

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v, Phillips Screw Company, et al., U.S. District Court, N.D. Illinois, 1948-1949 Trade Cases ¶62,394, 459 F. Supp. 832, (Mar. 28, 1949)

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United States v, Phillips Screw Company, et al.

1948-1949 Trade Cases ¶62,394. U.S. District Court, N.D. Illinois, Eastern Division. Civil No. 47C147. March 28, 1949. 459 FSupp 832

Sherman Antitrust Act

Consent Judgment—Patents for Cross-Recessed Screws—Monopoly Practices Enjoined.—A consent judgment entered in an action charging screw and screw driver manufacturing companies and a patent holding company with conspiring to restrain interstate trade enjoins the defendants from making or performing any contract which fixes prices, allocates customers or markets, limits imports or exports, limits production, or restricts sales. The defendants agree to refrain from methods unilaterally dictating the price of cross-recessed head screws or drivers, and from quoting domestic prices on any other basis than F.O.B. at the actual place of manufacture. License agreements relating to patents are terminated and defendants are ordered to grant non-exclusive licenses to manufacture cross-recessed head screws and drivers on a reasonable royalty basis.

For plaintiff: Otto Kerner, Jr., Willis L. Hotchkiss, Jr.

For defendants: T. A. Reynolds, Winston, Strawn & Shaw; John Lord O'Brien; Beverly B. Vedder & Ferris E. Hurd; Pope & Ballard; Cranston Spray; Special Appearance Wm. A. McAfee, Cleveland, Ohio; George J. O'Grady, Daily, Dines, White and Fiedler; Gardner, Carton & Douglas; Moore, Olson & Trexler; Snyder, Chadwill & Fagerburg; Lord, Bissel & Kaydk.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on January 16, 1947; all the defendants herein (except Scovill Manufacturing Company) having appeared and filed their respective answers to such complaint denying the substantive allegations thereof; and all the parties herein, by their respective attorneys herein, having severally consented to the entry of this final judgment without trial or adjudication of any issue of fact or law herein, and without admission by any party in respect of any such issue,

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 on consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter herein and of all parties hereto, and the complaint herein 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", as amended.

II.

[Definitions]

The following terms shall, as used in this judgment, have the following meanings.

A. The term "Phillips" means the defendant Phillips Screw Company.

B. The term "American" means the defendant American Screw Company.

C. The term "Cross-recessed Head Screws" means screws and bolts having a cross-shaped recess in the center of the screw or bolt heads. The term includes blanks which have the same type of recess punched into the heads thereof as the completed products but which are not threaded or otherwise completed.

D. The term "Cross-recessed Head Drivers" means driving tools the tips of which are shaped to fit the recesses in the heads of Cross-recessed Head Screws. The term includes such tools either in the form of hand drivers, in the form of detachable bits for use in power drivers, or in the form of blades or bars the tips of which are shaped to fit the recesses in Cross-recessed Head Screws but which have not otherwise been finished into hand drivers or detachable bits.

E. The term "Defined Patents" means United States letters patent and patent applications, as follows: (1) the letters patent and patent applications listed in Appendix A hereof; (2) all divisions; continuations, reissues and extensions of any of the foregoing patents and patent applications; (3) all patents issued on such applications; and (4) all patents relating to Cross-recessed Head Screws or Drivers acquired or applied for by Phillips or American within five years from the date of this judgment.

F. The term "Technical Information" means the methods and processes used by American at the date of this judgment in its commercial practice Under the Defined Patents.

G. Reference herein to any defendant shall be deemed to include such defendant, its successors, subsidiaries, assigns, officers, directors, agents, members, employees, and each person acting or claiming to act under, through or for such defendant.

III.

[Acts Enjoined]

A. Each defendant is hereby enjoined and restrained from directly or indirectly entering into, adhering to or maintaining any contract, combination, agreement, understanding or arrangement among themselves or with any other manufacturer of Cross-recessed Head Screws or Drivers relating to Cross-recessed Head Screws or Drivers:

- (1) to fix, establish, determine or maintain prices or other terms or conditions of sale with respect either to initial sales or with respect to resales;
- (2) to allocate customers, markets, sales quotas or territories;
- (3) to limit or prevent imports into or exports from the United States, its territories or possessions;
- (4) to limit production through quotas or otherwise;
- (5) to restrict sales; or
- (6) to refrain from manufacturing any type of Cross-recessed Head Screw or Driver.

B. Each defendant is hereby enjoined and restrained for a period of three years from the date of this judgment from:

- (1) publishing any price list specifying, or otherwise systematically suggesting, resale prices on Cross-recessed Head Screws or Drivers; and
- (2) by any other means or methods unilaterally dictating, regulating or attempting to dictate or regulate the price or terms or conditions of sale at which any person other than itself sells Cross-recessed Head Screws or Drivers.

C. Each defendant is hereby enjoined and restrained from publishing, printing, quoting or charging domestic prices for Cross-recessed Head Screws or Drivers on any basis other than (1) F.O.B. at the actual place of manufacture or origin of shipment of said products or (2) on a basis, which at destination at no time shall be higher than the said F.O.B. price plus actual transportation and other delivery charges, with every purchaser having an option to purchase F.O.B. at the actual place of manufacture or origin of the product.

IV.

[*Cancellation of License Agreement*]

A. Each of the license agreements between American and any of the defendants relating to any of the Denned Patents is hereby cancelled and terminated, provided, however, that any rights to monetary pay ments which shall have accrued thereunder at the date of the entry of this judgment shall be unimpaired by anything in this judgment.

B. Phillips and American are hereby severally, enjoined and restrained from per forming, enforcing or threatening to enforce any provisions of any license agreement under any of the Denned Patents with any person not a defendant herein (1) prohibit ing export or sale for export, (2) relating to selling prices or other terms or conditions of sale, (3) preventing or impeding the manufacture, use or sale of screws or drivers other than those manufactured pursuant to said agreements, or (4) inconsistent with the provisions of Section A of Article III of this judgment.

C. Phillips and American are hereby sev erally ordered and directed to send, within thirty days after the entry of this judgment, to each person who is not a defendant here in and who is licensed under any Defined Patent or under any foreign patent corressponding thereto, a copy of this judgment.

D. Phillips and American are hereby severally ordered and directed to use rea sonable efforts to cause to be cancelled all existing license agreements under any of the Defined Patents between either of them and any person who is not a defendant herein and to join in the cancellation of any such agreement with any such person desiring same.

V.

A. The license agreements referred to in the complaint herein between Phillips and/or American and Guest, Keen and Nettlefolds, Ltd., and between Phillips and/or American and The Steel Company of Canada, Ltd., are hereby cancelled and terminated. Phillips and American are hereby severally enjoined and restrained from adhering to, performing, reviving or renewing said agreements.

B. Phillips and American are hereby severally ordered and directed forthwith to initiate and carry on in good faith and with diligence negotiations to accomplish, and in fact to accomplish within one year from the date of the entry of this judgment, the cancellation and termination of the license agreements referred to in the complaint herein between Phillips and/or American and J. Osawa & Co.

C. In any event, Phillips and American are hereby severally enjoined and restrained from claiming or asserting that any license or right received by Phillips or American under any of the agreements referred to in this Article V is exclusive, and from per forming, enforcing or attempting to enforce any provisions of any of said agreements which (1) prohibits export or sale for export or (2) relates to selling prices or other terms or conditions of sale.

D. Phillips and American are hereby sev erally enjoined and restrained from enforc ing or attempting or threatening to enforce:

(1) any rights under any foreign patent corresponding to any Defined Patent to prevent the sale or use in or import into another country of Cross-recessed Head Screws or Drivers lawfully made in the United States, its territories or posses sions; and

(2) any rights under any Defined Patent to prevent the sale or use in or import into the United States, its territories or possessions of Cross-recessed Head Screws or Drivers lawfully made in another country under any foreign patent corresponding to such Defined Patent.

VI.

[*Suit for Patent Infringement Enjoined*]

Phillips and American are each hereby enjoined and restrained from instituting or threatening to institute, maintaining or continuing any suit or proceeding for acts of infringement of any of their respective patents or

patent rights relating to Cross-recessed Head Screws or Drivers alleged to have occurred prior to the date of this judgment.

VII.

[*Granting of Non-Exclusive Licenses Ordered*]

A. Phillips and American, depending on which has the right to grant licenses there under, are hereby severally ordered and directed to grant to any applicant therefor, a non-exclusive license to manufacture, use and sell Cross-recessed Head Screws and Drivers under any, some or all of the Defined Patents, without any limitation or condition whatsoever, except that:

- (1) a reasonable charge, in the form of a royalty or otherwise, and non-discriminatory as between such applicants, may be made in respect of any patents so licensed;
- (2) reasonable provision 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 money due and payable thereunder;
- (3) the license may be non-transferable; and
- (4) the license must provide that the licensee may cancel the license at any time after one year from the initial date thereof on sixty days' notice in writing to the licensor.

B. At the request of any applicant for a license under the provisions of paragraph A of this Article VII, the licensor shall include a non-exclusive grant of immunity from suit under every foreign patent, to the extent the licensor has or acquires the power to do so, corresponding to every United States patent included in the license, for any product manufactured, used or sold pursuant to the license.

C. American is hereby ordered and directed on request to supply, without charge, Technical Information to every licensee under this Article VII who shall manufacture under such license.

D. On receipt of a written request for a license or licenses under the provisions of paragraph A of this Article VII, Phillips or American, as the case may be, shall advise the applicant in writing of the royalty or other charge which it deems reasonable for the patent or patents to which the request pertains. If the parties are unable to agree on a reasonable royalty or charge within sixty days from the date such request is received, the applicant therefor may forthwith apply to this Court for determination of a reasonable royalty or charge, and Phillips or American, as the case may be, shall, on receipt of notice of the filing of such application, promptly give notice thereof to the Assistant Attorney General in charge of the Antitrust Division. Any license granted as a result of an application to the Court, as above provided, shall be retroactive to the date of such application or, at the applicant's option, provided that the applicant is a defendant herein, retroactive for any prior unlicensed period. The reasonable royalty rates or charges, if any, as once finally determined by the Court with respect to any Defined Patents shall apply to all licenses of the same patents thereafter granted, and any licensee who, at the date of such determination by the Court holds a license under the same patents, shall have the right, at its option, to have such royalty rates or charges applied retroactively, with respect to its operations, to the date of the application to the Court which resulted in such determination.'

E. In any such proceeding under paragraph D of this Article VII, the burden of proof shall be on Phillips or American, as the case may be, to establish the reasonableness of the royalty or other charge requested by it. Nothing in this judgment shall be construed as importing any validity or value to any of the Defined Patents.

F. Nothing in this Article VII shall be deemed to prevent Phillips and American from executing or carrying out an agreement by which either will be permitted to license the patents of both Phillips and American to any applicant who desires to acquire rights under patents belonging to both parties.

G. Phillips and American are each hereby enjoined and restrained from making any disposition of any of the Defined Patents or rights with respect thereto which deprives it of the power or authority to grant licenses as hereinabove in this Article VII provided, unless it requires, as a condition of such disposition, that the purchaser,

transferee, assignee or licensee, as the case may be, shall observe the requirements of Articles VII and VIII hereof and such purchaser, transferee, assignee or licensee shall file with this Court, prior to the consummation of the transaction, an undertaking to be bound by said provisions of this judgment.

H. Phillips and American are hereby severally ordered and directed to send to each applicant for a license under Article VII hereof a copy of this judgment promptly after the application is made.

VIII.

[Purposes of Compliance]

A. For the purpose of securing compliance with this judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, be permitted

(1) access, during the office hours of any such defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents there located relating to any of the matters contained in this judgment; and

(2) subject to the reasonable convenience of such 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.

Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, each defendant shall submit such reports in writing with respect to the matters contained in this judgment as may from time to time be necessary to the enforcement of this judgment.

B. Each of the defendants is hereby severally ordered and directed to file with this Court and with the Assistant Attorney General in charge of the Antitrust Division, within ninety days after the date of the entry of this judgment, a report of all action taken by it to comply with or conform to the terms of this judgment.

C. The information obtained by the means permitted by this Article VIII shall not 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 to which the United States of America is a party for the purpose of securing compliance with this judgment, or as otherwise required by law.

IX.

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

APPENDIX A

United States of America Patents and Applications of Phillips Screw Company

Patent Number	Date of Issue
1,908,080	May 9, 1933
1,908,081	May 9, 1933
2,046,343	July 7, 1936
2,046,837	July 7, 1936
2,046,838	July 7, 1936
2,046,839	July 7, 1936
2,046,840	July 7, 1936
2,066,484	January 5, 1937
Des. 104,473	May 11, 1937
2,402,342	June 18, 1946

Application Number	Date of Filing
688,649	August 6, 1946
688,650	August 6, 1946
688,651	August 6, 1946
688,652	August 6, 1946

United States of America Patents and Applications of American Screw Company

Patent Number	Date of Issue
2,022,573	November 26, 1935
2,029,944	February 4, 1936
2,066,372	January 5, 1937
2,082,085	June 1, 1937
2,084,078	June 15, 1937
2,084,079	June 15, 1937
2,090,338	August 17, 1937
2,165,424	July 11, 1939
2,165,425	July 11, 1939
2,322,262	June 22, 1943
2,359,898	October 10, 1944
2,400,684	May 21, 1946

Application Number	Date of Filing
470,671	December 30, 1942
694,715	September 4, 1946
782,875	October 29, 1947