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United States v. Morton Gregory Corp.

1950-1951 Trade Cases ¶62,750. U.S. District Court, N.D. Ohio. Civil Action No. 6279. Filed January 3, 1951.

Sherman Antitrust Act

Consent Decrees—Stud-Welding Materials and Equipment—Restraints on Competition, Patent Licenses, and Import Restrictions.—In a government consent decree agreed to by a holder of patents on stud-welding equipment and materials, the defendant is prohibited from carrying out any contract declared illegal or any contract to allocate territory, refrain from competition, exclude any manufacturer from any market, prevent use of materials and equipment purchased from others, or require use or non-use of any trademark; the patentee is also forbidden to grant licenses except on a non-exclusive basis, bring infringement suits which would interfere with the importation of competing equipment, collect more than a reasonable royalty upon infringing imported materials, or transfer patents except where the transferee binds himself to the terms of the decree.

For the plaintiff: Peyton Ford, Acting Attorney General; Wm. Amory Underhill, Acting Assistant General; Don C. Miller, United States Attorney; Marcus A. Hollabaugh and Sigmund Timberg, Special Assistants to the Attorney General; Robert B. Hummel, Trial Attorney; Lester P. Kauffmann, Robert M. Dixon, Miles Francis Ryan, Jr., and Max Freeman, Special Attorneys.

For the defendant: Lewis & Watkins, by Milton F. Mallender; Shumaker, Loop, Kendrick & Winn, by Ross W. Shumaker.

Final Judgment

KLOEB, D. J.: [*In full text.*] Plaintiff, United States of America, having filed its complaint herein on December 19, 1949; the defendant having filed its answer denying the substantive allegations thereof; and the plaintiff and defendant by their attorneys having consented to the entry of this Final Judgment without trial of any issue of fact or law herein and without admission by the parties in respect of any such issue; and the Court having considered the matter and being duly advised;

Now, THEREFORE, before any testimony has been taken and without trial 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 hereof and of defendant, and the complaint states a cause of action 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.

II

[*Definitions*]

As used in this judgment:

- (1) "Defendant" means Morton Gregory Corporation, a corporation organized and existing under the laws of the state of Michigan, and having its principal place of business in Toledo, Ohio;
- (2) "Foreign licensees" means each and all of the following:

- (a) Cooke and Ferguson, Ltd., a corporation organized and existing under the laws of Great Britain;
- (b) Electromecanique, a corporation organized and existing under the laws of Belgium;
- (c) Hulftegger & Company, a corporation organized and existing under the laws of Switzerland;
- (d) The Lincoln Electric Company (Australia) Proprietary Limited, a corporation organized and existing under the laws of Australia;
- (e) N. A. Gasaccumulator, a corporation organized and existing under the laws of Norway;
- (f) Svenska Aktiebolaget Gasaccumulator, a corporation organized and existing under the laws of Sweden;
- (g) Jean Sarazin & Company, a corporation organized and existing under the laws of France;
- (h) Fusarc Saldatura Elettrica, a corporation organized and existing under the laws of Italy;
- (3) "Stud welding" means the welding of metal studs to metal surfaces so that other materials or objects may be secured, attached, or fastened thereto;
- (4) "Stud welding equipment" means materials and supplies (including, but not limited to, guns, studs and ferrules) and devices and apparatus used in stud welding, and special purpose equipment used in the manufacture of such materials, supplies, devices or apparatus;
- (5) "Person" means any individual, corporation, partnership, association, joint stock company, or any other business or legal entity;
- (6) "United States patents" means all all United States letters patent and applications therefor, including all re-issues, divisions, continuations or extensions thereof, and patents issued upon said applications, relating to stud welding or stud welding equipment;
- (7) "Foreign patents" means all foreign letters patent and applications therefor, including all re-issues, divisions, continuations or extensions thereof, and patents issued upon said applications, relating to stud welding or stud welding equipment.

III

[*Application*]

The provisions of this Final Judgment shall apply to the defendant, its officers, directors, agents, employees, successors, assigns, and all other persons acting under, through, or for such defendant.

IV

[*Illegal Agreements*]

(A) The following agreements are hereby adjudged and declared to be illegal and unenforceable, and defendant is hereby enjoined and restrained from further performance or enforcement of the said agreements and any amendments thereto and from entering into, performing, adopting, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under, any contract, agreement, arrangement, understanding, plan or program for the purpose or effect of continuing, reviving or renewing any of the said agreements and any amendments thereto:

- (1) The agreement of June 17, 1947 with Cooke and Ferguson, Ltd.;
- (2) The agreement of May 10, 1948 with Electromecanique;
- (3) The agreement of May 13, 1948 with Hulftegger & Company;
- (4) The agreement of May 28, 1948 with The Lincoln Electric Company (Australia) Proprietary Limited;
- (5) The agreement of August 31, 1948 with N. A. Gasaccumulator;
- (6) The agreement of October 19, 1948 between defendant and Svenska Aktiebolaget Gasaccumulator;
- (7) The agreement of November 1, 1948 with Jean Sarazin & Company;

(8) The agreement of December 27, 1949 with Fusarc Saldatura Elettrica.

(B) Defendant is hereby ordered and directed to file with this Court, within one year following the entry of this Final Judgment, an affidavit that the agreements listed in the foregoing paragraph (A) of this Section have been terminated and that defendant is not a party to any then existing agreement or arrangement that is not in conformity with this Final Judgment.

V

[*Agreements Prohibited*]

Defendant is hereby enjoined and restrained from combining or conspiring with, or from entering into, adhering to, renewing, maintaining or furthering, directly or indirectly, or claiming any rights under, any contract, agreement, understanding, or concerted plan of action with any foreign person which has the purpose or effect of:—

(A) Allocating or dividing territories or markets for the manufacture, distribution or sale of stud welding equipment;

(B) Refraining from competing, or leaving any person from competition, in the manufacture, distribution or sale of stud welding equipment in any market or territory;

(C) Excluding any manufacturer or distributor of stud welding equipment from any marketer territory, or interfering with or restricting any such manufacturer or distributor in competing in any market or territory;

(D) Restraining or preventing any other person from making, using or selling stud welding equipment manufactured or sold by anyone else;

(E) Requiring any person to use or not to use any trade-mark or trade name.

VI

[*Prohibitions of Patent Uses*]

Defendant is hereby enjoined and restrained from:

(A) Securing, claiming or exercising any rights under any option to purchase stud welding equipment from any licensee under foreign patents owned or controlled by defendant;

(B) Granting any license, immunity, or other rights under any foreign patent except upon a non-exclusive basis;

(C) Conditioning in any manner, directly or indirectly, the grant by defendant to any foreign persons of rights under any United States patents or foreign patents, upon the grant to defendant of any rights under any United States patents or foreign patents.

VII

[*Importations*]

Defendant is hereby enjoined and restrained from instituting, maintaining, or furthering, or threatening to institute, maintain or further any claim, suit or proceeding, judicial or administrative, based on the patent, trade-mark or customs laws of the United States which would interfere with the importation of stud welding equipment into the United States or with the sale or other distribution of such imported stud welding equipment within the United States, provided however, that this shall not be construed to prevent the defendant (a) from taking such steps as may be necessary to avoid deception of purchasers of such imported stud welding equipment as to the source of origin of such equipment, and (b) from collecting an amount not to exceed reasonable royalties, and from taking such incidental steps as are necessary in connection therewith, for infringement of United States patents by such imported stud welding equipment, where such equipment has not been subjected, directly or indirectly, to the payment of any royalties under foreign patents corresponding to such United States patents.

VIII

[*Patent Assignment Terms*]

Defendant is hereby enjoined and restrained from selling, transferring or assigning any United States patents or foreign patents unless it requires, as a condition of such sale, transfer or assignment, that the purchaser, transferee or assignee (a) shall observe the requirements of Section VII of this Final Judgment and also file with this Court, prior to consummation of said transaction, an undertaking to be bound by the provisions of said Section VII, and (b) shall grant such immunities under the patents so sold, transferred or assigned as will assure unimpeded exports of stud welding equipment from the United States into the country in which said patents were issued or applied for.

IX

[Visitation, Inspection, and Compliance]

For the purpose of securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General and on reasonable notice to defendant be permitted, subject to any legally recognized privilege, (1) 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 (2) subject to the reasonable convenience of defendant and without restraint or interference from defendant, to interview officers or employees of defendant, who may have counsel present, regarding any such matters. Upon written request of the Attorney General or an Assistant Attorney General defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be reasonably necessary to the enforcement of this Final Judgment. Information obtained by the means permitted in this section shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

X

[Jurisdiction Retained]

Jurisdiction of this cause is retained by this Court for the purpose of enabling any of the parties 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 amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.