

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Dentists' Supply Co. of New York., U.S. District Court, E.D. Pennsylvania, 1967 Trade Cases ¶72,321, (Jan. 29, 1968)

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United States v. The Dentists' Supply Co. of New York.

1967 Trade Cases ¶72,321. U.S. District Court, E.D. Pennsylvania. Civil Action No. 41253. Entered January 29, 1968. Case No. 1918 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquiring Customers—Dental Supply Houses by Dental Products Manufacturer—Divestiture—Merger Ban—Consent Decree.—A dental products manufacturer was required by a consent judgment to sell, within two years, dental supply houses which in the aggregate accounted for 50% of its total retail sales volume of dental products during 1966. If the aggregate sales of all such outlets decline below the 1966 level, the decrease shall be made up by divesting dental supply houses having sales necessary to reach the stated aggregate. The divestiture shall be accomplished, if possible, so as to result in the firm not retaining any dental supply house in any local market in which any divested outlet shall be located. Additionally, the decree bars the manufacturer from acquiring dental supply houses without prior approval for ten years.

For the plaintiff: Donald F. Turner, Asst. Atty. Gen.; Baddia J. Rashid; William D. Kilgore, Jr.; Charles D. Mahaffie, Jr.; John F. Graybeal; Roy E. Green; and Robert J. Ludwig, Attorneys, Dept. of Justice.

For the defendant: Arthur H. Kahn and Bernard J. Beazley.

Final Judgment

FULLMAN, D. J.: Plaintiff, United States of America, having filed its Complaint herein on September 30, 1966, and defendant having appeared and filed its Answer to the Complaint denying the substantive allegations thereof, and the plaintiff and the defendant, 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 any evidence against or any admission by any party hereto with respect to any such issue of fact or law;

Now, Therefore, before the taking of any testimony, 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.

[Jurisdiction]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 7 of the Act of Congress of October 15, 1914 (15 U. S. C. § 18), commonly known as the Clayton Act, as amended.

II.

[Definitions]

As used in this Final Judgment:

(A) "Dental Supply House" means a retail store at which or from, which the business of selling primarily dental products is conducted;

(B) "Dental Products" means equipment and supplies used by dentists and dental laboratories; and

(C) "Person" means any individual, partnership, firm, corporation, association or other business or legal entity.

III.

[*Applicability*]

The provisions of this Final Judgment shall apply to the defendant, its officers, directors, agents and employees, and to the defendant's subsidiaries, successors and assigns, and to each of their respective officers, directors, agents and employees, and to all other persons in active concert or participation with defendant who receive actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall not apply to any person who acquires any dental supply house divested pursuant to Section IV of this Final Judgment or to any person who otherwise acquires one or more of the dental supply houses which the defendant owned on the date of this Final Judgment.

IV.

[*Divestiture*]

(A) Within two (2) years from the date of entry of this Final Judgment, defendant shall divest on terms and conditions reasonable under the circumstances of this proceeding, dental supply houses which in the aggregate accounted for fifty percent (50%) of defendant's total retail sales volume of dental products during 1966. If the aggregate sales of all such dental supply houses divested shall, on the basis of sales made during the calendar year immediately preceding such divestiture, have declined below their aggregate sales in 1966, such decrease shall be made up by divesting dental supply houses having sales necessary to reach the above-stated aggregate. Such divestiture shall be accomplished, if possible, so as to result in defendant not retaining any dental supply house in any local market in which any dental supply house divested hereunder shall be located.

(B) Prior to the closing of any sale hereunder, defendant shall furnish in writing to the Assistant Attorney General in charge of the Antitrust Division, complete details of the proposed transaction. Within thirty (30) days of the receipt of these details, the Assistant Attorney General may request supplementary information concerning the transaction which shall also be furnished in writing.

(C) If plaintiff objects to the proposed sale, it shall notify defendant in writing within thirty (30) days of receipt of the supplementary information submitted pursuant to plaintiff's last request for such information made pursuant to Section IV(B) of this Final Judgment or within thirty (30) days after the receipt of a statement from defendant, if applicable, that it does not have some or all of the requested supplementary information. If no request for supplementary information is made, said notice of objection shall be given within thirty (30) days of receipt of the originally submitted details concerning the transaction. In the event of such notice, the sale shall not be closed unless approved by the Court or unless plaintiff's objection is withdrawn.

(D) Following the entry of this Final Judgment, defendant shall submit written reports every two (2) months to the Assistant Attorney General in charge of the Antitrust Division describing the efforts made by it to divest the dental supply houses referred to in Section IV(A) of this Final Judgment.

(E) Nothing contained in Section IV of this Final Judgment shall prevent defendant from retaining a bona fide security interest in any dental supply house divested here under, and nothing contained herein shall be construed to prohibit repossession pursuant to such security interest. Any dental supply house so repossessed shall be divested by defendant within two (2) years from the date of repossession thereof to the extent necessary to meet the requirements of Section IV(A) of this Final Judgment and subject to the terms hereof.

V.

[*Future Acquisition*]

Defendant is enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from acquiring directly or indirectly without the consent of the Assistant Attorney General in charge of the Antitrust Division, any financial interest in, or any assets, business, good will, or capital stock of any person operating any dental supply houses, except that nothing herein shall prevent the defendant in the ordinary course of business from acquiring in good faith accounts receivable, notes or other commercial paper, inventory

previously purchased from the defendant or inventory which may be repossessed, or enforcing a bona fide obligation or lien. The provisions of this Section shall not apply to activities or operations outside of the United States.

VI.

[*Compliance*]

(A) For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognizable privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office, be permitted (1) reasonable access, during the office hours of defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant relating to any of the matters contained in this Final Judgment, and (2) subject to the reasonable convenience of defendant and without restraint or interference from defendant, to interview officers or employees of defendant, each of whom may have counsel present, regarding any, such matters.

(B) Defendant, upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be requested in connection with the enforcement of this Final Judgment. No information obtained by the means provided in this Section VI 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 to which the United States of America is a party for the purpose of determining and securing compliance with this Final Judgment or as otherwise required by law.

VII.

[*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 modification or termination of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.