Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. White Cap Company., U.S. District Court, N.D. Illinois, 1948-1949 Trade Cases ¶62,268, (Jun. 17, 1948)

United States v. White Cap Company.

1948-1949 Trade Cases ¶62,268. U.S. District Court, N.D. Illinois, Eastern Division. Civil Action No. 46C 861. June 17, 1948.

Sherman Antitrust Act, Clayton Antitrust Act

Consent Judgment—Sale or Lease of Machinery—Patent Licensing—A consent judgment entered in an action charging violations of the antitrust laws by a manufacturer of closures for glass jars and containers and of sealing machinery, enjoins the defendant from leasing or selling sealing machinery on condition that the lessee or purchaser purchase closures only from defendant, and in specified quantities; conditioning the availability of sealing machinery or parts thereof upon the procurement of closures from defendant or any other designated source; removing sealing machinery from the premises of any lessee thereof because such lessee uses closures or machinery manufactured or sold by any person other than the defendant; altering or changing sealing machinery in such a manner as to prevent the use therein of closures manufactured or sold by others, unless such alteration improves the operation efficiency of the machine; altering or changing closures in such a manner as to prevent the use in connection therewith of sealing machinery manufactured or sold by others, unless the change results in more efficient operation; conditioning any license or immunity to practice any invention relating to sealing machinery or closures by the tying of any such license or immunity to the purchase or procurement of machinery or closures from defendant or any other designated source ; and instituting or maintaining any suit for royalties alleged to have accrued prior to the date of this judgment under any existing machine patent as herein defined. Defendant is ordered and directed to grant to each applicant therefor a non-exclusive license to make, use and vend machines under all existing machine patents as herein defined.

For plaintiff: Herbert A. Bergson, Acting Assistant Attorney General; Sigmund Timberg, Rohert A. Nitschke, Special Assistants to the Attorney General.

For defendant:

Final Judgment

The plaintiff, United States of America, having filed its complaint herein on May 14, 1946; defendant, White Cap Company, a corporation, having appeared and filed its answer to said complaint denying the substantive allegations thereof and asserting its innocence of any violation of law; and the plaintiff and said defendant by their respective attorneys having consented to the entry of this final judgment herein without trial or adjudication of any issue of fact or law herein;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and without any admission by any party in respect to any such issue and upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED, as follows:

[*Jurisdiction; Cause of Action*]

I.

This court has jurisdiction of the subject matter of this action and of the parties to this judgment; the complaint states a cause of action against defendant, White Cap Company, under Sections 1 and 2 of the Act of Congress of July 2, 1890, as amended, entitled “An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies,” said Act being commonly known as the “Sherman Act” and under Section 3 of the Act of Congress

of October 15, 1914, as amended, entitled “An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for Other Purposes,” said Act being commonly known as the “Clayton Act.”

[*Terms Defined*]

II.

When used in this final judgment, the following terms have the meanings assigned respectively to them below:

(a) “White Cap” means the defendant, White Cap Company, a corporation organized and existing under the laws of the State of Delaware, having its principal office at Chicago, Illinois.

(b) “Closures” means caps for glass jars and containers suitable for vacuum packing.

(c) “Sealing Machinery” means machinery and accessories suitable for applying closures to glass jars and containers for vacuum packing.

(d) “Existing machine patents” means all presently issued United States letters patent, applications for letters patent, and patents on such applications, owned or controlled by defendant, White Cap Company, or under which it has power to issue licenses or sub-licenses, relating to sealing machinery, consisting of the following numbered United States patents:

1,801,062	2,132,335
1,875,789	2,158,675
1,920,539	2,169,973
1,931,911	2,173,602
2,041,891	2,319,213
2,057,464	2,319,214
2,076,052	2,337,032
2,103,051	2,337,033
2,107,237	2,347,668
	2,361,948

and the following numbered applications for United States patents:—

769,624	544,305
483,568	

and renewals, reissues, divisions and extensions thereof.

[*Applicability of judgment*]

III.

The provisions of this judgment applicable to defendant, White Cap Company, shall apply to each of its subsidiaries, successors, and assigns, and to each of its officers, directors, agents, nominees, employees, or any other person acting under, through or for such defendant.

[*Acts Enjoined*]

IV.

Defendant White Cap is hereby enjoined and restrained from:

A. Leasing, selling, or making or adhering to any contract for the sale or lease of, sealing machinery, whether patented or unpatented, or fixing a price charged therefor or discount from or rebate upon such price, on or accompanied by any condition, agreement, or understanding:

(1) That the lessee or purchaser thereof shall not purchase for use in connection with said machinery closures made or sold by any one other than the defendant; or

(2) That the lessee or purchaser shall purchase from the defendant a specified volume, quota, percentage or value of closures.

B. Selling, making or adhering to a contract for the sale of, or otherwise making available closures, whether patented or unpatented, or fixing a price charged therefor or discount from or rebate upon such price, on or accompanied by, any condition, agreement, or understanding;

(1) That the purchaser or recipient thereof shall not use said closures in connection with sealing machinery made or sold by any one other than the defendant; or

(2) That the purchaser or recipient thereof shall use such closures, or any specified volume, quota, percentage or value thereof, in sealing machinery made or sold by the defendant.

C. Entering into, adopting, adhering to, or furthering any agreement or course of conduct for the purpose of, or which in effect constitutes, the leasing, selling, or making or adhering to a contract contrary to the provisions of sub-paragraphs A and B above.

D. Conditioning the availability of sealing machinery or parts or repairs thereof upon the procurement of closures from the defendant White Cap Company or any other designated source, or the availability of closures or services in connection there with upon the procurement of sealing machinery from the defendant White Cap Company or any other designated source.

E. Removing sealing machinery from the premises of any lessee thereof because such lessee purchases, uses, or deals in closures or sealing machinery manufactured or sold by any person other than the defendant.

F. Altering or changing sealing machinery or utilizing patents on such alterations or changes, in such a manner as to prevent the use therein of closures manufactured or sold by anyone other than the defendant, provided, however, that this subsection F shall not apply if the alteration or change improves the operation or efficiency of the machine in applying any closure made by the defendant.

G. Altering or changing closures, or utilizing patents on such alterations or changes, in such a manner as to prevent the use in connection therewith of sealing machinery manufactured or sold by any one other than the defendant, provided, however, that this subsection G shall not apply if the alteration or change results in more efficient operation.

H. Conditioning any license or immunity, expressed or implied, to practice any invention related to sealing machinery or to closures claimed in any United States patent by the tying of any license or immunity for such invention to the purchase or procurement of machinery, closures, or any similar product or article from the defendant White Cap Company or any other designated source.

I. Instituting or threatening to institute or maintaining any suit, counter-claim or proceeding, judicial or administrative, for infringement, or to collect charges, damages, compensation or royalties, alleged to have occurred or accrued prior to the date of this judgment under any existing machine patent, as defined in Section II(d) of this judgment.

[*Licensing Required*]

V.

A. Defendant White Cap is hereby ordered and directed to grant to each applicant therefor a non-exclusive license to make, use, and vend under any, some, or all existing machine patents as herein de fined, and is hereby enjoined and restrained from making any sale or other disposition of any of said patents which deprives it of the power or authority to grant such licenses, unless it sells, transfers or assigns such patents and requires, as a condition of such sale, transfer or assignment, that the purchaser, transferee or assignee shall ob serve the requirements of Sections IV and V of this judgment and the purchaser, transferee or assignee shall file with this Court, prior to consummation of said trans action, an undertaking to be bound by the provisions of said Sections IV and V of this judgment.

B. Defendant White Cap is hereby en joined and restrained from including any restriction or condition whatsoever in any license or sub license granted by it pursuant to the provisions of this section except that (1) the license may be non-transferable; (2) a reasonable nondiscriminatory royalty may be charged; (3) reasonable provision may be made for periodic inspection of the books and records of the licensee, by an independent

auditor or any person accept able to the licensee, who shall report to the licensor only the amount of the royalty due and payable; (4) reasonable provision may be made for cancellation of the license upon failure of the licensee to pay the royalties or to permit the inspection of his books and records as hereinabove provided; (5) the license must provide that the licensee may cancel the license at any time after one year from the initial date thereof by giving thirty days' notice in writing to the licensor.

C. Upon receipt of written request for a license under the provisions of this section, defendant White Cap shall advise the applicant in writing of the royalty which it deems reasonable for the patent or patents to which the request pertains. If the parties are unable to agree upon a reason able royalty within sixty (60) days from the date such request for the license was received by White Cap, the applicant therefor may forthwith apply to this Court for the determination of a reasonable royalty, and White Cap 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 White Cap to establish the reasonableness of the royalty requested by it, and the reasonable royalty rates, if any, determined by the Court shall apply to the applicant and all other licensees under the same patent or patents. Pending the completion of negotiations or any such proceeding, the applicant shall have the right to make, use and vend under the patents to which his application pertains without payment of royalty or other compensation, but subject to the provisions of subsection D of this section.

D. Where the applicant has the right to make, use, and vend under subsection C of this section, defendant White Cap may apply to the Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty, if any. If the Court fixes such interim royalty rate, White Cap 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. Where an interim license or sublicense has been issued pursuant to this subsection, reason able royalty rates, if any, as finally deter mined by the Court shall be retroactive for the applicant and all other licensees under the same patents to the date the applicant files his application with the Court.

E. Nothing herein shall prevent any applicant from attacking, in the aforesaid proceedings or in any other controversy, the validity or scope of any of the patents nor shall this judgment be construed as importing any validity or value to any of said patents.

[*Laws Applicable*]

VI.

Nothing in this judgment shall prevent defendant, White Cap, from availing itself of the benefits of (A) the Act of Congress of April 10, 1918, commonly called the Webb-Pomerene Act, (B) the Act of Congress of 1937, commonly called the Miller-Tydings proviso to Section 1 of the Act of Congress of July 2, 1890, entitled “An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies,” or (C) save as elsewhere in this judgment provided of the patent laws.

[*Inspection to Secure Compliance*]

VII.

For the purpose of securing compliance with this judgment and for no other purpose, duly authorized representatives of the Department of Justice shall upon written request of the Attorney General or an Assistant Attorney General, and on reasonable notice to defendant, White Cap, made to its principal office, be permitted subject to any legally recognized privileges: (1) access during the office hours of said defendant, to all books, ledgers, accounts, correspondence, memoranda, and other” records and documents in the possession or under the control of said defendant relating to any matters contained in this judgment; and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding any such matters; provided, however, that no information obtained by the means provided in this paragraph 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 judgment, or as otherwise required by law.

[*Jurisdiction Retained*]

VIII.

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this judgment 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 judgment, for the amendment, modification or termination of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.