

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Max Gerber, et al., U.S. District Court, N.D. Illinois, 1950-1951 Trade Cases ¶62,829, (May 4, 1951)

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United States v. Max Gerber, et al.

1950-1951 Trade Cases ¶62,829. U.S. District Court, N.D. Illinois, Eastern Division. Civil Action No. 49 C 1300. Filed May 4, 1951.

Sherman Antitrust Act, Clayton Antitrust Act

Consent Decree—Combinations in Restraint of Trade—Exclusive Supply Contracts—Discriminations and Preferences in Selling or Refusing to Sell Plumbing Fixtures and Sanitary Brass Goods.—In an action against defendant manufacturers of plumbing fixtures and sanitary brass goods charging violation of the federal antitrust laws by restraining purchasers from purchasing from other companies, a consent decree has been entered whereby defendant manufacturers were enjoined from selling plumbing fixtures on the condition that the purchasers buy any sanitary brass goods from the defendants; from selling sanitary brass goods on the condition that the purchasers purchase any plumbing fixtures from the defendants; from entering into a contract or agreement preventing purchasers from purchasing any plumbing fixtures or sanitary brass goods from anyone other than the defendants; from selling plumbing fixtures on condition that the purchaser shall not purchase, use, deal in, or sell sanitary brass goods made or sold by anyone other than the defendants; from selling sanitary brass goods on condition that the purchaser shall not purchase, use, deal in, or sell plumbing fixtures made or sold by anyone other than the defendants; from refusing to sell or discriminating in the price of plumbing fixtures because the customer is not purchasing sanitary brass goods from the defendants; or from refusing to sell or discriminating in the price of sanitary brass goods because the customer is not purchasing plumbing fixtures from the defendants.

For the plaintiff: H. G. Morison, Assistant Attorney General; Sigmund Timberg, Willis L. Hotchkiss, and E. Houston Harsha, Special Assistants to the Attorney General; William D. Kilgore, Jr., Special Attorney.

For the defendants: Harold L. Perlman and H. R. Begley, of the firm of Gottlieb and Schwartz.

Before Michael L. Igoe, United States District Judge.

Final Judgment

[*In full text*] Plaintiff, United States of America, having filed its complaint herein on October 15, 1948, defendants having appeared and filed their answers denying the substantive allegations thereof, and the plaintiff and defendants by their attorneys having consented to the entry of this Final Judgment,

Now, therefore, without any testimony or evidence having 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 decree as follows :

I

[*Sherman, Clayton Acts Involved*]

The Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a cause of action against the defendants 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, and under Section 3 of the Act of Congress of October 15, 1914, commonly known as the Clayton Act.

II

[*Definitions*]

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As used in this Final Judgment:

(A) "Defendants" shall mean Max Gerber (operating under the trade name Gerber Enterprises), Kokomo Sanitary Pottery Corporation, Woodbridge Sanitary Corporation, Globe Valve Corporation, and Gerber Industries, Inc., or any of them;

(B) "Plumbing fixtures" shall mean plumbing articles, such as lavatories, water closets and urinals made of vitreous china or pottery, and such plumbing specialties as steel or metal shower stalls, or any one or more items of such fixtures;

(C) "Sanitary brass goods" shall mean bath and shower fittings (such as tub fillers, tub and shower fittings, drains and overflows), lavatory fittings (such as faucets, drains and combination fittings), and sink fittings (such as sink faucets, strainers and combination fittings), and other like items, or any one or more items of such goods.

III

[Applicability]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its officers, directors, agents, employees, subsidiaries, successors and assigns, and all other persons acting under, through or for such defendant.

IV

[Exclusive Supply Contracts Enjoined]

Defendants are hereby jointly and severally enjoined and restrained from:

(A) Selling or attempting to sell, or making or adhering to any contract for the sale of:

(1) Plumbing fixtures on the condition, express or implied, that the purchaser shall purchase any sanitary brass goods from the defendants, or

(2) Sanitary brass goods on the condition, express or implied, that the purchaser shall purchase any plumbing fixtures from the defendants;

(B) Entering into, adhering to or claiming any rights under contract, agreement or understanding, express or implied, with any purchaser which prevents such purchaser from purchasing, dealing in, using or selling plumbing fixtures or sanitary brass goods from anyone other than the defendants.

V

Defendants are hereby jointly and severally enjoined and restrained from:

(A) Selling or attempting to sell, or making or adhering to any contract for the sale of :

(1) Plumbing fixtures on the condition, express or implied, that the purchaser

(a) shall not purchase sanitary brass goods made or sold by anyone other than the defendants, or

(b) shall not use, deal in or sell sanitary brass goods other than those made or sold by the defendants,

(2) Sanitary brass goods on the condition, express or implied, that the purchaser

(a) shall not purchase plumbing fixtures made or sold by anyone other than the defendants, or

(b) shall not use, deal in or sell plumbing fixtures other than those made or sold by the defendants;

(B) Entering into, adopting, adhering to or furthering any agreement or course of conduct for the purpose of, or which in effect constitutes, the selling or making or adhering to a contract for the sale of plumbing fixtures or sanitary brass goods, contrary to the provisions of Paragraph (A) of this Section V.

VI

[Discriminations and Preferences Prohibited]

Defendants are jointly and severally enjoined and restrained from:

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(A) Refusing to sell or discriminating in the price, term, or condition of sale of plumbing fixtures, or refusing to fill or ship, or discriminating in or delaying the filling or shipping of any order for plumbing fixtures, because the customer has not purchased, is not purchasing, or will not agree to purchase, sanitary brass goods from the defendants;

(B) Refusing to sell or discriminating in the price, term, or condition of sale of sanitary brass goods, or refusing to fill or ship, or discriminating in or delaying the filling or shipping of any order for sanitary brass goods because the customer has not purchased, is not purchasing, or will not agree to purchase, plumbing fixtures from the defendants.

VII

[Notice to Purchasers]

Within 60 days after the date of this Judgment, each defendant shall send written notice, in a form approved by the Attorney General, to each person who has purchased or attempted to purchase any plumbing fixtures or sanitary brass goods from such defendant within the 6 months preceding the date of said Judgment, informing such person of the terms of this Judgment.

VIII

[Examination of Records]

For the purpose of securing compliance with this Final 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 any defendant made to its principal office, and subject to any legally recognized privilege, be permitted (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 said defendant, who may have counsel present, regarding any such matters. For the purpose of securing compliance with this Judgment any defendant, upon the written request of the Attorney General or an Assistant Attorney General and on reasonable notice to its principal office, shall submit such written reports with respect to any of the matters contained in this Judgment as from time to time may be necessary for the purpose of enforcement of this 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 Judgment, or as otherwise required by law.

IX

[Jurisdiction Retained]

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