

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Guardian Industries Corp., U.S. District Court, N.D. Ohio, 1976-1 Trade Cases ¶60,932, (May 27, 1976)

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United States v. Guardian Industries Corp.

1976-1 Trade Cases ¶60,932. U.S. District Court, N.D. Ohio, Eastern Division. Civil Action No. C73-383. Entered May 27, 1976 (Competitive impact statement and other matters filed with settlement: 41 *Federal Register* 9398). Case No. 2314, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions—Automotive Glass Replacement Shops—Divestiture—Restrictions on Opening New Shops—Consent Decree.—A producer of glass products was required by a consent decree to sell to one purchaser five automotive glass shops that the firm had acquired in alleged violation of [Sec. 7 of the Clayton Act](#). Furthermore, a ten-year acquisitions ban, as well as restrictions on opening new replacement shops for three years after divestiture was completed, were imposed.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, John A. Weedon, Robert J. Ludwig, Attys., Dept. of Justice, Frederick M. Coleman, U. S. Atty., David F. Hils, Joan Farragher Sullivan, Susan B. Cyphert, and Dale F. Shapiro, Attys., Antitrust Div., Dept. of Justice, Cleveland, Ohio.

For defendant: Sheldon Berns, of Kahn, Kleinman, Yanowitz & Arnson, Cleveland, Ohio.

Final Judgment

THOMAS, D. J.: Plaintiff, United States of America, having filed its Complaint herein on April 16, 1973, and defendant having appeared and filed its Answer to the Complaint denying the substantive allegations thereof, and the plaintiff and the defendant, by their respective attorneys, having severally 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 against or an admission by any party hereto with respect to any such issue of fact or law; Now, therefore, before the taking of any testimony, without trial or adjudication 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 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 15, 1914 (15 U. S. C. § 18), commonly known as the Clayton Act, as amended. Entry of this Final Judgment is in the public interest.

II.

[*Definitions*]

As used in this Final Judgment:

(A) "Person" means any individual, partnership, corporation, association or other legal or business entity;

(B) "Guardian" means the defendant Guardian Industries Corp.;

(C) "Replacement auto glass" means windshields, backlites, sidelites, vents, quarterlies, and all other types of glass, other than headlights or taillights, used in passenger and truck automotive vehicles, in place of broken, defective or otherwise unsatisfactory auto glass;

(D) "The replacement of auto glass" means the business of installing replacement auto glass and includes the combined operation of (1) providing replacement auto glass and all other materials, e. g., the installation kit, and (2) installing replacement glass;

(E) "Glass shop" means the location where any person is engaged in the replacement of auto glass, and includes the goodwill, business location, vehicles, customer lists, and all other assets used in the operation thereof;

(F) "Affiliate" means any person that controls or has power to control Guardian or is controlled by or is under common control with Guardian;

(G) "Purchaser" means any person who acquires the glass shops pursuant to this Final Judgment

III.

[*Applicability*]

The provisions of this Final Judgment applicable to Guardian shall also apply to each of its officers, directors, agents, employees, affiliates, subsidiaries, successors and assigns, 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. The provisions of this Final Judgment shall not apply to any purchaser as denned in Section II(G) of this Final Judgment.

IV.

[*Divestiture*]

(A) Guardian shall divest, with the prior approval of the plaintiff, as viable, going concerns, the following Guardian glass shops:

- (1) 5220 Warrensville Center Road, Maple Heights, Ohio;
- (2) 1379 W. 117th Street, Cleveland, Ohio;
- (3) 1622 Broadway, Lorain, Ohio;
- (4) 7591 Mentor Avenue, Mentor, Ohio; and
- (5) 464 West Avenue, Tallmadge, Ohio. The divestiture shall be absolute and unconditional.

(B) Within eighteen (18) months from the date of entry of this Final Judgment, Guardian shall make the divestiture ordered by this Final Judgment to a single purchaser.

(C) If the divestiture ordered in this Final Judgment has not been accomplished by Guardian within eighteen (18) months from the date of entry of this Final Judgment, the Court shall appoint a trustee who shall accomplish the divestiture ordered by this Final Judgment. Plaintiff may apply to the Court for the appointment of a trustee at any time following fifteen (15) months after the date of entry of this Final Judgment. The trustee shall be ordered to sell as a going business the glass shops and other assets to be divested to a person or persons satisfactory to the Plaintiff. Such sale shall be subject to confirmation by the Court after thirty (30) days' notice in writing by the trustee to the parties of the complete details of the proposed sale. Within such thirty (30) day period the parties shall have the right to object to such sale and shall have the right to be heard thereon.

In the event that the trustee is unable to sell the glass shops and other assets to be divested as a going business within eighteen (18) months after his appointment, the trustee shall apply to the Court for additional instructions and/or authority, which may include, if the Court deems appropriate, but shall not be limited to (a) to manage the business of said glass shops; (b) to receive a conveyance of Guardian's interest in said glass shops and other assets to be divested; and/or (c) to sell the assets of said glass shops individually or in groups. All of said fees and expenses of the trusteeship, including reasonable attorneys' fees, shall be paid by Guardian. Nothing in this Section IV(C) shall preclude the Court from finding Guardian in contempt of this Final Judgment.

(D) The divestiture ordered by this Final Judgment shall include all trade names and trademarks associated with any of the names:

- (1) Acme Glass;
- (2) Acme Glass Co.;
- (3) B & B;
- (4) B & B Acme Glass;
- (5) B & B Acme Glass Co.;
- (6) B & B & Acme Glass Co.;
- (7) B & B Auto Glass Co.;
- (8) B & B Bruening Auto Glass;
- (9) B & B Bruening Auto Glass Co.;
- (10) B & B Glass Co.;
- (11) Beachland;
- (12) Beachland Glass;
- (13) Beachland Glass Co.;
- (14) Beachland Glass of Lake County, Inc.

Guardian shall not adopt or use any such trade name or trademark or trade name or trademark similar thereto.

(E) Guardian shall abandon the use of the telephone number 216-431-3400 upon divestiture of the Guardian glass shops listed in Section IV(A.) hereof or upon publication and distribution of the Cleveland Metropolitan Area Yellow Pages 1977-1978 ("1977 Yellow Pages"), whichever shall first occur. Until such abandonment, telephone calls to 216-431-3400 shall be answered "B & B-Guardian" or "Guardian-B & B". Said telephone number shall not be published in the Cleveland Metropolitan Area Yellow Pages 1976-1977 ("1976 Yellow Pages") and after publication and distribution of said 1976 Yellow Pages, said telephone number shall not be used in any advertising or other written material published or distributed by Guardian. Guardian shall cause an advertisement under the name "B & B" to be placed in the 1976 Yellow Pages under the heading "Glass-Automobile" for the Guardian glass shops to be divested pursuant to Section IV(A) hereof located within the area covered by said 1976 Yellow Pages, which advertisement shall contain a new telephone number or new telephone numbers applicable to said glass shops. Telephone calls to such number or numbers shall be answered "B & B." Guardian shall place an advertisement under the name "Guardian" in said 1976 Yellow Pages under the headings "Glass" and "Glass-Automobile" for the glass shops to be retained by it located in the area covered by said 1976 Yellow Pages, which advertisement shall contain no mention of any of the names listed in Section IV(D) hereof nor any of the telephone numbers referred to in this Section IV(E). Prior to divestiture of the Guardian glass shops listed in Section IV(A) hereof, no advertising, other than that contained in the 1976 Yellow Pages, and no other written material shall be "published or distributed by Guardian to publicize Guardian glass shops unless advertisements and written material equal thereto are distributed to the same recipients by Guardian to publicize B & B glass shops. Until divestiture has been completed, Guardian shall continue to insert advertisements of equal size under the heading "Glass-Automobile" in the Cleveland Metropolitan Area Yellow Pages for such of the glass shops to be divested and such of the Guardian glass shops to be retained as are located within the area covered by said Cleveland Metropolitan Area Yellow Pages. Except for advertising in the Yellow Pages, the inclusion by Guardian of Guardian's name as parent corporation of B & B, Guardian's logo and/or Guardian's name in relation to products offered for sale by B & B in advertising and written material published and distributed to publicize B & B shall not be deemed a violation of this provision. All replacement auto glass jobs called in to the telephone number 216-431-3400 will be assigned by Guardian to the location nearest to the job site, regardless of whether the location is to be divested or retained. Telephone callers to

216-431-3400 or to any new numbers listed in the 1976 Yellow Pages shall not be advised of any change in telephone numbers except by referral to the 1976 Yellow Pages. The divestiture ordered by this Final Judgment shall include the following telephone numbers:

Lorain 216-244-3229

Elyria 216-323-7198

Mentor 216-946-0400

Akron 216-633-6744

Guardian shall not adopt or use any telephone numbers similar to those contained in this Section IV(E). Until divestiture has been completed, Guardian shall continue to insert advertisements for the glass shops to be divested located outside of Cuyahoga County in the Yellow Pages covering such areas under such headings as advertisements are presently contained employing such of the trade names listed in Section IV(D) hereof as have heretofore been used in such Yellow Pages.

(F) No divestiture of Guardian glass shops listed in paragraph (A) above shall be made to any person who is at the time of the divestiture, an officer, director, agent, employee, affiliate or subsidiary of Guardian without prior approval by the plaintiff. Nor may Guardian employ any person who owns or operates all or any portion of the divested glass shops.

(G) Guardian shall for a period of one (1) year from the completion of this divestiture pursuant to this Final Judgment, refrain from urging, suggesting, coercing or attempting to persuade any personnel of the glass shops divested, to terminate his employment with the purchaser of such glass shops so as to accept employment with Guardian or otherwise, and Guardian shall release, free and clear from any employment contract, any Guardian personnel who request such a release in order to become associated with the purchaser.

(H) Guardian is enjoined and restrained from knowingly taking any action, directly or indirectly, which will impair or impede, prior to its divestiture, the viability of any of the glass shops being divested under this Final Judgment, but nothing contained in this Section IV(H) shall prevent Guardian from competing with any of said glass shops after divestiture of same.

(I) Guardian shall make known the availability of the glass shops to be divested by ordinary and usual means for the sale of a business, and shall furnish to all *bona fide* prospective purchasers on an equal and nondiscriminatory basis all necessary information, including business records, regarding the said glass shops, and shall permit such prospective purchasers to have access to and to make such inspections thereof as are reasonably necessary for the above purpose, provided, however, that in the event that any business record contains information regarding glass shops to be retained by Guardian and information regarding glass shops to be divested, then, in lieu of furnishing such record, Guardian may extract therefrom the information contained therein relating to the glass shops to be divested and furnish an extract of the same to *bona fide* prospective purchasers.

(J) In the event that Guardian is unable to maintain its tenancy of the premises of any glass shop to be divested by Guardian pursuant to Section IV(A) hereof, Guardian shall acquire a comparable location, considering size, facilities, traffic flow, parking and storage areas, rental, and availability of other locations, within the same area as that served by the premises as to which its tenancy is to be terminated, and divest such new location in lieu thereof. Guardian shall furnish the plaintiff ten (10) days' prior notice in writing of its acquisition of such comparable location.

V

[Notice to Government]

Not less than sixty (60) days prior to the closing of any divestiture pursuant to this Final Judgment, Guardian shall furnish in writing to the plaintiff the complete details of the proposed transaction. Within thirty (30) days after the receipt of such information, plaintiff may request in writing additional information concerning the proposed

transaction which shall be promptly furnished in writing by Guardian. If no request for additional information is made, plaintiff shall advise Guardian in writing no later than thirty (30) days prior to the scheduled closing date whether it has any objection to the proposed divestiture. If plaintiff requests additional information, it shall advise Guardian in writing within thirty (30) days after receipt of such additional information, or within thirty (30) days of receipt of a written statement from Guardian that it does not have the requested information, whether plaintiff has any objection to the proposed divestiture. If plaintiff objects, the proposed divestiture shall not be consummated unless Guardian obtains the approval of the Court or the plaintiff's objection is withdrawn.

VI

[*Divestiture/New Shops*]

(A) All mobile units and other vehicles of whatever type, and all other equipment, which Guardian uses in the normal and usual day-to-day operation of the glass shops to be divested, shall be specifically included in and be a part of the divestiture ordered by this Final Judgment. The vehicles and other equipment listed in Appendices A and B [*not reproduced*.—CCH], respectively (or replacements of the same made in the ordinary course of business) shall be deemed to be included in, without necessarily constituting the total of, the vehicles and other equipment which Guardian uses in the normal and usual day-to-day operation of the glass shops to be divested.

(B) Guardian shall provide each *bona fide* prospective purchaser with a list of Guardian's employees at the glass shops to be divested, as of November 20, 1975 and as of the date of the prospective purchaser's request for such a list, and such purchaser shall be permitted, subject to the reasonable convenience of Guardian and without restraint or interference from Guardian, to interview these employees and to offer employment to as many of these employees as such prospective purchaser desires.

(C) Guardian is enjoined and restrained for three (3) years from the completion of the divestiture ordered by this Final Judgment from opening or acquiring any glass shop within a three (3) mile radius of any glass shop divested pursuant to this Final Judgment so long as the purchaser thereof under this Final Judgment operates such glass shop or any replacement for such glass shop located within a three (3) mile radius of such divested shop.

(D) Guardian is enjoined and restrained for a period of three (3) years from the completion of the divestiture ordered by this Final Judgment from owning or leasing more than fifty (50) vehicles for the conduct of its glass business in the area within the counties of Cuyahoga, Lake, Geauga, Summit, Medina and Lorain. No other vehicles shall regularly be used by Guardian or by Guardian's employees on behalf of Guardian to service this area.

(E) Guardian shall open no new glass shop in the area within the counties of Cuyahoga, Lake, Geauga, Summit, Medina and Lorain until the divestiture ordered by this Final Judgment has been completed.

VII

[*Reacquisition*]

None of the glass shops divested pursuant to this Final Judgment shall be reacquired by Guardian provided, however, that Guardian may acquire and enforce any *bona fide* lien, mortgage, deed of trust or other form of security on all or any of the glass shops divested given for the purpose of securing to Guardian payment of any unpaid portion of the purchase price or performance of the divestiture transaction. In the event Guardian as a result of the enforcement of any such *bona fide* lien, mortgage, deed of trust or other form of security, reacquires possession of any of the divested glass shops, Guardian shall so notify plaintiff within thirty (30) days of such repossession, and shall within one (1) year thereafter divest the reacquired glass shops as a viable, going business in accordance with the provisions of this Final Judgment.

VIII

[*Acquisition Ban*]

Guardian is enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from acquiring, directly or indirectly, any of the capital stock, assets, or goodwill of any person engaged in the replacement of auto glass in Cuyahoga, Lake, Geauga, Summit, Medina and Lorain Counties, Ohio. Guardian is further enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from acquiring, directly or indirectly, any of the capital stock, assets, or goodwill of any person engaged in the replacement of auto glass anywhere else in the United States except upon sixty (60) days' notice to the plaintiff.

IX

[Reports]

Following the entry of this Final Judgment and continuing until the divestiture required by this Final Judgment has been completed, Guardian shall submit written reports to the plaintiff every three (3) months describing in detail the efforts made by Guardian to comply with the provisions of this Final Judgment.

X

[Inspection]

(A) For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office, be permitted (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 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 and employees of defendant, who may have counsel present, regarding any such matters.

(B) Defendant, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit reports in writing to the Department of Justice 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 X shall be divulged by any representative of the Department of Justice to any person other than duly authorized representatives 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.

XI

[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 carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.