

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action
v.)	
)	No. 46 C 1332
BAUSCH & LOMB OPTICAL COMPANY,)	
ET AL.,)	
)	
Defendants.)	

FINAL JUDGMENT

Plaintiff, United States of America, filed its complaint herein on July 23, 1946, and filed an amendment thereto on October 28, 1946. Thereafter, the corporate defendants and the defendant individual doctors appeared and filed their answers to the amended complaint, denying the substantive allegations thereof and any violations of law.

Subsequent to the filing of the complaint, the corporate defendants, without prior notice to the plaintiff or the Court, discontinued dispensing at all of their branches where such business was carried on and, in connection with such discontinuance in certain locations, sold the dispensing businesses and/or assets relating thereto in such locations to the defendant buyers, who have been and are on the date of entry of this judgment engaged in dispensing on their own behalf.

On July 1, 1949, leave of court having first been obtained, plaintiff filed a supplemental complaint relating to such sales to the defendant buyers.

On February 26, 1948 and July 2, 1948 the Court entered orders directing the defendant class doctors whose names were set forth in exhibits attached to said orders, to appear and show cause why such doctors should not be bound by any judgment entered in this case. (Copies of these orders, omitting the lists of names, are attached hereto as Exhibits 1 and 2.) Exhibit 3, also attached hereto, sets

forth the names of each defendant class doctor who either received mailing and service of the aforesaid orders and failed to show cause why he should not be bound by any judgment entered in this case, or who submitted himself to the jurisdiction of this Court and agreed to be bound by such judgment, whether after trial or by consent of the parties.

Each of the corporate defendants, defendant individual doctors, and defendant buyers hereby consents to the entry of this final judgment. The consent of each defendant individual doctor is made both as an individual and as a representative of the defendant class doctors as hereinafter defined.

NOW, THEREFORE, upon such consents, no testimony having been taken, and without any finding or adjudication of fact or as to past specific transactions, or any admission by reason of such consents or this judgment, excepting only the statements hereinabove set forth, which are made solely for the purpose of this proceeding; it is hereby

ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

I. This Court has jurisdiction of the subject matter and of all defendants named in the complaint, as amended, including the defendant class doctors named in Exhibit 3 and the defendant buyers named in the supplemental complaint herein; any agreement, understanding and concert of action, whether written or oral, express or implied, of the type charged in the complaint, involving payment by any corporate defendant, directly or indirectly, to any of the defendant individual doctors or to defendant class doctors, or to any agent, representative, employee or designee of any such doctor, of the whole or any part of the purchase price of ophthalmic goods collected by any such corporate defendant (whether or not as agent or purported agent of such doctor) from any one or more patients of any such doctor, and whether in the form of, or described or regarded as a rebate, credit, credit balance,

gift, dividend, or participation or share in profits, or otherwise, is hereby adjudged to be in violation of Section 1 of the Sherman Act; and the complaint, as amended, and the supplemental complaint state a cause of action under Section 1 of the Sherman Act (15 U.S.C. Sec. 1), upon which relief may be granted.

II. Wherever used in this judgment:

(a) "Corporate defendants" means Bausch & Lomb Optical Company, Riggs Optical Company-Consolidated, Riggs Optical Company, Inc., McIntyre, Magee & Brown Company, and Southeastern Optical Company, Inc., and their respective successors, assigns, officers, directors, agents, employees and representatives, and each and every other person acting or claiming to act under, through, or for such defendant, excluding, however, the defendant individual doctors, the defendant class doctors and the defendant buyers, as hereinafter respectively defined.

(b) "Defendant individual doctors" means those oculists named in the complaint as individual defendants and as representatives of the defendant class doctors and each person acting or claiming to act under, through, or for any such defendant individual doctor.

(c) "Defendant class doctors" means those oculists whose names are listed in Exhibit 3 attached hereto, and each person acting, or claiming to act, under, through, or for any such doctor.

(d) "Defendant buyers" means those persons who are named as defendants in the supplemental complaint herein and each person acting or claiming to act under, through, or for any such buyer.

(e) "Person" means an individual, proprietorship, partnership, association, joint stock company, business trust, corporation, or any other business organization or enterprise.

(f) "Ophthalmic goods" means ophthalmic lenses, lens blanks, spectacle frames, mountings, eyeglasses, spectacles, and component parts or combinations of any of these articles sold or offered for sale within the United States, its territories and possessions, and as so defined does not include sunglasses or industrial safety equipment not containing lenses ground to prescription.

(g) "Dispensing" means the sale within the United States, its territories and possessions to consumers, of ophthalmic goods, particularly of spectacles and parts thereof, and of repair parts and services in connection therewith, and/or the measurement of facial characteristics for spectacles and the fitting and adjustment of such spectacles to the face.

(h) "Dispenser" means one who engages in dispensing. The term shall not be deemed to apply to a refractionist who engages in dispensing in his own professional offices (either himself or through a bona fide employee) to his own patients only.

(i) "Consumer" means any person who wears spectacles, or any patient for whom spectacles have been prescribed by a refractionist.

III. Each defendant individual doctor and defendant class doctor is hereby perpetually enjoined:

(a) From accepting, directly or indirectly, or designating any other person to thus accept, from any dispenser (whether such dispenser acts or purports to act as an agent of the doctor, or otherwise), any payment arising out of or connected with dispensing to any patient of such defendant doctor, whether such payment is in the form of, or is described or regarded as, a rebate, credit, credit balance, gift, dividend, participation in or share in profits, or otherwise;

(b) Entering into or participating in any plan, arrangement, or scheme whereby said defendant doctor receives from any dispenser (whether such dispenser acts or purports to act as agent of the doctor, or otherwise) directly or indirectly in any form (including any of the forms and methods referred to above) any payment arising out of or connected with dispensing to any patient of such defendant doctor.

IV. Each of the corporate defendants and each of the defendant buyers is hereby perpetually enjoined from making, directly or indirectly, any payment to any refractionist (including any oculist), or any agent, representative, employee or designee of any refractionist, arising out of or connected with dispensing, whether or not such payment is in the form of, or is described or regarded as, a rebate, credit, credit balance, gift, dividend, participation in or share in profits, or otherwise; and whether such payment constitutes an individual transaction, or is part of any plan or program.

V. Each of the corporate defendants is hereby perpetually enjoined from:

(a) Enforcing, performing, or entering into any agreement, contract, or understanding with any defendant buyer by which such defendant buyer agrees to purchase from any corporate defendant the defendant buyer's requirements or substantial requirements of any ophthalmic goods, supplies, or equipment for any designated period of time, or any specified volume of such goods, supplies, or equipment beyond those needed by the defendant buyer for his current business requirements and requested by him in the exercise of his own free choice; or agrees in advance to place orders for any shop work to be done by a corporate defendant.

(b) Enforcing, performing, or entering into any contracts, agreements, or understandings covering, or issuing any schedules fixing, or systematically suggesting, the consumer prices, terms,

or conditions of sale on which any defendant buyer shall sell ophthalmic goods.

(c) Enforcing, performing, or entering into any contract, agreement, or understanding with any defendant buyer dictating, prescribing, or suggesting to any such defendant buyer any arrangement restraining or limiting such defendant buyer as to the territory in which he shall operate or do business, or restraining or limiting the type of business such defendant buyer may engage in or enter into.

(d) Dominating, controlling, or interfering with, or attempting to dominate, control, or interfere with, the purchasing, financial, promotional, or other business policies, practices, operation, management, expansion or other activities of any such defendant buyer.

(e) Enforcing, performing, or entering into any agreement, contract, or understanding under which any corporate defendant grants any credit, discount, rebate, or allowance, based on a percentage or other proportion of the amount of ophthalmic merchandise purchased from such defendant, which credit, discount, rebate, or allowance is applied, or to be applied, in whole or in part, to reduce indebtedness incurred by any defendant buyer in connection with the purchase from any corporate defendant of dispensing assets, or the dispensing business, of one or more of the branches of any corporate defendant.

VI. Each of the corporate defendants is hereby enjoined for a period of ten years from the date of entry of this judgment from engaging in the business of dispensing, and from acquiring or holding any ownership interest, whether through the purchase or ownership of assets, stock or otherwise, in any person who engages in such business of dispensing.

VII. The corporate defendants, each of the defendant individual and class doctors, and each of the defendant buyers, are hereby perpetually enjoined from entering into any agreement, understanding or concert of action with any other person or persons, fixing or attempting to fix the consumer price to be charged for ophthalmic goods or services, and from dictating, prescribing, controlling or interfering with, or attempting to dictate, prescribe, control, or interfere with the consumer prices charged or to be charged by any other person or persons for such ophthalmic goods or services; provided, however, that nothing contained in this judgment shall be deemed to prevent or restrain any of the defendants after the expiration of the injunction contained in Section VI hereof from making such suggestions or making and enforcing such agreements as to prices as may then be lawful.

VIII. The plaintiff shall mail a copy of this judgment to each member of the defendant class doctors whose name is set forth in Exhibit 3, attached hereto and made a part hereof. Such mailing shall be by franked envelope to the last known address of each of such defendant class doctors, and the plaintiff, after making such mailing, shall file an affidavit of mailing with the Clerk of this Court. The plaintiff may transmit with such mailing a letter, in a form to be approved by the Court, covering the transmission of such judgment and explaining the application of the judgment to the doctor.

IX. 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 any defendant made to its principal office be permitted, subject to any legally recognized privilege: (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 such defendant, or officers or employees thereof, 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.

X. Jurisdiction of this Court is retained for the purpose of enabling any of the parties to this decree 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 decree, for the modification thereof, or the enforcement of compliance therewith and for the punishment of violations thereof.

Dated: May 16 , 1951.

s/ Walter J. La Buy
United States District Judge

We hereby consent to the entry of the foregoing judgment:

For the plaintiff;

s/ H. G. Morison
Assistant Attorney General

s/ Sigmund Timberg
Special Assistant to the
Attorney General

s/ Willis L. Hotchkiss
Special Assistant to the
Attorney General

s/ Harry R. Talan
Special Attorney

Bausch & Lomb Optical Company
Riggs Optical Company - Consolidated
Riggs Optical Company, Inc.
McIntyre, Magee & Brown Company
Southeastern Optical Company, Inc.

by their attorney

s/ Thomas S. Tyler

Simpson Thacher & Bartlett
Winston Strawn Shaw & Black

of Counsel.