

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Shaw-Walker Co. and Sperry Rand Corp., U.S. District Court, W.D. New York, 1962 Trade Cases ¶70,491, (Nov. 9, 1962)

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United States v. The Shaw-Walker Co. and Sperry Rand Corp.

1962 Trade Cases ¶70,491. U.S. District Court, W.D. New York. Civil No. 8996. Entered November 9, 1962. Case No. 1579 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 to fix 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.

**Production Restrictions—Number or Types of Colors—Consent Judgment.**—Manufacturers were prohibited by a consent judgment from entering into any agreement to fix or limit the number or types of colors for 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.

**Rigged Bidding—Paid Information—Non-Collusion Affidavit—Consent Judgment.**—Manufacturers were prohibited by a consent judgment from entering into any agreement to submit noncompetitive, collusive, or rigged bids to any governmental agency or other purchaser of fire resisting filing cabinets, and from communicating any bid information or an intention to bid or not to bid prior to the official opening of a bid. The manufacturers also were required, for a period of five years, to submit with each sealed bid submitted to any central purchasing agency of the United States an affidavit that the bid has been arrived at without collusion and that bid information has not been given to anyone.

**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.

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: Donovan, Leisure, Newton & Irvine, by J. R. Withrow, Jr., William F. Rogers and James Clabault, of counsel, for The Shaw-Walker Company; and Bergson & Borkland, by Herbert A. Bergson and Daniel H. Margolis, for Sperry Rand Corporation.

## 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, 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 the 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," 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) "Person" shall mean any individual, partnership, corporation, association, firm, or other business or legal entity.

III

**[ Applicability]**

The provisions of this Final Judgment applicable to any defendant 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]**

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 person engaged in the manufacture or wholesale distribution 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;

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

(C) Fix, establish or limit the number or types of colors for fire resisting filing cabinets to be manufactured or sold;

(D) Submit noncompetitive, collusive or rigged bids or quotations for fire resisting filing cabinets to any governmental body or agency thereof, or to any other purchaser of fire resisting filing cabinets; or

(E) Exchange any information except in connection with bona fide purchase or sales transactions:

(1) concerning bids for the sale of fire resisting filing cabinets, prior to the opening thereof; and

(2) concerning prices, terms or conditions for the sale of fire resisting filing cabinets.

V

**[ Fair Trade Contracts]**

(A) Each defendant 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 defendant 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 defendant is ordered and directed to mail, within thirty (30) days from the date of entry hereof, a letter to each of its 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

### **[ Bid Information ]**

Each defendant is enjoined and restrained from communicating to any manufacturer or wholesale distributor of fire resisting filing cabinets prior to the official opening of a bid submitted to plaintiff or any agency thereof;

(A) The intention to submit or the intention not to submit a bid for the sale of fire resisting filing cabinets to such plaintiff or agency;

(B) The fact that such a bid for the sale of fire resisting filing cabinets has or has not been submitted; or

(C) Any price, term, or condition of sale quoted, or to be quoted, in any such bid.

## VII

### **[ Affidavit ]**

Each defendant is ordered and directed for a period of five (5) years from the date of entry of this Final Judgment to submit a sworn statement, in the form set forth in the Appendix hereto, with each sealed bid for fire resisting filing cabinets submitted to any central purchasing agency of plaintiff.

## VIII

### **[ New Price Lists ]**

Each defendant is ordered and directed individually and independently within eight (8) months from the effective date of entry 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, and as a part of such independent review to consider the competitive advantages and disadvantages of the geographic location of its factories, the availability and cost of transportation from such point or points and its freight and other shipping cost experience; 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 VIII.

## IX

### **[ Trade Association Participation ]**

Each defendant 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 defendant 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 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.

**Appendix**

**Affidavit**

STATE OF COUNTY OF }ss.:

..... > being duly sworn, deposes and says that to the best of his knowledge and belief:

1. The attached bid to ....> (name of recipient of bid) dated ....> has been arrived at by ....> (name of defendant) unilaterally and without collusion with any other manufacturer or wholesale distributor of fire resisting filing cabinets;
2. No information concerning the attached bid or its invitation has been communicated by the affiant, nor by any employee or agent of ....> (name of defendant), to any person not an employee or agent of .....> (name of defendant); and
3. On .> instructions were given to all employees concerned with bidding that information concerning such bids may not be communicated to any other potential bidder or their employees.

Dated: .....>

Signature of Person Who Signed Bid Sworn to before me this .....> day of .....> 1962.  
Notary Public