

U. S. v. BATTERY SEPARATOR MFRS.' ASSN., ET AL.

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN
DIVISION.

July Term, 1941.

Civil Action No. 21940-R.

UNITED STATES OF AMERICA, PLAINTIFF

VS.

BATTERY SEPARATOR MANUFACTURERS' ASSOCIATION; AR-
ROW MILL CO; EVANS PRODUCTS CO.; PORT ORFORD
CEDAR COMPANY; SMITH WOOD PRODUCTS, INC.;
STANDARD BATTERY SEPARATOR COMPANY; WEST COAST
BATTERY SEPARATOR CO.; WESTERN BATTERY SEPARA-
TOR CO.; HARRY B. JAMESON; PAUL S. SPEYER; FRANK
L. FREEMAN; MAX D. TUCKER; RALPH SINGER;
GEORGE ULETT; ERNEST HARRINGTON; FRED W.
PAYNE; CHARLES KINNEAR; F. M. BINNION,
DEFENDANTS.

CONSENT DECREE.

The complainant, United States of America, having filed its complaint herein on August 11, 1941; all of the defendants having appeared generally and having waived service of process; all parties hereto by their respective attorneys herein having severally consented to the entry of this final decree herein without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of any such issue; and the complainant having moved the Court for this decree;

Now, therefore, before any testimony has been taken herein, 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:

1. That the Court has jurisdiction of the subject matter and of all the parties hereto; that the complaint

states a cause of action against the defendants under the Act of Congress of July 2, 1890, entitled, "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," and the acts amendatory thereof and supplemental thereto.

2. For the purpose of this decree, the term "battery separator" means a wooden slat used in the manufacture of batteries as a partition between positive and negative plates.

3. The defendants, their members, directors, officers, agents, and employees, their successors, and all persons acting under, through, or for defendants or their successors, or any of them, be and they hereby are perpetually enjoined and restrained from agreeing, combining, or conspiring among themselves or with any other individual, association, or corporation—

(a) to limit, curtail, or determine the amount of battery separators of any size or kind to be produced, manufactured, or sold during any indicated period of time;

(b) to promote or secure the limitation, curtailment, or other determination of the volume of production, manufacture, or sale of battery separators;

(c) to recommend a limitation of production or sale of battery separators or assign production, manufacture, or sales quotas to individual manufacturers or processors or groups of manufacturers or processors of battery separators;

(d) to formulate, promote, or participate in any plan for the allocation of business to individual manufacturers or groups of manufacturers of battery separators;

(e) to raise, lower, fix, establish, maintain, or stabilize the price of battery separators;

(f) to gather, compile, or disseminate information or statistics as to the volume of production or shipments by the members of the battery separator industry, the prices or mill realizations derived from actual prices which such products brought in past transactions, stocks on hand, orders on hand, cost of transportation, or

other information pertaining to the condition or operation of the industry, unless such information and statistics are readily, fully, and fairly available to the purchasing and distributing trade at the time of their initial dissemination and are in a form which is not forbidden by any other provision of this decree and which does not disclose to competitors invoices as to individual transactions or any data as to individual sales to named customers, or information as to the amount of production or shipments of battery separators by any individual manufacturer;

(g) to prevent, hinder, or discourage any individual, firm, or corporation from engaging in the business of manufacturing, processing, or distributing battery separators.

4. The defendants, their members, directors, officers, agents, and employees, their successors, and all persons acting under, through, or for defendants or their successors, or any of them, be, and they are, hereby individually and perpetually enjoined and restrained from engaging in any of the following specific acts and practices:

(a) Collecting, compiling, or utilizing data respecting production, manufacture, sales, orders, shipments, deliveries, or prices of manufacturers for the purpose of violating any of the provisions of paragraph 3 hereof.

(b) Distributing or disseminating any data collected or compiled respecting the production, manufacture, sales, orders, shipments, deliveries, or prices of manufacturers for the purpose of indicating whether manufacturers, or any of them, are cooperating in carrying out any of the activities prohibited by paragraph 3 hereof.

(c) Presenting or discussing at meetings or by correspondence, or otherwise, data relating to production, manufacture, sales, orders, shipments, deliveries, or prices for the purpose of cooperating in carrying out any of the activities prohibited by paragraph 3 hereof.

(d) Examining or auditing records or accounts of manufacturers relating to production, manufacture, sales,

orders, shipments, deliveries, or prices for the purpose of determining whether manufacturers, or any of them, are cooperating in carrying out any of the activities prohibited by paragraph 3 hereof.

(e) Sponsoring, calling, holding, or participating in any meeting or conference of competitors in the battery separator business held for the purpose of raising, lowering, fixing, establishing, maintaining, or stabilizing prices, price differentials, working charges, or amounts to be included in or deducted from the price charged for battery separators, or for the purpose of preventing, hindering, or discouraging any individual, firm, or corporation from engaging in the business of manufacturing, processing, or distributing battery separators.

(f) Exerting pressure by act, suggestion, or otherwise upon one or more competitors in the battery separator business to raise, lower, fix, establish, maintain, or stabilize production, prices, price differentials, working charges, terms and conditions of sale, or amounts to be included in or deducted from the price charged for battery separators, provided that this subparagraph shall not prohibit legitimate bargaining negotiations between a seller and a purchaser.

(g) Disclosing to competitors, directly or indirectly, invoices as to individual transactions or any data as to individual sales to named customers or information as to the amount of production or shipments of battery separators by any individual manufacturer, for the purpose of cooperating in carrying out any of the activities prohibited by paragraph 3 hereof.

(h) Paying money to or receiving money from competitors in the battery separator business for the purpose of carrying out any of the activities prohibited by paragraph 3 hereof.

5. This decree shall not prohibit any agreement or arrangement which is specifically authorized by any act of Congress.

6. Except as specifically provided in paragraph 4 of this decree, nothing contained herein shall be deemed to

affect relations which otherwise are lawful between a defendant, its officers, employees, or agents, or its subsidiaries, or between subsidiaries of a defendant.

7. For the purpose of securing compliance with this decree, authorized representatives of the Department of Justice, upon the written request of the Attorney General or an Assistant Attorney General, shall be permitted access, within the office hours of the defendants, and upon reasonable notice, to books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or the control of the defendants, or any of them, relating to any of the matters contained in this decree. Any authorized representative of the Department of Justice, subject to the reasonable convenience of the defendants, shall be permitted to interview officers or employees of defendants without interference, restraint, or limitation by defendants; provided, however, that any such officer or employee may have counsel present at such interview. Defendants, upon written request of the Attorney General or an Assistant Attorney General, shall submit such reports with respect to any of the matters contained in this decree as from time to time may be necessary for the purpose of enforcement of this decree; provided, however, that the information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings in which the United States is a party or as otherwise required by law.

8. Jurisdiction of this action is retained for the purpose of enabling any of the parties to this decree to apply to the Court at any time for such further orders or directions as may be necessary or appropriate in relation to the construction of or carrying out of this decree, for the modification thereof (including, without limitation, any modification or vacation of this decree upon application of said defendants, or any of them, required in

order to conform this decree to any act of Congress enacted after the date of entry of this decree), and for the enforcement of compliance therewith and the punishment of violations thereof.

Dated at San Francisco, California, this 11th day of August, 1941.

(S) MARTIN I. WELSH,
United States District Judge.