

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Gould Inc., U.S. District Court, N.D. Ohio, 1969 Trade Cases ¶72,863, (Sept. 3, 1969)

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United States v. Gould Inc.

1969 Trade Cases ¶72,863. U.S. District Court, N.D. Ohio. Civil Action No. C 69-590. Entered September 3, 1969. Case No. 2069 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquisition of Assets—Promissory Notes of Competitor—Battery Manufacturers—Divestiture-Consent Decree.—A battery manufacturer charged with violating [Sec. 7 of the Clayton Act](#) by acquiring promissory notes issued by a competitor was required by a consent decree to sell the notes within a year of their receipt and to refrain from acquiring any other promissory notes or other deferred obligations from the firm.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen., Baddia J. Rashid, Robert B. Hummel, Carl L. Steinhouse, Robert M. Dixon, Robert S. Zukerman, and Lester P. Kauffmann, Attys., Dept. of Justice.

For the defendant: Lloyd N. Cutler, of Wilmer, Cutler & Pickering, Washington, D. C, Allen C. Holmes, of Jones, Day, Cockley & Reavis, Cleveland, Ohio.

Final Judgment

BATTISTI, D. J.: Plaintiff, United States of America, having filed its complaint herein on1969, and plaintiff and defendant by their respective attorneys, having each consented to the making and entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence or an admission by any party hereto with respect to any such issue; and the Court having considered the matter and being duly advised;

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

Order, Adjudged and Decreed as follows:

I

[Jurisdiction]

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 the defendant under Section 7 of the Act of Congress of October 14, 1914 (15 U. S. C. Section 18), commonly known as the Clayton Act, as amended.

II

[Definitions]

As used in this Final Judgment:

(A) "Gould" means defendant Gould Inc., a corporation organized and existing under the laws of the State of Delaware, which corporation is the surviving corporation pursuant to the terms of a merger agreement with Clevite Corporation, dated as of March 26, 1969 and consummated on or about July 31, 1969;

(B) "Clevite" means Clevite Corporation, a corporation organized and existing under the laws of the State of Ohio, which was merged into Gould on or about July 31, 1969, pursuant to the above-described merger agreement;

(C) "BFI" means Business Funds, Inc., a corporation organized and existing under the laws of the State of Delaware.

III

[Applicability]

The provisions of this Final Judgment applicable to the defendant shall also apply to its directors, officers, agents and employees, and to its subsidiaries, successors and assigns, and to all other persons in active concert or participation with it who have received actual notice of this Final Judgment by personal service or otherwise.

IV

[Promissory Notes and Other Deferred Obligations]

Defendant is ordered and directed to sell, within twelve months after the date of receipt thereof, any promissory note or other deferred obligation received from BFI in payment for assets transferred to BFI pursuant to the contract dated July, 1969 between defendant and BFI, and thereafter to refrain from acquiring or holding any debt or other obligations of BFI, except that nothing herein shall prevent the defendant in the ordinary course of business from acquiring in good faith promissory notes or other deferred obligations of BFI.

V

[Inspection and Compliance]

(A) For the purpose of securing or determining compliance with this Final Judgment, and for no other purposes, 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 defendant, made to the principal office of the defendant, be permitted, subject to any legally recognized privilege:

(1) Reasonable access, during office hours of defendant, who may have counsel present, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment;

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

(B) Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, for the purpose of securing compliance with this Final Judgment and for no other purpose, defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time reasonably be requested.

(C) No information obtained by the means permitted in this Section V 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 in which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VI

[Jurisdiction Retained]

Jurisdiction 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 modification of any of the provisions contained therein, for the enforcement of compliance therewith and for the punishment of violations thereof.