UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	Civil No. 72-C-860
v.	:	Entered: July 27, 1972
BIRD CORPORATION and INSTRUMENTATION ASSOCIATES, INC.,	:	Filed: June 27, 1972
Defendants.	:	

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on June 27, 1972, defendants having appeared by their respective counsel, and the parties hereto, 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 any party with respect to any such issue; by Stipulation filed June 28, 1972;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

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 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," as amended (15 U.S.C. Sec. 1), commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Respirators" shall mean mechanical devices of the type known as Intermittent Positive Pressure Breathing devices, manufactured by the Bird Corporation;

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

(C) "Distributor" shall mean any person who purchases Respirators for resale.

III

The provisions of this Final Judgment applicable to any defendant shall apply to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with either defendant who receives actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment each of the defendants and its officers, directors, partners, employees, and subsidiaries, when acting in such capacity, shall be deemed to be one person. The provisions of this Final Judgment shall not be applicable to activities of Bird outside the United States (except for sales to agencies of the Plaintiff) which do not affect the domestic or foreign commerce of the United States.

IV

Each of the defendants is enjoined and restrained from:

(A) Directly or indirectly entering into, adhering to, maintaining, enforcing, or claiming any rights under any contract, agreement, combination, understanding, plan or program with any Distributor to:

(1) fix, establish, maintain or adhere to, prices, or discounts, for the resale of Respirators; or

(2) limit, allocate, or restrict the persons to whom, or the territories within which, Respirators may be sold.

(B) Directly or indirectly:

(1) compelling or coercing any Distributor to establish, adopt, adhere to, or enforce adherence to, any minimum or suggested retail prices, mark-ups, or margin of profit;

(2) compelling or coercing any Distributor to establish, adopt, adhere to, or enforce adherence to any limitation on the classes of customers to whom, or territory in which, the Distributor may sell Respirators;

(3) selling or offering to sell a Respirator to any Distributor on the condition or understanding that the Distributor will (a) adhere to or be expected to adhere to any price suggested by either defendant, or (b) limit the persons to whom or the territories within which the Distributor may sell Respirators.

(C) Directly or indirectly entering into, adhering to, maintaining, enforcing, or claiming any rights under any contract, agreement, combination, understanding, plan or program which prevents or restricts defendant Instrumentation Associates, Inc. from selling or dealing in any product other than respirators.

V

Nothing in this Final Judgment shall prohibit either defendant from:

(A) After five years from the date of entry of this Final Judgment, exercising any lawful rights it may have under the Miller-Tydings Act, 50 Stat. 693 (1937) and the McGuire Act, 66 Stat. 632 (1952) with respect to respirators.

(B) Requiring that any person who purchases Respirators for resale to a user must have taken such training course or courses in the use and servicing of Respirators as Bird customarily provides for Distributors; provided that Bird shall make such training course or courses available, on nondiscriminatory terms and conditions to any such person in the trade who shall apply to take such training course or courses.

VI

A) Within 90 days from the date of entry of this Final Judgment, each defendant shall send to each Distributor to which such defendant has within the preceding twelve months sold any Respirator, a true copy of this Final Judgment.

(B) Within 120 days from the date of entry of this Final Judgment, each defendant shall file with this Court and serve upon the plaintiff a report setting forth the fact and manner of compliance with paragraph VI(A) above.

VII

For a period of ten years from the date of entry of this Final Judgment, each defendant is ordered and directed each year

on the anniversary date of the entry of this Final Judgment to file a report with the plaintiff setting forth the steps which it has taken during the prior year to advise its appropriate officers, employees and agents of its and their obligations under the provisions of this Final Judgment. Such report filed by each defendant shall further contain the name and address of any Distributor in the United States to whom each such defendant has refused to sell any Respirator during said period and state the reasons for such refusal.

VIII

For the purpose of securing or determining compliance with this Final Judgment, 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 either of the defendants made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during office hours of said 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.

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

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, each defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means permitted in this Section VIII shall be divulged by any representatives 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 is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX

Jurisdiction is retained by this Court for the purpose of enabling any 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, for the modification of any of the provisions contained therein, for the enforcement of compliance therewith and for the punishment of violations thereof.

Dated: July 27, 1972
;Brooklyn, N.Y.

/s/ JACOB MISHLER
UNITED STATES DISTRICT JUDGE