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United States v. Bearing Distributors Company, et al.

1952-1953 Trade Cases ¶67,595. U.S. District Court, W.D. Missouri, Western Division. Civil Action No. 6895. Dated October 27, 1953. Case No. 1076 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decree—Specific Relief—Licensing of Patents—Practices Prohibited—Tractor Cabs.—Manufacturers of tractor cabs were ordered by a consent decree to grant to any applicant a license to manufacture, use, and sell tractor cabs under specified patents and under any other patent relating to tractor cabs issued to or acquired by any such manufacturer within five years from the date of the decree. A uniform, reasonable and nondiscriminatory royalty could be charged upon any license issued. The decree enjoined the manufacturers from making any disposition of any of the patents subject to the above order, unless the manufacturer requires as a condition of such disposition that the purchaser or licensee shall observe the requirements of specified provisions of the decree. Also, the manufacturers were enjoined from instituting any proceeding for infringement of any of the patents alleged to have occurred prior to the date of the decree.
Consent Decree—Practices Enjoined—Patents.—Manufacturers of tractor cabs were enjoined from granting to any other person any power or authority to hinder, restrict, limit, or prevent such manufacturer from granting a license under any patent or patents owned or controlled by such manufacturer to any person.
Consent Decree—Practices Enjoined—Price Fixing.—Manufacturers of tractor cabs were enjoined from entering into any plan with any person to fix, establish, or determine the prices, or the terms or conditions relating to prices, for the sale of tractor cabs to any third person.
Consent Decree—Practices Enjoined—Allocation of Markets.—Manufacturers of tractor cabs were enjoined from entering into any plan with any other defendant or any manufacturer of tractor cabs to allocate or divide territories, markets, dealers, or distributors for the manufacture, distribution, or sale of tractor cabs.
Consent Decree—Applicability of Decree—Wholly-Owned Subsidiaries.—A decree, in setting forth the application of the decree to the defendants, provided that "any defendant and a wholly-owned subsidiary thereof shall be considered as one person."

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; Marcus A. Hollabaugh, Earl A. Jinkinson, Raymond D. Hunter, and Bertram M. Long, Special Assistants to the Attorney General; and W. D. Kilgore, Jr., Harry N. Burgess, and Charles F. B. McAleer, Attorneys.

For the defendants: John G. Madden and James E. Burke (Madden and Burke), Kansas City, Mo., for Comfort Equipment Co. (successor to Bearing Distributors Co.); John E. Sebat (Jones, Sebat and Swanson), Danville, Ill., for Cab-Ette Co., Inc. and Lee Flora; Rudolph L. Lowell, Des Moines, Ia., for Fort Dodge Tent and Awning Co. and Michael A. Halligan; and Fred M. Roberts, Kansas City, Mo., for Clyde E. Clapper.

For an opinion of the U. S. District Court, Western District of Missouri, Western Division, see 1950-1951 Trade Cases ¶ 62,942.

Final Judgment

REEVES, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on April 27, 1951, Comfort Equipment Company, a corporation, formerly Bearing Distributors Company, having been made a party defendant herein, and the defendants having appeared and filed their answers to said complaint denying the substantive allegations thereof; and the plaintiff and said defendants, 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 admission by any party in respect of any such issue,

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent as aforesaid of all the parties hereto,

It is hereby ordered, adjudged and decreed as follows:

I

[*Sherman Act Action*]

This Court has jurisdiction of the subject matter hereof and of all parties hereto. The complaint states a cause of action against the defendants under Sections 1 and 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.

II

[*Definitions*]

As used in this Final Judgment:

(A) "Person" means an individual, partnership, firm, association, corporation or other legal entity.

(B) "Tractor cabs" means an accessory or device for a tractor or similar machinery, made of canvas or similar material, and sometimes designated as a heating unit, which when affixed or fastened to a tractor, or similar machinery, provides an enclosed space in which the driver of the tractor, or similar machinery, is heated and protected from the weather.

(C) "Patents" means United States Letters Patent and applications therefor, all reissues, continuations, divisions or extensions thereof, and patents issued upon said applications, relating to tractor cabs.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its successors, subsidiaries, assigns, officers, directors, agents, employees, and to those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment any defendant and a wholly-owned subsidiary thereof shall be considered as one person.

IV

[*Licensing of Patents Ordered*]

(A) Each defendant is ordered and directed, in so far as it has or may acquire the power or authority to do so, to grant to any applicant making written request therefor a license to manufacture, use and sell tractor cabs under United States Patent No. 2,452,834 and Patent No. 2,461,974 and any other patent relating to tractor cabs issued to or acquired by any such defendant within five years from date hereof, such license to be for the full unexpired term of the patent or patents. Said licenses shall contain no restriction whatsoever except that:

(1) The license may be nontransferable;

(2) A uniform, reasonable and nondiscriminatory royalty may be charged upon any license issued;

(3) Reasonable provisions may be made for periodic inspection of the books and records of the licensee by an independent auditor or by any person acceptable to the licensee who shall report to the licensor only the amount of the royalty due and payable;

(4) Reasonable provision may be made for cancellation of the license upon failure of the licensee to pay the royalties found to be due and payable or to permit the inspection of his books and records as hereinabove provided;

(5) The license must provide that the licensee may cancel the license at any time by giving ninety days' notice in writing to the licensor;

(6) The license or sub-license must provide that the licensee shall immediately have the benefit of any more favorable terms granted any other licensee.

(B) Upon receiving any application for a license in accordance with the provisions of this Section IV, the defendant shall advise the applicant of the royalty it deems reasonable for the patent or patents to which the application pertains. If the parties are unable to agree upon what constitutes a reasonable royalty within sixty (60) days from the date the application for the license was received by the defendant, the applicant therefor or the defendant may forthwith petition this Court for the determination of a reasonable royalty, and the said defendant shall, upon receipt of notice of filing such petition, promptly give notice thereof to the Attorney General. In any such proceeding the burden of proof shall be upon the defendant to establish the reasonableness of the royalty requested by it; and the reasonable royalty rates, if any, determined by the Court shall apply to the applicant and to all other licensees under the same patent or patents. Pending the completion of negotiations or of any such Court proceedings, the applicant shall have the right to make, use and vend under the patent or patents to which its application pertains, without payment of royalty or other compensation, but subject to the following provisions: The defendant may petition the Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty, if any. If the Court fixed such interim royalty rate, the defendant shall then grant, and the applicant shall accept, a license providing for the periodic payment of royalties at such interim rates from the date of the making of such application by the applicant. If the applicant fails to accept such license or fails to pay the interim royalty therein provided, such action shall be ground for the denial or dismissal of his application. Where an interim license has been issued pursuant to these provisions, reasonable royalty rates, if any, as finally determined by the Court shall be retroactive for the applicant and all other licensees under the same patent or patents to the date the applicant filed his application for a license.

(C) Nothing in this Final Judgment shall prevent any applicant for a license from attacking in any proceeding or controversy the validity or scope of any of the patents subject to this Final Judgment nor shall this Final Judgment be construed as importing any validity or value to any such patent.

V

[*Disposition of Patents*]

The defendants are jointly and severally enjoined and restrained from making any disposition of any of the patents or patent applications subject to Section IV of this Final Judgment, or any rights with respect thereto, which deprives such defendant of the power or authority to grant licenses as hereinbefore provided for in Section IV, unless the defendant requires as a condition of such disposition that the purchaser, transferee, assignee or licensee, as the case may be, shall observe the requirements of Sections IV and V hereof, as applicable, 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 Final Judgment.

VI

[*Infringement Suits*]

Defendants are jointly and severally enjoined and restrained from instituting any proceeding, judicial or administrative, for infringement of any of the patents to which Sections IV and V of this Final Judgment may apply alleged to have occurred prior to the date of the entry of this Final Judgment.

VII

[*Restriction on Licensing*]

The defendants are jointly and severally enjoined and restrained from, in any manner, granting to any other person, any power or authority, whether by contract, agreement or otherwise, to hinder, restrict, limit or prevent such defendant from granting a license under any patent or patents owned or controlled by such defendant to any person.

VIII

[*Agreement Terminated*]

That certain contract dated August 3, 1948 entered into by and between Lee Flora, Clyde E. Clapper, Michael A. Halligan, Cab-Ette Company, a corporation, Fort Dodge Tent and Awning Company, a corporation, and Bearing Distributor Company, a corporation, to the extent, if any, that the same may still be in force and effect, is hereby declared to be cancelled, null and void, and the defendants are jointly and severally enjoined and restrained from renewing, adhering to, maintaining or continuing, or claiming any rights under, any of the provisions thereof.

IX

[*Price Fixing— Allocation of Markets*]

(A) The defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining furthering or enforcing, directly or indirectly, any combination, conspiracy, contract, agreement, understanding, plan or program with any person to fix, establish, or determine the prices, or the terms or conditions relating to prices, for the sale of tractor cabs to any third person;

(B) The defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining, furthering or enforcing, directly or indirectly, any combination, conspiracy, contract, agreement, understanding, plan or program with any other defendant or any manufacturer of tractor cabs to allocate or divide territories, markets, dealers or distributors for the manufacture, distribution or sale of tractor cabs.

X

[*Copies of Decree*]

The defendants Clapper and Flora are ordered and directed within sixty days after the entry of this Final Judgment to send a copy of this Final Judgment to each of their present licensees under any patent or patents to which Section IV of this Final Judgment may apply and to each applicant who has, in writing, heretofore applied for and has not received a license to manufacture, use or sell tractor cabs under any such patent or patents. In the case of applicants who may apply for a license to make, use or sell tractor cabs pursuant to Section IV of this Final Judgment, a copy of this Final Judgment shall be sent promptly to each such applicant immediately after receipt of any such application. Each defendant, not a patentee, shall upon inquiry from an applicant for a license, advise the applicant to whom the application should be addressed, if known.

XI

[*McGuire Act*]

Nothing contained in this Final Judgment shall prevent the defendants from availing themselves of the benefits, if any, of the Act of Congress of July 14, 1952, commonly known as the McGuire Act, or of the Act of Congress of 1937, commonly known as the “Miller-Tydings proviso to Section 1 of the Act of Congress of July 2, 1890 entitled ‘An Act to protect trade and commerce against unlawful restraints and monopolies’ “.

XII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, 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 (1) access during the office hours of said defendant 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, and (2) subject to the reasonable convenience of said 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, and (3) upon such request the 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 XII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, 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.

XIII

[*Jurisdiction Retained*]

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 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 thereof, and for the purpose of enforcement of compliance therewith and the punishment of violations thereof.