

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Scott Aviation Division, A-T-O Inc. (Successor to Scott Aviation Corp.), U.S. District Court, W.D. New York, 1982-83 Trade Cases ¶64,998, (Jul. 23, 1981)

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United States v. Scott Aviation Division, A-T-O Inc. (Successor to Scott Aviation Corp.).

1982-83 Trade Cases ¶64,998. U.S. District Court, W.D. New York, Civil No. 8432 E, Dated July 23, 1981.

Case No. 1476, Antitrust Division, Department of Justice.

Sherman Act

Department of Justice Enforcement: Modification of Consent Decree: Removal of Bans on Customer and Territorial Restrictions: Retention of Resale Price Fixing Prohibition.— A 1961 consent decree against a manufacturer of artificial breathing devices was modified to remove prohibitions against (1) customer, territorial, or other resale restrictions upon its distributors and (2) agreements with its dealers to limit exports or imports of such devices. Bans against restricting the resale prices of its dealers and agreeing with distributors to fix resale prices were retained. A provision permitting the manufacturer to fair trade the items was deleted.

Modifying and replacing 1961 Trade Cases ¶70,148.

For plaintiff: C. Donald O'Connor, U. S. Atty., Buffalo, N. Y., Sanford Litvack, Asst. Atty. Gen., Antitrust Div., Dept. of Justice, Washington, D. C. **For defendant:** David K. Floyd, of Phillip, Lytle, Hitchcock, Blaine & Huber, Buffalo, N. Y.

Modified Final Judgment

ELFUIN, D. J.: Defendant having made application for the modification for the Final Judgment entered herein on November 8, 1961, the parties having consented to the entry of this Modified Final Judgment; and the Court having considered the matter and being duly advised, it is hereby

Ordered that the title to this action shall be amended as in the caption of this Modified Final Judgment; and it is hereby further

Ordered that the decretal paragraphs of the original Final Judgment herein of November 8, 1961, be and hereby are modified to read in full as follows:

Ordered, Adjudged and Decreed as follows:

I

[Continued Jurisdiction]

This Court has continued jurisdiction of the subject matter of this action and of the parties hereto. The original complaint stated 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 Modified Final Judgment:

(A) "Defendant" shall mean the Scott Aviation Division of A-T-O Inc., an Ohio corporation, successor to Scott Aviation Corporation;

(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 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, 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

[Applicability]

The provisions of this Modified 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 Modified 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 fix, establish, maintain or adhere to prices or discounts for the sale of artificial breathing devices to any third person.

V

[Resale Prices]

The defendant is enjoined and restrained from imposing or attempting to impose any limitation or restriction on the prices at which its dealers or distributors may sell artificial breathing devices.

VI

[Compliance]

The defendant is ordered and directed within ninety (90) days after the date of entry of this Modified Final Judgment to mail a copy of said judgment to each of its distributors; and to file with this Court, and serve upon the plaintiff, within one hundred and five (105) days after the day of the entry of this Modified Final Judgment, an affidavit of such mailing.

VII

[Inspections]

For the purpose of securing or determining compliance with this Modified Final Judgment, any 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 inspect and copy 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 Modified 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 Modified Final Judgment as may from time to time [be] requested.

No information or documents obtained by the means provided in this Section VII 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 United States except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Modified Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 25(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

VIII

[Retention of Jurisdiction]

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Modified 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 Modified 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.