

## **Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. R. P. Oldham Company, et al., U.S. District Court, N.D. California, 1958 Trade Cases ¶69,143, (Sept. 17, 1958)**

United States v. R. P. Oldham Company, et al.

1958 Trade Cases ¶69,143. U.S. District Court, N.D. California, Southern Division. Civil No. 36385. Filed September 17, 1958. Case No. 1338 in the Antitrust Division of the Department of Justice.

### **Sherman Antitrust Act**

**Combinations and Conspiracies—Consent Decree—Practices Enjoined—Export and Import Control—Allocation of Markets and Customers.**—An exporter of Japanese wire nails to the United States was prohibited by a consent decree from entering into any agreement with any person to (1) allocate sales territories in the United States among importers or among Japanese exporters with respect to Japanese wire nails or (2) determine or fix the amount of Japanese wire nails to be sold in the United States or in any sales territory in the United States.

**Combinations and Conspiracies—Consent Decree—Practices Enjoined—Export and Import Control—Discriminations—Refusal to Sell.**—An exporter of Japanese wire nails to the United States was prohibited by a consent decree from entering into any agreement with any person to restrict or prevent any person in the United States from buying or selling Japanese wire nails. The exporter was also enjoined from (1) urging or suggesting that any Japanese rod-maker, nail-maker, or exporter refuse to sell wire rods or wire nails to any person in the United States, (2) purchasing from any Japanese exporter except when it was represented that such exporter was selling to all United States importers without discrimination, (3) purchasing from any Japanese exporter with the knowledge that the nails were not being sold to all United States importers without discrimination, (4) refusing to sell Japanese wire nails, to the extent that they were available, to any United States importer who was financially able to purchase such nails, in pursuance of any agreement to exclude any United States importer from dealing in Japanese wire nails, and (5) discriminating in the sale or in the terms and conditions of sale among importers.

**Combinations and Conspiracies—Consent Decree—Practices Enjoined—Export and Import Control—Price Fixing.**—An exporter of Japanese wire nails to the United States was prohibited by a consent decree from entering into any agreement with any other person to fix, establish, or stabilize prices at which importers bought or sold Japanese wire nails in the United States and from entering into any agreement or common course of action with any importer to fix prices at which importers bought Japanese wire nails from Japanese exporters, rod-makers or nail-makers.

**Combinations and Conspiracies—Consent Decree—Practices Enjoined—Export and Import Control—Exclusive Dealing.**—An exporter of Japanese wire nails to the United States was prohibited by a consent decree from entering into any agreement with any other person to select or determine what persons in the United States should be permitted to buy Japanese wire nails. The exporter was also enjoined from accepting any exclusive or semi-exclusive arrangement for the purchase or sale of Japanese wire nails and from communicating with any importer for the purpose of determining what persons should not be allowed to buy Japanese wire nails for sale and distribution in the United States.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; and William D. Kilgore, Jr., Baddia J. Rashid, Lyle L. Jones, Jr., Marquis L. Smith and Gerald F. McLaughlin.

For the defendant: Irvin Goldstein, San Francisco, Calif.

### **Final Judgment as to Defendant Ataka New York, Inc.**

[ *Consent Decree* ]

ALBERT E. WOLLENBERG, District Judge [ *In full text* ] : The plaintiff, United States of America, having filed its complaint herein on April 25, 1957, and the defendant Ataka New York, Inc., having appeared and filed its

answer to such complaint denying the substantive allegations thereof; the parties signatory hereto through their respective attorneys having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law therein, and without any admission by any such party with respect to any such issue;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon the consent of such parties, 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 signatory hereto. The complaint states claims for relief against the defendant Ataka New York, Inc., 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, and under Section 73 of the Act of Congress of August 27, 1894, entitled "An Act To reduce taxation, to provide revenue for the Government and for other purposes," commonly known as the Wilson Tariff Act, as amended.

## II

### [ Definitions]

As used herein:

(A) "Japanese wire nails" means bright common nails, bright smooth box nails, bright casing nails, and bright finishing nails manufactured in Japan by Japanese nail-makers;

(B) "Person" means an individual, partnership, firm, association, corporation, or any other legal entity;

(C) "Importer" means a person engaged in the business of purchasing or acquiring nails from Japanese nail-makers or Japanese exporters for resale to wholesalers located on the West Coast of the United States; a Japanese exporter who sells nails in the United States directly to wholesalers is an importer with respect to such sales;

(D) "Japanese exporter" means a person and its agents, subsidiaries or affiliates in the United States who arrange for the export of Japanese wire nails to importers in the United States;

(E) "Japanese rod-maker" means a steel mill located in Japan which manufactures wire rod from which Japanese wire nails are made;

(F) "Japanese nail-maker" means a nail manufacturer located in Japan which manufactures wire nails from wire rod purchased from Japanese rod-makers.

## III

### [ Applicability]

The provisions of this Final Judgment applicable to the defendant Ataka New York, Inc., shall apply as well to its successors, assigns, affiliates, subsidiaries, officers, directors, servants, employees and agents, and to all persons in active concert or participation with defendant Ataka New York, Inc., who receive actual notice of this Final Judgment by personal service or otherwise.

## IV

### [ Export and Import Control]

Defendant Ataka New York, Inc., is enjoined and restrained from, directly or indirectly, entering into, adhering to, maintaining, furthering or claiming any rights under, any agreement, understanding, plan, program or common course of action with any other person:

- (A) To select or determine what persons in the United States should be permitted to buy Japanese wire nails;
- (B) To hinder, restrict, limit or prevent any person in the United States from buying or selling Japanese wire nails;
- (C) To allocate sales territories in the United States among importers or among Japanese exporters with respect to Japanese wire nails;
- (D) To fix, establish or stabilize prices at which importers buy or sell Japanese wire nails in the United States;
- (E) To determine or fix the amount of Japanese wire nails to be sold in the United States or in any sales territory in the United States.

As used in this Section IV, "any other person" does not include Ataka & Co., Ltd., Osaka and Tokyo, Japan, during such time as defendant Ataka New York, Inc., is owned by or under the effective control of said Ataka & Co., Ltd., or during such time as both of said companies are under the same ownership or effective control.

## V

### [ Exclusive Dealing]

Defendant Ataka New York, Inc., is enjoined and restrained from:

- (A) Urging or suggesting, directly or indirectly, to any Japanese rod-maker, Japanese nail-maker or Japanese exporter, other than Ataka & Co., Ltd., that such rod-maker, nail-maker or exporter refuse to sell wire rods or wire nails to any person or group of persons in the United States;
- (B) Accepting any exclusive or semi-exclusive agency or other exclusive or semi-exclusive arrangement for the purchase or sale of Japanese wire nails, other than from Ataka & Co., Ltd.;
- (C) Purchasing Japanese wire nails from any Japanese exporter, other than Ataka & Co., Ltd., except when such exporter represents that he is offering and selling Japanese wire nails without discrimination to all United States importers doing business on the West Coast;
- (D) Purchasing Japanese wire nails from any Japanese exporter, other than Ataka & Co., Ltd., when defendant Ataka New York, Inc., has knowledge that such nails are not being offered and sold by said exporter without discrimination to all United States importers doing business on the West Coast;
- (E) Entering into, adhering to, maintaining or furthering, directly or indirectly, any agreement, understanding, plan, program or common course of action with any other importer to fix, establish or stabilize prices at which importers purchase Japanese wire nails from Japanese exporters, Japanese rod-makers or Japanese nail-makers.

## VI

Defendant Ataka New York, Inc., is enjoined and restrained from:

- (A) Refusing to sell Japanese wire nails, to the extent that they are available, to any United States importer financially able to purchase such nails, pursuant to any plan, agreement, understanding, program or common course of action to exclude any United States importer from dealing in Japanese wire nails;
- (B) Discriminating in the sale or in the terms and conditions of sale of Japanese wire nails among importers;
- (C) Communicating, directly or indirectly, with any importer for the purpose of determining what other persons should or should not be allowed to buy Japanese wire nails for sale and distribution in the United States.

## VII

### [ Inspection and Compliance]

For the purpose of securing compliance with this Final Judgment, 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 defendant Ataka New York, Inc., made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during 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 matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of defendant and without restraint or interference from defendant, to interview officers or employees of defendant, who may have counsel present, regarding any such matters.

Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, 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 permitted 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 Department of Justice except in the course of legal proceedings in which the United States is a party for the purpose of 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 amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.