

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 ¶70,495, (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 ¶70,495. 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.—Manufacturers were prohibited by a consent judgment from entering into any agreement with any other manufacturers or wholesaler-distributors to fix the prices, differentials, discounts, or extras for the sale of fire resisting filing cabinets.

Allocation of Markets—Sales—Consent Judgment.—Manufacturers were prohibited by a consent judgment from entering into any agreement to allocate, divide, or apportion customers, territories, or markets for the sale of fire resisting filing cabinets.

Resale Price Fixing—Fair Trade Prohibition—Consent Judgment.—Manufacturers were prohibited by a consent judgment from entering into any agreement fixing resale prices for fire resisting filing cabinets, required to cancel each of their fair trade agreements, and prohibited from fair trading their products under federal and state laws for a period of three years.

Price Fixing—New Price Schedules—Consent Judgment.—Manufacturers were individually required by a consent judgment to independently review and establish new price schedules for fire resisting filing cabinets and abandon their then current domestic price lists.

Trade Association Participation—Consent Judgment.—Manufacturers were 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.

Cancellation of Contracts—Consent Judgment.—A manufacturer was required by a consent judgment to cancel contracts pursuant to which it manufactures and supplies fire resisting filing cabinets to other defendants for resale, but was permitted to enter into new, lawful contracts for the manufacture of its products for resale.

Resale Price Fixing—Wholesaler-Distributors—Consent Judgment.—A manufacturer was prohibited by a consent judgment from requiring any wholesaler-distributor to use a price list or suggested price in selling fire resisting filing cabinets not sold under the manufacturer's brand name, or restricting a wholesaler-distributor from selling its products to any purchaser.

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

For the defendants: Bergson & Borkland, by Herbert A. Bergson and Daniel H. Margolis, for Sperry Rand Corporation; Warner, Norcross & Judd, by Leonard W. Verdier, Jr., for Steelcase, Inc.; Hellings, Ulsh, Morey & Stewart, by William P. Stewart, for Art Metal, Incorporated; Hovvrey, Simon, Baker & Murchison, by William Simon and John S. Voorhees, for The General Fireproofing Company.

Final Judgment

HENDERSON, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on December 28, 1960, and the defendants Sperry Rand Corporation, The General Fireproofing Company, Steelcase, Inc. and Art Metal, Incorporated, 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 this Final Judgment constituting evidence or an admission by any 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 all 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 defendants 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, firm, corporation, association or other business or legal entity.

III

[Applicability]

The provisions of this Final Judgment applicable to any defendant consenting hereto shall apply to such defendant, 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 receive 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—Market Allocation]

The consenting defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding, plan or program among themselves or with any other manufacturer or wholesale-distributor of fire resisting filing cabinets to:

- (A) 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; or
- (B) Divide, allocate or apportion customers, territories or markets for the sale of fire resisting filing cabinets.

V

[Fair Trade—Resale Price Fixing]

(A) Each of the consenting defendants is ordered and directed to terminate and cancel each of its existing Fair Trade Agreements or any other agreement which prescribes or maintains or purports to prescribe or maintain the price at which any person shall resell fire resisting filing cabinets;

(B) Each of the consenting defendants 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;

(C) Each of the consenting defendants is ordered and directed to mail, within thirty (30) days from the date of entry hereof, a letter to each of its current domestic fire resisting" filing cabinet distributors and dealers current as of the date of entry of this Final Judgment setting forth subsections (A) and (B) above; and

(D) Nothing in this Final Judgment shall prohibit any defendant, 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 three (3) years from the date of entry of this Final Judgment.

VI

[New Price Lists]

Defendants The General Fireproofing Company, Steelcase, Inc. and Art Metal, Incorporated, are ordered and directed individually and independently within eleven (11) months of the effective date of this Final Judgment, to:

(A) Review, determine and establish its domestic list prices and other terms and conditions of sale for fire resisting filing cabinets on the basis of its individual costs, profits and other lawful considerations; provided, however, that such established prices shall not be computed or based upon the zones or zone differentials employed by it on December 28, 1960; and

(B) Withdraw its then current domestic price lists for fire resisting filing cabinets and to adopt and publish the price lists arrived at pursuant to subsection (A) of this Section VI.

VII

[Cancellation of Contracts]

Not later than 120 days after the date of entry of this Final Judgment, defendant Sperry Rand Corporation is ordered and directed to terminate and cancel its contracts or agreements pursuant to which it manufactures and supplies to defendants The General Fireproofing Company, Steel-case, Inc. and Art Metal, Incorporated, fire resisting filing cabinets for resale. Nothing in this Final Judgment, however, shall be deemed to prohibit any consenting defendant from entering into new, lawful contracts or agreements for the manufacture or sale of fire resisting filing cabinets for resale; provided, however, that in any such sales made by Sperry Rand Corporation, the prices charged shall not be stated in terms of a discount from resale prices.

VIII

[Resale Price Fixing]

Defendant Sperry Rand Corporation is enjoined and restrained from entering into, adhering to, maintaining, or claiming any right under any contract, agreement or understanding with any wholesale-distributor, including each of the other defendants herein,

(A) Requiring any wholesale-distributor to employ in selling fire resisting filing cabinets not sold under a brand name of defendant Sperry Rand Corporation, any price list, price or term or condition of sale fixed, specified or suggested by defendant Sperry Rand Corporation;

(B) Precluding or restricting such wholesale-distributors, or any of them, from selling or offering to sell fire resisting filing cabinets to any purchaser or class of purchasers.

IX

[Trade Association Participation]

Each of the consenting defendants 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 a consenting defendant to this Final Judgment.

X

[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 any consenting defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during the office hours of said consenting 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 consenting 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 consenting 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 X 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.

XI

[Jurisdiction Retained]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the 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.