

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Crown Zellerbach Corporation and American Linen Supply Company., U.S. District Court, N.D. Illinois, 1956 Trade Cases ¶68,544, (Nov. 19, 1956)

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United States v. Crown Zellerbach Corporation and American Linen Supply Company.

1956 Trade Cases ¶68,544. U.S. District Court, N.D. Illinois, Eastern Division. Civil Action No. 55 C 1480. Dated November 19, 1956. Case No. 1237 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief —Licensing of Patents—Towel Dispensing Cabinets.—A company engaged in the manufacture of paper towels and distribution of paper towel dispensing cabinets and a linen supply company, which manufactures paper towels and linen and paper towel dispensing cabinets, were each ordered to grant to any applicant a nonexclusive and unrestricted license or sublicense to make, use, and sell roll supports, used on towel cabinets, for the life of the patent, without any limitation or condition, except that (1) a reasonable and nondiscriminatory royalty could be charged and collected, (2) reasonable provision could be made for periodic inspection of the books and records of the licensee by an independent auditor or other person acceptable to both the licensee and licensor, who should report to the licensor only the amount of the royalty due and payable and no other information, (3) the license could be nontransferable, (4) reasonable provision could be made for the cancellation of the license upon failure of the licensee to pay the royalties or to permit the inspection of its books and records, and (5) the license must provide that the licensee can cancel the license at any time after one year by giving thirty days' notice in writing to the licensor.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Allocation of Markets and Customers.—A company engaged in the manufacture of paper towels and distribution of paper towel dispensing cabinets and a linen supply company, which manufactures paper towels and linen and paper towel dispensing cabinets, were prohibited from entering into any understanding with each other to allocate or divide customers, territories, or markets for the manufacture, distribution, sale, or lease of paper towel cabinets or paper towels.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Refusal To Deal.—A company engaged in the manufacture of paper towels and distribution of paper towel dispensing cabinets and a linen supply company, which manufactures paper towels and linen and paper towel dispensing cabinets, were prohibited from entering into any understanding with each other (1) to refuse to sell or lease or otherwise distribute paper towel cabinets or paper towels to any person or class of persons, or (2) to refuse to replace paper towel cabinets installed by any person.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Restrictive Covenants Between Competitors.—A company engaged in the manufacture of paper towels and distribution of paper towel dispensing cabinets and a linen supply company, which manufactures paper towels and linen and paper towel dispensing cabinets, were prohibited from entering into any understanding with each other (1) to limit or restrict the right of either party to appoint any person as a paper jobber, (2) to prevent their paper jobbers from competing for each other's customers or replacing paper towel cabinets installed by any person, or (3) to prevent the first above company from selling or leasing paper towel cabinets to persons engaged in the linen supply business.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Agreements Not To Compete.—A company engaged in the manufacture of paper towels and distribution of paper towel dispensing cabinets and a linen supply company, which manufactures paper towels and linen and paper towel dispensing cabinets, were prohibited from entering into any understanding with each other to refrain from competition in the manufacture, sale, or lease of paper towel cabinets.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Coercion and Intimidation.—

A company engaged in the manufacture of paper towels and distribution of paper towel dispensing cabinets and a linen supply company, which manufactures paper towels and linen and paper towel dispensing cabinets were prohibited from inducing or requiring any paper jobber to make restitution for paper towel cabinet or paper towel business taken from any other person.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Tie-in Sales.—A company engaged in the manufacture of paper towels and distribution of paper towel dispensing cabinets and a linen supply company, which manufactures paper towels and linen and paper towel dispensing cabinets, were prohibited from offering to sell or lease, or selling or leasing, paper towel cabinets to paper jobbers upon the condition or understanding that such paper jobbers purchase paper towels from either of the companies or any source designated by either of the companies.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Purchase Requirement Contracts.—A company engaged in the manufacture of paper towels and distribution of paper towel dispensing cabinets and a linen supply company, which manufactures paper towels and linen and paper towel dispensing cabinets, were prohibited from entering into any agreement with any person that such person require any third person to purchase all or any portion of his requirements of paper towels from either of the companies or any source designated by either of the companies.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Agreement Not To Contest Validity of Patents.—A company engaged in the manufacture of paper towels and distribution of paper towel dispensing cabinets and a linen supply company, which manufactures paper towels and linen and paper towel dispensing cabinets, were prohibited from entering into any agreement between each other not. to contest the validity of each other's patents, relating to towel cabinets, not yet issued.

For the plaintiff: Victor R. Hansen, Assistant Attorney General, and William D. Kilgore, Jr., Harry N. Burgess, Bertram M. Long, Earl A. Jinkinson, Baddia J. Rashid, Charles F. B. McAleer, and Francis C. Hoyt, Attorneys.

For the defendants: Philip S. Ehrlich, Philip S. Ehrlich, Jr., and Joseph T. Zoline for Crown Zellerbach Corporation. Leo F. Tierney, Roger W. Barrett, and Charles L. Stewart, Jr., for American Linen Supply Company.

For a prior decision of the U. S. District Court, Northern District of Illinois, Eastern Division, see [1956 Trade Cases ¶ 68,340](#); for a prior opinion of the U. S. District Court, Eastern District of Wisconsin, see [1955 Trade Cases ¶ 68,149](#).

Final Judgment

JULIUS J. HOFFMAN, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on May 18, 1955; the defendants having appeared by their counsel; and the parties hereto, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without any admission by any party hereto 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 the parties hereto, it is hereby

Ordered, adjudged and decreed, as follows:

I

[*Sherman Act*]

The Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim 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, as amended,

II

[*Definitions*]

As used in this Final Judgment:

- (A) "ALSCO" means defendant American Linen Supply Company, a Nevada corporation, having its principal office at Chicago, Illinois;
- (B) "Crown" means defendant Crown Zellerbach Corporation, a Nevada corporation, having its principal office at San Francisco, California;
- (C) "Person" means any individual, partnership, firm, corporation, trustee, association or any other business or legal entity;
- (D) "Towel Cabinet" means any device, mechanism, machine, or component part thereof, containing ALSCO's patented parts used for dispensing continuous roll paper Towels;
- (E) "Towels" means continuous roll paper towels made or sold for use in Towel Cabinets;
- (F) "Roll Support" means any, some or all patented devices used on Towel Cabinets which limit or restrict or purport to limit or restrict the Towels that can be used in Towel Cabinets;
- (G) "Paper Jobber" means any person engaged in the business of leasing and/or purchasing Towel Cabinets, and buying Towels for resale to industrial concerns, stores, restaurants, Government agencies, institutions and other ultimate consumers;
- (H) "Linen supply business" means the business of supplying on a service basis cloth towels, cloth towel dispensers, aprons, uniforms, coats, trousers, caps, tablecloths, napkins, bibs, or coveralls, to industrial concerns, stores, restaurants, Government agencies, institutions or other ultimate consumers;
- (I) "Patents" mean any, some or all claims of the following United States Letters Patent on Roll Supports:
 - (1) Letters Patent owned or controlled by any defendant on the date of entry of this Final Judgment;
 - (2) Letters Patent which may be granted on applications for Letters Patent which applications are on file in the United States Patent Office and owned or controlled by any defendant on the date of entry of this Final Judgment;
 - (3) Letters Patent which may be granted on applications for Letters Patent which applications are filed and owned or controlled by any defendant in the United States Patent Office within a period of five (5) years following the date of entry of this Final Judgment;
 - (4) Letters Patent which may be acquired by any defendant or under which any defendant acquires the right to grant licenses within a period of five (5) years following the date of entry of this Final Judgment;
 - (5) Divisions, continuations, reissues or extensions of the Letters Patent described above in clauses (1), (2), (3) and (4).

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any defendant shall apply to each such defendant, its subsidiaries, successors and assigns, and to each of its officers, agents, servants and employees, and to all persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

[*Termination of Agreement*]

The defendants and each of them are ordered and directed to terminate and cancel the "Tymatic agreement" dated January 1, 1949 between ALSCO and Crown, and the defendants and each of them are enjoined and restrained from directly or indirectly continuing, maintaining, entering into, adhering to, enforcing or claiming any

rights under any contract, agreement or understanding with each other contrary to or inconsistent with any of the provisions of this Final Judgment.

V

[*Practices Prohibited*]

The defendants and each of them are enjoined and restrained from directly or indirectly maintaining, continuing, entering into, adhering to, enforcing or claiming any right under any contract agreement or understanding with each other to:

- (A) Allocate or divide customers, territories or markets for the manufacture, distribution, sale or lease of Towel Cabinets or Towels;
- (B) Refuse to sell or lease or otherwise distribute Towel Cabinets or Towels to any Person or class of Persons;
- (C) Limit or restrict the right of either party to appoint any Person as a Paper Jobber;
- (D) Refrain from competition in the manufacture, sale or lease of Towel Cabinets;
- (E) Refuse to replace Towel Cabinets installed by any Person;
- (F) Prevent their Paper Jobbers from competing for each other's customers, or replacing Towel Cabinets installed by any Person;
- (G) Prevent Crown from selling or leasing Towel Cabinets to Persons engaged in the Linen Supply Business.

VI

[*Tying and Requirement Arrangements*]

Defendants are jointly and severally enjoined and restrained from:

- (A) Inducing or requiring any Paper Jobber to make restitution for Towel Cabinet or Towel business taken from any other Person;
- (B) Offering to sell or lease, or selling or leasing Towel Cabinets to Paper Jobbers upon the condition or understanding that such Paper Jobbers purchase Towels from a defendant or any source designated by a defendant;
- (C) Entering into, maintaining, adhering to, enforcing or claiming any rights under any contract, agreement or understanding with any Person that such Person require any third Person to purchase all or any portion of his requirements of Towels from any defendant or any source designated by any defendant

VII

[*Contesting Validity of Patents*]

Defendants are enjoined and restrained from continuing, entering into, adhering to, enforcing or claiming any rights under any contract, agreement or understanding between each other not to contest the validity of each other's Patents not yet issued.

VIII

[*Licensing of Patents*]

(A) Defendants are each ordered and directed:

- (1) Insofar as it now has or may acquire the power or authority to do so, to grant to any applicant, making written request therefor, a nonexclusive and unrestricted license or sublicense to make, use and sell Roll Supports for the life of the Patent, under any, some or all its Patents, without any limitation or condition whatsoever except that:

- (a) A reasonable and nondiscriminatory royalty may be charged and collected;
- (b) Reasonable provision may be made for periodic inspection of the books and records of the licensee by an independent auditor or other person acceptable to both the licensee and licensor, who shall report to the licensor only the amount of the royalty due and payable and no other information;
- (c) The license may be nontransferable;
- (d) 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 its books and records as hereinabove provided;
- (e) The license must provide that the licensee may cancel the license at any time after one (1) year from the initial date thereof by giving thirty (30) days notice in writing to the licensor.

(2) Upon receipt of any written application for a license to advise the applicant of the royalty it deems reasonable for the Patent or Patents to which the application pertains. If the defendant and the applicant are unable to agree upon what constitutes a reasonable royalty, the defendant may apply to the Court for a determination of a reasonable royalty, giving notice thereof to the applicant and the Attorney General, and shall make such application forthwith upon request of the applicant. In any such proceeding, the burden of proof shall be upon the defendant to establish the reasonableness of the royalty requested by it. Pending the completion of any such court proceeding, the applicant shall have the right to make, use and sell Roll Supports under the Patent or Patents to which its application pertains, without the payment of royalty or other compensation, but subject to the following provisions: defendant may, with notice to the Attorney General, apply to the Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty. If the Court fixes such interim royalty rate, a license shall then issue providing for the periodic payment of royalties at such interim rate from the date of the making of such application by the applicant; and whether or not such interim rate is fixed, any final order may provide for such adjustments, including retroactive royalties, as the Court may order after final determination of a reasonable and nondiscriminatory royalty, and such royalty rate shall apply to the applicant and to all other licensees under the same Patent or Patents.

(B) Nothing herein shall prevent any applicant from attacking at any time the validity or scope of any Patent or Patents nor shall this Final Judgment be construed as imputing any validity or value to any of said Patents;

(C) The defendants are enjoined and restrained from making any disposition of any Patent which deprives it of the power or authority to issue the licenses required by this Final Judgment unless the defendant requires as a condition of the sale, assignment or grant that the purchaser, assignee or licensee shall observe the provisions of this Section VIII of this Final Judgment with respect to the Patent or Patents so acquired and that such purchaser, assignee or licensee shall file with this Court prior to the consummation of such transaction a written undertaking to be bound by the provisions of Section VIII of this Final Judgment with respect to the Patents so acquired.

IX

[*Commerce Covered*]

This Final Judgment is not to be construed as relating to commerce outside the United States.

X

[*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 on reasonable notice to any defendant, made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this Final Judgment; and

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

Upon such request the defendant shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as from time to time may be necessary to the enforcement of this Final Judgment. No information obtained by the means permitted in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the 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.

XI

[*Jurisdiction Retained*]

Jurisdiction of this cause is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction, carrying out or modification of this Final Judgment or any of its provisions, or for the enforcement of compliance therewith and for the punishment of violations thereof.