

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Hunter Douglas Corporation., U.S. District Court, S.D. California, 1954 Trade Cases ¶67,802, (Jun. 30, 1954)

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United States v. Hunter Douglas Corporation.

1954 Trade Cases ¶67,802. U.S. District Court, S.D. California, Central Division. Civil Action No. 13236-PH. Filed June 30, 1954. Case No. 1107 in the Antitrust Division of the Department of Justice.

## Sherman Antitrust Act and Clayton Antitrust Act

**Consent Decree—Practices Enjoined—Exclusive Purchases—Refusal to Deal.**—A manufacturer of Venetian blinds and parts thereof was enjoined by a consent decree from selling or making available any component part of a Venetian blind on condition (1) that the purchaser should not use such part with a part made or sold by anyone other than the defendant, (2) that the purchaser would refrain from buying, using, or selling any component part not made or sold by the defendant, (3) that the buyer would use such component part only with parts made or sold by the defendant, (4) that the purchaser would not resell the component part, (5) that the purchaser would buy any other part made or sold by the defendant, and (6) that the purchaser would use the part only in connection with Venetian blinds. The decree further prohibited the sale of a part on condition that the purchaser would acquire from the defendant any amount of other parts. Other provisions prohibited the refusal to sell parts because the purchaser had not or would not purchase other parts, or because the purchaser had refused to enter into any contract contrary to the provisions of the consent decree.

**Consent Decree—Specific Relief—Licensing Provisions.**—A manufacturer of Venetian blinds and the parts thereof was required by a consent decree to grant, upon written request, nonexclusive licenses to make, use, and vend plastic tape under the claims of a certain United States patent except that the licenses could be made nontransferable, a reasonable royalty might be charged, inspection of a licensee's books and records might be made, and provision might be made for license cancellation upon failure of the licensee to make royalty payments or to permit inspection of its records. A licensee would be permitted to cancel the license at any time after one year from its initial date upon 30 days' notice in writing to the licensor. Provisions of the decree provided for fixing a reasonable royalty rate.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General, William D. Kilgore Jr., Marcus A. Hollabaugh, James M. McGrath, Draper W. Phillips and Vincent A. Gorman.

For the defendant: O'Melveny & Myers, by Pierce Works.

## Final Judgment

PIERSON M. HALL, District Judge [ *In Full text*]: The plaintiff, the United States of America, having filed its complaint herein on June 29, 1951, and the parties hereto, by their respective attorneys having appeared and consented to the entry of this Final Judgment, without trial and without adjudication of any issue of fact or law herein, and without this Final Judgment constituting any admission or adjudication in respect to any such issue; Now, therefore, before the taking of any testimony has been commenced and without adjudication of any issue of fact or law herein, and upon the consent as aforesaid of the parties hereto, and not upon evidence; it is hereby ordered, adjudged and decreed:

I

[ *Jurisdiction*]

That this Court has jurisdiction of the subject matter herein and of all parties hereto. The complaint states a cause of action against the defendant under sections 1 and 2 of the Act of Congress of July 2, 1890 (26 Stat.

209, as amended) commonly known as the Sherman Act, and under section 3 of the Act of Congress of October 15, 1914 (38 Stat. 731) commonly known as the Clayton Act.

## II

### [ *Definitions*]

As used in this Final Judgment:

(A) "Plastic tape" means a tape of plastic material in which slats of a Venetian blind are suspended from the head rail of such blind.

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

(C) "Venetian blind" means a window covering which has numerous thin parallel aluminum, steel or wood slats, usually placed horizontally one above the other. Normally, the slats are suspended by cloth or plastic tape from a head rail and are capable of being raised or lowered, and the slats may be set horizontally at any desirable angle to permit varying amounts of light or air.

(D) "Component part" means any part of a Venetian blind including, but not limited to, plastic tape, aluminum coil stock, aluminum slat stock, hardware, head rails; and bottom rails.

## III

### [ *Applicability*]

The provisions of this Final Judgment applicable to defendant shall apply to defendant, its officers, directors, agents, representatives, employees, successors, assignees and subsidiaries, and to all other persons acting or claiming to act on behalf of it or them.

## IV

### [ *Practices Enjoined*]

Defendant is enjoined and restrained from :

(A) Offering for sale, selling, making or adhering to a contract for the sale of, or otherwise making available, any component part of a Venetian blind, on or accompanied by any condition, agreement or understanding:

(1) that the purchaser or recipient thereof shall not use such component part with any other component part made or sold by anyone other than defendant;

(2) that the purchaser or recipient thereof shall refrain from purchasing, using, acquiring or selling any component part not made or sold by defendant;

(3) that the purchaser or recipient thereof shall use such component part only with any other component part made or sold by defendant;

(4) that the purchaser or recipient thereof shall not resell such component part;

(5) that the purchaser or recipient thereof shall purchase any other component part made or sold by defendant;  
or

(6) that the purchaser or recipient thereof shall use such component part only in connection with the assembly of a Venetian blind.

(B) Offering for sale, selling, making or adhering to a contract for the sale of, or otherwise making available, any component part on or accompanied by any condition, agreement or understanding that the purchaser or recipient thereof shall acquire from defendant any amount of any other component part made or sold by defendant.

(C) Refusing to sell or otherwise make available any component part to any person:

(1) because such person has not purchased or is not purchasing any other component part made or sold by defendant, or

(2) because such person refuses or has refused to enter into or to adhere to any condition, agreement or understanding contrary to any of the provisions of subsections (A) and (B) of this Section IV,

Nothing in this Final Judgment shall be construed as denying to the defendant any rights it may have under law with regard to the licensing or use by any person of any trade-mark owned or controlled by defendant; nor shall this Section IV be construed to prevent, without more, the sale by defendant of any two or more component parts, patented or otherwise, when voluntarily ordered or purchased by the purchaser or recipient thereof.

## V

### [ *Licensing Provisions* ]

(A) Defendant is ordered and directed to grant to each applicant making written request therefor, a non-exclusive and unrestricted license to make, use and vend plastic tape under any, some or all of the claims of United States Patent 2,405,579, subject to the following conditions:

(B) Defendant is enjoined and restrained from:

(1) Including any restriction or condition whatsoever in any license or sub-license, as the case may be, granted by it pursuant to the provisions of section V hereof, except that (a) the license may be made nontransferable; (b) a reasonable nondiscriminatory royalty may be charged; (c) reasonable provisions may be made for periodic inspection of the books and records of the licensee by an independent auditor or any person acceptable to the licensee who shall report to the licensor only the amount of the royalty due and payable; (d) reasonable provision may be made for cancellation of the license upon failure of the licensee to pay the royalty or to permit the inspection of its books and records as hereinabove provided; (e) the license shall provide that the licensee may cancel the license at any time after one year from the initial date thereof by giving 30 days notice in writing to the licensor;

(2) Upon receipt of a written request for a license or sublicense, as the case may be, under the provisions of this section V, defendant shall advise the applicant in writing of the royalty which it deems reasonable for the patent. If the parties are unable to agree upon a reasonable royalty within 60 days from the date such request for the license was received by such defendant, the applicant therefor may forthwith apply to this Court for the determination of a reasonable royalty, and the defendant shall, upon receipt of notice of the filing of such application, promptly give notice thereof to the Attorney General. In any such proceeding the burden of proof shall be on the defendant to establish the reasonableness of the royalty requested, and the reasonable royalty rates, if any, determined by this Court shall apply to the applicant and all other licensees under the patent. Pending the completion of negotiations or any such proceeding, the applicant shall have the right to make, use and vend under the patent without payment of royalty or other compensation as above provided, but subject to the provisions of paragraph (3) of this subsection V(B).

(3) Where the applicant has the right to make, use and vend under the patent pursuant to paragraph (2) of this subsection V (B), said applicant or the defendant may apply to this Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty. If this Court fixes such interim royalty rate, the defendant shall then issue and the applicant shall accept a license or, as the case may be, a sublicense, providing for the periodic payment of royalties at such interim rate from the date of the filing of such application by the applicant. If the applicant fails to accept such license or fails to pay the interim royalty in accordance therewith, such action shall be ground for the dismissal of his application, and his rights under paragraph (2) of this subsection V(B) shall terminate. Where an interim license or sub-license has been issued pursuant to this subsection, reasonable royalty rates, if any, as finally determined by this Court shall be retroactive for the applicant and all other licensees under the patent to the date the applicant filed his application with this Court;

(4) Nothing herein shall prevent any applicant from attacking in the aforesaid proceedings the validity or scope of said patent 2,405,579 nor shall this Final Judgment be construed as importing any validity or value to said patent.

(C) Defendant is enjoined and restrained from making any assignment, sale or other disposition of the patent referred to in Section V of this Final Judgment which would deprive it of the power or authority to grant the license referred to in said section.

## VI

### [ *Enforcement* ]

The defendant is ordered and directed to:

(A) Take such steps as may be necessary and within its power, to assure that Hunter Douglas Corporation, a corporation, organized and existing under and by virtue of the laws of the State of New York, takes no action inconsistent with the terms of this Final Judgment as respects any Venetian blind or component part manufactured, sold or distributed by said defendant.

(B) Give written notice, in such form as may be approved by the plaintiff, of the terms of Section IV of this Final Judgment to all persons who have purchased or who have attempted to purchase plastic tape from the defendant during the period from 1949 to date of entry of this Final Judgment.

## VII

### [ *Inspection and Compliance* ]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and upon written notice to defendant at its principal office, be permitted, subject to any legally recognized privilege:

(A) Access during the office hours of the 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;

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

For the purpose of securing compliance with this Final Judgment defendant upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division addressed to its principal offices, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment.

No information obtained by the means provided in this section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, 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.

## VIII

### [ *Retention of Jurisdiction* ]

Jurisdiction of this cause is retained for the purpose of enabling either plaintiff or defendant to apply to the 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 or for the modification of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.