

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

PITTSBURGH CRUSHED STEEL COMPANY  
THE GLOBE STEEL ABRASIVE COMPANY  
STEEL SHOT AND GRIT COMPANY, INC.  
THE AMERICAN STEEL ABRASIVES COMPANY  
STEEL SHOT PRODUCERS, INC.  
CLAYTON-SHERMAN ABRASIVES COMPANY  
STEELBIAST ABRASIVES COMPANY  
THE NATIONAL METAL ABRASIVE COMPANY  
WESTERN METAL ABRASIVES COMPANY  
THE PHILADELPHIA STEEL ABRASIVE CO.  
THE CLEVELAND METAL ABRASIVE COMPANY  
AMERICAN WHEELABRATOR & EQUIPMENT  
CORPORATION  
PANGBORN CORPORATION  
METAL ABRASIVE COUNCIL  
GUSTAVE H. KANN, WILLIAM L. KANN,  
ISAAC A. DIAMONDSTONE, ARTHUR J.  
TUSCANY,

Defendants.

CIVIL ACTION

NO. 28126

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on April 3, 1951, and all of the defendants having appeared and severally filed their answers to such complaint denying the substantive allegations thereof and denying any violations of law as alleged in the complaint; and the defendants Gustave H. Kann and Arthur J. Tuscany having since died, and the defendant American Wheelabrator and Equipment Corporation, a Delaware corporation having been merged into a Nebraska corporation of the same name which has consented to be substituted in this judgment as a defendant herein in place of said Delaware corporation; and it appearing from a certificate of dissolution this day filed with the Court that the defendant Metal Abrasive Council has been dissolved and that its accounts have been fully liquidated and settled; and the United States of America and the defendants by their respective attorneys having severally consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law

and without admission by any of said parties in respect to any such issues:

NOW, THEREFORE, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I.

This action is dismissed as to the deceased defendants Gustave H. Kann and Arthur J. Tuscany, and as to the dissolved defendant Metal Abrasive Council.

II.

American Wheelabrator and Equipment Corporation (a Nebraska corporation) is substituted as a defendant herein in place of American Wheelabrator and Equipment Corporation (a Delaware corporation).

III.

This Court has jurisdiction of the subject matter of this action and of the parties signatory hereto; and the complaint states a cause of action against the defendants and each of them under Section 1, and against the defendants Kann Affiliates, American Wheelabrator and Equipment Corporation, and Pangborn Corporation under Section 2 of the Act of Congress of July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies," as amended, commonly known as the Sherman Act.

IV.

As used in this Judgment:

A. "Metal abrasives" means any, some or all of the following: iron or steel shot or grit used or usable as a cutting, sawing, blast cleaning, peening or polishing agent in the processing of metal or stone products, and includes chilled iron shot sometimes called "steel shot"; iron grit sometimes called "steel grit" or "angular grit"; heat treated iron shot and genuine steel shot.

B. "Person" means any individual, partnership, firm, corporation, association, whether incorporated or unincorporated, trustee, or any other business or legal entity.

C. "Affiliate" means a person engaged in the manufacture, distribution or sale of metal abrasives and which, on the date of this Final Judgment, is related to a defendant corporation in that (1) the defendant corporation owns a majority of the voting stock of such corporation; or (2) the defendant corporation and such corporation are directly or indirectly controlled or managed by the same person.

D. "Kann affiliates" means the following companies: Pittsburgh Crushed Steel Company; The Globe Steel Abrasive Company, Clayton-Sherman Abrasives Company; Steel Shot and Grit Company, Inc.; The American Steel Abrasives Company; Steel Shot Producers, Inc. and each of them.

E. The term "manufacturer" means a person engaged in the manufacture of metal abrasives.

F. The term "patents" means and includes the following:

- (1) United States Letters Patent, and rights under United States Letters Patent, and all continuations and reissues thereof;
- (2) Applications for United States Letters Patent, and
- (3) United States Letters Patent which may, at any time hereafter, issue upon any application therefor owned, or directly or indirectly controlled, by any defendant on the date of this Final Judgment, and relating to the manufacture, or any machinery, equipment or process used or usable in the manufacture, of metal abrasives.

#### V.

The provisions of this Final Judgment applicable to a defendant shall apply to such defendant, and to each of its officers, directors, agents, employees, affiliates, successors and assigns, and all other persons in active concert or participation with any such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment a defendant and its officers, directors and employees and/or its affiliates (as hereinbefore defined in Section IV C) shall be considered one person so long as, and only so long as, such relationship exists.

#### VI.

The defendants are jointly and severally enjoined and restrained from:

Organizing, contributing anything of value to, or participating in any of the activities of, any trade association or any other central agency of or for persons engaged in the manufacture, sale or distribution of metal abrasives the purposes or activities of which are inconsistent with any of the provisions of this Final Judgment.

B. Disseminating, exchanging or communicating among themselves, or to or with any person, or any trade association or any other central agency any information or statistics relating to prices, discounts, terms or conditions of sale, or costs or elements of cost in connection with the manufacture, sale or distribution of metal abrasives.

#### VII.

The defendants are jointly and severally enjoined and restrained from entering into, adhering to, participating in, maintaining or claiming any rights under, any agreement, undertaking, arrangement, plan or program with any other person engaged in the manufacture, sale or distribution of metal abrasives, including any trade association or central agency of or for such persons directly or indirectly;

A. To fix, determine, establish or maintain prices, pricing systems, discounts or other terms or conditions for the sale of metal abrasives to any third person or persons;

B. To establish, maintain or adhere to any price list or price quotations, or any other means of determining or fixing price lists or price quotations or any other terms or conditions for the sale of metal abrasives to any third person or persons.

C. To distribute, circulate or exchange among themselves or with any other person, any price list or price quotation for the sale of metal abrasives to any third person or persons.

D. To disclose to, receive from or exchange with, any other person any data, information or statistics concerning costs of production, sales, costs of sales, inventories, deliveries or other elements concerning, relating to or affecting the price or prices for the sale of metal abrasives.

E. To establish, maintain or adhere to any basing point or delivered price system, program or practice.

F. To hinder, limit, restrict or prevent any person from engaging in the business of manufacturing, selling or distributing metal abrasives.

G. To allocate, divide or restrict territories, fields or markets for the manufacture, sale or distribution of metal abrasives.

H. To refrain from competition or leave any person free from competition in any territory, field or market in manufacture, sale or distribution of metal abrasives.

I. To disseminate, exchange or disclose to or with any other person the terms of any bid submitted or to be submitted by any defendant in response to any invitation for competitive bids prior to the opening of such competitive bids.

J. To communicate or disseminate to, or exchange with, any other person any information as to excess supplies or surplus quantities of metal abrasives on hand or anticipated, or to offer to purchase, or to offer for sale all or any part of any such excess supplies or surplus quantities of metal abrasives.

K. To compile, maintain, use or adhere to, any compilation of freight rates for metal abrasives.

L. To refuse to sell metal abrasives to any person or to refuse to appoint any person a distributor or sales agent.

#### VIII.

The defendants are jointly and severally enjoined and restrained, from directly or indirectly:

A. Circulating to each other or to other manufacturers or to any central agency for manufacturers, any list of their distributors, but this subsection A shall not prohibit the announcement to the general public of the names and addresses of a defendant's distributors.

B. Distributing, disseminating or exchanging any price list or price quotation for metal abrasives to or with any other manufacturer or to or with any trade association or other central agency of or for manufacturers in advance of the announcement thereof to the general public.

C. Disclosing to, or receiving from, or exchanging with, any other manufacturer or any other central agency for manufacturers, any data, information or statistics relating to prices, discounts, terms or

conditions of sale, costs of production, sales, costs of sales, inventories, deliveries or any other information relating to prices for the sale of metal abrasives.

D. Disclosing to any other person the terms of any bid submitted or to be submitted by such defendant in response to any invitation for competitive bids prior to the opening of such bids.

#### IX.

The defendants are jointly and severally enjoined and restrained from publishing, printing, quoting or charging prices for metal abrasives on any basis other than either (1) f.o.b. at the actual place of manufacture or origin of shipment thereof, or (2) on a delivered price basis, which at destination at no time shall exceed the f.o.b. price at the actual place of manufacture or origin of shipment thereof, plus actual transportation and delivery charges to the point of delivery, with every purchaser having the right to purchase f.o.b. at the actual place of manufacture or origin of shipment.

#### X.

The Kann affiliates are jointly and severally enjoined and restrained:

A. For a period of ten (10) years after the date of this Final Judgment, from acquiring, directly or indirectly, by purchase, lease or otherwise, any of the capital stock, physical assets, business (including customer accounts) or good will of, or any financial interest in, any other person engaged in the manufacture, sale or distribution of metal abrasives except upon application to this Court, after notice to the Attorney General, and a showing to the satisfaction of this Court, that such acquisition will not substantially lessen competition or tend to create a monopoly in the manufacture, sale or distribution of metal abrasives.

B. For a period of ten (10) years after the date of this Final Judgment, from constructing or operating, in conjunction with any other person engaged in the manufacture, sale or distribution of metal abrasives, any plant or facility for the manufacture, sale or distribution of metal abrasives.

C. From knowingly permitting any of their directors, officers, servants or employees to also serve, at the same time, as a director, officer, servant or employee of any other person engaged in the manufacture, sale or distribution of metal abrasives.

D. From entering into, adhering to or maintaining, or claiming any rights under, any contract, agreement, or understanding with any other person to hinder, restrict, limit or prevent such other person from engaging in the business of manufacturing, selling or distributing metal abrasives.

#### XI.

The defendants Pangborn Corporation, American Wheelabrator and Equipment Corporation and Kann affiliates, and each of them, are hereby enjoined and restrained from holding or acquiring, directly or indirectly, legal title to or any beneficial interest in any shares of stock, bonds, debentures or other evidences of indebtedness issued by each other, and from exercising any voice in the management of each other through the appointment of directors or other representatives in each other's organizations or otherwise, but this Section shall not prohibit any of the aforesaid defendants from holding or acquiring indebtedness arising out of purchases or sales in the ordinary course of business.

#### XII.

The defendants Kann affiliates, American Wheelabrator & Equipment Corporation and Pangborn Corporation are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding or arrangement with each other or with any other person, the purpose or effect of which is to:

A. Hinder, restrict, limit or prevent any of them or any such other person from distributing or selling metal abrasives produced by any person.

B. Hinder, restrict, limit or prevent any of them or any such other person from, in any manner, engaging in the manufacture, sale or distribution of metal abrasives.

C. Require that any of them or any such other person shall offer or give to each other or to any other particular person any preferential or prior rights to any development in connection with the manufacture of metal abrasives before offering or giving such rights to anyone else.

D. Pay, except pursuant to Section XIII of this Final Judgment, to American Wheelabrator & Equipment Corporation or Pangborn Corporation, or either of them, any commission, sum of money or other thing of value (1) based upon any consideration other than actual services performed or to be performed in connection with the sale of metal abrasives or (2) not available to any other distributor willing and able to perform comparable services, or (3) on the basis that either has national outlets, or has particular experience in the field, or is a manufacturer of machinery using metal abrasives.

### XIII.

A. Each of the defendants is ordered and directed:

(1) Insofar as it has the power or authority to do so, to grant to any applicant making written request therefor a nonexclusive and unrestricted license to make, use and sell metal abrasives, for the full life of the patent, under any, some or all of its patents without any limitation or condition whatsoever except that:

(a) a reasonable and non-discriminatory royalty may be charged and collected;

(b) reasonable provision may be made for periodic inspection of the books and records of the licensee by an independent auditor who may report to the defendant licensor only the amount of the royalty due and payable and no other information;

(c) the license may be non-transferable;



(d) reasonable provision may be made for cancellation of the license upon failure of the licensee to pay the royalties or to permit the inspection of its books and records as provided in this Section XIII;

(e) the license must provide that the licensee may cancel the license at any time after one (1) year by giving thirty (30) days' notice in writing to the licensor.

(2) Upon receipt of a written application for a license in accordance with the provisions of subsection (1) of this Section XIII, to advise the applicant in writing of the royalty it deems reasonable for the patent or patents to which the application pertains. If the defendant and the applicant are unable to agree upon what constitutes a reasonable royalty, within sixty (60) days from the date such application for the license was received by the defendant, the defendant or the applicant may apply to this Court for a determination of a reasonable royalty, giving notice thereof to the defendant or applicant as may be appropriate and the Attorney General, and the defendant shall make such application forthwith upon request of the applicant. In any such proceeding the burden of proof shall be upon the defendant to whom application is made to establish a reasonable royalty. Pending the completion of any such court proceeding, the applicant shall have the right to make, use and vend under the patent or patents to which its application pertains, without the payment of royalty or other compensation, but subject to the following provisions: Such defendant or the applicant may, with notice to the Attorney General, apply to the Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty. If the Court fixes such interim royalty rate, the defendant patent owner shall then issue and the applicant shall accept a license providing for the periodic payment of royalties at such interim rate from the date of the filing of such application to the Court. If the applicant fails to execute a license for the payment of royalties determined by the Court or fails to pay any interim or other royalty or to perform any other condition stipulated by the Court, in accordance therewith,

such action shall be ground for the dismissal and denial of his application. Where an interim license or sublicense has been issued pursuant to this subsection or where the applicant has exercised any right under the patent, reasonable royalty rates, if any, as finally determined by the Court, shall be retroactive for the applicant and for all other licensees under this judgment at the option of such licensees to the date of the application to the Court to fix such reasonable royalty rate.

B. Nothing herein contained shall prevent any applicant or licensee from attacking in any manner the validity or scope of any of the afore-said patents nor shall this Final Judgment be construed as importing any validity or value to any of the said patents.

C. Each defendant is ordered and directed within ninety (90) days after the date of this Final Judgment to file with this Court, with a copy to the Attorney General, a report setting forth a full and complete list of all patents required by this Section XIII to be licensed by such defendant.

#### XIV

Each of the defendants is enjoined and restrained from:

A. Making any disposition of any patents which deprives it of the power or authority to grant licenses as hereinbefore provided in Section XIII, unless it requires, as a condition of such disposition, that the purchaser, transferee, assignee or licensee, as the case may be, shall observe the requirements of Section XIII hereof and such purchaser, transferee, assignee or licensee shall file with this Court, prior to the consummation of said transaction, an undertaking to be bound by said provisions of this judgment.

B. Instituting, threatening to institute or maintaining any suit or counterclaim for infringement of, or for collection of damages or other compensation for infringement under or for the use of, any patent for acts alleged to have occurred prior to the date of entry of this Final Judgment; provided, however, that this subsection B shall not apply to any such suit or proceeding instituted by any defendant prior to, and still pending on, September 20, 1954.

XV

A. Defendants Kann affiliates and American Wheelabrator & Equipment Corporation, and each of them, are ordered and directed, upon written application therefor within five years from the date of the entry of this Final Judgment to furnish to each licensee who has been licensed by them pursuant to Section XIII of this Final Judgment, and who has made a written application therefor during the term of its license:

(1) A written manual describing the methods, processes and techniques known to and used by such defendant on the date of this Final Judgment in its manufacture of metal abrasives under the patent or patents under which such applicant is licensed;

(2) Annual supplements to said manual during a period of five (5) years after the date of this Final Judgment describing any change in such methods, processes and techniques applicable to the patent or patents required to be licensed pursuant to Section XIII of this Final Judgment.

B. In the furnishing of technical information pursuant to subsection A of this Section XV defendants Kann affiliates and American Wheelabrator & Equipment Corporation, and each of them, are enjoined and restrained from charging the applicant therefor any amount exceeding the separate cost to such defendant directly allocable to preparing the same without any administrative or overhead expense.

XVI

The defendant Kann affiliates, American Wheelabrator & Equipment Corporation and Pangborn Corporation, and each of them are jointly and severally enjoined and restrained:

A. From conditioning the sale or lease of any machinery or equipment to any person on any agreement or undertaking to repair or service any such machinery or equipment, upon any agreement or understanding that the purchaser or lessee thereof shall purchase metal abrasives from any designated manufacturer or distributor thereof.

B. From furnishing or offering to furnish repairs to, inspection of, or servicing for, any equipment or machinery, either free or

at a discriminatory rate upon any agreement or understanding that the user of such equipment or machinery shall purchase metal abrasives from any designated manufacturer or distributor thereof.

## XVII

A. Nothing contained in Sections VI, VII or VIII of this Final Judgment shall prohibit the exchange of necessary information or negotiations between a prospective seller and a prospective buyer, or the furnishing of prices, terms and conditions of sale by a seller to his agent or the making of agreements relative thereto in bona fide transactions not otherwise prohibited by this Final Judgment involving (a) the purchase or sale of metal abrasives, or (b) the purchase or sale of a plant for the manufacture or processing of metal abrasives.

B. The provisions of Section VII, subsection F, and Section X, subsection D of this Final Judgment, shall not be construed to prohibit reasonable provisions in employment contracts designed solely to secure the confidential nature of technical information and customer lists disclosed to an employee by virtue of his employment; provided, that the term of any agreement or covenant not to engage in the business of manufacturing, selling or distributing metal abrasives contained in any such employment contract shall not extend for a period longer than one (1) year after the termination of employment of such person by such defendant.

C. The provisions of Section X, subsection A of this Final Judgment, shall not prohibit the bona fide sale to, or purchase by, any of the Kann affiliates, of an individual item of machinery or equipment for the manufacture of metal abrasives by or from another manufacturer; provided (a) that such individual item of machinery or equipment represents an insignificant portion of the total machinery, equipment or facilities of the seller and (b) that none of the other terms or conditions of such sale or purchase are otherwise prohibited by any of the provisions of this Final Judgment.

D. Nothing contained in this Final Judgment shall be construed to prevent any defendant from availing itself of any rights it may have, if any, under the Act of Congress of August 17, 1937, commonly known as the Miller-Tydings Act, or the Act of Congress of July 14, 1952, commonly known as the McGuire Act.

E. Nothing contained in this Final Judgment shall be construed to prohibit a defendant from appointing and using any person as the sole distributor for any designated territory of metal abrasives manufactured or sold by such defendant.

### XVIII

For the purpose of securing compliance with this judgment, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant be permitted:

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

B. Subject to the reasonable convenience of defendants and without restraint or interference from them to interview officers or employees of defendants, who may have counsel present, regarding any such matters; and upon such request such defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section XVIII shall 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 to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

### XIX

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

Dated: November 13, 1954

/s/ Freed  
United States District Judge

We hereby consent to the making and entry of the foregoing Final  
Judgment:

For the Plaintiff:

/s/ Stanley N. Barnes  
Stanley N. Barnes  
Assistant Attorney General

/s/ Marcus A. Hollabaugh  
Marcus A. Hollabaugh

/s/ Robert B. Hummel  
Robert B. Hummel  
Special Assistants to the  
Attorney General

/s/ William D. Kilgore, Jr.  
William D. Kilgore, Jr.

/s/ Harry N. Burgess  
Harry N. Burgess

/s/ Vincent A. Gorman  
Vincent A. Gorman

/s/ Miles F. Ryan  
Miles F. Ryan

/s/ Robert M. Dixon  
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For the Defendants:

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