

UNITED STATES v. NEW DEPARTURE MFG. CO.

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF NEW YORK.

Equity No. 48-A

THE UNITED STATES OF AMERICA, PETITIONER,

VS.

THE NEW DEPARTURE MANUFACTURING COMPANY, THE
MIAMI CYCLE & MANUFACTURING COMPANY, THE COR-
BIN SCREW CORPORATION, AURORA AUTOMATIC MACHIN-
ERY COMPANY, ECLIPSE MACHINE COMPANY, BUFFALO
METAL GOODS COMPANY, EDWIN E. JACKSON, JR., FRED-
ERICK R. HUNTINGTON, ALBERT F. ROCKWELL, DE WITT
PAGE, CHARLES T. TREADWAY, WILLIAM A. GRAHAM,
GALES P. MOORE, CHARLES GLOVER, CLARENCE A. EARL,
DAVID L. WHITTIER, RALPH D. WEBSTER, LEONARD S.
WHITTIER, SIMON FLORSHEIM, JOHN D. HURLEY, KELLY
R. JACOBY, JAMES P. DROUILLARD, EMMETT M. JACK-
SON, AND FISHER C. ATHERTON, DEFENDANTS.

FINAL DECREE.

This cause coming on to be heard on this 27th day of
May, 1913, before the Honorable John R. Hazel, district
judge, and the petitioner having appeared by John Lord
O'Brian, its attorney in and for the Western District of

New York, and by Malcolm A. Coles, its special assistant
to the Attorney General, and having moved the court for
an injunction in accordance with the prayer of its peti-
tion, and it appearing to the court that the allegations of
the petition state a cause of action against the defend-
ants under the provisions of the act of Congress of July
2nd, 1890, commonly known as the antitrust act, that this
court has jurisdiction of the subject matter, that each of
the defendants has either been regularly served or has
accepted service of process and has appeared in open
court by Messrs. Lyman M. Bass, Daniel J. Kenefick,
William Waldo Hyde, Delevan Holmes, Alexander D.
Falck, and Louis E. Hart, their counsel, and said defend-
ants having stated in open court through their counsel
that it is not their desire or intention or the desire or
intention of any or either of them to violate the pro-
visions of the act above referred to, but have stated that
it is their desire and intention and the desire and inten-
tion of each of them to comply with each and all the pro-
visions of the statute of the United States referring to
agreements, combinations or conspiracies in restraint of
trade or attempting to create a monopoly and that their
previous action in the premises was in full belief that
such action was not in violation of law; that it is the de-
sire and intention of each of them not to operate under
or make or carry on any such contracts or practices as
are prohibited and condemned by said act of Congress,
and it appearing to the satisfaction of the court that,
notwithstanding the aforesaid answers, petitioner is en-
titled upon the pleadings to the relief prayed for herein;
and all of said defendants through their counsel here
consenting to the entering and rendition of this decree;

Now, therefore, it is accordingly by this court, ordered,
adjudged and decreed as follows:

FIRST. That the combination and association entered
into by the defendants herein in or about the month of
July, 1908, in relation to the manufacture, sale and ship-
ment in interstate and foreign commerce of bicycle and
motorcycle coaster brakes and each and all of the con-
stituent parts of the mechanism thereof, front and rear

hubs, sprockets and built-up wheels, constituted and is a combination in restraint of trade and an attempt to monopolize such trade among the several States and with foreign nations in violation of section 1 of the said act of Congress of July 2nd, 1890, commonly known as the anti-trust act, and the said combination and association is hereby declared illegal and void, and each and all of said defendants are hereby jointly and severally perpetually enjoined, restrained and forbidden from further engaging in or attempting to carry out in any respect the affairs and purposes of said combination and association.

SECOND. That all of the agreements annexed to the petition herein and therein described as Exhibits A, B, C, D, E, F, G, H, I, J and K, and all agreements uniform in terms with any of said exhibits and all other agreements of substantially the same character as any of the said exhibits made by any of said corporation defendants, constitute agreements in restraint of trade and commerce among the States and with foreign nations in violation of section 1 of the said act of Congress of July 2, 1890, commonly known as the antitrust act, and each and all of said agreements are hereby declared illegal and void and are hereby cancelled and declared to be of no effect, and each and all of said defendants are hereby jointly and severally perpetually restrained, enjoined and forbidden from further observing or attempting to carry out the provisions of said agreements.

THIRD. That each and every written and unwritten agreement or understanding existing between any of the various corporation defendants or their aforesaid officers, extending, amending or enlarging the terms of the above specified agreements is in violation of the aforesaid anti-trust act and is hereby declared to be illegal and cancelled and of no effect and each and all of said defendants are hereby jointly and severally perpetually restrained, enjoined and forbidden from further observing or attempting to carry out in any respect the provisions of such agreements or understandings.

FOURTH. That each of said individual defendants and each of said defendant corporations, together with its directors, managers, officers, agents and employees, and each of them and all persons acting or assuming to act for or under or in behalf of them, or any of them, or for or in behalf of each other, be and they hereby are perpetually restrained, enjoined and prohibited from—

(a) Carrying out said conspiracy and combination, from entering into or carrying out any other conspiracy either among themselves or in connection with other persons or corporations to restrain and monopolize the manufacture, sale and shipment of bicycle and motorcycle coaster brakes and the constituent parts of the mechanism thereof, front and rear hubs, sprockets and built-up wheels, either by themselves, or by competitors or by manufacturers, jobbers or dealers in such merchandise and commodities and from attempting to monopolize the trade and commerce therein;

(b) Establishing or fixing by combination, conspiracy, mutual agreement or understanding the sale and resale price, or prices, for any bicycle and motorcycle coaster brakes or any of the constituent parts of the mechanism thereof, front and rear hubs, sprockets or built-up wheels.

And also restraining and prohibiting said corporations and persons who may be the owners of valid patents upon bicycle and motor-cycle coaster brakes and each or any of the constituent parts of the mechanism thereof, front and rear hubs, sprockets or built-up wheels from requiring or imposing upon any purchaser, user or dealer in any of said commodities a fixed resale price, unless and until the United States Supreme Court shall decide that the owner of a valid patent may lawfully fix and impose such resale price.

(c) Holding joint meetings for the purpose of arranging for concerted action with respect to the business and trade in any and all of the aforesaid merchandise;

(d) Having a joint arbitrator, referee, commissioner or other person exercising any of the functions described in Exhibit A herein as being those of an arbitrator;

(e) Selecting, making up, ratifying or confirming by combination, conspiracy, mutual agreement or understanding by and between any of said parties, any lists of manufactures or jobbers or dealers with whom trade shall or shall not be carried on in the aforesaid merchandise by any of the corporations or persons herein enjoined;

(f) Fixing or establishing by combination, conspiracy, mutual agreement or understanding trade discounts, trade rebates, terms of credit or any other terms and conditions in connection with or relating to the sale, shipment and trade by any of said corporations and parties in any of the aforesaid merchandise;

(g) Warning, harassing or intimidating by means of personal acts, letters or advertisements any other corporations or persons in relation to the sale, shipment and trade in the aforesaid merchandise except such action as may lawfully be taken by any individual or corporation in properly protecting his or its own legal property rights.

FIFTH. None of the provisions in this decree contained shall prevent any of the defendants owning valid patents from granting licenses thereunder upon lawful terms and conditions fixed only by the licensor, but no such license shall provide for the fixing of a resale price unless and until the Supreme Court of the United States shall decide that a licensor may lawfully fix and impose such resale price.

SIXTH. That the organization and association commonly known as the "Association of Coaster Brakes Licensees," described in the petition of this cause was and now is a combination and conspiracy in direct restraint of interstate and foreign trade and commerce in violation of the provisions of the said act of Congress of July 2nd, 1890, and the defendants and each of them who have been members of or who at any time have taken part in the meetings or had a share in the business operation of said association are hereby jointly and severally perpetually enjoined, restrained and forbidden from further maintaining said association and from participating therein and from hereafter creating, maintaining or participating

in any manner whatsoever in any other association or organization of similar character; and it is hereby further

Ordered, adjudged and decreed that this court retains jurisdiction of this cause for the purpose of enforcing the decree herein.

Ordered, adjudged and decreed that the defendants be and they are hereby given a period of sixty days from and after the date of entry of this decree for compliance with the terms thereof; and it is hereby further

Ordered, adjudged and decreed that the defendants pay the costs of this suit to be taxed.

JOHN R. HAZEL,
United States Judge.