

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. United Scientific Co., Inc., U.S. District Court, N.D. California, 1973-2 Trade Cases ¶74,776, (Dec. 11, 1973)

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United States v. United Scientific Co., Inc.

1973-2 Trade Cases ¶74,776. U.S. District Court, N.D. California. Civil No. C-73-0299 ACW. Entered December 11, 1973. Case No. 2311, Antitrust Division, Department of Justice.

Sherman Act

Resale Price Fixing—Customers and Territories—Bids to Educational Institutions—Suggested Prices—Fair Trade Rights—Microscopes—Consent Decree.—A microscope manufacturer was prohibited by a consent decree from suggesting, urging or requiring any dealer: (1) to adopt or adhere to any fixed, suggested or specified price, discount or markup in the sale of microscopes; (2) to modify or withdraw its bid to any educational institution or other public agency because of the price or discount at which the dealer bid microscopes; and (3) to establish, adopt or adhere to any limit on the classes of customers to whom, or the territory in which such dealer may bid or sell microscopes. Additionally, the decree prohibits the firm from terminating or threatening to terminate, discontinuing or limiting the sale of microscopes to, or otherwise penalizing any dealer because of the prices at which or the persons to whom the dealer sells or offers to sell, or the territories in which the dealer operates. The decree, as with [1973-2 TRADE CASES ¶ 74,762](#), does not prohibit suggestions of prices markups or profit margins provided that the page containing such a suggestion (or the first page of a multipage document) containing the suggestion includes a statement that each dealer is free to sell at whatever prices, markups or margins of profit he may choose. Also, the decree does not prevent the defendant from availing itself of rights it may have under the Miller-Tydings Act and the McGuire Act.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, Anthony E. Desmond, Gary R. Spratling and Robert J. Ludwig, Attys., Dept. of Justice.

For defendant: David R. Harrison, of Long & Levit, San Francisco, Cal.

Final Judgment

WOLLENBERG, D. J.: Plaintiff, United States of America, having filed its complaint herein on February 26, 1973; defendant, United Scientific Co., Inc., having appeared by its counsel; and plaintiff and defendant, by their respective attorneys, each having 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 consenting hereto with respect to any such issue,

Now, Therefore, before any testimony or evidence has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto,

It is hereby Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

The Court has jurisdiction of the subject matter hereof and the parties hereto. The complaint states a claim upon which relief may be granted against defendant under Section 1 of the Act of Congress of July 2, 1890 (as amended), commonly known as the Sherman Act (15 U. S. C. § 1).

II

[*Definitions*]

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As used in this Final Judgment:

- (a) "Person" shall mean any individual, partnership, firm, corporation or other business or legal entity;
- (b) "United" shall mean the defendant United Scientific Co., Inc.;
- (c) "Dealer" shall mean a person engaged in the purchase of microscopes from United for resale; and
- (d) "Microscopes" shall mean microscopes and microscope parts and accessories, including lenses.

III

[*Applicability*]

The provisions of this Final Judgment applicable to United shall also apply to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and all persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall apply to sales of defendant's microscopes in the United States.

IV

[*Prices, Territories, Customers*]

United is enjoined and restrained from entering into, adhering to, maintaining, enforcing, or claiming, directly or indirectly, any rights under any contract, agreement, combination, understanding, plan or program with any dealer to:

- (A) Fix, establish, maintain or adhere to prices or discounts at which microscopes are bid, sold, offered for sale, or advertised by any such dealer; and
- (B) Limit or restrict the sales territories within which, or the persons to whom dealers may bid, sell, offer for sale or advertise microscopes.

V

United is enjoined and restrained from:

- (A) Suggesting, urging, compelling or requiring any dealer to establish, maintain, adopt, advertise or adhere to any fixed, suggested or specified price, discount, markup or margin of profit in the sale of microscopes;
- (B) Encouraging the report of, or taking action in response to any complaint by dealers regarding bidding or selling at discounted prices in connection with the sale of United microscopes by any other dealer;
- (C) Suggesting, urging, compelling or requiring any dealer to establish, maintain, adopt, adhere to or enforce adherence to any limit on the classes of customers to whom, or the territory in which, such dealer may bid, sell, offer to sell or advertise microscopes;
- (D) Suggesting, urging, compelling or requiring any dealer to modify or withdraw its bid to any educational institution or other public agency because of the price or discount at which said dealer bid microscopes;
- (E) Terminating or threatening to terminate the dealer sales agreement of any dealer because of the prices at which, the persons or classes of persons to whom, or the markets or territories in which such dealer has bid, sold or offered to sell United microscopes; and
- (F) Discontinuing, curtailing or limiting the sale of microscopes to, or otherwise penalizing any dealer because of the prices at which, the persons or classes of persons to whom, or the markets or territories in which such dealer has bid, sold or offered to sell United microscopes.

VI

[*Suggested Prices; Fair Trade*]

(A) Nothing in this Final Judgment shall prohibit United from unilaterally suggesting retail prices, markups or margin of profit to dealers for the sale of microscopes; provided, however, that the page (or the first page of a multipage document) containing such a suggestion shall include a statement that each dealer is free to sell at whatever prices, markups or margins of profit he may choose.

(B) Nothing in this Final Judgment shall be deemed to prohibit United from availing itself of rights it may have under the Miller-Tydings Act and the McGuire Act.

VII

[*Contracts*]

(A) United is ordered and directed, within ninety (90) days after the date of entry of this Final Judgment, to revise any portion of its contracts and agreements with dealers which are inconsistent with any provision of this Final Judgment.

(B) United is ordered and directed, within ninety (90) days after entry of this Final Judgment, to notify each such dealer in writing, in a form acceptable to plaintiff, that he may sell United products at such prices as, and to whatever customers and wherever he may please.

(C) United is ordered and directed, for a period of ten (10) years after entry of this Final Judgment, to deliver to each new dealer with whom United commences business relations a notice in writing in the same form as that approved for use pursuant to subsection VII(B) above within thirty (30) days after commencing such business relations.

(D) United is ordered and directed, within ninety (90) days after the entry of this Final Judgment, to serve a copy of this Final Judgment upon each of United's officers, directors and each of its employees or representatives who has responsibility for the sale of United products, and to advise each such person that violation by him of this Final Judgment could result in a conviction for contempt of court and could subject him to imprisonment and/or fine.

(E) United is ordered and directed, for a period of ten (10) years after entry of this Final Judgment, to serve a copy of this Final Judgment upon each successor to those officers, directors and supervisory employees of United described in subsection (D) of this section VII, within thirty (30) days after each successor is employed by or becomes associated with United.

(F) United is ordered and directed, within one hundred and twenty (120) days after the entry of this Final Judgment to serve upon plaintiff affidavits concerning the fact and manner of compliance with subsections (B) and (D) of this section VII

VIII

[*Reports*]

For a period of ten (10) years from the date of the entry of this Final Judgment, United is ordered to file with the plaintiff, on each anniversary date of such entry, a report setting forth the steps which United has taken during the prior year to advise United's appropriate officers, directors and employees of their obligation under this Final Judgment. Such report shall further contain the name and address of any dealer whose dealership was terminated by United and state the reasons for such termination.

IX

[*Inspection and Compliance*]

(A) For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to the defendant made to its principal office, be permitted:

(1) Access, during the office hours of the defendant, and in the presence of counsel if the defendant chooses, 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 the defendant and without restraint or interference from it, to interview the officers and employees of the defendant, who may have counsel present, regarding any such matters;

(B) Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal offices, the defendant shall submit such reports in writing, to the Department of Justice with respect to any of the matters contained in this Final Judgment as from time to time may be requested;

(C) No information obtained by the means provided in this Section IX 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 is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

X

[*Retention of Jurisdiction*]

Jurisdiction is retained for the purpose of enabling either 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 of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.