

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

UNITED STATES OF AMERICA,
Plaintiff,

v.

ATOMIC FIRE EQUIPMENT COMPANY;
FIRE EQUIPMENT ASSOCIATES, INC.;
FIRE SAFETY COMPANY, INC.;
L & L FIRE FIGHTING EQUIPMENT CO.;
S. R. SMITH COMPANY, INC.;
JOSEPH V. RATTAY dba CLEVELAND FIRE
EQUIPMENT COMPANY; and MAXINE S.
SIEBERT dba FIRE EQUIPMENT SERVICE
AND SALES,

Defendants.

Civil No. C72-1185

Judge Frank J. Battisti

Filed: November 26, 1975

Entered: February 26, 1976

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on November 2, 1972, and plaintiff and defendants, by their respective attorneys, having each consented to the entry of this Final Judgment without trial or adjudication of or finding on any issues of fact or law herein and without this Final Judgment constituting evidence or admission by plaintiff or defendants, or any of them, in respect to any such issue;

NOW, THEREFORE, before any testimony has been taken and without trial or adjudication of or finding on any issue of fact or law herein, and upon consent of the parties as aforesaid, it is hereby

ORDERED, ADJUDGED, and DECREED as follows:

I

This Court has jurisdiction of the subject matter herein and of the parties hereto, and the Complaint states claims upon which relief may be granted against the defendants under

Section 1 of the Act of Congress of July 2, 1890 (15 U.S.C. § 1), commonly known as the Sherman Act, as amended. Entry of this Judgment is in the public interest.

II

As used in this Final Judgment:

- (A) "Person" shall mean any individual, corporation, partnership, firm, association or other business or legal entity.
- (B) "Fire extinguishers" shall mean portable, hand-operated fire extinguishing equipment.
- (C) "Service" shall mean installation, inspection, testing, maintenance or recharging of fire extinguishers.
- (D) "Distributors" shall mean those persons engaged in the business of selling and servicing fire extinguishers manufactured by others.

III

The provisions of this Final Judgment applicable to any defendant shall apply also to its subsidiaries, successors, assigns, directors, officers, agents, servants and employees, and to all persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise; provided, however, that this Final Judgment shall not apply to transactions or activity solely between a defendant and its directors, officers, agents, servants, employees, parent company, subsidiaries, or any of them, when acting in such capacity.

IV

Each defendant is enjoined and restrained, individually and collectively, from entering into, adhering to, maintaining,

furthering, enforcing or claiming any rights under any contract, agreement, understanding, plan or program with any other person, directly or indirectly, to:

- (A) Fix, determine, establish, maintain, stabilize, increase or adhere to prices, discounts or other terms or conditions for the sale or service of fire extinguishers to any third person;
- (B) Eliminate or suppress price competition in the sale or service of fire extinguishers;
- (C) Communicate to or exchange with any other person selling or servicing fire extinguishers, or any trade group or association whose members include persons engaged in the sale or servicing of fire extinguishers, any information concerning any actual or proposed price, price change, discount, or other term or condition of sale at or upon which fire extinguishers are to be, or have been, sold or serviced to or for any third person prior to the communication of such information to the public or trade generally;
- (D) Allocate customers for the sale or service of fire extinguishers.

V

Each defendant is enjoined and restrained, individually and collectively, from directly or indirectly: (a) urging, influencing or suggesting to any other fire extinguisher distributor the prices or other terms or conditions of sale or service for fire extinguishers to any third person; and (b) advising or informing any other defendant of the identity of any of its customers.

VI

Nothing herein shall be deemed to prohibit:

- (A) Any bona fide arm's length purchase, sale or service negotiations between any defendant and any supplier or distributor of fire extinguishers or fire extinguisher parts, components or supplies.
- (B) The affixing to fire extinguishers of tags or labels which identify a defendant as the seller or servicer of said extinguisher.
- (C) Any advertisement or article which discloses the identity of a customer of a defendant, provided, however, that no defendant shall advertise or disclose the name of any of its retail customers for sale or service of fire extinguishers in a trade journal for distributors of fire extinguishers.
- (D) The mere suggestion by any defendant fire extinguisher manufacturer to its distributors of suggested resale prices for fire extinguishers manufactured by or for it.

VII

Within sixty (60) days of the entry of this Final Judgment, each defendant is ordered and directed, individually and independently:

- (A) To review, determine and establish its prices and other terms and conditions of sale and service of fire extinguishers, on the basis of its independent judgment; provided, however, that compliance with the provisions of this Section VII (A) and (B) shall not be required if within such sixty (60) day period an affidavit signed by the officer or officers responsible for the determination of such prices, terms and conditions is filed with this

Court (with a copy to the Assistant Attorney General in charge of the Antitrust Division) stating that such defendant, prior to the effective date of this Final Judgment and subsequent to November 2, 1972, reviewed, determined and announced the prices, discounts, or terms and conditions of sale and service of fire extinguishers in accordance with the requirements of this Section.

- (B) To withdraw its then current price lists, if any, and adopt and publish price lists, if any are used, arrived at pursuant to subparagraph (A) above.

VIII

For a period of ten (10) years from the date of entry of this Final Judgment, each defendant is ordered to file with the plaintiff, on each anniversary date of this Final Judgment, a report setting forth the steps it has taken during the prior year to advise its appropriate officers, directors, employees, and agents of its and their obligations under this Final Judgment.

IX

For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted, subject to any legally recognized privilege (a) access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matters contained in

this Final Judgment, and (b) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, directors, agents, servants or employees of such defendant, who may have counsel present, regarding any such matters. Any defendant, upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal office, shall submit such reports in writing with respect to any of the 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 representatives 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 for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

X

Jurisdiction is retained 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 or directions as may be necessary or appropriate for the construction of or the carrying out of this Final Judgment, for the modification of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

/s/ FRANK J. BATTISTI
United States District Judge

Dated: February 26, 1976