

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Sperry Rand Corporation; The General Fireproofing Company; Steelcase, Inc.; Diebold, Incorporated; and Art Metal, Incorporated., U.S. District Court, W.D. New York, 1962 Trade Cases ¶70,490, (Nov. 9, 1962)

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United States v. Sperry Rand Corporation; The General Fireproofing Company; Steelcase, Inc.; Diebold, Incorporated; and Art Metal, Incorporated.

1962 Trade Cases ¶70,490. U.S. District Court, W.D. New York. Civil No. 8995. Entered November 9, 1962. Case No. 1578 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Fire Resisting Filing Cabinets—Consent Judgment.—A manufacturer was prohibited by a consent judgment from entering into any agreement with any other manufacturer or wholesaler-distributors (selling products under their trade names) to fix the prices, differentials, discounts, or extras for the sale of fire resisting filing cabinets.

Resale Price Fixing—Fair Trade Prohibition—Consent Judgment.—A manufacturer was prohibited by a consent judgment from fixing or establishing, through agreements with any person, resale prices for fire resisting filing cabinets, and from fair trading its products under federal and state laws for a period of 18 months.

Trade Association Participation—Consent Judgment.—A manufacturer was prohibited by a consent judgment from participating in activities of trade associations, industry groups, or other organizations, with knowledge that such activity would violate any provision of the judgment, if such organizations were consenting defendants to the judgment.

For the plaintiff: Lee Loevinger, Assistant Attorney General, W. D. Kilgore, Jr., Lewis Bernstein, Charles R. Esherick, Charles F. B. McAleer, and Gerald E. Kandler, Attorneys, Department of Justice.

For the defendant: Arnold, Portas & Porter, by William F. McGovern, for Diebold, Incorporated.

Final Judgment

HENDERSON, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on December 28, 1960, and the consenting defendant, Diebold, Incorporated, having heretofore on October 27, 1960, canceled, effective December 1, 1960, its agreement of November 19, 1954, to purchase fire resisting filing cabinets from Sperry Rand Corporation formerly known as Remington Rand, Inc., and canceled, effective December 1, 1960, all Fair Trade Agreements with its dealers relating to fire resisting filing cabinets, both parties by their respective attorneys, having each 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 either party with respect to any such issue, and the Court having considered the matter and being duly advised,

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein and upon consent of both parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

[Sherman Act]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states a claim against the defendant under Section 1 of the Act of Congress of July 2, 1890, entitled "An act to protect trade

and commerce against unlawful restraints and monopolies” (15 U. S. C. § 1, 26 Stat. 209), commonly known as the Sherman Act, as amended.

II

[Definitions]

As used in this Final Judgment:

- (A) “Fire resisting filing cabinet” shall mean a storage cabinet consisting of an outside metallic shell lined with a fire-resistant material and provided with an interior compartment or compartments used for receiving a storage drawer or drawers, and any metal accessories customarily sold on an optional basis in conjunction therewith;
- (B) “Wholesale-distributor” shall mean any person which distributes, under its own trade name, fire resisting filing cabinets manufactured by some other person;
- (C) “Person” shall mean any individual, partnership, corporation, association, firm or other business or legal entity.

III

[Applicability]

The provisions of this Final Judgment shall apply to defendant Diebold, and to each of its successors, assignees, officers, directors, agents, employees and subsidiaries, and to those persons in active concert or participation with such defendant who receives actual notice of this Final Judgment by personal service or otherwise, but shall not apply to transactions solely between such defendant and its said officers, directors, agents, employees, parent company and subsidiaries or any of them.

IV

[Price Fixing]

Defendant Diebold is enjoined and restrained from entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding, plan or program with any other manufacturer or wholesaler-distributor of fire resisting filing cabinets to fix, establish or maintain prices, differentials, discounts, extras or any other term or element of prices, differentials, discounts or extras for the sale of fire resisting filing cabinets to any third person.

V

[Resale Price Fixing]

- (A) Defendant Diebold is enjoined and restrained from entering into, adhering to, maintaining or claiming any rights under any contract, agreement or understanding with any person to fix, establish, maintain or adhere to any prices, discounts, terms or other elements of price for the sale of fire resisting filing cabinets to any third person; and
- (B) Nothing in this Final Judgment shall prohibit defendant Diebold, acting independently, from exercising such lawful rights as it may have under the Miller-Tydings Act, as amended, the McGuire Act, or any other similar legislation, with respect to any fire resisting filing cabinet manufactured, distributed or sold by it, after a period of eighteen (18) months from the date of entry of this Final Judgment.

VI

[Trade Association Participation]

Defendant Diebold is enjoined and restrained from participating in any formal or informal activity of any trade association, industry group or other organization, with knowledge that any such activity or purpose of such trade association, industry group or other organization would violate any provision of this Final Judgment, if such trade association, industry group, or other organization, were consenting defendant to this Final Judgment.

VII

[Inspection and Compliance]

For the purposes of securing compliance with this Final Judgment, and for no other purposes, 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 defendant Diebold made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during the office hours of said defendant, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant regarding any subject matter contained in this Final Judgment; and

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

Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, said 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 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 to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII

[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 or 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 enforcement of compliance therewith and the punishment of violations thereof.