

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Parker-Hannifin Corp., U.S. District Court, N.D. Ohio, 1977-2 Trade Cases ¶61,737, (Nov. 1, 1977)

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United States v. Parker-Hannifin Corp.

1977-2 Trade Cases ¶61,737. U.S. District Court, N.D. Ohio, Eastern Division, Civil No. C72-493, Entered November 1, 1977, (Competitive impact statement and other matters filed with settlement: 42 *Federal Register* 37874).

Case No. 2240, Antitrust Division, Department of Justice.

Sherman Act

Acquisitions: Automotive Aftermarket: Replacement Parts: Consent Decree.— A manufacturer and seller of automotive replacement parts was barred by a consent decree, for a period of ten years, from acquiring any manufacturer of related products, such as tire hardware or worm drive clamps. The manufacturer was also barred from making certain combination of products manufactured by it and by a competitor, with the result that a customer may obtain pooled quantity discounts or meet minimum freight requirements.

Acquisitions: Divestiture: Automotive Replacement Parts: Consent Decree.— A manufacturer and seller of automotive replacement parts was required by a consent decree to divest all of its interest, direct and indirect, in a competitor's subsidiary which shall be an ongoing entity competing in the market. The manufacturer was ordered not to encumber for its own benefit any asset of the company to be divested and not to dispose of any asset other than in the ordinary course of business. If within two years divestiture was not accomplished, a trustee should be appointed, with full authority to dispose of, and eventually to manage, the company to be divested.

Acquisitions: Divestiture: Competitive Viability: Consent Decree.— Among the provisions concerning divestiture under a consent decree, a manufacturer of automotive replacement parts was ordered to maintain the company to be divested as a separate and viable entity, until divestiture was accomplished. It was ordered not to make changes in its recordkeeping hindering divestiture; to maintain existing production and distribution facilities of the company; to maintain a separate sales organization and separate, sufficient and adequate personnel capable of managing the company after divestiture; to preserve all existing competition between the company and other subsidiaries and divisions of the manufacturer; to direct the company to continue its distinct advertising; and to deny a defendant's division and the company to be divested access to their trade secrets, customer lists, supplier lists and prices.

Acquisitions: Divestiture: Potential Buyers' Report: Consent Decree.— A manufacturer of automotive replacement parts that was ordered to divest itself of a competitor's subsidiary under a consent decree was also required to keep a detailed record of potential buyers and to report to the government every 90 days as to those potential buyers and as to the status of all ongoing negotiations for divestiture unless a trustee had been appointed.

For plaintiff: John H. Shenefield, Acting Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, John A. Weedon, Kenneth L. Jost, Gerald H. Rubin, Joan Farragher, Sandra B. Wallack, and William J. Oberdick, Attys., Antitrust Div., Dept. of Justice. **For defendant:** Thompson, Hine and Flory, by John F. McClatchey, Cleveland, Ohio.

Final Judgment

Manos, D. J.: Plaintiff, United States of America, having filed its Complaint herein on May 15, 1972, and Defendant, Parker-Hannifin Corporation, having appeared by its attorney and filed its Answer denying the substantive allegations of the Complaint; and the Plaintiff and Defendant, 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; Now, Therefore, before the taking of any testimony and upon the consent of the parties hereto, it is hereby Ordered, Adjudged and Decreed:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The Complaint states a claim upon which relief may be granted against the Defendant under [Section 7 of the Clayton Act](#), 15 U. S. C. §18.

II

[Definitions]

As used in this Final Judgment:

- (A) "Person" means any individual, corporation, partnership, firm, association or other business or legal entity;
- (B) "Defendant" means Parker-Hannifin Corporation and all its subsidiaries and divisions, including Ideal Corporation;
- (C) "Parker" means Parker-Hannifin Corporation and all its subsidiaries and divisions. other than Ideal Corporation, but including persons acquired by Defendant after the entry of this Final Judgment;
- (D) "Ideal" means Ideal Corporation, a wholly-owned subsidiary of Parker, at is existed on May 15, 1972;
- (E) "Acme" means Acme Air Appliance Co., Inc. a subsidiary of Ideal;
- (F) "Tire valve" means snap-in type or clamp-in type tubeless valves for use with pneumatic tires or tube type valves for attachment to tire tubes;
- (G) "Tire hardware" means tire valves, tire valve extensions, tire valve core housings, tire valve cores, air pressure gauges, air line gauge assemblies, air line gauges, tire pressure gauges, service gauges, air chucks, blow guns, automatic quick change couplers and nipples, and tire valve service and repair tools;
- (H) "Worm-drive hose clamp" means a device consisting of a serrated steel band with a threaded worm-drive screw which fits into an attached housing and which can be turned in the band's serration;
- (I) "Pooled quantity discounts" means any reduction in purchase price due to the quantity of products purchased from Defendant;
- (J) "Minimum freight requirements" means the price or poundage which a purchaser must exceed for Defendant to pay freight costs or any part thereof.

III

[Applicability]

The provisions of this Final Judgment shall apply to Defendant, to its subsidiaries, divisions, and affiliates, to the officers, directors, agents, employees, successors and assigns of each, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[Divestiture]

(A) Within two years of the date of entry of this Final Judgment, Defendant shall divest all of its interest, direct and indirect, in Acme, which shall be an ongoing entity competing in the automotive aftermarket and capable of continuing so to compete as of the date of divestiture. Pending divestiture of Acme, Defendant shall not dispose of any asset of Acme other than in the ordinary course of business, and shall not for its own benefit encumber any asset of Acme.

(B) If two years after the date of entry of this Final Judgment, Defendant has not divested itself of Acme as provided in Paragraph (A) of this Section, then, in addition to any other remedy the Plaintiff may seek from the Court, the Court, upon application of Plaintiff and notice to the Defendant, shall appoint a Trustee. For a period of 18 months from his appointment, the Trustee shall have full authority to dispose of Acme, subject to the supervision of this Court. Defendant shall continue to manage Acme subject to Plaintiff's right to seek from the Court an order giving the Trustee managerial authority. Defendant, upon the expiration of 18 months from the appointment of the Trustee, and in the event he has not disposed of Acme, shall, upon application of Plaintiff, immediately convey to the Trustee all of its interest in Acme. The Trustee shall thereafter have full authority to manage and dispose of Acme, subject to the supervision of this Court. The Trustee shall, as expeditiously as possible after his appointment, subject to the supervision of this Court after hearing the parties on any issue presented, dispose of Acme as an ongoing entity competing in the automotive aftermarket and capable of continuing so to compete. The fees and expenses of the Trustee shall be submitted to this Court for approval and payment by Defendant.

(C) The details of any proposed divestiture under Paragraph (A) of this Section shall be submitted to the Plaintiff. Following the receipt of such details and any additional information that it may request, Plaintiff shall have thirty (30) days in which to object to the proposed divestiture. If Plaintiff does not object, the proposed divestiture may be consummated; if Plaintiff objects, the proposed divestiture shall not be consummated until Defendant obtains an order of this Court approving the proposed divestiture or Plaintiff withdraws its objection.

V

[*Competitive Viability*]

Defendant shall, until the divestiture required by Section IV of this Final Judgment is accomplished:

- (1) Maintain Acme in its present status as a separate and viable company;
- (2) Make no changes in any of Defendant's recordkeeping which may hinder the divestiture of Acme;
- (3) Maintain the existing production and distribution facilities of Acme except for changes in the ordinary course of business;
- (4) Maintain a sales organization for Acme that is separate from that of Parker;
- (5) Maintain sufficient and adequate personnel at Acme separate and distinct from Defendant's other personnel and capable of managing Acme effectively after divestiture by Defendant;
- (6) Preserve all existing competition between Acme and other subsidiaries and divisions of Defendant;
- (7) Direct Acme to continue to publicize, sell, and advertise distinctly the name of Acme in connection with products made or distributed by Acme and not indicate Acme's affiliation with it to the detriment of third parties competing with Defendant, except that Acme will be known to be a subsidiary of Ideal or Parker;
- (8) Deny its TPH Division and Acme access to the trade secrets, customer lists, supplier lists and prices of the other.

VI

[*Potential Buyers*]

(A) Defendant shall keep written memoranda of all inquiries it receives, whether written, oral, telephonic, or otherwise, from persons seeking information regarding the business to be divested pursuant to Section IV. The

memoranda shall include the name, business address, and business telephone number of each person seeking information, and shall indicate the nature of the inquiry, Defendant's response to the inquiry, the date of the inquiry, and the date of Defendant's response.

(B) Beginning on the 90th day after entry of this Final Judgment, and on every 90th day thereafter until the divestiture ordered by Section IV has been completed, Defendant shall furnish a written report to Plaintiff which shall include:

(1) A list of all persons who contacted Defendant during the reporting period seeking information about the business to be divested pursuant to Section IV, plus copies of the memoranda required by Paragraph (A) of this Section;

(2) A description of steps taken during the reporting period to accomplish divestiture and of the status of all ongoing negotiations for divestiture of Acme, unless a trustee has been appointed pursuant to Section IV(B).

VII

[*Combinations of Products*]

For two years from the date of entry of this Final Judgment, Defendant shall not offer to combine products manufactured by Defendant (other than (a) products manufactured by Ideal and (b) products internally developed by Ideal), with worm-drive hose clamps manufactured by Ideal, with the result that a customer may obtain pooled quantity discounts or meet minimum freight requirements.

VIII

[*Acquisitions*]

For a period of ten years from the date of entry of this Final Judgment, Defendant shall not directly or indirectly acquire any person engaged in whole or in part in the manufacture of any product named in Section II(G) or II(H) of this Final Judgment.

IX

[*Inspections*]

(A) For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, any duly authorized representative of the Department of Justice shall be permitted, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the Defendant made to its principal office, subject to any legally recognized privilege:

(1) Access during Defendant's office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Defendant relating to any of the matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of Defendant and without restraint or interference from it, to interview officers, directors, agents, partners or employees of Defendant, who may have counsel present, regarding any of the matters contained in this Final Judgment.

(B) Defendant, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing with respect to any matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means provided in this Section IX 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 United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by Defendant to Plaintiff, Defendant represents and identifies in writing the material in any such information or documents of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by Plaintiff to Defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the Defendant is not a party.

X

[Retention of Jurisdiction]

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 implementation, for the modification of any of the provisions, for the enforcement of compliance, and for the punishment of violations of this Final Judgment.

XI

[Public Interest]

Entry of this Final Judgment is in the public interest.