person, having a place of business in the United States, who purchases any Permatex product from Permatex for resale;

(E) "Jobber" means any person (other than a distributor), having a place of business in the United States, who purchases any Permatex product for resale to retailers, auto repair shops, manufacturers, or industrial or governmental users of Permatex products.

III

[*Applicability*]

The provisions of this Final Judgment, shall apply to Permatex and to each of its subsidiaries, successors, assigns, officers, directors, servants, employees and agents, and to all other persons in active concert or participation with Permatex who receive actual notice of this Final Judgment by personal service or otherwise. Provided, however, that for the purposes of this Final Judgment, defendant Permatex, its officers, directors, servants, employees and *bona fide* agents, when acting as such, shall be deemed to be one person.

IV

[*Practices Prohibited*]

Defendant Permatex is enjoined and restrained from, directly or indirectly:

(A) Entering into, adhering to, maintaining, enforcing or claiming any rights under any contract, agreement, understanding, plan or program with any distributor or jobber of any Permatex product, or with any other person to:

- (1) Fix, establish, limit or restrict the price or prices, terms or conditions for the sale of any Permatex product to any third person;
- (2) Restrict or limit the person, or persons, to whom any distributor, or jobber or any other person may or shall sell any Permatex product;
- (3) Boycott, or otherwise refuse to sell any Permatex product to, any person or class or group of persons;

(B) Selling, or offering or attempting to sell, any Permatex product to any person on or accompanied by any condition, agreement or understanding which fixes, limits or restricts the price or prices, terms or conditions at which such Permatex product or products may be sold to any third person, or which restricts or limits the persons or class of persons to whom such product or products may be sold;

(C) Restricting or limiting or attempting to restrict or limit any person from purchasing any Permatex product or products from any other source;

(D) Refusing, in the ordinary course of business, to sell any Permatex product to any person based in whole or in part upon the price or prices at which, or the persons to whom, such other person sells, or has sold, Permatex products;

(E) In any manner restricting, limiting or preventing, or attempting to restrict, limit or prevent any other person from:

- (1) Selling or offering to sell any Permatex product or products at any price, or upon any terms or conditions such other person may individually determine; or
- (2) Selling or offering to sell any Permatex product or products to any person or person, or to any group or class of persons;
- (3) Purchasing any Permatex product or products from any distributor or jobber thereof;

(F) Nothing contained in subsections (A) (2), (B), or (E) (2) of this Section IV shall be construed to prohibit defendant Permatex from allowing or disallowing any distributor or jobber any functional discount or allowance when so required under the Robinson-Patman Act.

V

[*Modification of Contracts*]

(A) Defendant is ordered and directed, within 90 days from the date of entry of this Final Judgment, to

- (1) Cancel each provision of every contract to which it may be a party which is contrary to, or inconsistent with, any provision of this Final Judgment;
- (2) Remove from all its sales literature, salesmen's manuals, and similar documents, any language which is contrary to or inconsistent with any provision of this Final Judgment;
- (3) Mail to each of its distributors and to each of its jobbers known to it a conformed copy of this Final Judgment together with a letter which includes a statement substantially identical to Exhibit A attached hereto and made a part hereof; and

(B) Defendant is ordered and directed, for a period of two years from the date of entry of this Final Judgment, to mail to each new distributor appointed by it, not later than 30 days after the date of such distributor's appointment, a conformed copy of this Final Judgment together with a letter which includes a statement substantially identical to Exhibit A attached hereto and made a part hereof.

(C) Defendant is ordered and directed to file with this Court and serve upon the plaintiff, within 120 days from the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subsection (A) of this Section V.

VI

[*Inspection and Compliance*]

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

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

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

Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division defendant shall submit such written reports with respect to the matters covered 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 for in this Section VI 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 plaintiff except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the Court 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, and for the enforcement of compliance therewith and the punishment of violations thereof.

Exhibit "A"

In accordance with the terms of a decree entered by the United States District Court for the Eastern District of New York in Brooklyn, New York, with the consent of the parties, terminating the Government's civil antitrust lawsuit against Permatex Company, Inc., we are sending this notice to you and to other distributors and jobbers in the United States who handle Permatex products.

The decree provides, among other things, that:

- (1) We cannot enter into any agreement with you which prevents you from selling Permatex products to any customer you choose, at any price you determine; and
- (2) We cannot enter into any agreement with you or anyone else which prevents us from selling Permatex products to any other person.

A copy of the Court's decree is enclosed.

The Permatex Company, in entering into this decree, did so in order to avoid expensive litigation so that it would be able to concentrate on its primary purpose—selling Permatex products. The decree does not, of course, constitute an admission that Permatex Company is guilty of any wrongdoing, and the decree so states.

We trust that we can look forward to a continuation of the wonderful business relationship that has existed between us in the past.