

U. S. v. PORCELAIN APPLIANCE CORPORATION

Special Assistant to the Attorney General, for relief in accordance with the prayer of the Petitioner, and it appearing to the Court that it has jurisdiction of the subject matter hereof, and of the parties hereto, and no testimony or evidence having been taken, but all of the defendants herein having appeared by their attorneys and having consented thereto in open court:

Now, therefore, it is ordered, adjudged, and decreed as follows:

I. That the combination and conspiracy in restraint of interstate trade and commerce, the acts, agreements, and understandings in restraint of interstate trade and commerce, as described in the petition herein, and the restraint of such trade and commerce obtained thereby are violative of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," known as the Sherman Antitrust Act.

II. That each and every of the license agreements described in the petition herein, wherein defendant Porcelain Appliance Corporation, is licensor and the other defendant corporations are severally licensees, is a contract in restraint of interstate trade and commerce, and is violative of the aforesaid act of Congress.

III. That the defendants and their officers, agents, servants, and employees, and all persons acting under, through, or in behalf of them or any of them, be and they are hereby perpetually enjoined, restrained and prohibited from further enforcing or recognizing in any way the now existing license agreements described in the petition herein, wherein defendant Porcelain Appliance Corporation is licensor and the other defendant corporations are severally licensees, and from entering into any agreement or agreements of a similar character to said agreements, or that will have an effect like unto the effect of said agreements.

IV. That the defendants, their officers, agents, servants, and employees, and all persons acting under,

UNITED STATES OF AMERICA v. PORCELAIN
APPLIANCE CORPORATION ET AL.,
DEFENDANTS.

IN THE DISTRICT COURT OF THE UNITED STATES IN
AND FOR THE NORTHERN DISTRICT OF OHIO,
EASTERN DIVISION.

In Equity No. 1640.

UNITED STATES OF AMERICA, PETITIONER

v.

PORCELAIN APPLIANCE CORPORATION ET AL., DEFENDANTS.

FINAL DECREE.

This cause came on to be heard at this Term, and upon consideration thereof and upon motion of the Petitioner by Wilfred J. Mahon, United States Attorney for the Northern District of Ohio, and by H. B. Teegarden,

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through, or in behalf of them, or any of them, are hereby perpetually enjoined, restrained and prohibited from combining, conspiring, or agreeing to do any of the following acts.

(a) To fix in any manner whatsoever or to maintain uniform or non-competitive prices for assembled split knobs to jobbers and/or to purchasers other than jobbers.

(b) To fix in any manner whatsoever or to maintain uniform or non-competitive charges for the barrels or containers used for the shipment of assembled split knobs.

(c) To do any acts or acts having the purpose or necessary effect of causing or enabling them, or any of them, to establish or maintain uniform or non-competitive prices for assembled split knobs, or uniformly to increase or to diminish such prices, or to maintain uniform policies as to prices and sales.

(d) To establish and/or maintain the following rules and regulations relating to the sale of assembled split knobs, or any rules or regulations similar thereto, or which have the purpose or necessary effect of eliminating competition in the sale of assembled split knobs:

(a) Freight may be equalized with manufacturing competitor having lowest freight rates to point of delivery.

(b) All sales must be based on prices ruling at date of shipment.

(c) Local sales shall be f. o. b. factory stock room.

(d) Sales from warehouse stocks (if warehouse is outside of city in which plant is located), consigned stocks, or agent's stocks, must be on basis f. o. b. Car Factory, plus freight, by same means of transit, from manufacturing competitor having lowest rate to destination, and five (5) per cent as a warehouse or consigned or agent's stock charge.

(e) Carting from warehouse, consigned, or agent's stocks shall not be done at the expense of the licensee, consignee, or agent.

averaging of the number of assembled split knobs per barrel for a period of not less than one month, semi-annually.

(f) Terms of sale to be thirty (30) days net, or an allowance of two (2) per cent for cash payment on or before the 10th proximo.

(g) Container charges may be billed separately or may be added to and included in the net selling price. In the latter case the amount added shall entirely absorb the container charge and shall be determined by an actual averaging of the number of assembled split knobs per barrel for a period of not less than one month, semiannually.

(h) In equalizing freight, the customer shall be credited with the difference between the freight, by the same means of transit from factory to destination, and from factory of nearest manufacturing competitor to destination; provided that where such competitor has a cheaper means of transit, freight may be equalized between a high rate and a low rate. Shipments by American Railway Express or similar companies shall be equalized on the basis of ordinary rail freight.

(i) "Jobbers" and "jobbers of electrical supplies," to denote a vendor of electrical supplies who maintains a permanent office, carries a stock of goods, and who travels one or more salesmen.

(j) No salesman, agent, or representative of a manufacturer shall buy or sell knobs on his own account in the capacity of jobber; and no jobber, dealer in electrical supplies, or electrical contractor shall be appointed as salesman, representative, or agent of a manufacturer.

(k) Salesmen, factory representatives, and manufacturers' agents shall herein be deemed to constitute an integral part of the manufacturers' own organization, and their acts shall be considered as being the acts of the manufacturer. The splitting of commissions and similar practices shall be considered the equiv-

alent of the manufacturer rebating the customer, thereby in effect reducing the price of assembled split knobs.

Provided, however, that nothing contained in this Paragraph IV shall be construed as prohibiting any defendant from individually adopting and following any method of pricing and selling assembled split knobs to such persons and on such terms as he or it may choose, if done individually and without combining, conspiring or agreeing with any other defendant or with any other manufacturer of assembled split knobs or other person.

V. That the combination and consolidation under one control of the patents and patent rights relating to assembly devices for split knobs, as described in the petition herein, are violative of the aforesaid Act of Congress, and that defendant Porcelain Appliances Corporation shall execute proper assignments of such of said patents and said patent rights as are now held by it, whether by license, assignment, or otherwise, to the persons or corporations who owned or held the same prior to said combination and consolidation, or to any subsequent purchaser or purchasers thereof for value, to the end that said patents and said patent rights shall not be used hereafter as instrumentalities for monopolizing and/or restraining in any way the interstate trade and commerce in assembled split knobs.

VI. None of the provisions in this decree contained shall prevent any defendant owning a valid patent, or patents, or interest therein, from granting licenses thereunder upon lawful terms and conditions or from in any manner exercising any exclusive right enjoyed by owners of United States patents, or of an interest therein.

VII. Jurisdiction of the cause is maintained for the purpose of giving full effect to this decree and of making such other and further orders and decrees or taking such other action, if any, as may be necessary or appropriate to the carrying out and enforcement of said decree, and for the purpose of enabling the United States to apply to the Court for a modification or enlargement of the

provisions of said decree on the ground that they are inadequate and for the defendants or any of them to apply for a modification of said provisions on the ground that they or any of them have become inappropriate or unnecessary.

Made and entered this 25th day of February, 1930.

SAMUEL H. WEST,

District Judge.