

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Scott Aviation Corp., U.S. District Court, W.D. New York, 1961 Trade Cases ¶70,148, (Nov. 8, 1961)

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United States v. Scott Aviation Corp.

1961 Trade Cases ¶70,148. U.S. District Court, W.D. New York. Civil Action No. 84-32. Filed November 8, 1961. Case No. 1476 in the Antitrust Division of the Department of Justice.

Sherman Act

Restrictions on Distributors' Markets and Customers—Consent Judgment.—A manufacturer of artificial breathing devices was prohibited by a consent judgment from restricting the customers to whom, or the territories in which, its distributors could sell. Similarly, agreements with its distributors allocating or restricting customers, territories, or markets were prohibited.

Resale Price Fixing—Permissive Provisions—Fair Trade.—A manufacturer of artificial breathing devices was prohibited by a consent judgment from restricting the price at which its distributors could sell. Similarly, the manufacturer was prohibited from agreeing with its distributors to fix the resale prices. However, the manufacturer was permitted to fair trade the items, but only if its distributors were notified of the fair trade states and of any abrogation or impairment of its right to fair trade.

Import and Export Restrictions—Consent Judgment.—A manufacturer of artificial breathing devices was prohibited by a consent judgment from entering into any agreement with its distributors restricting imports or exports.

For the plaintiff: Lee Loevinger, Assistant Attorney General, W. D. Kilgore, Jr., Lewis Bernstein, Joseph F. Tubridy, Charles F. B. McAleer, and John J. Galgay, Attorneys, Department of Justice.

For the defendant: Dudley, Stowe & Sawyer, by Roy P. Ohlin.

Final Judgment

HENDERSON, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on September 14, 1959, the defendant having filed its answer denying the substantive allegations thereof, and the parties hereto 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 hereto with respect to 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 the 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 claims for relief against the defendant under Section 1 of the Act of Congress of July 2, 1890 as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Act.

II

[Definitions]

As used in this Final Judgment:

- (A) "Defendant" shall mean the defendant, Scott Aviation Corporation, a corporation organized and existing under the laws of the State of New York;
- (B) "Person" shall mean an individual, partnership, firm, corporation, association or other business or legal entity;
- (C) "Distributor" shall mean any person who purchases artificial breathing devices from defendant for resale to dealers or users thereof;
- (D) "Dealer" shall mean any person who purchases artificial breathing devices from distributors for resale to users;
- (E) "User" shall mean any person who purchases artificial breathing devices for the use thereof and not for resale;
- (F) "Artificial breathing devices" are apparatus manufactured by defendant, its subsidiaries, successors or assigns and which are used to sustain life or provide comfort when the surrounding atmosphere is insufficient or toxic by supplying either pure oxygen or compressed air directly to the person using the apparatus.

III

[Application]

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

IV

[Distribution Agreements]

The defendant is enjoined and restrained from entering into, adhering to, maintaining, enforcing or claiming any rights under, any combination, contract, agreement, understanding, plan or program with any distributor, dealer or other person to:

- (A) Limit, allocate, assign or restrict customers, territories or markets for the sale of artificial breathing devices;
- (B) Fix, establish, maintain or adhere to prices, discounts, or other terms or conditions for the sale of artificial breathing devices to any third person;
- (C) Limit or restrict the resale of artificial breathing devices after sale thereof;
- (D) Limit, restrict or prevent the exportation from or the importation into the United States, its territories and possessions, of artificial breathing devices.

V

[Individual Prohibitions]

The defendant is enjoined and restrained from:

- (A) Imposing or attempting to impose any limitation or restriction upon the persons to whom, the territories in which, or the prices at which, its dealers or distributors may sell artificial breathing devices;
- (B) Imposing or attempting to impose any restriction on the resale of artificial breathing devices after sale thereof.

VI

[Fair Trade]

Nothing contained in this Final Judgment shall prevent the defendant from availing itself of such rights, if any, as it may have pursuant to the Miller-Tydings Act as amended by the Maguire Act; provided, however, that before the defendant may fair trade artificial breathing devices in any state or territory it shall first identify each such state or territory in writing to each of its dealers and distributors. In the event that the defendant's right to fair trade artificial breathing devices in any state or territory should be abrogated or impaired, defendant is ordered and directed to notify forthwith each of its dealers and distributors of that fact, together with all information pertinent thereto as will adequately advise each dealer and distributor of the extent of such abrogation or impairment.

VII

[Compliance]

Defendant is ordered and directed:

(A) Within ninety (90) days after the date of entry of this Final Judgment to take all necessary action to effect the cancellation of each provision of every contract or agreement between and among the defendant and its dealers and distributors which is contrary to or inconsistent with any provision of this Final Judgment;

(B) Subject to the provisions of Section VI of this Final Judgment to advise each of its dealers and distributors, within ninety (90) days after the date of entry of this Final Judgment that he may sell defendant's artificial breathing devices at such prices as, and to whomever and wherever, he pleases;

(C) Within ninety (90) days after the date of entry of this Final Judgment to mail a copy of said judgment to each of its dealers and distributors;

(D) To file with this Court, and serve upon the plaintiff, within One hundred and five (105) days after the date of the entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subsections (A), (B) and (C) of this Section VII.

VIII

For the purpose of securing or determining compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on 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, be permitted, subject to any legally recognized privilege:

(A) Access, during the office hours of the defendant, to all books ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant which relate to any matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of the defendant and without restraint or interference from the defendant, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters.

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the defendant shall submit such reports in writing with respect to the 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 permitted in this Section VIII 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 plaintiff except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX

[Jurisdiction Retained]

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 amendment or modification of any of the provisions thereof for the enforcement of compliance therewith, and for the punishment of violations thereof.