

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Sybron Corp., U.S. District Court, E.D. Pennsylvania, 1971 Trade Cases ¶73,766, (Aug. 20, 1971)

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United States v. Sybron Corp.

1971 Trade Cases ¶73,766. U.S. District Court, E.D. Pennsylvania. Civil Action No. 41254. Filed August 20, 1971. Case No. 1919, Antitrust Division, Department of Justice.

Clayton Act

Mergers—Dental Products Producer and Retailer—Divestiture—Final Judgment— Under the terms of the final judgment rendered in a litigated U. S. antitrust suit against a dental products manufacturer's acquisition of a dental supply store chain (1971 TRADE CASES ¶ 73,633), the manufacturer, within three years from entry of the judgment, was required to divest all of the dental supply houses owned by it and its subsidiaries in the United States, to make reports describing its efforts to divest the dental supply houses, and to report details of any proposed divestiture sale for the purpose of securing government approval. The firm was prohibited, for a period of seven years from the completion of divestiture, from acquiring any dental supply house in the United States without prior approval of the government. The firm was also required to take measures, with respect to a divested company, to insure its viability as a competitor with other dental supply houses.

For plaintiff: Donald G. Balthis, Chief, Antitrust Div., Dept. of Justice, and Louis C. Bechtle, U. S. Atty., Philadelphia, Pa.

For defendant: Edwin P. Rome, Philadelphia, Pa.

Final Judgment

FULLAM, D. J.: Plaintiff, United States of America, having filed its complaint herein on September 30, 1966; and after full trial on all issues of liability; and the Court having rendered its opinion thereon, Now, Therefore, it is hereby Ordered, Adjudged and Decreed:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter hereof and of the parties hereto.

The effect of the April 30, 1965 merger of the Ritter Company, Inc. (predecessor to defendant Sybron Corporation) and M. F. Patterson Dental Supply Company of Delaware may be substantially to lessen competition in the dental equipment market in violation of Section 7 of the Act of Congress of October 15, 1964 (15 U. S. C § 18), commonly known as the Clayton Act, as amended.

II

[Definitions]

As used in this Final Judgment:

- (A) "Person" means any individual, partnership, firm, corporation, association, or other business or legal entity;
- (B) "Defendant" means the Sybron Corporation (formerly Ritter Pfaudler Corporation); a New York Corporation;
- (C) "Dental supply house" means a retail store at or from which the business of selling primarily dental products is conducted.

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 *pro*-visions of this Final Judgment shall not apply to any person who acquires any dental supply house divested pursuant to this Final Judgment.

IV

[*Divestiture*]

(A) Within three (3) years from the date of entry of this Final Judgment, defendant shall divest all of the dental supply houses owned by the defendant and its subsidiaries in the United States on such a basis as would permit them or any of them to be maintained as operating businesses in competition with other dental supply houses;

(B) Defendant shall make known the availability of the dental supply houses to be divested by the ordinary and usual means for sale of a business, and shall on an equal and non-discriminatory basis furnish to bona fide prospective purchasers all necessary information, including business records, regarding such houses, and shall permit such prospective purchasers to have access to and make such inspections as are reasonably necessary for the above purposes; provided, however, defendant shall not be obliged to provide such information, or to permit such access and inspections, to any person claiming to act as an agent or representative for any prospective purchaser who shall not have produced written authority to negotiate for the acquisition of some or all dental supply houses to be divested on behalf of such identified prospective purchaser;

(C) Following the entry of this Final Judgment, defendant shall submit written reports every three (3) 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, and setting forth the names and addresses of those persons expressing an interest in purchasing such houses, including any person whom, it does not believe to be a bona fide prospective purchaser and to whom it has denied information;

(D) Prior to the closing of any divestiture sale hereunder, defendant shall furnish in writing to the Assistant Attorney General in charge of the Antitrust Division, complete details of the proposed transaction. Plaintiff may, within thirty (30) days of the receipt of defendant's initial submission, request additional information, which shall also be furnished in writing. Said thirty (30) day period shall be tolled pending receipt by the Assistant Attorney General of the additional information requested;

(E) If plaintiff objects to the proposed divestiture, it shall notify defendant of such objection in writing within thirty (30) days of receipt of the supplementary information submitted pursuant to the last request for such information plaintiff made under Section IV(D). If no request for supplement any 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 objection, the divestiture sale shall not be closed unless approved by the Court or unless plaintiff's objection is withdrawn;

(F) Nothing contained in Section IV of this Final Judgment shall prevent defendant from retaining for a reasonable period a bona fide security interest in any dental supply house divested hereunder, 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, in accordance with the requirements of Section IV of this Final Judgment.

V

[*Acquisitions*]

Defendant is enjoined and restrained for a period commencing with the date of entry of this Final Judgment and terminating seven (7) years from the date of completion by defendant of the divestiture required by Section IV(A) of this Final Judgment from merging with or acquiring, directly or indirectly, any dental supply house, or any

financial interest in any such dental supply house, located within the United States without the prior approval of the plaintiff, 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.

VI

[*Relations with Divested Firms*]

(A) Defendant is ordered and directed to agree, upon the request of the purchaser, that for a period of eighteen (18) months from the date of the closing of any sale of a dental supply house pursuant to this Final Judgment, it will not, without purchaser's consent, employ salesmen or other personnel who on the date of the agreement of sale or at any time within three (3) months prior thereto, were employed at the divested dental supply house.

(B) Defendant is ordered and directed, for a period of three (3) years from the date of the closing of the sale of any dental supply house divested pursuant to this Final Judgment, to recognize the purchaser thereof as one of its authorized dealers at that divested dental supply house and to supply such purchasers with dental products on the same terms and conditions as it supplies other comparable dental supply houses.

(C) Defendant is ordered and directed to agree upon reasonable terms and conditions, if a purchaser of ten (10) or less dental supply houses divested pursuant to this Final Judgment so requests, that it will not open or establish a dental supply house in the sales area of the divested house for a reasonable period of time, not to exceed two years, from the date of the closing of the divestiture sale of such house.

VII

[*Inspection and Compliance*]

(A) For the purpose of determining or securing compliance with the 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 the 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. 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 Plaintiff, except in the course of legal proceedings to which the United States of America is a party for the purpose of determining or securing compliance with this Final Judgment or as otherwise required by law.

VIII

[*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.