APPENDIX A

TABLE OF CONTENTS

UNITED STATES v. COAL DEALERS ASS'N OF CAL., *et al.*

Civil No. 12539

Year Judgment Entered: 1899

IN THE UNITED STATES CIRCUIT COURT, IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, NINTH JUDICIAL CIRCUIT.

No. 12539. In Equity.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE COAL DEALERS ASSOCIATION OF CALIFORNIA, ET AL., RESPONDENTS.

FINAL DECREE.

This cause having been brought on to be heard upon the pleadings and proofs, and Mr. Alfred L. Black, as Special Counsel for the complainant, having been heard on the part of the Complainant, and Messrs. Robert Y. Hayne and Craig & Craig having been heard on the part of the respondents, the Coal Dealers' Association of California, and all the members of said Association, and J. J. Donegan, T. O'Brien, T. Morton, E. K. Carson, George Corkery, J. B. Dallas, Peter Kelly, N. C. Toff, H. Baehr, T. Brannan, George Jones, J. T. Mullen, M. Joost, G. B. DeMartini, P. J. Casey, W. H. Wiseman and W. J. Jones, members of said Association, and also for R. D. Chandler, Oregon Coal and Navigation Company, and W. G. Stafford, trading as W. G. Stafford & Company; and T. C. Coogan, having been heard on the part of the defendants Charles R. Allen and George Fritch; and Mr. W. C. Goodfellow, having been heard on behalf of the defendant Central Coal Company; and it having been stipulated by Mr. Alfred L. Black in open Court on behalf of the Complainant that this cause may be dismissed for want of proofs against J. C. Wilson & Company, Oregon Improvement Company, R. Dunsmuir & Sons and John Rosenfeld Sons Company, and due deliberation having been had, it is ordered, adjudged, and decreed that this action be and the same is hereby dismissed, as to the respondents J. C. Wilson & Company, Oregon Improvement Company, R. Dunsmuir & Sons, and John Rosenfeld Sons Company.

And it is further ordered, adjudged, and decreed that the agreement made between the respondents the Coal Dealers' Association of California, and the respondents Charles R. Allen, R. D. Chandler, Central Coal Company, George Fritch, Oregon Coal and Navigation Company, W. G. Stafford, trading as W. G. Stafford & Company, and others, as is set forth in the complaint herein, as made on June 1st, 1896, together with the modifications as is in said complaint set forth, be and the same hereby is adjudged to be void, and of no effect, and contrary to the provisions of an Act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," Approved on the 2nd day of June, 1890, and known as Chapter 697 of the Supplement to the Revised Statutes of the United States.

And it is further ordered, adjudged, and decreed that the respondents the Coal Dealers' Association of California, and all the members of said Association, J. J. Donegan, T. O'Brien, T. Morton, E. K. Carson, George Corkery, J. B. Dallas, Peter Kelly, N. C. Toft, H. Baehr, T. Brannan, George Jones, J. T. Mullen, M. Joost, G. B. DeMartini, P. J. Casey, W. H. Wiseman and W. J. Jones, members of said Association, and also R. D. Chandler, Oregon Coal and Navigation Company, and W. G. Stafford, trading as W. G. Stafford & Company, Charles R. Allen, George Fritch, and Central Coal Company are hereby perpetually enjoined from acting under or in accordance with the terms of the agreement made between said respondent The Coal Dealers' Association of California, and said respondents Charles R. Allen, Central Coal Company, R. D. Chandler, George Fritch, Oregon Coal and Navigation Company, W. G. Stafford, trading as W. G. Stafford & Company, and others, made on June 1st, 1896, together

with the modifications of said agreement, as is fully set forth in the bill of complaint filed herein, and that said respondents last herein named, and each and every of them, be and they are perpetually enjoined and prohibited from further agreeing, combining, or conspiring or acting together to maintain prices by any agreement similar to that set forth in said complaint, for coal brought from British Columbia, Washington, and Oregon to San Francisco in the State of California, for domestic purposes as fuel.

WM. W. MORROW,
Circuit Judge.

Filed May 2, 1899.

UNITED STATES v. OTIS ELEVATOR CO., *et al.*

Civil No. 13884

Year Judgment Entered: 1906

UNITED STATES v. OTIS ELEVATOR CO.

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH CIRCUIT, NORTHERN DISTRICT OF CALIFORNIA.

In Equity. No. 13884.

THE UNITED STATES OF AMERICA, COMPLAINANT,
VS.
OTIS ELEVATOR COMPANY, ET AL., DEFENDANTS.

This cause this day coming on to be heard, upon the motion of complainant for an injunction in accordance with the prayer of the bill of complaint heretofore filed herein, and the defendants, Otis Elevator Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, Electrical Engineering Company, Cahill and Hall Elevator Company and A. J. McNicoll Elevator Company, each and all of which said corporations is and are organized under and by virtue of the laws of the State of California; Crane Elevator Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois; Standard Elevator and Manufacturing Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois; Eaton and Prince Elevator Company (also known as Eaton and Prince Company, a corporation) a corporation organized and existing under and by virtue of the laws of the State of Illinois; Smith-Hill Elevator Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois; Whittier Machine Company, a corporation duly organized and existing under and by virtue of the laws of the State of Massachusetts; Stokes and Parish Elevator Company, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania; Morse, Williams & Company, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania; McAdams & Cartwright Elevator Company (also known as McAdams & Cartwright Elevator Company, a corporation) a corporation organized and existing under and by virtue of the laws of the State of New York; Graves Elevator Company, a corporation organized and existing under and by virtue of the laws of the State of New York; Plunger Elevator Company, a corporation duly organized and existing under and by virtue of the laws of the State of Massachusetts; Sprague Elevator Company, a corporation organized and existing under and by virtue of the laws of the State of New York; Sulzer-Voght Machine Company (also known as Sulzer-Voght Machine Company, a corporation) a corporation organized and existing under and by virtue of the laws of the State of Kentucky; Central Iron Works Company (also known as Central Iron Works, a corporation) a corporation organized and existing under and by virtue of the laws of the State of Illinois; Moon Elevator Company, a corporation organized and existing under and by virtue of the laws of the State of Missouri; Warner Elevator Company, a corporation organized and existing under and by virtue of the laws of the State of Ohio; M. J. O'Donnell & Company, a corporation organized and existing under and by virtue of the laws of the State of Ohio; Gardner Elevator Company, a corporation organized and existing under and by virtue of the laws of the State of Michigan; Geiger, Fiske & Koop (also known as Geiger, Fisk & Koop, a corporation), a corporation organized and existing under and by virtue of the laws of the State of Kentucky; National Electric Elevator Company (also known as The National Company, a corporation) a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania; Burdette and Rowntree Manufacturing Company (also known as Burdett-Rowntree Manufacturing Company, a corporation) a corporation organized and existing under and by virtue of the laws of the State of Illinois; Moline Elevator Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois; D. H. Darrin Company, a corporation organized and existing under and by virtue of the laws of the State of Maryland, impleaded herein as John Doe; Electron Manufacturing Company, a corporation organized and existing

under and by virtue of the laws of the State of New York, impleaded herein as Richard Doe; and also the defendants Samuel Burger, W. D. Baldwin and C. G. Constock (also known as C. C. Comstock) ; appearing by their solicitors and the said defendants denying in open court that they are violating the provisions of the Act of Congress approved July 2, 1890 entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," or Section 73 of an Act of Congress in force August 27, 1894, entitled "An Act to reduce taxation, to provide revenue for the government and for other purposes," and stating in open court that it is not their desire or intention, nor the desire or intention of any or either of them so to do, but stating that it is their desire and intention, and the desire and intention of each of them to comply with each and all of the provisions of the statutes of the United States referring to agreements, combinations or conspiracies in restraint of trade, and the said defendants offering no objection to the entry of this decree, but consenting that this decree be entered,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That said defendants, and each and all of them, and all and each of their respective directors, officers, agents, servants and employees, and all persons acting under or through them or in their behalf, or claiming so to act, be and they, each of them, are and is hereby perpetually enjoined, restrained and prohibited from violating any of the provisions of the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," or of section 73 of an Act of Congress in force August 27, 1894, entitled "An Act to reduce taxation, to provide revenue for the government, and for other purposes" by doing any of the things hereinafter particularly enjoined; and particularly from agreeing or contracting together expressly or impliedly as to the trade or commerce in elevators, elevator machinery or appliances between the State of California, and other states of the United States and the Territories of Alaska, Hawaii and the other territories of the United States, and the District of Columbia, or between the various states and territories of the United States to do any of the things herein particularly enjoined; and also from hindering, restraining or destroying the trade in elevators, elevator machinery or appliances, and commerce therein between said divers states, territories and the District of Columbia by doing any of the things herein particularly enjoined; and also that all and each of them, and all and each of their respective directors, officers, agents, servants and employees, and all persons acting under or through them or in their behalf, or claiming so to act, be, and they and each of them are and is hereby perpetually enjoined, restrained and prohibited from entering into, making, executing or performing, directly or indirectly, expressly or impliedly any agreement, contract, or understanding to deprive the people of the city of San Francisco, or of the State of California, or any state or territory of the United States or the District of Columbia, of such facilities, rates and prices for elevators, elevator machinery or appliances produced, manufactured, installed, sold or shipped between the divers states, territories and District of Columbia as will be afforded by free and unrestricted competition between the defendant corporations in elevators, elevator machinery and appliances manufactured, sold, installed and used within the divers states and territories of the United States and the District of Columbia; and also from agreeing, contracting, combining or acting together, expressly or impliedly to monopolize or attempt to monopolize the trade and commerce in elevators, elevator machinery and appliances between the State of California and the other states and territories of the United States, and the District of Alaska, by doing any of the things herein particularly enjoined, and also from agreeing, contracting, combining, conspiring or acting together, expressly or impliedly to prevent, or hinder each other or one another from importing, dealing in, producing, manufacturing, installing or selling or offering

for sale elevators, elevator machinery or appliances in the trade and commerce between the divers states and territories and the District of Columbia except at such rates or prices as shall be fixed, determined or suggested by the said Otis Elevator Company, or by any person acting for or claiming to act for said Otis Elevator Company.

2. That said defendants and each of them, and all and each of their respective directors, officers, agents, servants and employees, and all persons acting under or through them or either of them, or claiming so to act, are and is hereby perpetually enjoined and restrained from making, performing or carrying out any contract, agreement or understanding with or between any of the defendants herein, now existing as to the selling price, sale, offering for sale or for installation, or marketing of elevators, elevator machinery or appliances, and all such contracts, agreements and understandings are hereby cancelled, annulled and set aside, and they and each of them are and is hereby enjoined and restrained from making, executing or carrying out any such contract, agreement or understanding in the future.

3. The said defendants and each of them and all and each of their respective directors, officers, agents, servants and employees and all persons acting under or through them, or either of them, or claiming so to act, are and is hereby perpetually enjoined and restrained from making, executing, or carrying into effect any contract, agreement, or understanding as to division of territory, or territories, place or places, or district in which any of said defendants shall or shall not do business, or shall or shall not bid or refrain from bidding for or execute or perform any contract or contracts for the sale, manufacture, or installation of any elevator, elevator machinery or appliances, and all such contracts, agreements or understandings are hereby annulled, cancelled and set aside, and they and each of them are and is also hereby enjoined and restrained from making, executing or carrying out any such contract, agreement or understanding in the future.

4. The said Otis Elevator Company, and each and all of its officers, managers, directors, agents, or any other person exercising authority as to prices, sale, offering for sale, or for installation or marketing is and are hereby perpetually enjoined, restrained and prohibited from acting as director, manager, officer, or agent of any of said other corporation defendants or of fixing, determining, counselling, or suggesting directly or indirectly, the price or rate at which any of said other defendant corporations shall sell or offer to sell, install, market or dispose of any elevator, elevator machinery or appliance, and also from preventing or hindering any of the other said companies defendant from free, open and unrestrained competition with the said Otis Elevator Company.

All the other defendant corporations and all and each of their respective officers, managers, directors, agents or any other person exercising authority as to prices, sale, offering for sale, or for installation, or marketing is and are hereby perpetually enjoined, restrained and prohibited from acting as director, manager, officer or agent of any other corporation defendant herein, or of fixing, determining, counselling, or suggesting directly or indirectly, the price or rate at which any of the other defendant corporations shall sell or offer to sell, install, market or dispose of any elevator, elevator machinery or appliance, and also from preventing or hindering any of the other said companies defendant from free, open and unrestrained competition with each other or one another, and all and each of said defendant corporations shall in all matters connected with or relating to the sale, offering for sale, or for installation of elevators, elevator machinery or appliances be managed, controlled and directed as separate, distinct corporations without interference, control, direction one by the other or by any officer, manager, director or agent of one with the affairs or business of the other so far as the same relates as aforesaid to the sale, offering for sale, marketing or installation of elevators.

5. It is hereby ordered, adjudged and decreed that the bill herein be amended by substituting as defendants D. H. Darrin Company, a corporation organized and existing under and by virtue of the laws of the State of Maryland, in the place of John Doe, and the Electron Manufacturing Company, a corporation organized and existing under and by virtue of the laws of the State of New York, in the place of Richard Doe; and that the bill be dismissed without prejudice as to the defendants Frazer Electric Elevator Company, a corporation, Houghton Elevator Company, a corporation, and the Bloomsberg Elevator and Machine Company, a corporation, and also as to the defendants Thomas Doe, William Doe, Henry Doe, George Doe, Charles Doe, Adam Doe, Hugh Doe and Edward Doe.

IT IS ALSO ORDERED, ADJUDGED AND DECREED that this decree shall bind all the defendants herein named as to any act herein enjoined in which the parties to this decree may participate with any other persons, firms or corporations in any way connected with any of the defendants herein and performing any of the acts complained of in said bill or in this decree enjoined, although said persons, firms or corporations may not be parties to this suit; and that the complainant may at any time it be so minded move the court to bring in additional parties.

IT IS FURTHER ADJUDGED AND DECREED that the court shall retain jurisdiction of this suit to make any further or additional decree or order or to modify or enlarge this decree from time to time as to equity may seem proper upon such reasonable notice by either party as the court, when application is made therefore, may prescribe.

WM. W. MORROW,
U. S. Circuit Judge.

Dated June 1st, 1906.

UNITED STATES v. FEDERAL SALT CO., *et al.*

Civil No. 13303

Year Judgment Entered: 1914

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA, SECOND DIVISION.

Civil No. 13303.

THE UNITED STATES OF AMERICA, COMPLAINANT,

VS.

FEDERAL SALT COMPANY ET AL., DEFENDANTS.

DECREE.

It appearing to the court that the bill in equity in the above-entitled cause was filed in this court on the 15th day of October, 1902, that a subpœna was issued and duly served on the defendants Federal Salt Company, American Salt Company, Carmen Island Salt Company, Getz Brothers and Company, Louis Getz, Christ Madsen, August Rossow, Sophia Droste, F. F. Lund, John Nichelson, N. C. Neilson, J. P. Tuchsen, Emma Lindenberg, A. Lindenberg, Patricio Moriscano, E. L. Stern, Benjamin Stern, August L. Johnson, Catherine Pestdorf, Reginald Mills and A. S. Jones, individually and as surviving partners of the Haywards Lumber Company, Redwood City Salt Company, Mary Cox, William F. Burton, August Johnson, Union Pacific Salt Company, Leslie Salt Refining Company, Mrs. Elsa A. Oliver, Imperial Salt Company and Continental Salt and Chemical Company; that the time for filing an answer on the part of each of said defendants has expired and no answer has been filed, and that an order taking the bill pro confesso was duly entered on the 8th day of December, 1902, in the order book as to defendants Federal Salt Company, American Salt Company, Carmen Island Salt Company, Getz Brothers and Company, Louis Getz, Christ Madsen, August Rossow, Sophia Droste, F. F. Lund, John Michelson, N. C. Neilson, J. P. Tuchsen, Emma Lindenberg, A. Lindenberg, Patricio Moriscano, E. L. Stern, Benjamin Stern, August L. Johnson, Catherine Pestdorf, Reginald Mills and A. S. Jones individually and as surviving partners of the Haywards Lumber Company, Redwood City Salt Company, and Mary Cox, and that an order taking the bill pro confesso was duly entered on the 25th day of May, 1914, in the order book as to defendants William F. Burton, August Johnson, Union Pacific Salt Company, Leslie Salt Refining Company, Mrs. Elsa A. Oliver, Imperial Salt Company, and Continental Salt and Chemical Company.

NOW THEREFORE, more than thirty days after entering said orders as aforesaid, to wit, on the third day of July, 1914, it is hereby ordered, adjudged and decreed that the unlawful agreements and contracts and each of them as fully set forth in the bill of complaint on file herein and alleged to have been made and entered into between the Federal Salt Company and the other defendants hereinabove named and each of them in restraint of the trade and commerce in salt with and between the State and Northern District of California and the States of Oregon, Washington, Nevada and other states of the United States and the territories of Alaska, Hawaii and the other territories of the United States and the District of Columbia and foreign nations are null and void as being in contravention of the Act of Congress entitled "An Act to Protect Trade and Commerce against unlawful restraint and manipulation" approved July 2, 1890, and the provisions of Section 73 of the Act of Congress approved August 27, 1894, and that said defendants and each and all of them be perpetually enjoined and prohibited from further going on, carrying out, maintaining or acting in any way, shape, manner or form under said unlawful agreements hereinbefore mentioned and each of them from further agreeing, combining, conspiring and acting together as to the trade and commerce in salt between the State and Northern District of California and the States of Oregon, Washington, Nevada, and other states of the United States and the territories of Alaska, Hawaii and other territories of the United States and the District of Columbia and foreign countries to hinder, restrain and destroy the salt trade and commerce between said divers states, territories, District of Columbia and foreign countries and all and each of them are hereby perpetually enjoined and prohibited from entering and continuing any agree-

ments, contracts, combinations, trusts and conspiracies to deprive the people of the City of San Francisco and of the State and Northern District of California and of the States of Oregon, Washington, Nevada and other states of the United States and the territories of Alaska, Hawaii and other territories of the United States and the District of Columbia and foreign countries of such facilities, rates and prices for salt imported, produced, sold and shipped between the divers states, territories, District of Columbia and foreign countries as will be afforded by free and unrestrained competition between owners, producers, operators, importers and dealers of salt used and consumed at and within the divers states, territories, District of Columbia and foreign countries hereinbefore mentioned for domestic and other purposes and that all and each of said defendants are hereby perpetually enjoined and prohibited from agreeing, contracting, combining and conspiring and acting together to monopolize or attempt to monopolize said trade and commerce in salt between the State and Northern District of California and the States of Oregon, Washington, Nevada and other states of the United States and the territories of Alaska, Hawaii and other territories of the United States and the District of Columbia and foreign countries; and all and each of said defendants are hereby perpetually enjoined and prohibited from agreeing, contracting, combining, conspiring or acting together to prevent each other or one another from importing, dealing, producing, selling or shipping salt from and between the divers states, territories, District of Columbia or foreign countries aforesaid and from importing, dealing, producing or selling salt in the trade and commerce between divers said states, territories, District of Columbia and foreign countries of such rates and prices as shall be fixed by said Federal Salt Company, and each and all of said defendants acting independently or separately on its own behalf.

And with the consent of the Attorney General and upon motion of the United States Attorney, it is further ordered that the said action be dismissed without prejudice to a new suit as to the following defendants in said action; to wit:

New Liverpool Salt Company, Henry Droste, Anna Christensen, Mrs. Peter Mathisen, H. Pedermann, Mary Neilsen, N. C. Neilsen, Harriet M. Block, Edward Oliver, Arthur Cox, Benjamin F. Barton, John Quigley, Mary Petermann, Adolph Oliver, Henry Oliver and Andrew Oliver, individually and as partners under the firm name of Oliver Brothers; John A. Plummer and Charles A. Plummer, individually and as partners under the firm name of Plummer and Brother; James Bamberger, J. Ligura and Isaac Bloch, individually and as partners under the firm name of Bamberger, Ligura and Bloch, and Anna Ohlson.

WILLIAM C. VANFLEET,
Judge.

Dated July 13th, 1914.

UNITED STATES v. CALIFORNIA RETAIL HARDWARE & IMPLEMENT ASS'N, *et al.*

Civil No. 1835

Year Judgment Entered: 1927

UNITED STATES v. CALIFORNIA RETAIL HARDWARE AND IMPLEMENT ASSOCIATION ET AL., DEFENDANTS.

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DISTRICT.

In Equity No. 1835.

UNITED STATES OF AMERICA, PLAINTIFF

vs.

CALIFORNIA RETAIL HARDWARE AND IMPLEMENT ASSOCIATION, A. D. Ketterlin, Frank Smith, Walter A. Mariana, M. M. Brown, Le Roy Smith, W. B. Allen, Fred T. Duhring, John P. Maxwell, I. Cushman Walker, Berry

M. Adams, Frank R. Barcroft, Frank Bremer, O. T. Clow, Harry Crowe, W. S. Eldred, E. R. Gifford, Wilber W. Green, E. Hobbie, Robert J. Johnson, Charles Melander, George L. Messick, Harry Nichols, J. W. Pearson, John D. Turner, Albert Thompson, and Robert J. Wisnom, defendants.

DECREE.

The United States of America having filed its petition herein on the 4th day of February, 1927, and the defendants, California Retail Hardware and Implement Association, A. D. Ketterlin, Frank Smith, Walter A. Mariana, M. M. Brown, Le Roy Smith, W. B. Allen, Fred T. Duhring, John P. Maxwell, I. Cushman Walker, Berry M. Adams, Frank R. Barcroft, Frank Bremer, O. T. Clow, Harry Crowe, W. S. Eldred, E. R. Gifford, Wilber W. Green, E. Hobbie, Robert J. Johnson, Charles Melander, George L. Messick, Harry Nichols, J. W. Pearson, John D. Turner, Albert Thompson, and Robert J. Wisnom, having duly appeared by I. I. Brown, Esq., and Bert Schlesinger, Esq., their attorneys;

Comes now the United States of America, by George W. Hatfield, its attorney for the Northern District of California, C. Stanley Thompson and R. P. Stewart, Special Assistants to the Attorney General, and come also the defendants named herein, by their attorneys as aforesaid;

And it appearing to the court that the petition herein states a cause of action and that the court has jurisdiction of the subject matters alleged in the petition; and the United States of America having moved the court for an injunction and for other relief against the defendants as hereinafter decreed; and the court having duly considered the statements of counsel for the respective parties and all and singular the allegations of the petition herein, and being fully advised in the premises, finds for the plaintiff and against the defendants; and all of the defendants through their said attorneys now and here consenting to the rendition of the following decree:

Now, therefore, it is ordered, adjudged, and decreed as follows:

1. That the combination in restraint of interstate trade and commerce, and the acts, agreements, and understandings among the defendants in restraint of interstate trade and commerce, complained of in the petition herein, are in violation of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," and acts amendatory thereof and supplemental or additional thereto.

2. That the defendants, their officers, agents, servants, and/or employees be and they are hereby perpetually enjoined and prohibited—

(a) From compiling, adopting, publishing, circulating, and/or distributing to and among the persons, firms, and corporations, members of the defendant California Retail Hardware and Implement Association, printed lists, and/or letters or pamphlets containing lists, known as "endorsed" lists, described in the petition herein, or any other similar list or lists of manufacturers, jobbers, and/or wholesale dealers engaged in interstate commerce in hardware, agricultural implements, and other like commodities, for the purpose or with the effect of informing the members of said defendant association of the name or names of each and every such manufacturer, jobber, or wholesale dealer who or which has sold the commodities described in the petition herein, directly to the consumer or consumers thereof, and who or which has failed and refused to confine his or its said sales and shipments of said commodities to retail dealers therein, in the Northern District of California,

(b) And from issuing, circulating, and/or distributing the said "endorsed" list or any similar list or lists for the purpose of preventing and dissuading the members of the said defendant association from purchasing any of said commodities from any manufacturer, jobber, or wholesale dealer engaged in interstate commerce not named in said "endorsed" list,

(c) And from issuing, circulating, and/or distributing said "endorsed" list or any similar list or lists for the purpose of influencing and preventing manufacturers, jobbers, and wholesale dealers engaged in interstate commerce in the commodities described in the petition herein, or their agents, from making sales of the said commodities, in the Northern District of California, directly to the consumer or consumers thereof.

3. From combining, agreeing, or contracting together, or with one another, or with others, orally or in writing, expressly or impliedly, directly or indirectly, to withhold their patronage from any manufacturer, jobber, or wholesale dealer engaged in interstate commerce in the commodities in said petition described by reason of, or on account of such manufacturer, jobber, or wholesale dealer having sold directly to the consumer or consumers of said commodities, within the Northern District of California.

4. The jurisdiction of this cause is hereby retained for the purpose of giving full effect to this decree, and for the purpose of making such other and further orders, decrees, amendments, or modifications, or taking such other action, if any, as may be necessary or appropriate to the carrying out and enforcement of said decree; and for the purpose of enabling any of the parties to this decree to make application to the court at any time for such further orders and directions as may be necessary or proper in relation to the execution of the provisions of this decree, and for the enforcement of strict compliance therewith.

A. F. ST. SURE,
United States District Judge.

May 12th, 1927.

UNITED STATES v. FERNALD CO., *et al.*

Civil No. 1944

Year Judgment Entered: 1927

UNITED STATES OF AMERICA vs. THE FERNALD AND SOULE STEEL COMPANY.

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

In Equity No. 1994.

THE UNITED STATES OF AMERICA, PLAINTIFF

vs.

THE FERNALD COMPANY, A CORPORATION, AND THE SOULE STEEL COMPANY, A CORPORATION, DEFENDANTS.

DECREE.

The United States of America having filed its petition herein on the 6th day of December, 1927, and the defendants, The Fernald Company and Soule Steel Company, having duly appeared by Robert B. Gaylord and Max Thelan, their attorneys:

Comes now the United States of America, by George J. Hatfield, its attorney for the northern district of California, and by C. Stanley Thompson, R. P. Stewart, and Breck P. McAllister, special assistants to the Attorney General, and come also the defendants named herein, by their attorneys as aforesaid;

And it appearing to the court that the petition herein states a cause of action and that the court has jurisdiction of the subject matters alleged in the petition and of the parties; and the United States of America having moved the court for an injunction and for other relief against the defendants as hereinafter decreed; and the court having duly considered the statements of counsel for the respective parties and all and singular the allegations of the petition herein, and being fully advised in the premises, finds for the plaintiff and against the defendants; and all of the defendants through their said attorneys now and here consenting to the rendition of the following decree:

Now, therefore, it is ordered, adjudged, and decreed as follows:

1. That the combination described in the petition herein, and the acts, agreements and understandings complained of in said petition, between the defendants and the manufacturers named in said petition, restrain the interstate trade and commerce described in said petition and violate the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and acts amendatory thereof and supplemental or additional thereto.

2. That the defendants, their officers, agents, servants, and/or employees be and they are hereby perpetually enjoined, restrained, and prohibited—

(*a*) From agreeing with each other and/or with the three manufacturers named in the petition herein, viz: Berger Company, Youngstown Company, and Truscon Company, or any of them, to fix and establish and/or to maintain uniform, arbitrary, and/or non-competitive prices for metal lath sold within the State of California

in the course of the interstate trade and commerce described in the petition herein; and

(*b*) From agreeing with each other and/or with the three manufacturers named in the petition herein, viz: Berger Company, Youngstown Company, and Truscon Company, or any of them, as to the classification of customers within the State of California purchasing or attempting to purchase metal lath in the course of the interstate trade and commerce described in the petition herein as distributors, retailers, or consumers.

The jurisdiction of this cause is hereby retained for the purpose of giving full effect to this decree, and for the purpose of making such other and further orders, decrees, amendments, or modifications, or taking such other action, if any, as may be necessary or appropriate to the carrying out and enforcement of said decree.

A. F. ST. SURE,
United States District Judge.

DECEMBER 6, 1927.

UNITED STATES v. STANDARD OIL CO. OF CAL., *et al.*

Civil No. 2542-S

Year Judgment Entered: 1930

UNITED STATES OF AMERICA vs. STANDARD OIL COMPANY OF CALIFORNIA, ET AL. DEFENDANTS.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

In Equity No. 2542-S.

UNITED STATES OF AMERICA, PETITIONER

vs.

STANDARD OIL COMPANY OF CALIFORNIA, RICHFIELD OIL Company, General Petroleum Corporation of California, Shell Company of California, Union Oil Company of California, The Texas Company, Associated Oil Company, Marine Refining Corporation, Hancock Oil Company, MacMillan Petroleum Company, Rio Grande Oil Company, Edington-Witz Refining Company, Hercules Gasoline Company, Seaside Oil Company, Shanley Gasoline Company, Sunland Refining Company, United States Refining Company, Vernon Oil Refining Company, Western Oil and Refining Company, and F. R. Long, defendants.

FINAL DECREE.

The United States of America filed its petition herein on February 15, 1930, and each of the defendants having duly appeared by their respective counsel, the United States of America by its counsel moved the Court for an injunction as prayed in the petition and each of the defendants consented to the entry of this decree without contest and before any testimony had been taken.

WHEREFORE, it is ORDERED, ADJUDGED AND DECREED as follows:

I. That the Court has jurisdiction of the subject matter and of all persons and parties hereto and that the petition herein alleges a conspiracy to monopolize and restrain interstate trade and commerce in the manufacture, transportation and sale of gasoline in interstate commerce, which is hereby declared illegal and in vio-

lation of the Act of Congress of July 2, 1890, commonly known as the Sherman Anti-Trust Act.

II. That the defendants and each of them and each and all of the respective officers and directors of the corporate defendants and each and all of the respective agents, servants, employees and all persons acting or claiming to act on behalf of the defendants or any of them be and they hereby are perpetually enjoined and restrained from carrying out directly or indirectly, expressly or impliedly the conspiracy to monopolize and to restrain interstate trade and commerce in the manufacture, transportation and sale of gasoline as alleged in the petition herein in the manner or by the means hereinafter described and from entering into or carrying out directly or indirectly, expressly or impliedly, any similar conspiracy of like character or effect by any such means or in any such manner, and that the corporate defendants, their respective officers, agents, servants, employees and all persons acting or claiming to act on behalf of them or any of them be enjoined from doing any of the acts specified in paragraphs 1, 2 and 3 of this clause II by the means more particularly specified in paragraphs (a), (b), (c), (d) and (e) of this clause II, to wit:

(1) Carrying on interstate trade and commerce in gasoline manufactured by them in accordance with or pursuant to any understanding or agreement between them to eliminate competition as to prices of sale of said gasoline;

(2) Fixing by agreement between said defendants or any two or more of them uniform and non-competitive prices to be charged for said gasoline, referred to in Paragraph I hereof;

(3) Increasing or decreasing by agreement between said defendants or any two or more of them the prices to be charged by them for said gasoline, referred to in Paragraph I hereof;

That is to say in the following manner or by the following means or any of them or in a manner or by means similar thereto, to wit:

(a) By agreement between said defendants or any two or more of them to refuse to sell, furnish, transport, supply or deliver said gasoline to any reseller in the Pacific Coast area for the reason that such reseller refuses to sell said gasoline to consumers at the prices so fixed by said defendants, or in fact so refusing pursuant to such agreement.

(b) By making representations to any reseller or resellers of said gasoline to the effect that Rule 17 of Group Two of the National Code of Practices for marketing refined petroleum products, or any other rule or provision thereof, requires resellers who are not subscribers to said Code to post prices at which gasoline shall be sold by them or requires any resellers to sell gasoline at the prices posted by the companies selling gasoline to them, or any of them, or that failure so to post the prices or so to sell is a violation of said code or of any rule or order of the Federal Trade Commission, or of any law of the United States whatsoever.

(c) Collectively agreeing through the medium of the defendant F. R. Long or others to purchase or in fact purchasing pursuant to any such collective agreement from the defendant independent companies gasoline manufactured by said independent companies on the condition that said independent companies should sell the remainder of the gasoline so manufactured by them at prices so fixed as aforesaid for the purpose of preventing the defendant independent companies from carrying on the manufacture and sale of gasoline in interstate commerce in competition with the defendant major companies or for the purpose of enabling the defendant major companies to sell the entire amount of gasoline respectively manufactured by them at uniform and non-competitive prices fixed by them as aforesaid throughout the Pacific Coast area.

(d) By quoting prices or making sales of said gasoline or causing resellers to quote prices or make sales of said gasoline prices fixed by agreement by any of the means, or any means similar thereto, referred to in paragraphs (a), (b) and (c) hereof.

(e) By refraining or causing resellers to refrain fror quoting prices other than those fixed by agreement b any of the means, or any means similar thereto, referre to in paragraphs (a), (b), and (c) hereof, or from making sales of said gasoline at prices other than those so fixed.

III. That the agreements referred to in the petition herein between defendant major companies and F. R. Long and between F. R. Long and the defendant independent companies be revoked, canceled and nullified; and that each and all of the defendants be perpetually enjoined from continuing to operate under the said agreements or any of them.

IV. That the corporate defendants, their respective officers, agents, servants, employees and all persons acting on behalf of them or any of them be enjoined from aiding, abetting or assisting individually or collectively others to do any of the things which the defendants are hereinbefore restrained from doing and which are also hereinbefore adjudged to be illegal.

V. Nothing in this decree contained is intended to relate to any elimination of competition which may or might result from the fusion or merger or consolidation of any two or more of the corporate defendants, or from the purchase by any of the corporate defendants of all or any part of the property of capital stock of any other corporate defendant or defendants.

VI. Nothing herein contained shall be construed as in any way an adjudication as to the right of any one or more of the corporate defendants to refuse to sell to any dealer gasoline so long as such refusal is not the result of a collective agreement between such corporate defendant or defendants and one or more of the other corporate defendants so to refuse to sell to such dealer.

VII. That jurisdiction of this cause be and it hereby is retained for the following purposes:

(a) Enforcing this decree;

(b) Enabling the petitioner to apply to this court for a modification, but not for an enlargement, of any of the provisions of this decree:

(c) Enabling the defendants or any of them to apply to this court for modification, but not for enlargement, of any of the provisions of this decree on the ground that the same have become inappropriate or unnecessary; and

(d) Enabling any party to this action to apply to this court for further directions or instructions as to the applicability of this decree.

Any application by any party hereto under the foregoing subdivisions (a), (b), (c), and (d) of this Paragraph VII shall be made in open court upon notice to all of the parties hereto, and any of the parties hereto, upon such application, shall have the right and privilege of requiring the production of witnesses upon whose testimony such application is sought or opposed, and of examining and cross-examining such witnesses in accordance with the rules of the court.

VIII. That the petitioner have and recover from the defendants the costs expended in this cause,

ENTER

A. F. ST. SURE,
United States District Judge.

SEPTEMBER 15, 1930.

UNITED STATES v. STANDARD OIL CO. OF CAL., *et al.*

Civil No. 2542-S

Year Judgment Modified: 1933

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

In Equity No. 2542-S.

UNITED STATES OF AMERICA, PETITIONER,

VS.

STANDARD OIL COMPANY OF CALIFORNIA, RICHFIELD OIL COMPANY, GENERAL PETROLEUM CORPORATION OF CALIFORNIA, SHELL COMPANY OF CALIFORNIA, UNION OIL COMPANY OF CALIFORNIA, THE TEXAS COMPANY, ASSOCIATED OIL COMPANY, MARINE REFINING CORPORATION, HANCOCK OIL COMPANY, MACMILLAN PETROLEUM COMPANY, RIO GRANDE OIL COMPANY, EDINGTON-WITZ REFINING COMPANY, HERCULES GASOLINE COMPANY, SEASIDE OIL COMPANY, SHANLEY GASOLINE

COMPANY, SUNLAND REFINING COMPANY, UNITED STATES REFINING COMPANY, VERNON OIL REFINING COMPANY, WESTERN OIL AND REFINING COMPANY, and F. R. LONG, Defendants.

ORDER MODIFYING FINAL DECREE.

The motions of the defendants, Union Oil Company of California, and Associated Oil Company herein, for modification of the Final Decree made and entered herein on the 15th day of September, 1930, coming on to be heard this day, on notice to all of the parties hereto and upon consideration thereof;

And Paul M. Gregg, Esq., by Jerry H. Powell, Esq., appearing on behalf of defendant Union Oil Company of California, and Robert M. Searls, Esq., appearing on behalf of defendant Associated Oil Company, and James Lawrence Fly, Esq., Special Assistant to the Attorney General, appearing on behalf of Petitioner, all having consented in open court to the entry of this Order and no objection being made on behalf of any party hereto:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

I

The Final Decree made and entered herein on the 15th day of September, 1930, is hereby modified so as to incorporate therein the following additional provisions, to-wit:

Nothing in this Decree shall be construed to enjoin defendants, individually or collectively, from carrying on any and all activities authorized by or conducted pursuant to and in accordance with the Code of Fair Competition for the Petroleum Industry as approved by the National Recovery Administration, and signed by the President on August 19, 1933, under the act of Congress of June 16, 1933, known as the National Industrial Recovery Act (a copy of which said Code of Fair Competition has been filed herein in support of the said motions), and any and all modifications thereof duly approved by the President or his designated government representative, as provided in the National Industrial Recovery Act, and any agreements entered into with or approved by the President or his designated government representative pursuant to Section 4 (a) of Title I of the National Industrial Recovery Act or any order or license issued by the President or his designated government representative, pursuant to the National Industrial Recovery Act, provided, however, that no such modification or amendment or agreement or order or license shall be effective for purposes of this decree until after such approval, execution or issuance by the President or his designated government representative and thereafter until ten days after notice thereof shall have been filed herein and served upon the Petitioner through the United States Attorney for this District and shall have been given by mail or telegram delivered to the Attorney General, nor then if the Petitioner shall have filed herein and given to the defendants a notice of objection thereto, without prejudice to the right of the defendants and each of them to make such motions herein as they may be advised.

Nothing in this decree shall be construed to prohibit the defendants from associating amongst themselves and with others to formulate any proposed Code of Fair Competition or any modification or amendment to the said Code of Fair Competition as signed by the President on August 19, 1933, or any agreement contemplated by the National Industrial Recovery Act, for the purpose of submitting the same for approval to the President or his designated government representative, pursuant to the National Industrial Recovery Act.

II

This Order shall become null and void at such time as and to the extent that the National Industrial Recovery Act or amendments thereto become inoperative or inapplicable, whether by Presidential proclamation, or by the terms of the statute itself, or by other act of Congress, or otherwise, allowance being made for the period allowable under Section 5 of Title I of the National Industrial Recovery Act.

III

Except as provided by this Order herein, said Final Decree of September 15, 1930, shall remain in full force and effect, and Clause VII thereof, wherein the Court retains certain jurisdiction, is hereby construed to include the same jurisdiction with reference to the Final Decree as modified hereby.

Done in open court this 25th day of September, 1933.

/s/ A. F. ST. SURE,
United States District Judge.

UNITED STATES v. ASSOCIATED MARBLE COS., *et al.*

Civil No. 21848L

Year Judgment Entered: 1941

U. S. vs. ASSOCIATED MARBLE COMPANIES, ET AL.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA,

SOUTHERN DIVISION.

Civil Action No. 21848L

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

ASSOCIATED MARBLE COMPANIES; VERMONT MARBLE COMPANY; JOSEPH MUSTO SONS-KEENAN CO.; AMERICAN MARBLE COMPANY; J. E. BACK CO., INC.; EISELE & DONDERO MARBLE CO. (THE); T. M. HOWARD; H. C. FASSETT; JOSEPH B. KEENAN; A. F. EDWARDS; J. E. BACK; A. G. DONDERO; HERBERT E. MILLER; JOHN CLERVI; RAY COOK; DEFENDANTS.

DECREE

The United States of America filed its complaint herein on April 28, 1941, and each of the defendants above named having duly appeared generally by its or his respective counsel, the United States of America, by its

counsel, moved this Court for an injunction as prayed in the said complaint. Each of the defendants consented in writing to the entry of this decree without contest and before any testimony or evidence had been taken, offered or received.

Wherefore, it is Ordered, Adjudged and Decreed:

1. The consent of the respective defendants herein to the entry of this decree is not, nor is the decree, evidence or admission that the defendants, or any of them, have violated any law or statute of the United States.

2. Because of said consents of said defendants and the acceptance thereof by the United States of America, it is not necessary to institute nor proceed with the trial of the within action or to take or receive any testimony or evidence therein or to make findings of fact (such findings being expressly waived by the parties) or to adjudicate any issue presented therein.

3. The Court has jurisdiction of the subject matter of this action and of all the parties hereto for the purposes only of this decree and of proceedings for the enforcement thereof. The complaint herein states a cause of action against defendants under the Act of Congress of July 2, 1890, commonly called "The Sherman Anti-trust Act", and acts amending or supplementing said Act.

4. As used in this decree, the following terms have the following meanings:

(a) "Northern California" means so much of the State of California as lies north of an imaginary straight line drawn from the easterly boundary line to the westerly boundary line of said State and passing through the most northerly point on the boundary line of the City of Bakersfield and the most northerly point on the boundary line of the City of Santa Barbara, in said State;

(b) "Marble business" shall mean the purchasing, importing, selling, cutting, polishing, sizing and installing of marble or any one or more of said activities;

(c) "Marble dealer" shall mean any person, firm or corporation engaged in the marble business.

5. The defendants, and each of them, and all of their respective officers, directors, agents, servants, employees, and all persons acting or authorized to act on behalf of the defendants, or any of them, be, and they hereby are, perpetually enjoined and restrained from carrying out or continuing, directly or indirectly, expressly or impliedly, any combination or conspiracy to restrain interstate trade and commerce in violation of the aforesaid Act of Congress in marble, as alleged in the complaint herein, and from entering into or carrying out, by any means whatsoever, any combination or conspiracy of like character or effect, and more particularly, (but the enumeration following shall not detract from the inclusiveness of the foregoing) from conspiring or agreeing among themselves or with other marble dealers to engage in any of the following specified acts and practices, or from doing, performing, or agreeing upon, entering upon, or carrying out among themselves or in conjunction with others any of the following acts or things:

(a) Curtailing, limiting, restricting, or otherwise controlling the amount of marble business which any marble dealer may obtain or perform in Northern California;

(b) Fixing, controlling, or affecting the price to be charged for the polishing, cutting, sizing, sale and installation of marble in Northern California;

(c) Formulating, promoting, or taking part in any plan, the object or effect of which is to prorate the available marble business in Northern

California among the defendants or among any of them and other marble dealers in said area;

(d) Collecting, compiling, or comparing data respecting sales, orders, purchases, or deliveries of marble for the purpose of enabling or compelling marble dealers to adhere to any pro rationing or division of available business among marble dealers in Northern California;

(e) Distributing purchase, sale, installation or price data in such form as to indicate the relationship of the sales or installation of any individual marble dealer to the total sales and installation of marble in Northern California during any period of time;

(f) Sponsoring, calling, holding, or participating in any meeting or conference held for the purpose of raising, lowering, fixing, establishing, maintaining, or stabilizing prices for the sale and installation of marble in Northern California;

(g) Creating, operating, or participating in the operation of any bid depository or of any scheme, plan, or device designed to maintain or to fix the price of marble or marble installation or to limit competition in bidding for marble or marble installations, or having the effect of limiting the free choice of the awarding authority in securing a bona fide competitive bid on any given project;

(h) Exchanging or disseminating information concerning or relating to future prices to be charged for the sale or installation of marble in Northern California;

(i) Recommending, advising, or suggesting the raising, lowering, fixing, establishing, maintaining, or stabilizing of prices to be charged for the sale and installation of marble in Northern California;

(j) Persuading, influencing, or coercing any marble dealer to refuse to accept work involving the polishing, cutting, sizing and preparation of marble for use in Northern California from any other marble dealer;

(k) Discriminating in the price or other conditions of sale of marble for use in Northern California to any marble dealer;

(l) Persuading or influencing, by threats or otherwise, any marble producer, jobber, or distributor, or their agents, or representatives, to discriminate against any marble dealer with regard to the terms or conditions of sale of marble in Northern California;

(m) Attempting to prevent contractors from dealing with individual marble dealers or to prevent individual marble dealers from engaging in the marble business in Northern California.

6. Nothing herein contained shall restrain or prohibit, or be construed to restrain or prohibit, any defendant from doing any act or entering into any agreement not providing for the purchasing, importing, selling, cutting, polishing, sizing, and installing of marble for use in the United States, which is entirely completed outside the United States; nor shall anything contained herein be construed to prohibit any act or arrangement authorized by the Act of April 10, 1918, commonly known as the "Webb Export Trade Act."

7. Nothing contained in this decree shall prevent the defendants, or any of them, or their respective officers, managers, agents, servants, or employees, or any person authorized to act for or on behalf of them, from establishing or compiling by concerted action or otherwise, among themselves or with any other marble dealers, standards for marble with respect to sizes, dimensions, colors, quality, or statistical data pertaining to the conditions or operation of the industry, provided that the compiling, or use of such information and statistics does not discriminate against any competitor or have the effect of restraining or preventing the sale or installation of marble in Northern California; and provided no such

standard for marble shall forbid the production or sale of nonstandard marble which is identified as such.

8. That nothing in this decree shall apply to arrangements or agreements authorized by any applicable legislation of the United States.

9. Within 60 days after the entry of this decree, there shall be filed with the Clerk of this Court a copy, certified by the Secretary of Associated Marble Companies, of a resolution or resolutions evidencing the voluntary dissolution of said Associated Marble Companies.

10. That jurisdiction of this cause may be, and it is hereby, retained for the purpose of enforcing, construing, and modifying the terms of this decree upon the application of the plaintiff or any of the defendants.

11. That for the purpose of securing compliance with this decree, but for no other purpose, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General or an Assistant Attorney General, be permitted access within the office hours of the defendants to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or control of defendants relating to any of the matters contained in this decree; that any authorized representative of the Department of Justice shall, subject to the reasonable convenience of the defendants, be permitted to interview officers or employees of the defendants without interference, restraint, or limitation by defendants, relating to any of the matters contained in this decree, provided that such officers and agents may have counsel present if they so desire.

Any information obtained by the means permitted in this paragraph shall not be divulged by any representatives 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 in which the United States is a party, or as otherwise required by law.

(s) HAROLD LOUDERBACK,
U. S. District Judge.

Dated This 28th day of April, 1941.

UNITED STATES v. CALIFORNIA RICE INDUS.*, et al.*

Civil No. 21990-S

Year Judgment Entered: 1941

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. California Rice Industry, C. S. Morse, William Crawford, Rosenberg Bros. & Co., Rice Growers Association of California, C. E. Grosjean Rice Milling Co., Pacific Trading Company, Inc., Growers Rice Milling Co., Phillips Milling Co., Oscar F. Zebal, and George W. Brewer., U.S. District Court, N.D. California, 1940-1943 Trade Cases ¶56,168, (Oct. 4, 1941)

United States of America v. California Rice Industry, C. S. Morse, William Crawford, Rosenberg Bros. & Co., Rice Growers Association of California, C. E. Grosjean Rice Milling Co., Pacific Trading Company, Inc., Growers Rice Milling Co., Phillips Milling Co., Oscar F. Zebal, and George W. Brewer.

1940-1943 Trade Cases ¶56,168. U.S. District Court, N.D. California, Southern Division. Civil Action No. 21990-S. July Term, 1941. Filed October 4, 1941.

Upon consent of all parties, a decree was entered in proceedings under the Sherman Anti-Trust Act, perpetually enjoining defendants from combining and conspiring among themselves to restrain interstate trade and commerce in the purchase and sale of paddy and milled rice. Among the activities forbidden are fixing prices; assigning purchase quotas; maintaining and enforcing price diGerentials, brokerage allowances, rates of discount and other terms of sale; compiling and disseminating statistical information relating to purchases, processing, sales, orders, shipments, deliveries and prices; auditing records to determine compliance with the unlawful activities; disclosing confidential information of an individual to his competitors; and sponsoring and conducting meetings for the purpose of fixing and maintaining prices, rates of discount and other terms of sale.

Thurman Arnold, Assistant Attorney General, Frank J. Hennessy, U. S. District Attorney, San Francisco, Calif., Tom C. Clark and Wallace Howland, Special Assistants to the Attorney General, and Joseph L. Alioto, Special Attorney, for plaintiff.

Harry M. Creech, San Francisco, Calif., for defendants.

Before St. Sure, District Judge.

Consent Decree

The complainant, United States of America, having filed its complaint herein on October 4, 1941; all of the defendants having appeared generally and having waived service of process; all parties hereto by their respective attorneys herein having severally consented to the entry of this final decree herein without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of any such issue; and the complainant having moved the Court for this decree;

Now, THEREFORE, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent of all parties hereto, it is hereby

ORDERED, ADJUDGED, and DECREED:

I.

[*Jurisdiction*]

The Court has jurisdiction of the subject matter and of all the parties hereto; the complaint states a cause of action against the defendants under the Act or Congress of July 2, 1890 entitled, “An Act to Protect Trade and

Commerce Against Unlawful Restraints and Monopolies," and the acts amendatory thereof and supplemental thereto.

II.

[*Definitions*]

For the purposes of this decree, the term "paddy rice" means Japan type rice in the raw state, and the term "milled rice" means Japan type rice after the same has been processed.

III.

[*Activities Enjoined*]

The defendants, their members, officers, directors, agents, and employees, their successors and all persons acting under, through, or for defendants or their successors, or any of them, be, and they hereby are, perpetually enjoined and restrained from agreeing, combining, or conspiring among themselves or with any other individual, association or corporation:

[*Fixing Quotas*]

(a) To limit, curtail, or determine by assignment of quota or otherwise the amount of paddy rice which may be acquired by any purchaser thereof, or the amount of paddy rice which may be milled by any processor thereof, or the amount of milled rice which may be sold or shipped by any seller thereof;

(b) To recommend by suggested quotas or otherwise a limitation in the amount of paddy rice to be acquired by purchasers thereof, or in the amount of paddy rice to be milled by processors thereof, or in the amount of milled rice to be sold or shipped by sellers thereof;

[*Price Fixing*]

(c) To raise, lower, fix, maintain, determine, or adhere to prices to be paid for paddy rice;

(d) To raise, lower, fix, maintain, determine, or adhere to prices of milled rice;

[*Maintaining Price Differentials*]

(e) To fix, maintain, determine or adhere to price differentials, rates of discount, brokerage allowance, or other terms of sale of milled rice;

[*Enforcing Price Differentials*]

(f) To adhere to, or to enforce through penalties or otherwise adherence to prices, price differentials, brokerage allowance, or rates of discount or other terms of sale of milled rice, posted or openly announced by any seller or sellers thereof;

[*Dissemination of Statistical Information*]

(g) To gather, compile, or disseminate in formation or statistics as to the volume of purchases of paddy rice, the production, sales, or shipments of milled rice, the prices paid for paddy rice or milled rice, stocks on hand, orders on hand, cost of transportation, or other statistics pertaining to the condition or operation of the rice industry in California; unless such information and statistics are readily, fully, and fairly made available at the time of their initial dissemination to growers of paddy rice, purchasers of milled rice, and the public gen erally and are in a form which is not forbidden by any other provision of this decree and which does not disclose to competitors invoices as to individual transactions, or any data as to individual sales to named customers, or information as to the amount of purchases of paddy rice by any individual purchaser; or as to the amount of paddy rice processed by any individual processor, or as to the amount of milled rice sold or shipped by any individual seller, or as to prices charged or paid by any individual seller or buyer.

IV.

[*Other Activities Restrained*]

The defendants, their members, officers, directors, agents, and employees, their successors and all persons acting under, through, or for defendants or their successors, or any of them, be, and they are, hereby individually and perpetually enjoined and restrained from engaging in any of the following specified acts and practices:

[*Compiling Sales, etc., Data)*

(a) Collecting, compiling, distributing, or utilizing data respecting purchases, processing, sales, orders, shipments, deliveries or prices for the purpose of violating any of the provi sions of paragraph III hereof;

[*Distributing Data on Sales, etc.*]

(b) Distributing or disseminating any data, collected or compiled respecting purchases, processing, sales, orders, shipments, deliveries or prices for the purpose of indicating whether purchasers or processors of paddy rice or sellers of milled rice, or any of them are cooperating in carrying out any of the activities prohibited by paragraph III hereof;

[*Discussion of Sales, etc., Data*]

(c) Presenting or discussing at meetings or by correspondence, or otherwise, data relating to purchases, processing, sales, orders, shipments, deliveries or prices for the purpose of cooperating in carrying out any of the activities prohibited by paragraph III hereof;

[*Auditing Records*]

(d) Examining or auditing records or accounts of purchasers or processors of paddy rice or sellers of milled rice relating to purchases, processing, sales, orders, shipments, de liveries or prices for the purpose of determining whether purchasers or processors of paddy rice or sellers of milled rice, or any of them are cooperating in carrying out any of the activities prohibited by paragraph III hereof.

[*Conducting Meetings*]

(e) Sponsoring, calling, holding, or participating in any meeting or conference of competitors in the rice industry for the purpose of raising, lowering, fixing, maintaining, determining or adhering to the prices of paddy rice or milled rice, or rates of discount, or, other terms of sale of milled rice.

[*Suggesting Price Fixing, etc.*]

(f) Suggesting directly or indirectly to one or more competitors in the rice industry that they raise, lower, fix, maintain, or determine production, prices, price differentials, brokerage allowance, working charges, terms and conditions of sale or amounts to be included in or deducted from the price charged for paddy rice or milled rice, provided that this paragraph shall not prohibit legitimate bargaining negotiations between a seller and a purchaser, which does not involve any conduct or activity otherwise prohibited by this decree.

[*Disclosing Confidential Data of Individuals to Competitors*]

(g) Disclosing to competitors invoices as to individual transactions or any data as to individual sales to named customers or information as to the amount of purchases of paddy rice or production, sales, or shipments of milled rice or prices paid or charged by any individual processor or seller, provided that nothing herein shall be deemed to prohibit a defendant from any expression of prices or sales terms of rice for the purpose of effecting its current sale nor from any issuance or transmission of an invoice or statement for the purpose of effecting its collection or payment.

V.

[*Activities Excepted*]

Except as specifically provided in paragraph IV of this decree nothing contained herein shall be deemed to affect relations which otherwise are lawful between a defendant, its members, directors, officers, employees, principals, agents, or subsidiaries where such relations do not involve any agreements, combinations or conspiracies enjoined in this decree with any other defendant, its directors, officers, employees or agents. Nothing in this decree shall be deemed to prohibit the lawful conduct of any defendant, its members, directors, officers, employees, principals or agents with respect to the lawful operation of its business.

VI.

[*Examination of Records to Secure Compliance*]

For the purpose of securing compliance with this decree, authorized representatives of the Department of Justice, upon the written request of the Attorney General or an Assistant Attorney General, shall be permitted access, within the office hours of the defendants, and upon reasonable notice, to books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or the control of the defendants, or any of them, relating to any of the matters contained in this decree. Any authorized representative of the Department of Justice, subject to the reasonable convenience of the defendants, shall be permitted to interview officers or employees of defendants without interference, restraint, or limitation by defendants; provided, however, that any such officer or employee may have counsel present at such interview. De-fendants, upon the written request of the Attorney General or an Assistant Attorney General, shall submit such reports with respect to any of the matters contained in this decree as from time to time appear to be reasonably necessary for the purpose of enforcement of this decree; provided, how-ever, that the information obtained by the means permitted in this paragraph 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 in which the United States is a party or as otherwise required by law.

VII.

[*Retention of Jurisdiction*]

Jurisdiction of this action 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 or directions as may be necessary or appropriate in relation to the construction of or carrying out of this decree, for the modification thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.

UNITED STATES v. MONTEREY SARDINE INDUS.

Civil No. 21991-W

Year Judgment Entered: 1941

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Monterey Sardine Industries, Inc., Salvatore Ventimiglia, O. Enea, Sam Lonero, A. N. Lucido and Horace E. Balbo., U.S. District Court, N.D. California, 1940-1943 Trade Cases ¶56,169, (Oct. 6, 1941)

United States of America v. Monterey Sardine Industries, Inc., Salvatore Ventimiglia, O. Enea, Sam Lonero, A. N. Lucido and Horace E. Balbo.

1940-1943 Trade Cases ¶56,169. U.S. District Court, N.D. California, Southern Division. Civil Action No. 21991-W. October 6, 1941.

Upon consent of all parties, a decree was entered in proceedings under the Sherman Anti-Trust Act, enjoining an association and certain individuals from monopolistic activities in the marketing of sardines at the port of Monterey, California, or any other port. The activities enjoined are price fixing through the formulation of plans with purchasers of sardines; preventing non-members of the association from marketing their sardines at Monterey, California, or any other port; compelling purchasers of sardines by contractual arrangements to purchase solely from the association or its members; and conducting meetings for the purpose of carrying out the unlawful activities of the conspiracy..

Thurman Arnold, Assistant Attorney General, Frank J. Hennessy, U. S. District Attorney, San Francisco, Calif., Tom C. Clark and Wallace Howland, Special Assistants to the Attorney General, and Fred S. Gilbert, Jr., for plaintiff.

Peter J. Ferrante and Webster Street, Monterey, Calif., for defendants.

Before Louderback, District Judge.

Consent Decree

The complainant, United States of America, having filed its complaint herein on October 6, 1941; all of the defendants having appeared generally and having waived service of process; all parties hereto by their respective attorneys herein having severally consented to the entry of this final decree herein without trial or adjudication of any issue of fact or law herein and without admission by any party in respect to any such issue; and the complainant having moved the Court for this decree;

NOW, THEREFORE, before any testimony has been taken herein, and without trial or adjudication of any issue, of fact or law herein, and upon consent of all parties hereto, it is hereby

ORDERED, ADJUDGED, and DECREED

[*Jurisdiction*]

1. That the Court has jurisdiction of the subject matter and of all the parties hereto; that the complaint states a cause of action against the defendants under the Act of Congress of July 2, 1890, entitled, “An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies,” and the acts amendatory thereof and supplemental thereto.

[*Activities Enjoined*]

2. Each of the defendants, their succes sors, members, officers, directors, agents and employees, and all persons acting under, through or for them, or any of them, be and they are hereby enjoined and restrained from doing, or attempting to do, or induc ing others to do the following things or any of them:

[*Restraining Marketing*]

(a) Preventing or restraining any individual, co-partnership, or corporation not a member of Monterey Sardine Industries, Inc., from, or sup pressing or hindering any such individual, co partnership, or

corporation in, marketing sar dines at, or transporting or delivering sardines to, Monterey, California, or any other port;

[*Compelling Purchasing from Association by Contract*]

(b) Entering into any contract or agreement with any corporation, co-partnership, or indi vidual by terms of which such corporation, co-partnership, or individual shall be required to purchase sardines solely from defendant Monterey Sardine Industries, Inc., or its members, or from any other organization or association or its members, or through any common agency, and from or through no one else; or forcing, inducing, coercing, or persuading any corporation, co-partnership, or individual to enter into any such contract or agreement or any such practice;

(c) Entering into any contract or agreement with any corporation, co-partnership, or indi vidual prohibiting it from purchasing sardines from any individual, co-partnership, or corpo ration not a member or temporary member of Monterey Sardine Industries, Inc., or of any organization or association, or preventing any corporation, co-partnership, or individual from making such purchases;

[*Price Fixing*]

(d) Formulating, entering into, or participat ing in, or furthering any agreement, plan, or program with any combination or group of purchasers of sardines for the purpose or with the effect of fixing or determining prices for sardines;

[*Conducting Meeting*]

(e) Sponsoring, calling, holding, or participat ing in any meeting or conference for the pur pose of carrying out any of the activities prohibited by this decree, or any meeting in which purchasers of sardines are represented as a combination or as a group for the purpose or with the effect of fixing or determining prices for sardines.

[*Further Activities Enjoined*]

3. Each of the said defendants, their suc cessors, members, officers, directors, agents and employees, and all persons acting under, through, or for them, or any of them, are further enjoined and restrained from agree ing, combining, or conspiring among them selves or with any other person to do, or to attempt to do, or to induce others to do any of the acts or things set forth and prohibited by subparagraphs 2 (a) to 2 (e), inclusive, of this decree and from carrying out or performing the provisions of any contract or agreement which provisions are inconsistent with, contrary to, or prohibited by, the terms of this decree.

[*Examination of Records to Secure Compliance*]

4. For the purpose of securing compliance with this decree, authorized representatives of the Department of Justice, upon the written request of the Attorney General or an Assistant Attorney General, shall be per mitted access, within the office hours of the defendants, and upon reasonable notice, to books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or the control of the defendants, or any of them, relating to any of the matters contained in this decree. Any authorized representative of the Department of Justice, subject to the reasonable convenience of the defendants, shall be permitted to interview officers or employees of defendants without interference, restraint, or limitation by defendants; provided, however, that any such officer or employee may have counsel present at such interview. Defendants, upon the written request, of the Attorney General or an Assistant Attorney General, shall submit such reports with respect to any of the matters contained in this decree as from time to time may appear to be reasonably necessary for the purpose of enforcement of this decree; provided, however, that the information obtained by the means permitted in this paragraph shall not be divulged by any repre-sentative 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 in which the United States is a party or as otherwise required by law.

[*Retention of Jurisdiction*]

5. Jurisdiction of this action 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 or directions as may be necessary or appropriate for the con struction of or carrying out of this decree for the modification thereof, and for the en-forcement of compliance therewith and the punishment of violations thereof.

UNITED STATES v. FREIGHTWAYS, *et al.*

Civil No. 22075-R

Year Judgment Entered: 1943

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Freightways et al., U.S. District Court, N.D. California, 1940-1943 Trade Cases ¶56,273, (Apr. 14, 1943)

Click to open document in a browser

United States v. Freightways et al.

1940-1943 Trade Cases ¶56,273. U.S. District Court, N.D. California, Southern Division. Civil Action No. 22075-R. April 14, 1943.

In a consent decree entered in proceedings under the anti-trust laws, dissolution of Freightways is ordered, and defendants are enjoined from adopting any agreement or plan for the division or allocation of territory among themselves for the purpose of soliciting freight; from dividing the United States into zones; from providing exclusive routings over the lines of the defendants and their connecting carriers; from issuing any routing or other guides for the use of agents, shippers, carriers or others which set up on a point-to-point basis exclusive routings of shipments transported over the lines of the defendant carriers or their connecting carriers; from exchanging freight exclusively among themselves or exclusively with other motor carriers; from agreeing not to exchange freight with or accept freight from other motor carriers in competition with themselves; from pooling or arbitrarily dividing freight at any common terminal or elsewhere; from soliciting freight in a common name; from canceling through routes and through rates with other carriers; from using the name "Freightways" in their corporate title on rolling stock and routing of traffic, or in any manner whatsoever; and from fixing, discussing or determining rates, charges, fares, rules and practices except for the purpose of establishing through routes or joint rates.

Decree entered by Michael J. Roche, United States District Judge.

Decree

This case having come on to be heard before the Honorable Michael J. Roche, United States District Judge, United States of America, appearing by Tom C. Clark, Assistant Attorney General; Arne C. Wiprud, William R. Kueffner and Pierce W. Bradley, Special Assistants to the Attorney General; Robert J. Rubin and George W. Hippeli, Special Attorneys; and Frank J. Hennessy, United States Attorney; and the answering defendants appearing by DeLancey C. Smith, Francis R. Kirkham, Charles F. Prael, and Donald R. Schafer, their attorneys, and the Court having heard and duly considered the pleadings and statements of counsel for the respective parties, and the plaintiff having presented its case, and the defendants having submitted their case, and consented to the entry of this decree before any testimony was taken on behalf of defendants; and it appearing to the satisfaction of the Court that the plaintiff is entitled to the relief hereinafter granted and adjudged, it is, therefore, hereby ordered, adjudged and decreed as follows:

I

[*Jurisdiction and Cause of Action*]

The Court has jurisdiction of the parties hereto; and for the purposes of this decree and proceeding for the enforcement thereof, the Court has jurisdiction of the subject hereof and the complaint states a cause of action against the said defendant under the Act of Congress of July 2, 1890 entitled, "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," known as the Sherman Antitrust Act.

II

[*Combination and Conspiracy Unlawful*]

The combination and the conspiracy between defendant Freightways and defendant motor carriers constitutes a combination and conspiracy to monopolize, and an unreasonable and unlawful restraint of trade and commerce among the several states and with foreign countries in violation of Sections 1 and 2 of the Sherman Antitrust Act.

III

[*Prohibited Acts Enjoined*]

Each individual defendant, and each corporate defendant, its successors, officers, directors, agents and employees and all persons and corporations acting under, through or for it, hereby is and are enjoined from doing the acts prohibited by this decree and is and are directed to do the acts hereby required.

IV

[*Dissolution*]

It is further ordered, adjudged and decreed, that the defendant Freightways shall be and is hereby forever dissolved and the defendants, and each of them, their officers and agents, are hereby ordered to dissolve and liquidate said defendant Freightways and divest themselves of any and all interest therein.

V

[*Membership in Similar Organization*]

The defendants, and each of them, their officers and agents, are perpetually enjoined and restrained from organizing, participating in, or becoming members of any association or corporation which carries on directly or indirectly such activities of Freightways as are prohibited by this decree.

VI

[*Allocation of Areas or Routings*]

Any two or more of the defendants, their officers and agents, are hereby perpetually enjoined and restrained from making, adopting, promulgating or making use of any agreement, resolution, plan or device for dividing and allocating among defendants, or any of them, geographical areas from which and to which freight would be solicited, carried, and/or delivered, or dividing the United States into zones, or providing exclusive routing or routings via the lines of defendants, or any of them, and their connecting carriers, for each traffic movement originating in or destined to said zones on the one hand and from or to points within the territory served by defendant motor carriers, or any of them, on the other hand, or between points in the territory served by the defendants, or any of them.

VII

[*Publication of Routing Guides*]

Any two or more defendants, their officers and agents, are hereby perpetually enjoined and restrained from using preparing, publishing, or issuing any routing or other guides for the use of agents, shippers, carriers, or others, setting up on a point to point basis exclusive routings to be given shipments transported by or for movement over the lines of defendant motor carriers, or any of them, and their connecting carriers.

VIII

[*Agreements for Exclusive Exchange of Freight or Elimination of Competition*]

The defendants, and each of them, their officers and agents, are perpetually enjoined and restrained from agreeing to exchange or from exchanging freight exclusively among themselves or exclusively with other motor carriers, or from agreeing to eliminate competition among themselves, or any of them, or with other carriers, in violation of the Sherman Antitrust Act.

IX

[*Agreements Not to Exchange Freight with Competitors*]

The defendants, and each of them, their officers and agents, are hereby perpetually enjoined and restrained from agreeing not to exchange freight with or accept freight from other motor carriers which are in competition with defendant motor carriers, or any of them.

X

[*Pooling or Dividing Freight*]

Defendants, and each of them, their officers, agents and employees are enjoined and restrained from pooling or arbitrarily dividing freight at any common terminal or elsewhere.

XI

[*Violation of Shipper's Routing Directions*]

Defendants, and each of them, their officers, agents and employees are enjoined and restrained from the transportation of freight otherwise than in accordance with routing of same by the shipper, carrier or consignee, except where same has not been routed by shipper, carrier or consignee, and except in cases of emergency such as riot, flood, accident, disaster or other act of God.

XII

[*Solicitation of Freight in Common Name*]

Any two or more defendants, their officers and agents, are enjoined and restrained from the solicitation of freight in a common name; and from using any shipping documents which show the name thereon of any carrier other than the originating or participating carrier.

XIII

[*Cancellation of Through Routes and Joint Rates*]

The defendants, and each of them, their officers and agents, are perpetually enjoined and restrained from cancelling through routes and joint rates with other carriers, or otherwise restricting their tariffs, by concert of action among themselves or among any two or more of them.

XIV

[*Restricting Right to Dispose of Assets*]

The defendants, and each of them, their officers and agents, are perpetually enjoined and restrained from agreeing among themselves that none of said defendants will sell, or otherwise dispose of their assets or good will, or any part thereof, without first offering same to any of the defendants herein, or in any other manner restricting the right of any of the defendants to dispose of their said assets and good will in any manner they desire.

XV

[*Use of Name "Freightways"*]

The defendants, and each of them, their officers and agents, are perpetually enjoined and restrained from using only the name, "Freightways" in their corporate title, on rolling stock and routing of traffic, or in any manner whatsoever.

XVI

[*Agreements upon Rates and Practices*]

The defendants, and each of them; their officers and agents, are perpetually enjoined and restrained from agreeing among themselves to fix, discuss, or in any manner, determine rates, charges, fares, and rules and practices in connection therewith, other than the agreeing by two or more connecting carriers on the establishment of through routes and joint rates and on the division among or between themselves of revenue derived from interline freight moving via their lines on joint rates published or concurred in by the defendants and other carriers participating in such movement.

XVII

[*Opening of Gateways to All Mótor Carriers*]

The defendants, and each of them, their officers and agents, shall take all necessary and proper steps to accomplish the opening to all motor carriers of all gateways heretofore closed pursuant to agreement of the defendants, or any of them, and the removal of any tariff restrictions made pursuant to agreement of the defendants, or any of them, to effectuate the closing of such gateways.

XVIII

[*Time Within Which Decree to Be Effectuated*]

All of the provisions of this decree are effectuated on the 31st day of January 1944.*

*[Paragraph XVIII, originally setting the effective date as 180 days from the date of the decree, was amended to read as above January 31, 1944.]

XIX

[*Appointment of Receiver*]

Upon the failure of said defendants, or any of them, to comply with the provisions of this decree, including the liquidation and dissolution of defendant Freightways, within the time specified in this decree, the Court may appoint a receiver to effectuate the provisions of this decree after motion and order for that purpose.

XX

[*Costs of Suit*]

The plaintiff shall recover from the defendants the costs of this suit to be duly taxed herein.

XXI

[*Access to Records, Interviews and Reports*]

For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General or an Assistant Attorney General and on reasonable notice to defendant motor carriers, made to the principal office of said defendants, be permitted (a) reasonable access, during the office hours of said defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendants, relating to any of the matters contained in this decree; (b) subject to the reasonable convenience of said defendants and without restraint or interference from it, and subject to any legally recognized privilege, to interview officers or employees of said defendants, who may have counsel present, regarding any such matters; and said defendants, on such request, shall submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this decree; provided, however, that information obtained by the means permitted in this paragraph 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 in which the United States is a party or as otherwise required by law.

XXII

[*Jurisdiction Retained*]

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree to make application to the Court any time before or after the effective date hereof for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this decree, for the modification hereof upon any ground for the enforcement of compliance herewith and the punishment of violations hereof.

UNITED STATES v. FREIGHTWAYS, *et al.*

Civil No. 22075-R

Year Order Effectuating Judgment Entered: 1944

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

Civil Action No. 22075-R.

UNITED STATES OF AMERICA, PLAINTIFF

VS.

FREIGHTWAYS, ET AL., DEFENDANTS.

ORDER EFFECTUATING THE DECREE.

The motion of the plaintiff herein for an order and decree effectuating all of the provisions of the decree of the above-entitled court entered herein on the 14th day of April 1943 coming on regularly for hearing this 31st day of January, 1944, the plaintiff, United States of America, appearing by George W. Hippeli, Esquire, and the defendants appearing by De Lancey C. Smith, Esquire, Francis R. Kirkham, Esquire, and Charles F. Prael, Esquire, and the matter having been argued and submitted and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that all of the terms and provisions of the decree entered herein on the 14th day of April 1944 be, and the same are, hereby effectuated.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that paragraph XVIII of said decree be and it is hereby amended to read as follows:

"All of the provisions of this decree are effectuated on the 31st day of January 1944."

Dated this 31st day of January 1944.

MICHAEL J. ROCHE,
United States District Judge.

UNITED STATES v. PAC. GREYHOUND LINES, *et al.*

Civil No. 25267-S

Year Judgment Entered: 1947

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Pacific Greyhound Lines, et al., U.S. District Court, N.D. California, 1946-1947 Trade Cases ¶57,619, (Sept. 25, 1947)

United States v. Pacific Greyhound Lines, et al.

1946-1947 Trade Cases ¶57,619. U.S. District Court, N.D. California. Civil Action No. 25267-S. September 25, 1947.

A consent judgment, entered in an action charging that defendants had imposed monopolistic restraints upon bus transportation between certain West Coast cities, requires the sale of the operating rights of a bus line maintained by a defendant as a "fighting ship." Agreements to fix passenger fares, other than agreements establishing joint fares over through routes, are prohibited. Certain guaranteed-earnings agreements between a defendant railroad and a defendant motor bus company are terminated, and the railroad is required, in entering into such agreements, to give priority to competitors of the bus company. The railroad is prohibited from participating in the management and operation of the bus company.

For plaintiff: Tom C. Clark, Attorney General; John F. Sonnett, Assistant Attorney General; James E. Kilday, William C. Dixon, Wallace Howland, Special Assistants to the Attorney General; Frank J. Hennessy, United States Attorney; Lawrence W. Somerville, Special Attorney.

For defendants: Maurice E. Harrison, James S. Moore, Jr., Brobeck, Phleger & Harrison, for Pacific Greyhound Lines, Dollar Lines; Robert Driscoll, Maurice E. Harrison, Brobeck, Phleger & Harrison, for The Greyhound Corporation; T. W. Bockes, E. B. Collins, W. R. Rause, E. E. Bennett, E. C. Renwick, for Interstate Transit Lines, Interstate Transit Lines, Inc., Union Pacific Stages, Incorporated; Robert L. Pierce, E. J. Foulds, for Southern Pacific Company.

FINAL JUDGMENT

[*Consent Judgment*]

Plaintiff, the United States of America, having filed its complaint herein on the 24th day of October 1945; and the defendants having appeared and severally filed their answers to such complaint, denying the substantive allegations thereof; and the plaintiff by leave of court and with consent of the defendants having filed its amended complaint herein on the 22nd day of September 1947; and the parties hereto having stipulated with the approval of the court that the answers heretofore filed in response to the original complaint shall be deemed and taken to be as answers to such amended complaint; all the parties hereto by their respective attorneys herein having severally consented to the entry of this final judgment herein without trial or adjudication of any issue of fact or law herein, and without admission herein by any party in respect to any such issue;

NOW, THEREFORE before any testimony has been taken herein, and without trial or adjudications of any issue of fact or law herein, and upon consent of all parties hereto, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

[*Court Has Jurisdiction*]

I.

The Court has jurisdiction of the subject matter herein, and of all the parties to this judgment, and the amended complaint states a cause of action against the defendants, and each of them, under sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," as amended, commonly known as the Sherman Act (15. USC secs. 1, 2).

[*Definitions*]

II.

As used herein:

(a) “Overland” means, individually and jointly, the defendants Interstate Transit Lines, Interstate Transit Lines, Inc., and Union Pacific Stages, Incorporated;

(b) “Joint fare” means a single fare applicable to the interstate transportation of passengers by two or more motor or rail carriers from the place of origin to the place of destination;

(c) “Through route” means a combination of the routes of two or more connecting carriers, motor or rail, arising through joint agreement, facilitating the interchange of interstate passengers and their baggage from the line of one connecting carrier to that of another, for the movement of traffic from the place of origin to the place of destination;

(d) “Interchange” means the transfer of Passengers and their baggage from the line of one connecting carrier to that of another for the purpose of continuing the journey toward the ultimate destination.

[*Applicability of Provisions*]

III.

The provisions of this judgment applicable to any defendant shall apply to each of its subsidiaries, successors, assignees and nominees, and to each of its officers, directors, agents and employees, and to each person acting or claiming to act under, through or for them, or any of them.

[*Agreements to Fix Fares Enjoined*]

IV.

Each of the defendants Pacific Greyhound Lines, Dollar Lines and Southern Pacific Company, is hereby enjoined and restrained from entering into or performing any agreement or understanding by and between themselves or any of them, directly or indirectly, to fix, establish or maintain passenger fares, other than agreements by and between he said defendants or any of them establishing through routes, joint fares over the routes of the participating carriers handling such interline traffic, or optional honoring of tickets, and for fixing the division of revenue with respect to any such traffic.

[*Contracts on Restrictive Conditions Enjoined*]

V.

Each of the defendants Pacific Greyhound Lines, Interstate Transit Lines, Interstate Transit Lines, Inc., and Union Pacific Stages, Incorporated, is hereby enjoined and restrained from continuing in effect, entering into, performing or enforcing any provision in any contract

(a) between Pacific Greyhound Lines on the one hand and the Overland group or any of them on the other hand, or

(b) between any of said defendants and a feeder line motor carrier using a depot of any of said defendants at any point in California or Oregon whereby any feeder line is required as a condition to the enjoyment of joint fares, through routes, or joint terminal privileges with said defendants, or any of them, to agree not to enter into joint fares or through routes with competitors of said defendants or to refuse to interchange through passengers at the terminals of competitors of defendants. Each of said defendants is directed to take such steps as are necessary to eliminate such restrictions from existing contracts, if any, with any such feeder line containing the same, and shall notify all feeder lines who are now parties to such contracts of the removal of such restrictions. Each of said defendants shall submit to this Court a report in detail of such steps as have been taken in compliance with the terms of this section within six months of the date of the filing of this judgment

and shall furnish a copy thereof to the Assistant Attorney General of the United States in charge of the Antitrust Division.

[*Agreements to Restrain Competition Prohibited*]

VI.

Each of the defendants Pacific Greyhound Lines (hereinafter referred to as Pacific), and Interstate Transit Lines, Interstate Transit Lines, Inc., and Union Pacific Stages, Incorporated (herein collectively described as Overland), is hereby enjoined and restrained from continuing in effect, entering into, performing or enforcing any agreement or understanding between Pacific and Overland whereby:—

(a) Pacific agrees not to establish through routes or joint fares with any competitor of Overland;

(b) Overland agrees not to establish through routes or joint fares with any competitor of Pacific;

(c) Pacific agrees to cancel any through route or joint fare now in effect with any competitor of Overland;

(d) Overland agrees to cancel any through route or joint fare now in effect with any competitor of Pacific;

(e) Pacific agrees to cancel any through route or joint fare now in effect with any feeder line;

(f) Overland agrees to cancel any through route or joint fare now in effect with any feeder line;

(g) Pacific agrees to refuse to route passengers originating on its line and destined to a point on Overland or any connection of Overland over the lines of a motor bus competitor to Overland with whom Pacific maintains through routes and joint fares;

(h) Overland agrees to refuse to route passengers originating on its line and destined to a point on Pacific or any connection of Pacific over the lines of a motor bus competitor of Pacific with Whom Overland maintains through routes and joint fares.

[*Defendants Directed to Eliminate Restraints; Report of Compliance*]

VII.

Each of the defendants referred to in section VI herein is directed to take such steps as are necessary to eliminate the restraints referred to therein from existing contracts and agreements, if any, containing the same. Within six months from the date of the entry of this judgment, each of such defendants shall submit to this Court a report in detail of such steps as they have taken in compliance with the terms of this section, and shall furnish a copy thereof to the Assistant Attorney General of the United States in charge of the Antitrust Division.

[*Divestiture of Operating Rights Ordered*]

VIII.

Defendant Dollar Lines is hereby directed to divest itself completely of all of its rights to operate motor bus service under certificates of public convenience and necessity held by it or under pending application therefor (hereinafter collectively referred to as operating rights) by effecting the sale of said operating rights to a purchaser or purchasers that shall have no corporate or other relationship, direct or indirect, by security ownership, management control or otherwise, with any of the defendants named in the amended complaint herein, or with any person affiliated therewith.

Advertisements for bids for the purchase of Dollar Lines' operating rights, in a form approved by the Assistant Attorney General of the United States in charge of the Antitrust Division, shall be made twice weekly for a period of four weeks in a daily newspaper of general circulation in the cities of San Francisco and Los Angeles, California, and Portland, Oregon, and in each issue of the periodical known as “Traffic World.” Such advertisements shall contain adequate information as to all assets of Dollar Lines used or useful in the transportation of passengers (including but not limited to operating rights, interests in buses, and depot rights, if any) and as to the interests of other parties which may have an interest in such assets.

Prospective purchasers shall submit bids for purchase of the operating rights of Dollar Lines. Dollar Lines shall immediately report to the Assistant Attorney General of the United States in charge of the Antitrust Division all bids and proposals received by it pursuant to said public offer. Within ten days after the date specified for the closing of bids in said advertisements, Dollar Lines shall submit to the Court the bids and proposals received and shall at that time petition the Court for permission to sell its operating rights to the highest bidder therefor.

If, after a hearing on the said petition at which all of the interested parties shall have an opportunity to be heard, the Court determines that acceptance of the highest bid for the said operating rights will not bring about substantial competition in the transportation of passengers over the route or routes involved, it shall award the said operating rights to the next highest bidder deemed by it qualified to bring about such substantial competition, subject to the approval of such transfer by the Interstate Commerce Commission and the Public Utilities Commissioner of the State of Oregon.

Any party submitting a proposal to purchase the said operating rights of Dollar Lines shall have the option and privilege at the time of submitting his bid to declare an intention to purchase all or any of those certain five GMC Model 843 buses, heretofore operated by Dollar Lines, and designated as R 130, R 131, R 132, R 133 and R 137, including tools and accessories carried thereon, owned by defendant Pacific Greyhound Lines. In the event that the successful bidder for the purchase of the operating rights of Dollar Lines as determined by the Court shall have declared such an intention to purchase the said buses and equipment pertaining thereto at the time of submitting his bid, said buses and accessories so specified by the approved purchaser as desired by him shall be conveyed to him for a price to be agreed upon by such parties as being the fair and reasonable market value thereof. In the event of failure on the part of such parties to agree on such reasonable price, the Court, after hearing the interested parties and the complainant herein, shall fix such reasonable price.

Pending determination by the Court of the successful bidder and the conveyance thereto of the said operating rights of Dollar Lines, Pacific Greyhound Lines and Dollar Lines shall take all steps necessary to preserve the operating rights of Dollar Lines, provided, however, that upon such conveyance being made such responsibility of said defendants herein shall cease.

Upon approval by the Court of a successful bidder, pursuant to the foregoing paragraphs the parties shall promptly file and diligently prosecute all requisite applications for the approval of the transfer of said operating rights by the Interstate Commerce Commission and the Public Utilities Commissioner of Oregon, and

1. The approved bidder shall deposit with the Clerk of the Court cash or a certified check payable to the order of Dollar Lines in the amount of the bid, to be delivered to Dollar Lines, or order, upon delivery to such purchaser of the conveyance of said operating rights, but to be returned to the bidder if such approval is denied;

2. Contemporaneously, Dollar Lines shall deposit with the Clerk of the Court a suitable instrument conveying its entire right, title and interest in its aforesaid operating rights to such successful bidder, to be delivered to the said purchaser upon the granting of the required approval by the said Commission and said Commissioner of said conveyance.

Further, the approved bidder shall have the option of

1. Granting Dollar Lines written permission to suspend all operations under its said operating rights pending the determination by the said Commission and said Commissioner of the bidder's application for approval of his acquisition of such rights. In such event the responsibility of defendants Pacific Greyhound Lines and Dollar Lines to preserve such operating rights shall be terminated for the purposes and within the terms of this judgment; or

2. Entering into an agreement with Dollar Lines for the continuance of operations and such other steps as may be necessary to preserve the operating rights of Dollar Lines, by which the approved bidder shall agree to pay to Dollar Lines monthly upon receipt of bill therefor the excess, if any, of expenses paid and liabilities incurred over the revenues received by Dollar Lines in the operation of the services covered by such operating rights, and by which Dollar Lines shall agree to pay to such successful bidder any excess of revenues received over expenses

paid and liabilities incurred in the operation of such services, in the event the conveyance of said operating rights to such bidder is approved by the said Commission and the said Commissioner.

In the event that no bids for the purchase of the operating rights of Dollar Lines are approved by the Court, pursuant to the preceding paragraphs of this section, any of the parties hereto shall be at liberty to apply to the Court for such other and further relief as may seem desirable to the end that actual divestiture of the said operating rights of Dollar Lines may be accomplished.

[*Reacquisition of Operating Rights Prohibited*]

IX.

Defendants The Greyhound Corporation, Pacific Greyhound Lines and Dollar Lines are hereby severally and jointly restrained and enjoined from hereafter reacquiring any of the operating rights now owned or claimed by defendant Dollar Lines and from acquiring, directly or indirectly, any stock or other financial or management interest or control over the purchaser of said operating rights under section VIII hereof or his or its successors or assignees.

[*Termination of Contracts Ordered*]

X.

Defendants Southern Pacific Company Pacific Greyhound Lines and The Greyhound Corporation are hereby directed and ordered to terminate each of the following contracts to which they or their corporate predecessors or subsidiaries are or were parties:

1. An agreement of April 2, 1929, between Southern Pacific Company and Pacific Transportation Securities, Inc., under which Southern Pacific Company agreed, among other things, not to engage in motor bus service within the area served by Pacific Transportation Securities, Inc., and under which Pacific Transportation Securities, Inc. agreed, among other things, to perform certain motor bus operations under guarantee by Southern Pacific Company.

2. Agreement of April 2, 1929, between Southern Pacific Land Company and Motor Transit Corporation, under which Southern Pacific Company agreed, among other things, not to engage in motor bus service within the area served by Pacific Transportation Securities, Inc.

3. Memorandum of Understanding dated March 17, 1931, between Southern Pacific Company and Pacific Greyhound Corporation, providing for the furnishing of certain motor bus operations by Pacific Greyhound Corporation under guarantee by Southern Pacific Company.

4. Agreement of December 23, 1931, between Southern Pacific Company and Pacific Greyhound Corporation, amending in certain respects the Memorandum of Understanding dated March 17, 1931, between the said parties (Item 3 above).

5. Letter Agreement of August 19, 1940, between Northwestern Pacific Railroad Company and Pacific Greyhound Lines, providing for the furnishing of certain motor bus operations by Pacific Greyhound Lines between Sausalito and San Francisco under guarantee by Northwestern Pacific Railroad Company.

The termination of such contracts and agreements shall not affect the liability of any party thereto for the settlement of any charges thereunder accruing prior to the date of such termination.

[*Auxiliary Service Prohibited Unless No Other Carrier is Willing or Able to Perform Such Service*]

XI.

Defendant Southern Pacific Company is hereby enjoined and restrained from hereafter entering into any contract with defendant Pacific Greyhound Lines under which the latter is to perform motor bus service supplemental or auxiliary to defendant Southern Pacific Company's rail service subject to an agreed guarantee by Southern Pacific Company of the net or gross income from such operations, unless:

1. There is, other than defendant Pacific Greyhound Lines, no other motor bus common carrier not a subsidiary of any carrier by rail which holds or when the service is required will hold operating rights from the Interstate Commerce Commission and appropriate state utility commissions to perform the entire interstate and intrastate service desired by defendant Southern Pacific Company over a particular route or separate operation; or

2. If another carrier or carriers of the type mentioned in (1) above exists, it or they have first been offered the same contract by defendant Southern Pacific Company and have signified a refusal to accept the same; or

3. If the contract has first been let to any other such motor bus common carrier referred to in (1) above and such contract has subsequently been terminated (a) By mutual consent, or (b) By Southern Pacific Company after material breach by the other motor bus common carrier, or (c) By such other motor bus common carrier in accordance with the terms of the contract, and there are no other motor bus common carriers of the type referred to in (1) above.

[*Agreements Embodying Restrictive Terms Prohibited*]

XII.

Each of the defendants Pacific Greyhound Lines, The Greyhound Corporation and Southern Pacific Company is hereby enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any combination, conspiracy, contract, agreement, understanding, plan or program of concerted action by and between defendants (a) Pacific Greyhound Lines and The Greyhound Corporation, or either of them, on the one hand, and (b) defendant Southern Pacific Company, on the other hand, whereby either party is restricted in any way as to the terms and conditions on which it shall conduct its transportation business with third parties, or is restricted in any way from competing with the other party.

[*Amendment of Bylaws Required*]

XIII.

Each of the defendants Southern Pacific Company and The Greyhound Corporation is directed to present and approve as stockholders an amendment of section 46 of the bylaws of Pacific Greyhound Lines relating to stockholders' consent to amendments, so as to permit a majority of Pacific Greyhound Lines' stockholders to alter or repeal the provisions of the bylaws or to make new bylaws, and to take such steps as may be necessary to accomplish this purpose.

[*Participation by One Corporate Defendant in Affairs of Another Enjoined*]

XIV.

Defendant Southern Pacific Company is hereby enjoined and restrained from:

1. Participating, either directly or indirectly, in the election, designation, compensation or removal of any officer, director, committee member, or other official of defendant Pacific Greyhound Lines;

2. Allowing any of its officers, directors, employees or nominees to serve or act as an officer, director, committee member or official of defendant Pacific Greyhound Lines.

3. Participating in the determination of or in any way influencing the managerial and operating policies of defendant Pacific Greyhound Lines, or activities pursuant thereto;

4. Exercising the voting power of its stock in defendant Pacific Greyhound Lines, either directly or indirectly, on any question, issue or proposition, except as may hereafter be authorized by this Court under the provisions of section XX of this judgment and after notice given by defendant Southern Pacific Company to the Assistant Attorney General of the United States in charge of the Antitrust Division.

Nothing contained in this section shall apply to any corporation, copartnership or individual not owned, controlled or dominated by defendant Southern Pacific Company which or who may subsequently become a bona fide

purchaser of the stock interest or any part thereof which Southern Pacific Company now holds in defendant Pacific Greyhound Lines.

[*Conditions Upon Which Defendant May Dispose of Stock of Another Defendant*]

XV.

Defendant Southern Pacific Company is hereby enjoined and restrained from making any sale, pledge, or other disposition of any capital stock having voting rights of defendant Pacific Greyhound Lines now owned by it to any person or persons other than The Greyhound Corporation or Pacific Greyhound Lines except upon the following conditions:

1. The sale or pledge shall be at times and in quantities at the option of Southern Pacific Company.

2. No sale or pledge or other disposition shall be made by Southern Pacific Company, directly or indirectly, through a broker underwriting syndicate or other agency, to any rail or motor bus common carrier, or to any officer, director or nominee of any such carrier, or to any corporation, copartnership or individual dominated or controlled by any such carrier or by any of the defendants named in the amended complaint herein, or to any person owning any stock in Dollar Lines on October 24, 1945.

3. Prima facie evidence of compliance by defendant Southern Pacific Company with the provisions of paragraph (2) of this section shall be the filing with the Clerk of this Court within thirty (30) days after any sale, pledge or other disposition of said stock an affidavit duly executed by or on behalf of the transferee thereof to the effect that such transferee is not within any of the restricted classes of persons under the terms of (2) above.

[*Defendant Enjoined from Maintaining Interest in Another Defendant*]

XVI

Defendant Southern Pacific Company is hereby enjoined and restrained from hereafter acquiring, directly or indirectly, ownership of or beneficial interest in any shares of capital stock having voting rights of defendant Pacific Greyhound Lines, or any successor in interest thereto. Subject to the provisions of sections XIV and XVII hereof, this paragraph shall not be deemed to prohibit the retention by Southern Pacific Company of such stock as it may hold as of the date of the entry of this judgment or any stock received as a dividend thereon, until such time as it may sell or otherwise dispose of such stock in the manner herein provided.

[*Legality of Retention by a Defendant of Certain Interests Not Adjudicated Herein*]

XVII.

Nothing in this judgment shall be considered an adjudication of the legality or illegality of the retention by defendant Southern Pacific Company of such beneficial interest in the capital stock having voting rights of defendant Pacific Greyhound Lines as may be permitted under the terms of this judgment; and plaintiff shall be free at any time to apply to this Court under section XX hereof, or in an independent action, after notice to defendant Southern Pacific Company and an opportunity to be heard, for an order requiring Southern Pacific Company to divest itself of all of its ownership of and interest in such Pacific Greyhound Lines stock, and for any other and further relief; and in connection with such application or independent action the plaintiff shall not be estopped by any provision of this judgment.

XVIII.

Nothing contained in this judgment shall be deemed to restrain or prevent the defendants entering into this judgment, or any of them, from entering into any agreement or taking any action approved by the Interstate Commerce Commission which under the law in effect at the time of such approval is, when so approved, exempt from the provisions of the antitrust laws.

[*Access to Defendants' Records*]

XIX.

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 the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, 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; (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 such matters; and (3) upon request said defendant shall submit such reports as might from time to time be reasonably necessary to the enforcement of this judgment, provided, however, that no information obtained by the means provided in this paragraph shall be divulged by 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*]

XX

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, and for the Court to make, such further orders and directions as may be necessary and appropriate for the construction or carrying out of this judgment, for the modification and termination of any provisions thereof, for the enforcement of compliance therewith, or for the punishment of violations thereof.

UNITED STATES v. PAC. GREYHOUND LINES, *et al.*

Civil No. 25267-S

Year Judgment Modified: 1969

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. PACIFIC GREYHOUND LINES, THE GREYHOUND CORPORATION, SOUTHERN PACIFIC COMPANY, DOLLAR LINES, INTERSTATE TRANSIT LINES, INC., UNION PACIFIC STAGES, INCORPORATED, Defendants.	)	CIVIL ACTION NO. 25267-S

SUPPLEMENTAL ORDER

A supplemental order having been entered in this case on September 19, 1958, which permitted defendant Southern Pacific Company and Southwestern Transportation Company to acquire certain common stock of The Greyhound Corporation but subject to restrictions as to sale or other disposition set forth in paragraph XV of the Final Judgment herein dated September 25, 1947; and

IT APPEARING that, pursuant to such supplemental order, Southwestern Transportation Company acquired 273,174 shares of common stock of The Greyhound Corporation, and defendant Southern Pacific Company acquired 229,980 shares of common stock of The Greyhound Corporation, and that effective at midnight (12 PM), November 26, 1969, all of such shares owned by defendant Southern Pacific Company were acquired by a new Delaware corporation known

as Southern Pacific Transportation Company, a carrier by railroad, incident to the merger into that company of former Southern Pacific Company; and

IT FURTHER APPEARING that paragraph XV, subparagraph 2, of the original Final Judgment herein provides, in effect, that, except for disposition to The Greyhound Corporation, no sale or pledge or other disposition of the aforementioned stock of The Greyhound Corporation shall be made "to any rail or motor bus common carrier, or to any officer, director or nominee of any such carrier, or to any corporation, copartnership or individual dominated or controlled by any such carrier or by any of the defendants named in the amended complaint herein, or to any person owning any stock in Dollar Lines on October 24, 1945", and that subparagraph 3 of said paragraph XV provides that prima facie evidence of compliance with the provisions of subparagraph 2 shall be the filing with the Clerk of this Court within 30 days after any disposition of this stock "an affidavit duly executed by or on behalf of the transferee thereof to the effect that such transferee is not within any of the restricted classes of persons under the terms of (2) above"; and

IT FURTHER APPEARING that it is now proposed to dispose of all of the aforementioned capital stock of The Greyhound Corporation as follows: Southern Pacific Transportation Company will make a gift of 92,100 of such shares to Southern Pacific Foundation (a non-profit, charitable corporation, whose officers and directors are officers of Southern Pacific Transportation Company so that it is dominated by that Company and thus within the restrictions of subparagraph 2 of paragraph XV of the Final Judgment herein); thereafter, through a broker or brokers and by sales made on the New York Stock Exchange or other national securities exchanges, Southern Pacific Foundation, Southern Pacific Transportation Company and Southwestern Transportation Company will

sell all of the remaining stock of The Greyhound Corporation which they then own to the general public, in which event it will be impossible to comply with the requirements of subparagraph 3 of paragraph XV of the Final Judgment since the purchasers will be unknown.

NOW THEREFORE, GOOD CAUSE APPEARING THEREFOR, AND UPON STIPULATION BY THE PARTIES AFFECTED IT IS HEREBY ORDERED:

FIRST: That notwithstanding the provisions of paragraph XV of said Final Judgment, Southern Pacific Transportation Company is authorized to transfer by way of gift and without consideration to Southern Pacific Foundation within 90 days after the date of this supplemental order 92,100 shares of common stock of The Greyhound Corporation, provided that within 90 days after the date of this supplemental order, Southern Pacific Foundation sells such shares as provided in paragraph SECOND hereof; and

SECOND: That within 90 days after the date of this supplemental order, and in addition to any method of disposition permitted by paragraph XV of the Final Judgment herein, Southern Pacific Foundation is authorized to sell 92,100 shares of the common stock of The Greyhound Corporation, Southern Pacific Transportation Company is authorized to sell 137,880 shares of the common stock of The Greyhound Corporation (the same constituting all of its then remaining ownership of such stock) and Southwestern Transportation Company is authorized to sell 273,174 shares of the common stock of The Greyhound Corporation (the same constituting all of its ownership of su stock) through a broker or brokers to the general public by means of transactions on the New York Stock Exchange or other national securities exchanges without the necessity for filing affidavits by transferees as required by the aforesaid subparagraph 3 of paragraph XV of said Final Judgment; and

THIRD: Within 30 days after completion of the sales

mentioned in paragraph SECOND, Southern Pacific Transportation Company, Southern Pacific Foundation and Southwestern Transportation Company shall file reports setting forth all details concerning the disposition of such common stock of The Greyhound Corporation with the clerk of the United States District Court for the Northern District of California and with the San Francisco office of the Antitrust Division of the Department of Justice.

IT IS FURTHER ORDERED that, except as hereinabove modified, said Final Judgment of September 25, 1947, and said Supplemental Order of September 19, 1958, shall be and remain in full force and effect.

DATED this 9th day of December 1969.

STANLEY A. WEIGEL
JUDGE, United States District Court

We hereby stipulate to the entry of the foregoing Supplemental Order.

SOUTHERN PACIFIC TRANSPORTATION COMPANY
SOUTHWESTERN TRANSPORTATION COMPANY
SOUTHERN PACIFIC FOUNDATION

Robert L. Pierce
Robert L. Pierce
Their Attorney

FOR THE PLAINTIFF
UNITED STATES OF AMERICA

(s) William D. Kilgore, Jr.
William D. Kilgore, Jr. MLS

(s) Marquis L. Smith
Marquis L. Smith

(s) Anthony E. Desmond
Anthony E. Desmond
Attorneys, Department of Justice

UNITED STATES v. N. CAL. PLUMBING & HEATING WHOLESALERS ASS'N*, et al.*

Civil No. 29170

Year Judgment Entered: 1953

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Northern California Plumbing and Heating Wholesalers Association, et al., U.S. District Court, N.D. California, 1952-1953 Trade Cases ¶67,563, (Aug. 27, 1953)

United States v. Northern California Plumbing and Heating Wholesalers Association, et al.

1952-1953 Trade Cases ¶67,563. U.S. District Court, N.D. California, Southern Division. Civil No. 29170. Filed August 27, 1953. Case No. 992 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decree—Practices Enjoined—Price Fixing, Preparation of Price Publication, and Policing Prices—Wholesalers of Plumbing and Heating Supplies.—A plumbing and heating wholesalers' association, its secretary-manager, and wholesalers were enjoined by a consent decree from fixing prices; fixing discounts, mark-ups, and delivery charges; and using prices or pricing formulas contained in any publication designated by the defendants. Each defendant was enjoined from knowingly contributing to the preparation of any publication containing prices or pricing formulas and from communicating to any defendant its own prices prior to the time when such prices first are announced to prospective purchasers. Also, the association and its secretary-manager were enjoined from preparing or distributing any prices, investigating or policing prices, and inducing any defendant to maintain or change its prices.

Consent Decree—Applicability of Provisions—Persons in Active Concert Who Have Notice.—A consent decree provided, in part, that the decree shall be applicable to those persons, in active concert or participation with any defendant, who receive actual notice of the decree by personal service or otherwise.

Consent Decree—Contingent Provision—Position of Defendant as Determining the Applicability of the Prohibitions.—A consent decree entered in an action against an association, its secretary-manager, and member wholesalers provided that if, and for so long as, the secretary-manager shall (1) become engaged solely in business for himself as a wholesaler, he shall not be subject to specified provisions of the decree but shall be subject to provisions applicable to the wholesalers; (2) be employed solely by a wholesaler on a full time basis, he shall not be subject to specified provisions of the decree but shall be considered only as an employee of a wholesaler.

Consent Decree—Permissive Provision—Credit Practices.—A consent decree entered in an action against a plumbing and heating wholesalers' association, its secretary-manager, and wholesalers provided that nothing shall be deemed to adjudicate the legality or illegality of the activities of any, defendant in the granting or withholding of credit, exchanging credit information with other interested parties, or participating in the activities of any *bona fide* credit organization.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; Edwin H. Pewett, Special Assistant to the Attorney General; Lloyd H. Burke, United States Attorney; and William D. Kilgore, Jr., Lyle L. Jones, and Marquis L. Smith.

For the defendants: Melvin, Faulkner, Sheehan & Wiseman, by Harold L. Faulkner, for Northern California Plumbing and Heating Wholesalers Association; Coast Pipe & Supply Company; Grinnell Company of the Pacific; Slakey Bros., Inc.; Thomas F. Smith," Inc.; Tay-Holbrook, Inc.; Delta Pipe & Supply Company; Ralph Olsen; John E. Heaslett; and Dalziel Plumbing Supplies. Morrison, Hohfeld, Foerster, Shuman & Clark, by Herbert W. Clark, for Crane Co. Pillsbury, Madison & Sutro, by M. D. L. Fuller, for Pacific'Can Company. David Livingston for Dallman Company. Rhein, Dienstag & Levin, by Edward Dienstag, for Heieck & Moran (Oakland); Heieck & Moran (Sacramento); and Heieck & Moran (San Francisco). Young, Hudson & Rabinowitz; by H. S. Young, for P. E. O'Hair & Co. and Western Plumbing Supply Company, Ltd.

Final Judgment

CARTER, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on September 27, 1949, the defendants having appeared, and plaintiff and the defendants named in paragraph II (a) hereof 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, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein and upon 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 hereof 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, as amended.

II

[*Consenting and Non-Consenting Defendants*]

(a) The unincorporated defendants *consenting* to the entry of this Final Judgment are:

Name	Identification	Location
John E. Heaslett	Secretary-Manager, Northern California Plumbing & Heating Wholesalers Association	San Francisco, California
Ralph Olsen	Partner, Olsen & Heffernan	San Francisco, California
Northern California Plumbing and Heating Wholesalers Association	An unincorporated association	San Francisco, California

The corporate defendants consenting to the entry of this Final Judgment are:

Name of Corporation	State of Incorporation	Principal Place of Business
Coast Pipe & Supply Company	California	San Francisco, Calif.
Crane Company	Illinois	Chicago, Ill.
Dallman Company	California	San Francisco, Calif.
Dalziel Plumbing Supplies	California	San Francisco, Calif.
Delta Pipe & Supply	California	Stockton, Calif.
Grinnell Company of the Pacific	California	San Francisco, Calif.
Heieck & Moran (Oakland)	California	Oakland, Calif.
Heieck & Moran (Sacramento)	California	Sacramento, Calif.
Heieck & Moran (San Francisco)	California	San Francisco, Calif.
P. E. O'Hair & Co.	California	San Francisco, Calif.
Pacific Can Company	Nevada	San Francisco, Calif.
Slakey Bros., Inc.	California	Sacramento, Calif.

Thomas F. Smith, Inc.	California	San Francisco, Calif.
Tay-Holbrook, Inc.	California	San Francisco, Calif.
Western Plumbing Supply Company, Ltd	California	San Jose, Calif.

(b) The defendant not consenting to the entry of this Final Judgment is George W. Lysaght, Owner, Current Price Bureau, San Francisco, California.

III

[*Definitions*]

As used in this Final Judgment:

(A) "Northern California Area" shall mean that part of the State of California north of 35 degrees 45 minutes north latitude and includes the counties of Monterey, Kings, Tulare, Inyo and all counties north thereof;

(B) "Plumbing supplies" shall mean the various commodities used in the plumbing industry, including enamelware and vitreous chinaware fixtures, brass goods and trim, pipes, valves and fittings, sheet metal as used in the plumbing industry, lead, solder, oakum and plumber's tools;

(C) "Wholesaler" shall mean a person engaged in the business of purchasing plumbing supplies from various sources for resale to plumbing contractors, governmental agencies, industrial and other users and to retailers; a manufacturer who sells plumbing supplies to such purchasers through its own sales offices and branches located in the Northern California Area is also a wholesaler as defined herein only with respect to such sales;

(D) "Person" shall mean an individual, partnership, firm, association or corporation, or any other business or legal entity;

(E) "Prices" shall mean the selling prices of wholesalers for plumbing supplies;

(F) "Pricing formulas" shall mean any figures, discounts, mark-ups, charges or methods used by a wholesaler to compute and determine actual prices.

IV

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to a defendant, shall apply to such defendant, its subsidiaries, officers, agents, servants, employees and attorneys, (insofar as such defendant conducts business in the Northern California Area) and to those persons in active concert or participation with any defendant who receive actual notice of this Final Judgment by personal service or otherwise.

V

[*Price Fixing Enjoined*]

The defendant Northern California Plumbing and Heating Wholesalers Association, the defendant John E. Haslett, and each of the defendant wholesalers, are, with respect to the sale of plumbing supplies to third persons, jointly and severally enjoined from entering into, adhering to, maintaining or furthering any agreement, understanding, plan or program with any other defendant or with any other wholesaler which has the purpose or effect of:

(A) Fixing, determining, maintaining or stabilizing prices, through the use of pricing formulas or otherwise;

(B) Fixing, determining, maintaining or stabilizing discounts, mark-ups, delivery charges, freight additions or allowances or other terms or conditions applicable to the sale or offering for sale of any item or class of items of plumbing supplies;

(C) Using prices, pricing formulas, discounts, mark-ups, delivery charges or freight additions or allowances contained in any publication or other document designated by the said defendants or any of them.

VI

[*Pricing Publication*]

Each defendant is enjoined from:

(A) Knowingly contributing to the preparation or distribution of any publication of any other defendant or any other person which contains prices or pricing formulas for plumbing supplies of other than identified sellers;

(B) In any manner communicating to any wholesaler or to any other defendant its own prices, discounts, delivery charges, freight additions or allowances prior to the time when the same first are announced to purchasers or prospective purchasers.

VII

[*Distributing and Policing Prices*]

Each of the defendants Northern California Plumbing and Heating Wholesalers Association and John E. Haslett is enjoined from:

(A) Preparing or distributing any prices, pricing formulas, discounts, delivery charges, freight additions or allowances;

(B) Investigating, checking or otherwise policing the prices, pricing formulas, discounts, delivery charges, freight additions or allowances of any wholesaler;

(C) Inducing or attempting to induce any wholesaler or any other defendant to maintain or change his prices, pricing formulas, discounts, delivery charges, freight additions, allowances or other terms or conditions of sale; provided, however, that if, and for so long as, defendant John E. Haslett shall (1) become engaged solely in business for himself as wholesaler, said defendant Haslett shall not be subject to the terms of this Section VII but shall be considered as a wholesaler subject to each provision of this Final Judgment applicable to any other defendant wholesaler; (2) be employed solely by a defendant wholesaler on a full time basis, said defendant Haslett shall not be subject to the terms of this Section VII but shall be considered, for the remaining provisions of this Final Judgment, only as an employee of said defendant wholesaler.

VIII

[*Permissive Provision*]

Nothing herein shall be deemed to adjudicate the legality or illegality of the activities of any defendant in the granting or with-holding of credit, exchanging credit information with other interested parties, or participating in the activities of any bona fide credit organization.

IX

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on writer 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, (A) reasonable 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 written information with respect to any of the matters contained in this Final

Judgment as from time to time may be necessary for the purpose of the enforcement of this Final Judgment. No information obtained by the means permitted in this Section IX 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 in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

X

[*Jurisdiction Retained*]

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

UNITED STATES v. SWITZER BROS., *et al.*

Civil No. 29860

Year Individual Defendants Judgment Entered: August 1953

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Switzer Brothers, Inc., et al., U.S. District Court, N.D. California, 1952-1953 Trade Cases ¶67,605, (Aug. 28, 1953)

United States v. Switzer Brothers, Inc., et al.

1952-1953 Trade Cases ¶67,605. U.S. District Court, N.D. California, Southern Division. Civil Action No. 29860. Filed August 28, 1953. Case No. 1053 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decree—Practices Enjoined—Performance of Terminated Agreements—Daylight Fluorescent Devices and Materials.—A consent decree, which recited that specified agreements had been voluntarily cancelled and terminated, enjoined the defendants from reviving, maintaining, entering into, adopting, adhering to, claiming any rights under or enforcing the agreements or any other contract, agreement, understanding, plan or program which has as its purpose or effect the continuing or renewing of the agreements.
Consent Decree—Specific Relief—Dissolution of Partnership—It was provided in a consent decree that the partnership or tenancy in common entered into by the defendants, having voluntarily ceased operations and having distributed all of its assets to the individual defendants, shall be dissolved within thirty days from the date of the decree.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; and Edwin H. Pewett, Marcus A. Hollabaugh, Lyle L. Jones, Don H. Banks, and Wallace Howland.

For the defendants: W. Bruce Beckley for John O. Gantner, Jr., Eugene Burns, Gerald D. Stratford, and W. Bruce Beckley.

For a prior decision of the U. S. District Court, Northern District of California, Southern Division, see 1952-1953 Trade Cases ¶67,567. For other consent judgments entered in this case, see 1952-1953 Trade Cases ¶ 67,598.

Final Judgment

CARTER, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on June 28, 1950; the defendants having appeared and filed their answers to said complaint; and the plaintiffs and the defendants, John O. Gantner, Jr., Eugene Burns, Gerald D. Stratford and W. Bruce Beckley, by their respective attorneys, have severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or of law herein and without any admission by any party in respect to any such issue; and the Court having considered the matter and being duly advised;

Now therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law, and upon consent of said parties as aforesaid, it is therefore:

Ordered, adjudged and decreed, as follows:

1.

[*Clayton and Sherman Acts*]

The Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states a cause of action against said defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled “An Act to Protect Trade & Commerce Against Unlawful Restraints & Monopolies”, and under Section 3 of the Act of Congress of October 15, 1914, entitled “An Act to Supplement Existing Laws Against Unlawful Restraints & Monopolies and for Other Purposes.”

2.

[*Defendants*]

The defendants consenting to and entering into this Final Judgment are the following individuals: John O. Gantner, Jr., Eugene Burns, Gerald D. Stratford and W. Bruce Beckley.

3.

[*Applicability of Provisions*]

The provisions of this Final Judgment applicable to any of said defendants shall apply to such defendant, his agents, and to all other persons acting or claiming to act under, through or for such defendant.

4.

[*Revival of Agreeements Enjoined*]

The agreement between Switzer Brothers, Inc. and said defendants, dated January 21, 1949, and the agreement between The Firelure Corporation and said defendants, dated January 21, 1949, having been voluntarily cancelled and terminated by the respective parties thereto, by written documents, copies of which are attached hereto and marked Exhibits A & B [not reproduced], respectively, said defendants are, jointly and severally, enjoined and restrained from reviving, maintaining, entering into, adopting, adhering to, claiming any rights under or enforcing either of said agreements or any other contract, agreement, understanding, plan or program which has as its purpose or effect the continuing or renewing of either of said agreements.

5.

[*Partnership Dissolved*]

The partnership or tenancy in common entered into by said defendants, and known as Gabbs Supply Company, having voluntarily ceased operations and having distributed all of its assets to said individual defendants, shall be dissolved within thirty (30) days of the date hereof.

6.

[*Inspection and Compliance*]

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 the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice to any of said defendants, be permitted, subject to any legally recognized privilege, (A) access, during the office hours of said defendant, to all books, papers, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of or under the control of said defendant relating to any of the matters contained in this Final Judgment, and (B) subject to the reasonable convenience of said defendant, to interview said defendant, who may have counsel present, regarding such matters. Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice to any of said defendants, said defendant shall submit such written reports as may from time to time be reasonably necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this section 6 shall be divulged by 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 is a party for the purpose of securing compliance with this Final Judgment or as otherwise provided by law.

7.

[*Jurisdiction Retained*]

Jurisdiction is retained by this 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 or carrying out of this Final Judgment, for the amendment, modification or termination of any of the provisions hereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

UNITED STATES v. SWITZER BROS., *et al.*

Civil No. 29860

Year Aberfolyle Judgment Entered: October 1953

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. SWITZER BROTHERS, INC., GANTNER & MATTERN CO., THE FIRELURE CORPORATION, THE SHERWIN-WILLIAMS COMPANY, THE SHERWIN-WILLIAMS COMPANY OF CALIFORNIA, ABERFOYLE MANUFACTURING COMPANY, INC., LAWTER CHEMICALS, INC., ROBERT C. SWITZER, JOSEPH L. SWITZER, JOHN O. GANTNER, JR., EUGENE BURNS, GERALD D. STRATFORD, and W. BRUCE BECKLEY, Defendants.	CIVIL ACTION NO. 29860 ORIGINAL F I L E D Oct. 22, 1953 With Clerk, U. S. Dist. Court San Francisco

FINAL JUDGMENT AS TO DEFENDANT
ABERFOYLE MANUFACTURING COMPANY, INC.

Plaintiff, United States of America, having filed its complaint herein on June 28, 1950, the consenting defendant hereto having filed its answer to said complaint denying the substantive allegations thereof, and the plaintiff and the defendant Aberfoyle Manufacturing Company, Inc., by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or of law herein and without admission by any party in respect to any such issue;

NOW, THEREFORE, before any testimony has been taken and without trial or adjudication of any issue of fact or law and upon consent of the parties aforesaid, and the said consenting defendant still asserting its innocence of any violation,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I

As used in this Final Judgment:

(A) "Person" means an individual, partnership, firm, association, corporation, or other legal entity;

(B) "Defendant" means Aberfoyle Manufacturing Company, Inc.;

(C) "Switzer" means the defendant Switzer Brothers, Inc.;

(D) "Daylight fluorescent" means a color comprised of a predominantly reflected wave band of incident visible light and, due to visible-light response, fluorescent emitted light of substantially the same wave length as the predominantly reflected wave band, said combined reflected and emitted light having a brightness and purity of hue characterized by color distinguishability at a distance beyond the perceptibility range of any subtractive color of similar hue;

(E) "Daylight fluorescent devices", as distinguished from daylight fluorescent materials, denotes all types and kinds of end-use products, articles, and devices, without limitation, in whose manufacture, production, or processing, daylight fluorescent materials are utilized. Included among such devices which utilize daylight fluorescent coating compositions are advertising signs, billboards, posters and displays, fishing lures and tackle, aircraft and shipboard instrument boards and panels, and novelty jewelry. Included among such devices utilizing daylight fluorescent textiles are swim suits, hosiery, caps, and other garments and articles of apparel, advertising and theatrical banners, signal flags and fishing flies and other lures;

(F) "Daylight fluorescent materials" means, for example, certain lacquers, paints, pigments, screen process inks, and other coating compositions, yarns, filaments, threads and fibers, together with cloth and fabrics woven and made therefrom, various organic felted materials, in sheet and roll form, such as papers, cardboards, and the like, films and foils, all of which when properly applied, processed, and utilized, result in a daylight fluorescent effect;

(G) "Patents" means each and all United States Letters Patent and applications therefor, relating to daylight fluorescent materials or devices, or both;

(H) "Trademarks" means each and all trademarks and trade names, used by or registered for defendant, relating to daylight fluorescent materials or devices, or both.

II

The Court has jurisdiction of the subject matter hereof and of the parties signatory hereto. The complaint states a cause of action against the consenting defendant under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and under Section 3 of the Act of Congress of October 15, 1914, entitled "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for other Purposes."

III

Defendant consenting to and entering into this Final Judgment is Aberfoyle Manufacturing Company, Inc. The provisions of this Final Judgment applicable to the said consenting defendant shall apply to said defendant and its officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other persons acting under, through or for said defendant. For the purpose of this Final Judgment the defendant and any wholly-owned subsidiary shall be deemed to be one person.

IV

The agreement between defendant Aberfoyle Manufacturing Company, Inc. and defendant Switzer, dated July 14, 1949, having been terminated, defendant is enjoined and restrained from continuing or renewing said agreement.

V

Defendant is enjoined and restrained from entering into, adhering to or enforcing any agreement, understanding, plan or program with any person engaged in the manufacture of daylight fluorescent materials or devices which:

(A) Requires the use of only daylight fluorescent materials and devices manufactured or sold by the defendant or any source approved by the defendant;

(B) Restricts, limits or controls the channels through which daylight fluorescent materials or devices may be sold or distributed.

VI

Defendant is enjoined and restrained from entering into, adhering to or enforcing any agreement, understanding, plan or program with any manufacturer, distributor or user, or any other person:

(A) Not to sell to or buy from others daylight fluorescent materials or devices;

(B) Not to use, purchase or deal in daylight fluorescent materials or devices manufactured or sold by any third person;

(C) Preventing any person from competing in the manufacture, processing, distribution or sale of daylight fluorescent materials or devices.

VII

Defendant is enjoined and restrained from:

(A) Requiring any person to use only daylight fluorescent materials and devices manufactured or sold by the defendant, or by any source approved by the defendant;

(B) Conditioning the processing by defendant of daylight fluorescent materials upon any agreement or understanding restricting or limiting the distribution, sale or use of daylight fluorescent materials or devices manufactured or owned by any person other than the defendant;

(C) Without obstructing the exercise of trademark rights, limiting, controlling or restricting the end use of daylight fluorescent materials or devices by purchasers thereof;

(D) Selling or processing, or offering to sell or process, or fixing the price for the sale of, daylight fluorescent materials or devices, upon the condition, agreement or understanding that the purchaser thereof shall not purchase, use or deal in the daylight fluorescent materials or devices, or ingredients or goods of any person other than defendant.

VIII

Defendant is enjoined and restrained from:

(A) Granting or accepting any license or sub-license or immunity under any patents upon a condition or requirement that the other party to such transaction shall agree:

(1) To manufacture, sell, or use only daylight fluorescent devices of specified kinds or types;

(2) To manufacture, sell or use only such daylight fluorescent devices as may be covered by a specified patent or patents, or which are produced by or are the result of any process covered by a specified patent or patents;

(3) To adopt and to use on daylight fluorescent devices, trademarks or trade names owned or controlled by any person;

(4) To utilize in the manufacture or processing of the licensed daylight fluorescent devices only materials to be obtained from designated sources or only materials obtained from sources approved or in any way specified or designated by defendant.

(B) Granting or accepting any license under any trademark upon a condition or requirement that the other party to such transaction shall agree:

(1) To manufacture, sell, or use only such daylight fluorescent devices or materials as may be covered by a specified patent or patents, or which are produced by or are the result of any process covered by a specified patent or patents;

(2) To utilize in the manufacture of the licensed daylight fluorescent devices or materials only materials manufactured or processed by manufacturers or processors approved or in any way specified or designated by defendant.

(C) Granting any trademark license to any manufacturer, seller, or user of daylight fluorescent materials or devices which:

(1) Does not permit the trademark licensee to cancel the license, with or without reason or cause, upon thirty (30) days' notice to the licensor;

(2) Requires the licensee to use the licensed trademark on daylight fluorescent materials or devices of any given type or kind to the exclusion of other trademarks.

IX

Nothing in this Final Judgment shall be deemed to prohibit the defendant:

(A) From issuing or maintaining a trademark license which requires the use of materials designated by name or manufacturer in cases where it is not possible to use any other designation and the licensee is in fact free to obtain equivalent materials from other sources;

(B) From issuing a patent license in connection with a trademark license; provided, the licensee, at his option, may take either a patent license or a trademark license;

(C) From issuing patent licenses describing the scope of the grant therein.

X

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 the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice to the defendant, be permitted, subject to any legally recognized privilege, (a) access, during the office hours of defendant, to all books, papers, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of or under the control of defendant relating to any of the matters contained in this Final Judgment; and (b) subject to the reasonable convenience of defendant, to interview officers and employees of defendant, who may have counsel present, regarding such matters. Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice to defendant, defendant shall submit such written reports as may from time to time be reasonably necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section X shall be divulged by 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 is a party for the purpose of securing compliance with this Final Judgment or as otherwise provided by law.

XI

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final 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 Final 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.

San Francisco, California

DATED: October 22, 1953

LOUIS E. GOODMAN
UNITED STATES DISTRICT JUDGE

We hereby consent to the entry of the foregoing Final Judgment.

Stanley N. Barnes
Assistant Attorney General

W. D. Kilgore, Jr.

Marcus A. Hollabaugh

Max Freeman

Lyle L. Jones

Don H. Banks

Trial Attorneys

Trial Attorneys

Attorneys for Plaintiff

WOLF, BLOCK, SCHORR, and SOLIS-COHEN

By Donald Bean

Philip S. Ehrlich

Attorneys for Defendant

UNITED STATES v. SWITZER BROS., *et al.*

Civil No. 29860

Year Firelure Judgment Entered: October 1953

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. SWITZER BROTHERS, INC., GANTNER & MATTERN CO., THE FIRELURE CORPORATION, THE SHERWIN-WILLIAMS COMPANY, THE SHERWIN-WILLIAMS COMPANY OF CALIFORNIA, ABERFOYLE MANUFACTURING COMPANY, LAWTER CHEMICALS, INC., ROBERT C. SWITZER, JOSEPH L. SWITZER, JOHN O. GANTNER, JR., EUGENE BURNS, GERALD D. STRATFORD, and W. BRUCE BECKLEY, Defendants.	CIVIL ACTION NO. 29860 ORIGINAL F I L E D Oct. 22, 1953 With Clerk, U. S. Dist. Court San Francisco

FINAL JUDGMENT AS TO DEFENDANT

THE FIRELURE CORPORATION

Plaintiff United States of America having filed its complaint herein on June 28, 1950, the consenting defendant hereto having filed its answer to said complaint denying the substantive allegations thereof, and the plaintiff and the defendant The Firelure Corporation by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or of law herein and without admission by any party in respect to any such issue;

NOW, THEREFORE, before any testimony has been taken and without trial or adjudication of any issue of fact or law and upon consent of the parties aforesaid, and said consenting defendant still asserting its innocence of any violation,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

I

As used in this Final Judgment:

(A) "Person" means an individual, partnership, firm, association, corporation, or other legal entity;

(B) "Defendant" means the defendant The Firelure Corporation;

(C) "Switzer" means the defendant Switzer Brothers, Inc.;

(D) "Daylight fluorescent" means a color comprised of a predominantly reflected wave band of incident visible light and, due to visible-light response, fluorescent emitted light of substantially the same wave length as the predominantly reflected wave band, said combined reflected and emitted light having a brightness and purity of hue characterized by color distinguishability at a distance beyond the perceptibility range of any subtractive color of similar hue;

(E) "Daylight fluorescent devices", as distinguished from daylight fluorescent materials, denotes all types and kinds of end-use products, articles, and devices, without limitation, in whose manufacture, production, or processing, daylight fluorescent materials are utilized. Included among such devices which utilize daylight fluorescent coating compositions are advertising signs, billboards, posters and displays, fishing lures and tackle, aircraft and shipboard instrument boards and panels, and novelty jewelry. Included among such devices utilizing daylight fluorescent textiles are swim suits, hosiery, caps, and other garments and articles of apparel, advertising and theatrical banners, signal flags and fishing flies and other lures;

(F) "Daylight fluorescent materials" means, for example, certain lacquers, paints, pigments, screen process inks, and other coating compositions, yarns, filaments, threads and fibers, together with cloth and

fabrics woven and made therefrom, various organic felted materials, in sheet and roll form, such as papers, cardboards, and the like, films and foils, all of which when properly applied, processed, and utilized, result in a daylight fluorescent effect.

(G) "Patents" means each and all United States Letters Patent and applications therefor, relating to daylight fluorescent materials or devices, or both;

(H) "Trademarks" means each and all trademarks and trade names, used by or registered for defendant, relating to daylight fluorescent materials or devices, or both.

II

The Court has jurisdiction of the subject matter hereof and of the parties signatory hereto. The complaint states a cause of action against the consenting defendant under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", and under Section 3 of the Act of Congress of October 15, 1914, entitled "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for other Purposes".

III

Defendant consenting to and entering into this Final Judgment is The Firelure Corporation. The provisions of this Final Judgment applicable to the said consenting defendant shall apply to such defendant and its officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other persons acting under, through or for such defendant.

IV

The Final Judgment heretofore entered herein as to defendant The Firelure Corporation on August 31, 1953, is hereby vacated, nunc pro tunc, as of the date thereof, and is hereby declared to be of no force or effect whatsoever.

V

Agreement between the defendant The Firelure Corporation and the defendants Eugene Burns, Gerald D. Stratford, John O. Gantner, Jr. and

W. Bruce Beckley, doing business under the name and style of Gabbs Supply Company, dated January 21, 1949, having been terminated, defendant The Firelure Corporation is enjoined and restrained from continuing and renewing said agreement.

VI

Defendant is enjoined and restrained from entering into, adhering to or enforcing any agreement, understanding, plan or program with any person engaged in the manufacture of daylight fluorescent materials or devices which:

(A) Requires the use of only daylight fluorescent materials and devices manufactured or sold by the defendant or any source approved by the defendant;

(B) Restricts, limits or controls the channels through which daylight fluorescent materials or devices may be sold or distributed.

VII

Defendant is enjoined and restrained from entering into, adhering to or enforcing any agreement, understanding, plan or program with any manufacturer, distributor or user, or any other person:

(A) Not to sell to or buy from others daylight fluorescent materials or devices;

(B) Not to use, purchase or deal in daylight fluorescent materials or devices manufactured or sold by any third person;

(C) Preventing any person from competing in the manufacture, processing, distribution or sale of daylight fluorescent materials or devices.

VIII

Defendant is enjoined and restrained from:

(A) Requiring any person to use only daylight fluorescent materials and devices manufactured or sold by the defendant, or by any source approved by the defendant;

(B) Conditioning the processing by defendant of daylight fluorescent materials upon any agreement or understanding restricting or limiting the distribution, sale or use of daylight fluorescent materials or devices

manufactured or owned by any person other than the defendant;

(C) Without obstructing the exercise of trade-mark rights, limiting, controlling or restricting the end use of daylight fluorescent materials or devices by purchasers thereof;

(D) Selling or processing, or offering to sell or process, or fixing the price for the sale of, daylight fluorescent materials or devices, upon the condition, agreement or understanding that the purchaser thereof shall not purchase, use or deal in the daylight fluorescent materials or devices, or ingredients or goods of any person other than defendant.

IX

Defendant is enjoined and restrained from:

(A) Granting or accepting any license or sub-license or immunity under any patents upon a condition or requirement that the other party to such transaction shall agree:

(1) To manufacture, sell or use only daylight fluorescent devices of specified kinds or types;

(2) To manufacture, sell or use only such daylight fluorescent devices as may be covered by a specified patent or patents, or which are produced by or are the result of any process covered by a specified patent or patents;

(3) To adopt and to use on daylight fluorescent devices, trade-marks or trade names owned or controlled by any person;

(4) To utilize in the manufacture or processing of the licensed daylight fluorescent devices only materials to be obtained from designated sources or only materials obtained from sources approved or in any way specified or designated by defendant.

(B) Granting or accepting any license under any trade-mark upon a condition or requirement that the other party to such transaction shall agree:

(1) To manufacture, sell, or use only such daylight fluorescent devices or materials as may be covered by a specified patent or patents, or which are produced by or are the result of any process covered by a specified patent or patents;

(2) To utilize in the manufacture of the licensed daylight fluorescent devices or materials only materials manufactured or processed by manufacturers or processors approved or in any way specified or designated by defendant.

(C) Granting any trade-mark license to any manufacturer, seller, or user of daylight fluorescent materials or devices which:

(1) Does not permit the trade-mark licensee to cancel the license, with or without reason or cause, upon thirty (30) days' notice to the licensor;

(2) Requires the licensee to use the licensed trade-mark on daylight fluorescent materials or devices of any given type or kind to the exclusion of other trade-marks.

X

Nothing in this Final Judgment shall be deemed to prohibit defendant:

(A) From issuing or maintaining a trade-mark license which requires the use of materials designated by name or manufacturer in cases where it is not possible to use any other designation and the licensee is in fact free to obtain equivalent materials from other sources;

(B) From issuing a patent license in connection with a trade-mark license; provided, the licensee, at his option, may take either a patent license or a trade-mark license;

(C) From issuing patent licenses describing the scope of the grant therein.

XI

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 the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice to defendant, be permitted, subject to any legally recognized privilege, (a) access, during the office hours of defendant, to all books, papers, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of or under the control of defendant relating to any of the matters contained in this Final Judgment; and (b) subject to the reasonable convenience of defendant, to interview officers and employees of defendant, who may have counsel present, regarding such matters. Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice to defendant, defendant shall submit such written reports as may from time to time be reasonably necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section XI shall be divulged by 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 is a party for the purpose of securing compliance with this Final Judgment or as otherwise provided by law.

XII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final 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 Final 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.

San Francisco, California

DATED: October 22, 1953

LOUIS E. GOODMAN
United States District Judge

We hereby consent to the entry of the foregoing Final Judgment.

STANLEY N. BRANES
Assistant Attorney General

W. D. KILGORE, JR.

MARCUS A. HOLLABAUGH

MAX FREEMAN

LYLE L. JONES

DON H. BANKS

Trial Attorneys

Trial Attorneys

Attorneys for Plaintiff

BOYKEN, MOHLER & BECKLEY

By W. BRUCE BECKLEY
W. Bruce Beckley

Attorneys for Defendant

UNITED STATES v. SWITZER BROS., *et al.*

Civil No. 29860

Year Gantner & Mattern Judgment Entered: October 1953

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. SWITZER BROTHERS, INC. GANTNER & MATTERN CO. THE FIRELURE CORPORATION, THE SHERWIN-WILLIAMS COMPANY, THE SHERWIN-WILLIAMS COMPANY OF CALIFORNIA, ABERFOYLE MANUFACTURING COMPANY, LAWTER CHEMICALS, INC., ROBERT C. SWITZER, JOSEPH L. SWITZER, JOHN O. GANTNER, JR., EUGENE BURNS, GERALD D. STRATFORD, and W. BRUCE BECKLEY, Defendants.	Civil Action No. 29860 ORIGINAL F I L E D Oct. 22, 1953 With Clerk, U. S. Dist. Court San Francisco

FINAL JUDGMENT AS TO DEFENDANT

GANTNER & MATTERN CO.

Plaintiff United States of America having filed its complaint herein on June 28, 1950, the consenting defendant hereto having filed its answer to said complaint denying the substantive

allegations thereof, and the plaintiff and the defendant Gantner & Mattern Co. by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or of law herein and without admission by any party in respect to any such issue;

NOW THEREFORE before any testimony has been taken and without trial or adjudication of any issue of fact or law and upon consent of the parties aforesaid, and said consenting defendant still asserting its innocence of any violation,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I.

As used in this Final Judgment:

(A) "Person"means an individual, partnership, firm, association, corporation, or other legal entity;

(B) "Defendant" means the defendant Gantner & Mattern Co.;

(C) "Switzer" means the defendant Switzer Brothers, Inc.;

(D) "Daylight fluorescent" means a color comprised of a predominantly reflected wave band of incident visible light and, due to visible-light response, fluorescent emitted light of substantially the same wave length as the predominantly reflected wave band, said combined reflected and emitted light having a brightness and purity of hue characterized by color distinguishability at a distance beyond the perceptibility range of any subtractive color of similar hue;

allegations thereof, and the plaintiff and the defendant Gantner & Mattern Co. by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or of law herein and without admission by any party in respect to any such issue;

NOW THEREFORE before any testimony has been taken and without trial or adjudication of any issue of fact or law and upon consent of the parties aforesaid, and said consenting defendant still asserting its innocence of any violation,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I.

As used in this Final Judgment:

(A) "Person"means an individual, partnership, firm, association, corporation, or other legal entity;

(B) "Defendant" means the defendant Gantner & Mattern Co.;

(C) "Switzer" means the defendant Switzer Brothers, Inc.;

(D) "Daylight fluorescent" means a color comprised of a predominantly reflected wave band of incident visible light and, due to visible-light response, fluorescent emitted light of substantially the same wave length as the predominantly reflected wave band, said combined reflected and emitted light having a brightness and purity of hue characterized by color distinguishability at a distance beyond the perceptibility range of any subtractive color of similar hue;

(E) "Daylight fluorescent devices", as distinguished from daylight fluorescent materials, denotes all types and kinds of end-use products, articles, and devices, without limitation, in whose manufacture, production, or processing, daylight fluorescent materials are utilized. Included among such devices which utilize daylight fluorescent coating compositions are advertising signs, billboards, posters and displays, fishing lures and tackle, aircraft and shipboard instrument boards and panels, and novelty jewelry. Included among such devices utilizing daylight fluorescent textiles are swim suits, hosiery, caps, and other garments and articles of apparel, advertising and theatrical banners, signal flags and fishing flies and other lures;

(F) "Daylight fluorescent materials" means, for example, certain lacquers, paints, pigments, screen process inks, and other coating compositions, yarns, filaments, threads and fibers, together with cloth and fabrics woven and made therefrom, various organic felted materials, in sheet and roll form, such as papers,cardboards, and the like films and foils, all of which when properly applied, processed, and utilized, result in a daylight fluorescent effect;

(G) "Patents" means each and all United States Letters Patents and applications therefor, relating to daylight fluorescent materials or devices, or both;

(H) "Trademarks" means each and all trademarks and trade names, used by or registered for defendant, relating to daylight fluorescent materials or devices, or both.

II.

The court has jurisdiction of the subject matter hereof and of the parties signatory hereto. The complaint states a cause of action against the consenting defendant under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", and under Section 3 of the Act of Congress of October 15, 1914, entitled "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for other Purposes."

III.

Defendant consenting to and entering into this Final Judgment is Gantner & Mattern Co. The provisions of this Final Judgment applicable to the said consenting defendant shall apply to such defendant and its officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other persons acting under, through or for such defendant.

IV.

(A) Agreements between the defendant Switzer and defendant Gantner & Mattern Co., dated September 27, 1946; February 7, 1947; November 26, 1947; January 17, 1949; August 10, 1949; November 10, 1949; and October 23, 1950, having been terminated, defendant is enjoined and restrained from continuing or renewing any of said agreements.

(B) Defendant is enjoined and restrained from maintaining, adhering to, claiming any rights under, reviving, adopting, or enforcing any provisions of the agreement between defendant Switzer and defendant Gantner & Mattern Co., dated September 25, 1951, as amended, which is inconsistent with any

of the provisions of this Final Judgment.

V.

Defendant is enjoined and restrained from entering into, adhering to or enforcing any agreement, understanding, plan or program with any person engaged in the manufacture of daylight fluorescent materials or devices which:

(A) Requires the use of only daylight fluorescent materials and devices manufactured or sold by the defendant or any source approved by the defendant;

(B) Restricts, limits or controls the channels through which daylight fluorescent materials or devices may be sold or distributed.

VI.

Defendant is enjoined and restrained from entering into, adhering to or enforcing any agreement, understanding, plan or program with any manufacturer, distributor, or user, or any other person:

(A) Not to sell to or buy from others daylight fluorescent materials or devices;

(B) Not to use, purchase or deal in daylight fluorescent materials or devices manufactured or sold by any third person;

(C) Preventing any person from competing in the manufacture, processing, distribution or sale of daylight fluorescent materials or devices.

VII.

Defendant is enjoined and restrained from:

(A) Requiring any person to use only daylight fluorescent materials and devices manufactured or sold by the defendant, or by any source approved by the defendant;

(B) Conditioning the processing by defendant of daylight fluorescent materials upon any agreement or understanding

restricting or limiting the distribution, sale or use of daylight fluorescent materials or devices manufactured or owned by any person other than the defendant;

(C) Without obstructing the exercise of trade-mark rights, limiting, controlling or restricting the end use of daylight fluorescent materials or devices by purchasers thereof;

(D) Selling or processing, or offering to sell or process, or fixing the price for the sale of, daylight fluorescent materials or devices, upon the condition, agreement or understanding that the purchaser thereof shall not purchase, use or deal in the daylight fluorescent materials or devices, or ingredients or goods of any person other than defendant.

VIII.

Defendant is enjoined and restrained from:

(A) Granting or accepting any license or sub-license or immunity under any patents upon a condition or requirement that the other party to such transaction shall agree:

(1) To manufacture, sell or use only daylight fluorescent devices of specified kinds or types;

(2) To manufacture, sell or use only such daylight fluorescent devices as may be covered by a specified patent or patents, or which are produced by or are the result of any process covered by a specified patent or patents;

(3) To adopt and to use on daylight fluorescent devices, trade-marks or trade names owned or controlled by any person;

(4) To utilize in the manufacture or processing of the licensed daylight fluorescent devices only materials to be obtained from designated sources or only materials obtained from sources approved or in any way specified or designated by defendant.

(B) Granting or accepting any license under any trade-mark

upon a condition or requirement that the other party to such transaction shall agree:

(1) To manufacture, sell, or use only such daylight fluorescent devices or materials as may be covered by a specified patent or patents, or which are produced by or are the result of any process covered by a specified patent or patents;

(2) To utilize in the manufacture of the licensed daylight fluorescent devices or materials only materials manufactured or processed by manufacturers or processors approved or in any way specified or designated by defendant.

(C) Granting any trade-mark license to any manufacturer, seller, or user of daylight fluorescent materials or devices which:

(1) Does not permit the trade-mark licensee to cancel the license, with or without reason or cause, upon thirty (30) days' notice to the licensor;

(2) Requires the licensee to use the licensed trade-mark on daylight fluorescent materials or devices of any given type or kind to the exclusion of other trade-marks.

IX.

Nothing in this Final Judgment shall be deemed to prohibit defendant:

(A) From issuing or maintaining a trade-mark license which requires the use of materials designated by name or manufacturer in cases where it is not possible to use any other designation and the licensee is in fact free to obtain equivalent materials from other sources;

(B) From issuing a patent license in connection with a trade-mark license; provided, the licensee, at his option, may take either a patent license or a trade-mark license;

(C) From issuing patent licenses describing the scope of the grant therein.

X.

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 the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice to defendant, be permitted, subject to any legally recognized privilege, (a) access, during the office hours of defendant, to all books, papers, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of or under the control of defendant relating to any of the matters contained in this Final Judgment; and (b) subject to the reasonable convenience of defendant, to interview officers and employees of defendant, who may have counsel present, regarding such matters. Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice to defendant, defendant shall submit such written reports as may from time to time be reasonably necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section X shall be divulged by 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 is a party for the purpose of securing compliance with this Final Judgment or as otherwise provided by law.

XI.

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final 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 Final 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.

San Francisco, California

DATED: October 22, 1953

LOUIS E. GOODMAN
United States District Judge

We hereby consent to the entry of the foregoing Final Judgment.

STANLEY N. BARNES
Assistant Attorney General

W. D. KILGORE, JR.

MARCUS A. HOLLABAUGH

MAX FREEMAN

LYLE L. JONES

DON H. BANKS

Trial Attorneys

Trial Attorneys

Attorneys for Plaintiff

BOYKEN, MOHLER & BECKLEY

By W. BRUCE BECKLEY
W. Bruce Beckley

Attorneys for Defendant

UNITED STATES v. SWITZER BROS., *et al.*

Civil No. 29860

Year Lawter Judgment Entered: October 1953

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. SWITZER BROTHERS, INC., GANTNER & MATTERN CO., THE FIRELURE CORPORATION, THE SHERWIN-WILLIAMS COMPANY, THE SHERWIN-WILLIAMS COMPANY OF CALIFORNIA, ABERFOYLE MANUFACTURING COMPANY, INC., LAWTER CHEMICALS, INC., ROBERT C. SWITZER, JOSEPH L. SWITZER, JOHN O. GANTNER, JR., EUGENE BURNS, GERALD D. STRATFORD, and W. BRUCE BECKLEY, Defendants.	CIVIL ACTION NO. 29860 ORIGINAL F I L E D Oct. 22, 1953 With Clerk, U. S. Dist. Court San Francisco

FINAL JUDGMENT AS TO DEFENDANT LAWTER CHEMICALS, INC.

Plaintiff, United States of America, having filed its complaint herein on June 28, 1950, the consenting defendant hereto having filed its answer to said complaint denying the substantive allegations thereof, and the plaintiff and the defendant Lawter Chemicals, Inc., 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 admission by any party in respect to any such issue;

NOW, THEREFORE, before any testimony has been taken and without trial or adjudication of any issue of fact or law and upon consent of the

parties aforesaid, and the said consenting defendant still asserting its innocence of any violation,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I

As used in this Final Judgment:

(A) "Person" means an individual, partnership, firm, association, corporation, or other legal entity;

(B) "Defendant" means Lawter Chemicals, Inc.;

(C) "Switzer" means the defendant Switzer Brothers, Inc.;

(D) "Daylight fluorescent" means a color comprised of a predominantly reflected wave band of incident visible light and, due to visible-light response, fluorescent emitted light of substantially the same wave length as the predominantly reflected wave band, said combined reflected and emitted light having a brightness and purity of hue characterized by color distinguishability at a distance beyond the perceptibility range of any subtractive color of similar hue;

(E) "Daylight fluorescent devices", as distinguished from daylight fluorescent materials, denotes all types and kinds of end-use products, articles, and devices, without limitation, in whose manufacture, production, or processing, daylight fluorescent materials are utilized. Included among such devices which utilize daylight fluorescent coating compositions are advertising signs, billboards, posters and displays, fishing lures and tackle, aircraft and shipboard instrument boards and panels, and novelty jewelry. Included among such devices utilizing daylight fluorescent textiles are swim suits, hosiery, caps, and other garments and articles of apparel, advertising and theatrical banners, signal flags and fishing flies and other lures;

(F) "Daylight fluorescent materials" means, for example, certain lacquers, paints, pigments, screen process inks, and other coating compositions, yarns, filaments, threads and fibers, together with cloth and fabrics woven and made therefrom, various organic felted materials,

in sheet and roll form, such as papers, cardboards, and the like, films and foils, all of which when properly applied, processed, and utilized, result in a daylight fluorescent effect;

(G) "Patents" means each and all United States Letters Patent and applications therefor, relating to daylight fluorescent materials or devices, or both;

(H) "Trademarks" means each and all trademarks and trade names, used by or registered for defendant, relating to daylight fluorescent materials or devices, or both.

II

The Court has jurisdiction of the subject matter hereof and of the parties signatory hereto. The complaint states a cause of action against the consenting defendant under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", and under Section 3 of the Act of Congress of October 15, 1914, entitled "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for other Purposes."

III

Defendant consenting to and entering into this Final Judgment is Lawter Chemicals, Inc. The provisions of this Final Judgment applicable to the said consenting defendant shall apply to said defendant and its officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other persons acting under, through or for said defendant. For the purpose of this Final Judgment the defendant and any wholly-owned subsidiary shall be deemed to be one person.

IV

Defendant is enjoined and restrained from maintaining, adhering to, claiming any rights under, reviving, adopting or enforcing any provision of the agreements entered into between defendant Switzer and defendant Lawter Chemicals, Inc., both dated February 3, 1950, or any other agreement or understanding between the said defendants which is inconsistent with any provision of this Final Judgment.

V

Defendant is enjoined and restrained from entering into, adhering to or enforcing any agreement, understanding, plan or program with any person engaged in the manufacture of daylight fluorescent materials or devices which:

(A) Requires the use of only daylight fluorescent materials and devices manufactured or sold by the defendant or any source approved by the defendant;

(B) Restricts, limits or controls the channels through which daylight fluorescent materials or devices may be sold or distributed.

VI

Defendant is enjoined and restrained from entering into, adhering to or enforcing any agreement, understanding, plan or program with any manufacturer, distributor or user, or any other person:

(A) Not to sell to or buy from others daylight fluorescent materials or devices;

(B) Not to use, purchase or deal in daylight fluorescent materials or devices manufactured or sold by any third person;

(C) Preventing any person from competing in the manufacture, processing, distribution or sale of daylight fluorescent materials or devices.

VII

Defendant is enjoined and restrained from:

(A) Requiring any person to use only daylight fluorescent materials and devices manufactured or sold by the defendant, or by any source approved by the defendant;

(B) Conditioning the processing by defendant of daylight fluorescent materials upon any agreement or understanding restricting or limiting the distribution, sale or use of daylight fluorescent materials or devices manufactured or owned by any person other than the defendant;

(C) Without obstructing the exercise of trademark rights, limiting, controlling or restricting the end use of daylight fluorescent materials or devices by purchasers thereof;

(D) Selling or processing, or offering to sell or process, or fixing the price for the sale of, daylight fluorescent materials or devices, upon the condition, agreement or understanding that the purchaser thereof shall not purchase, use or deal in the daylight fluorescent materials or devices, or ingredients or goods of any person other than defendant.

VIII

Defendant is enjoined and restrained from:

(A) Granting or accepting any license or sub-license or immunity under any patents upon a condition or requirement that the other party to such transaction shall agree:

(1) To manufacture, sell or use only daylight fluorescent devices of specified kinds or types;

(2) To manufacture, sell or use only such daylight fluorescent devices as may be covered by a specified patent or patents, or which are produced by or are the result of any process covered by a specified patent or patents;

(3) To adopt and to use on daylight fluorescent devices, trademarks or trade names owned or controlled by any person;

(4) To utilize in the manufacture or processing of the licensed daylight fluorescent devices only materials to be obtained from designated sources or only materials obtained from sources approved or in any way specified or designated by defendant.

(B) Granting or accepting any license under any trademark upon a condition or requirement that the other party to such transaction shall agree:

(1) To manufacture, sell, or use only such daylight fluorescent devices or materials as may be covered by a specified patent or patents, or which are produced by or are the result of any process covered by a specified patent or patents;

(2) To utilize in the manufacture of the licensed daylight fluorescent devices or materials only materials manufactured or processed by manufacturers or processors approved or in any way specified or designated by defendant.

(C) Granting any trademark license to any manufacturer, seller, or user of daylight fluorescent materials or devices which:

(1) Does not permit the trademark licensee to cancel the license, with or without reason or cause, upon thirty (30) days' notice to the licensor;

(2) Requires the licensee to use the licensed trademark on daylight fluorescent materials or devices of any given type or kind to the exclusion of other trademarks.

IX

Nothing in this Final Judgment shall be deemed to prohibit the defendant:

(A) From issuing or maintaining a trademark license which requires the use of materials designated by name or manufacturer in cases where it is not possible to use any other designation and the licensee is in fact free to obtain equivalent materials from other sources;

(B) From issuing a patent license in connection with a trademark license; provided, the licensee, at his option, may take either a patent license or a trademark license;

(C) From issuing patent licenses describing the scope of the grant therein.

X

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 the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice to the defendant, be permitted, subject to any legally recognized privilege, (a) access, during the office hours of defendant, to all books, papers, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of or under the control of defendant relating to any of the matters contained in this Final Judgment; and (b) subject to the reasonable convenience of defendant, to interview officers and employees of defendant, who may have counsel present, regarding such matters. Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice to defendant, defendant shall submit such written reports as may from time to time be reasonably necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section X shall be divulged by 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 is a party for the purpose of securing compliance with this Final Judgment or as otherwise provided by law.

XI

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final 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 Final 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.

San Francisco, California

Dated: October 22, 1953

LOUIS E. GOODMAN
United States District Judge

We hereby consent to the entry of the foregoing Final Judgment.

STANLEY N. BARNES
Assistant Attorney General

W. D. KILGORE, Jr.

MARCUS A. HOLLABAUGH

MAX FREEMAN

LYLE L. JONES
Trial Attorneys

DON H. BANKS
Trial Attorneys

Attorneys for Plaintiff

NELSON, BOODELL and WILL

By NELSON BOODELL & WILL
THOMAS J. BOODELL

Attorneys for Defendant

UNITED STATES v. SWITZER BROS., *et al.*

Civil No. 29860

Year Switzer Brothers Defendants Judgment Entered: October 1953

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. SWITZER BROTHERS, INC., GANTNER & MATTERN CO., THE FIRELURE CORPORATION, THE SHERWIN-WILLIAMS COMPANY, THE SHERWIN-WILLIAMS COMPANY OF CALIFORNIA, ABERFOYLE MANUFACTURING COMPANY, LAWTER CHEMICALS, INC., ROBERT C. SWITZER, JOSEPH L. SWITZER, JOHN O. GANTNER, JR., EUGENE BURNS, GERALD D. STRATFORD, and W. BRUCE BECKLEY, Defendants.	CIVIL ACTION NO. 29860 ORIGINAL F I L E D Oct. 22, 1953 With Clerk, U. S. Dist. Court San Francisco

FINAL JUDGMENT AS TO DEFENDANTS SWITZER BROTHERS, INC., ROBERT C. SWITZER AND JOSEPH L. SWITZER

Plaintiff United States of America having filed its complaint herein on June 28, 1950, the consenting defendants hereto each having filed their several answers to said complaint denying the substantive allegations thereof, and the plaintiff and the defendants Switzer Brothers, Inc., and Robert C. Switzer and Joseph L. Switzer, by their

respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or of law herein and without admission by any party in respect of any such issue;

NOW, THEREFORE, before any testimony has been taken and without trial or adjudication of any issue of fact or law and upon consent of the parties aforesaid, and said consenting defendants still asserting their innocence of any violation,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

I

As used in this Final Judgment:

(A) "Person" means an individual, partnership, firm, association, corporation, or other legal entity;

(B) "Defendants" means the defendants Switzer Brothers, Inc., Robert C. Switzer and Joseph L. Switzer and each of them;

(C) "Gantner" means the defendant, Gantner & Mattern Co.;

(D) "Firelure" means the defendant, The Firelure Corporation;

(E) "Sherwin-Williams" means the defendant, The Sherwin-Williams Co., and all its wholly-owned subsidiaries, including defendant The Sherwin-Williams Co. of California;

(F) "Aberfoyle" means the defendant, Aberfoyle Manufacturing Co., Inc.;

(G) "Lawter" means the defendant, Lawter Chemicals, Inc.;

(H) "Gabbs" means the partnership or tenancy in common of Eugene Burns, Gerald D. Stratford, John O. Gantner, Jr., and W. Bruce Beckley, doing business as Gabbs Supply Co.;

(I) "Daylight fluorescent" means a color comprised of a predominantly reflected wave band of incident visible light and, due to visible-light response, fluorescent emitted light of substantially the same wave length as the predominantly reflected wave band, said combined

reflected and emitted light having a brightness and purity of hue characterized by color distinguishability at a distance beyond the perceptibility range of any subtractive color of similar hue;

(J) "Daylight fluorescent devices", as distinguished from daylight fluorescent materials, denotes all types and kinds of end-use products, articles, and devices, without limitation, in whose manufacture, production, or processing, daylight fluorescent materials are utilized. Included among such devices which utilize daylight fluorescent coating compositions are advertising signs, billboards, posters and displays, fishing lures and tackle, aircraft and shipboard instrument boards and panels, and novelty jewelry. Included among such devices utilizing daylight fluorescent textiles are swim suits, hosiery, caps, and other garments and articles of apparel, advertising and theatrical banners, signal flags and fishing flies and other lures;

(K) "Daylight fluorescent materials" means, for example, certain lacquers, paints, pigments, screen process inks, and other coating compositions, yarns, filaments, threads and fibers, together with cloth and fabrics woven and made therefrom, various organic felted materials, in sheet and roll form, such as papers, cardboards, and the like, films and foils, all of which when properly applied, processed, and utilized, result in a daylight fluorescent effect;

(L) "Patents" means each and all United States Letters Patent and applications therefor, relating to daylight fluorescent materials or devices, or both;

(M) "Trademarks" means each and all trademarks and trade names, used by or registered for defendant, relating to daylight fluorescent materials or devices, or both.

II

The Court has jurisdiction of the subject matter hereof and of the parties signatory hereto. The complaint states a cause of action against the consenting defendants under Sections 1 and 2 of the Act of

Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", and under Section 3 of the Act of Congress of October 15, 1914, entitled "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for other Purposes".

III

The defendants consenting to and entering into this Final Judgment are Switzer Brothers, Inc., Robert C. Switzer and Joseph L. Switzer. The provisions of this Final Judgment applicable to any of the said consenting defendants shall apply to such defendant and its or his officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons acting under, through or for such defendant. For the purpose of this Final Judgment when either of the individual defendants, Robert C. Switzer and Joseph L. Switzer, is acting in his capacity as an officer or agent of the defendant Switzer Brothers, Inc., the said individual defendant and defendant Switzer Brothers, Inc. shall be deemed to be one person.

IV

(A) The following agreements, having been terminated:

(1) Agreements between the defendant Switzer and defendant Gantner, dated September 27, 1946; February 7, 1947; November 26, 1947; January 17, 1949; August 10, 1949; November 10, 1949 and October 23, 1950;

(2) Agreement between the defendant Switzer and defendant Aberfoyle dated July 14, 1949;

(3) Agreement between defendant Switzer and defendant Gabbs dated January 21, 1949;

defendants are enjoined and restrained from continuing or renewing any of the agreements above listed.

(B) Defendants are enjoined and restrained from maintaining, adhering to, claiming any rights under, reviving, adopting or enforcing

any provision of the following agreements which is inconsistent with any of the provisions of this Final Judgment:

(1) Agreement between defendant Switzer and defendant Sherwin-Williams, dated January 25, 1949;

(2) Agreements between defendant Switzer and defendant Lawter, both dated February 3, 1950;

(3) Agreement between defendant Switzer and defendant Gantner dated September 25, 1951, as amended.

V

(A) Defendants are jointly and severally ordered and directed to grant to each applicant making written request therefor a non-exclusive, unrestricted, royalty-free license to manufacture, sell and use under United States Letters Patent Nos. 2,417,384; 2,475,529 or 2,450,085. In any such license notice may be given that said royalty-free license does not convey rights under other patents owned or controlled by defendants. Defendants are enjoined and restrained from transferring by assignment, or otherwise divesting themselves of, ownership or control of said patents Nos. 2,417,384; 2,475,529 or 2,450,085.

(B) Defendants are jointly and severally enjoined and restrained from instituting or threatening to institute any suit or proceeding against any person to restrain or enjoin, or collect damages for, infringement occurring prior or subsequent to the date of entry of this Final Judgment, of said patents Nos. 2,417,384; 2,475,529 or 2,450,085; provided, however, that nothing herein shall prevent defendants (1) from defending the validity of said patents, or (2) by way of claim (counterclaim) or defense, from asserting claims for past unlicensed, contributory or induced infringement of said patents.

(C) Except as to cases now on appeal or on certiorari defendants are ordered and directed to dismiss any of their pending actions for

infringement of the patents listed in subsection (B) above in which a counterclaim has not been pled, and to dismiss any such pending action in which a counterclaim, if pled, is dismissed. However, in case a counterclaim has been pled and is not dismissed, defendants may, but only to the extent of such counterclaim and only until the time of such dismissal, assert in such case the validity of said patents and plead by way of claim (counterclaim) or defense past unlicensed, contributory or induced infringement of said patents.

VI

(A) Defendants are ordered and directed to grant to each applicant making written request therefor a license to manufacture and sell daylight fluorescent fabrics under United States Letters Patent No. 2,606,809 upon terms and conditions as are prescribed for the licensing of patents relating to daylight fluorescent devices in Section VII herein, except for the terms of Section VII (B) (8).

(B) Nothing in the foregoing subsection (A) shall be deemed to prohibit defendants from taking appropriate action to enforce licenses issued under the above subsection (A), and asserting said patent against unlicensed manufacturers and sellers of daylight fluorescent fabrics.

(C) Defendants are jointly and severally enjoined and restrained from asserting or enforcing any rights under United States Letters Patent No. 2,606,809, except as are necessary to comply with and are permitted by subsections (A) and (B) of this Section VI.

VII

(A) The defendants are:

(1) Ordered and directed to grant to each person making written request therefor a non-exclusive license to make, use and sell any daylight fluorescent devices specified in the request under any, some or all United

States Letters Patent listed in Schedule A attached hereto; except that defendants need not be required to re-grant a license hereafter cancelled for breach; and

(2) Enjoined and restrained from making any disposition of said patents which deprives them of the power or authority to grant said licenses unless they sell, transfer or assign said patents and require as a condition of said sale, transfer or assignment that the purchaser, transferee or assignee thereof shall observe the provisions of this Section VII with respect to the patents so acquired.

(B) The defendants are enjoined and restrained from including any restriction or condition whatsoever in any license granted pursuant to the provisions of this Section VII except that:

(1) The license may be non-transferable;

(2) A reasonable non-discriminatory royalty may be charged; however, a bona fide compromise settlement of royalty claims due and payable shall not be deemed to be discriminatory;

(3) A reasonable provision may be made for periodic inspection of the books and records of the licensee by an independent auditor or any other person acceptable to the licensee who shall report to the licensor only the amount of royalty due and payable;

(4) Reasonable provisions may be made for cancellation of the license by licensor for breach;

(5) A description of the type of device which the licensee is to make, use or sell may be included;

(6) The marking of patent numbers on licensed devices in accordance with the patent statutes may be required;

(7) The license must provide that the licensee may cancel the license at any time by giving thirty (30) days' notice in writing to the licensor;

(8) Notice may be included that the license does not convey the right to manufacture or to have manufactured patented daylight fluorescent materials covered by any patent owned or controlled by the defendants.

(C) Upon receipt of a written request for a license under the provisions of this Section VII, the applicant shall be advised in writing of the royalty which the defendant deems reasonable for the patent or patents to which the request pertains. If the parties are unable to agree upon a reasonable royalty within 60 days from the date such request for the license was received by the defendant, the applicant therefor may forthwith apply to this Court for the determination of a reasonable royalty, and the defendant shall, upon receipt of notice of the filing of such application, promptly give notice thereof to the plaintiff. Upon application of defendants, this Court will appoint a Special Master in Cleveland, Ohio to take all evidence in such proceedings and to make appropriate reports to this Court. In any such proceedings the burden of proof shall be on the defendant to establish the reasonableness of the royalty requested, and whatever reasonable royalty rates are determined by the Court shall apply to the applicant and to all other licensees making the same type or kind of device pursuant to this judgment under the same patent or patents. Pending the completion of negotiations or any such proceedings, the applicant shall have the right to make, use and vend daylight fluorescent devices under the patents to which its application pertains but subject to the payment of such reasonable royalty as may be determined by the Court. Pending the determination of a reasonable royalty, the applicant or defendant may apply to this Court to fix an interim royalty rate. If the Court fixes such interim royalty rate, the defendant shall then issue, and the applicant shall

accept, a license providing for the periodic payment of royalties at such interim rate from the date of the filing of the application for a license. If the applicant fails to accept the license or fails to pay the interim royalty, such action shall be cause for the dismissal of his application, and his rights, within the scope of his application, under this Section shall terminate without relieving him of liability for payment of a reasonable royalty during such time as said patent or patents were used.

(D) Nothing contained in this Final Judgment shall prevent any applicant for such patent license from attacking in the aforesaid proceedings, or in any other controversy, the validity or scope of any of said patents, nor shall this Final Judgment be construed as importing or impairing any validity or value to any of said patents.

VIII

Defendants are enjoined and restrained from entering into, adhering to or enforcing any agreement, understanding, plan or program with any person engaged in the manufacture of daylight fluorescent materials or devices which:

(A) Requires the use of only daylight fluorescent materials and devices manufactured or sold by the defendants or any source approved by the defendants;

(B) Restricts, limits or controls the channels through which daylight fluorescent materials or devices may be sold or distributed.

IX

Defendants are enjoined and restrained from entering into, adhering to or enforcing any agreement, understanding, plan or program with any manufacturer, distributor or user, or any other person:

(A) Not to sell to or buy from others daylight fluorescent materials or devices;

(B) Not to use, purchase or deal in daylight fluorescent materials or devices manufactured or sold by any third person;

(C) Preventing any person from competing in the manufacture, processing, distribution or sale of daylight fluorescent materials or devices.

X

Defendants are enjoined and restrained from:

(A) Requiring any person to use only daylight fluorescent materials and devices manufactured or sold by the defendants, or by any source approved by the defendants;

(B) Conditioning the processing by defendants of daylight fluorescent materials upon any agreement or understanding restricting or limiting the distribution, sale or use of daylight fluorescent materials or devices manufactured or owned by any person other than the defendants;

(C) Without obstructing the exercise of trade-mark rights, limiting, controlling or restricting the end use of daylight fluorescent materials or devices by purchasers thereof;

(D) Selling or processing, or offering to sell or process, or fixing the price for the sale of, daylight fluorescent materials or devices, upon the condition, agreement or understanding that the purchaser thereof shall not purchase, use or deal in the daylight fluorescent materials or devices, or ingredients or goods of any person other than defendants;

(E) Refusing to grant a license under any patent where the refusal is, in whole or in part, due to the refusal of the applicant for the license to grant back a license to the defendants under any patent or improvement patent;

(F) Requiring any person to agree in a license agreement to refrain from contesting the validity of patents not specifically covered by such license.

XI

Defendants are enjoined and restrained from:

(A) Granting any license or sub-license or immunity under any patents upon a condition or requirement that the other party to such transaction shall agree:

(1) To manufacture, sell or use only daylight fluorescent devices of specified kinds or types;

(2) To manufacture, sell or use only such daylight fluorescent devices as may be covered by a specified patent or patents, or which are produced by or are the result of any process covered by a specified patent or patents;

(3) To accept a license under, or otherwise to adopt and to use on daylight fluorescent devices, trade-marks or trade names owned or controlled by any person;

(4) To utilize in the manufacture or processing of the licensed daylight fluorescent devices only materials to be obtained from designated sources or only materials obtained from sources approved or in any way specified or designated by defendants;

(5) To utilize in the manufacture of the licensed daylight fluorescent devices only materials manufactured or processed by manufacturers or processors approved or in any way specified or designated by defendants;

(6) Not to manufacture, sell, or use any daylight fluorescent device not covered by the patent or patents specifically licensed.

(B) Instituting or maintaining, or threatening to institute or maintain, any suit or proceeding against any person for infringement of any patent without first giving written notice to such person of the particular claim or claims of which patent is deemed to have been infringed.

(C) Granting any license under any trade-mark upon a condition or requirement that the other party to such transaction shall agree:

(1) To manufacture, sell, or use only such daylight fluorescent devices or materials as may be covered by a specified patent or patents, or which are produced by or are the result of any process covered by a specified patent or patents;

(2) To utilize in the manufacture of the licensed daylight fluorescent devices or materials only materials manufactured or processed by manufacturers or processors approved or in any way specified or designated by defendants.

(D) Granting any trade-mark license to any manufacturer, seller or user of daylight fluorescent materials or devices which:

(1) Does not permit the trade-mark licensee to cancel the license, with or without reason or cause, upon thirty (30) days' notice to the licensor;

(2) Requires the licensee to use the licensed trade-mark on daylight fluorescent materials or devices of any given type or kind to the exclusion of other trade-marks.

XII

Within sixty (60) days from the date of the entry of this Final Judgment defendant Switzer shall give notice in writing, approved as to form and content by the plaintiff, of the contents of:

(A) Sections V and IX hereof to each person licensed or otherwise authorized on the date of this Final Judgment by said defendant to employ or to use any of the said patents covered by said Section V.

(B) Section IX hereof to each of its dealers and distributors of daylight fluorescent materials.

A list of the names and addresses of the persons to whom the above required notice has been sent shall be submitted to plaintiff herein.

XIII

Nothing in this Final Judgment shall be deemed to prohibit the defendants:

(A) From issuing or maintaining a trade-mark license which requires the use of materials designated by name or manufacturer, in cases where it is not possible to use any other designation and the licensee is in fact free to obtain equivalent materials from other sources.

(B) From issuing a patent license in connection with a trade-mark license; provided, the licensee, at his option, may take either a patent license or a trade-mark license.

(C) From issuing patent licenses describing the scope of the grant therein.

XIV

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 the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice to defendants, be permitted, subject to any legally recognized privilege, (a) access, during the office hours of defendants, to all books, papers, ledgers, accounts, correspondence,

memoranda and other records and documents in the possession of or under the control of defendants relating to any of the matters contained in this Final Judgment; and (b) subject to the reasonable convenience of defendants, to interview officers and employees of defendants, who may have counsel present, regarding such matters. Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice to defendants, defendants shall submit such written reports as may from time to time be reasonably necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section XIV shall be divulged by 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 is a party for the purpose of securing compliance with this Final Judgment or as otherwise provided by law.

XV

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final 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 Final 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.

San Francisco, California
DATED: October 22, 1953

LOUIS E. GOODMAN
United States District Judge

We hereby consent to the entry of the foregoing Final Judgment.

STANLEY N. BARNES
Assistant Attorney General

W. D. KILGORE, Jr.

MARCUS A. HOLLABAUGH

MAX FREEMAN

LYLE L. JONES

DON H. BANKS
Trial Attorneys

Attorneys for Plaintiff

Switzer Brothers, Inc.

By ROBERT C. SWITZER
Robert C. Switzer, President

ROBERT C. SWITZER
Robert C. Switzer

Joseph L. Switzer

By ROBERT C. SWITZER
Robert C. Switzer
Attorney-in-fact.

LILLICK, GEARY, OLSON, ADAMS & CHARLES

By JOHN F. PORTER

Attorneys for Defendants

EXHIBIT A

List of patents owned or controlled by defendants having claims covering daylight fluorescent devices.

United States Letters Patent No.	Claims
2,277,169	1-24
2,302,645	1-14
2,417,383	3-8
2,498,592	16-24
2,629,956	1-13

UNITED STATES v. SWITZER BROS., *et al.*

Civil No. 29860

Year Sherwin-Williams Defendants Judgment Entered: October 1953

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. SWITZER BROTHERS, INC. GANTNER & MATTERN CO., THE FIRELURE CORPORATION, THE SHERWIN-WILLIAMS COMPANY, THE SHERWIN-WILLIAMS COMPANY OF CALIFORNIA, ABERFOYLE MANUFACTURING COMPANY, LAWTER CHEMICALS, INC., ROBERT C. SWITZER, JOSEPH L. SWITZER, JOHN O. GANTNER, JR., EUGENE BURNS, GERALD D. STRATFORD, and W. BRUCE BECKLEY, Defendants.	Civil Action No. 29860 ORIGINAL FILED Oct. 22, 1953 With Clerk, U. S. Dist. Court San Francisco

FINAL JUDGMENT AS TO DEFENDANTS
THE SHERWIN-WILLIAMS COMPANY AND
THE SHERWIN-WILLIAMS COMPANY OF CALIFORNIA

Plaintiff United States of America having filed its complaint herein on June 28, 1950, the consenting defendants hereto each having filed their several answers to said complaint denying the substantive allegations thereof, and the plaintiff and the defendants The Sherwin-Williams Company and The Sherwin-Williams Company of California, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or of law herein and without admission by any party in respect to any such issue:

NOW, THEREFORE, before any testimony has been taken and without trial or adjudication of any issue of fact or law and upon consent of the parties aforesaid, and said consenting defendants still asserting their innocence of any violation,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

I

As used in this Final Judgment:

(A) "Person" means an individual, partnership, firm, association, corporation or other legal entity;

(B) "Defendants" means the defendants The Sherwin-Williams Company and The Sherwin-Williams Company of California and each of them;

(C) "Switzer" means the defendant Switzer Brothers, Inc.;

(D) "Daylight fluorescent" means a color comprised of a predominantly reflected wave band of incident visible light and, due to visible-light response, fluorescent emitted light of substantially the same wave length as the predominantly reflected wave band, said combined reflected and emitted light having a brightness and purity of hue characterized by color distinguishability at a distance beyond the perceptibility range of any subtractive color of similar hue;

(E) "Daylight fluorescent devices", as distinguished from daylight fluorescent materials, denotes all types and kinds of end-use products, articles, and devices, without limitation, in whose manufacture, production, or processing, daylight fluorescent materials are utilized. Included among such devices which utilize daylight fluorescent coating compositions are advertising signs, billboards, posters and displays, fishing lures and tackle, aircraft and shipboard instrument boards and panels, and novelty jewelry. Included among such devices utilizing daylight fluorescent textiles are swim suits, hosiery, caps, and other garments and articles of apparel, advertising and theatrical banners, signal flags and fishing flies and other lures;

(F) "Daylight fluorescent materials" means, for example, certain lacquers, paints, pigments, screen process inks, and other coating compositions, yarns, filaments, threads and fibers, together with cloth and

fabrics woven and made therefrom, various organic felted materials, in sheet and roll form, such as papers, cardboards, and the like, films and foils, all of which when properly applied, processed, and utilized, result in a daylight fluorescent effect.

(G) "Patents" means each and all United States Letters Patent and applications therefor, relating to daylight fluorescent materials or devices, or both;

(H) "Trademarks" means each and all trademarks and trade names, used by or registered for defendant, relating to daylight fluorescent materials or devices, or both.

II

The Court has jurisdiction of the subject matter hereof and of the parties signatory hereto. The complaint states a cause of action against the consenting defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", and under Section 3 of the Act of Congress of October 15, 1914, entitled "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for other Purposes".

III

Defendants consenting to and entering into this Final Judgment are The Sherwin-Williams Company and The Sherwin-Williams Company of California. The provisions of this Final Judgment applicable to either of the said consenting defendants shall apply to such defendant and its officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other persons acting under, through or for such defendant. For the purpose of this Final Judgment the defendant The Sherwin-Williams Company and its wholly-owned subsidiary, defendant The Sherwin-Williams Company of California, and any other wholly or substantially wholly owned subsidiary, shall be deemed to be one person.

IV

Defendants are enjoined and restrained from maintaining, adhering to, claiming any rights under, reviving, adopting or enforcing any provision of the agreement between defendant Switzer Brothers, Inc. and

defendant The Sherwin-Williams Company, dated January 25, 1949 or any other agreement or understanding between the said defendants which is inconsistent with any provision of this Final Judgment.

V

Defendants are enjoined and restrained from entering into, adhering to or enforcing any agreement, understanding, plan or program with any person engaged in the manufacture of daylight fluorescent materials or devices which:

(A) Requires the use of only daylight fluorescent materials and devices manufactured or sold by the defendants or any source approved by the defendants;

(B) Restricts, limits or controls the channels through which daylight fluorescent materials or devices may be sold or distributed.

VI

Defendants are enjoined and restrained from entering into, adhering to or enforcing any agreement, understanding, plan or program with any manufacturer, distributor or user, or any other person:

(A) Not to sell to or buy from others daylight fluorescent materials or devices;

(B) Not to use, purchase or deal in daylight fluorescent materials or devices manufactured or sold by any third person;

(C) Preventing any person from competing in the manufacture, processing, distribution or sale of daylight fluorescent materials or devices.

VII

Defendants are enjoined and restrained from:

(A) Requiring any person to use only daylight fluorescent materials and devices manufactured or sold by the defendants, or by any source approved by the defendants;

(B) Conditioning the processing by defendants of daylight fluorescent materials upon any agreement or understanding restricting or

limiting the distribution, sale or use of daylight fluorescent materials or devices manufactured or owned by any person other than the defendants;

(C) Without obstructing the exercise of trademark rights, limiting, controlling or restricting the end use of daylight fluorescent materials or devices by purchasers thereof;

(D) Selling or processing, or offering to sell or process, or fixing the price for the sale of, daylight fluorescent materials or devices, upon the condition, agreement or understanding that the purchaser thereof shall not purchase, use or deal in the daylight fluorescent materials or devices, or ingredients or goods of any person other than defendants.

VIII

Defendants are enjoined and restrained from:

(A) Granting or accepting any license or sub-license or immunity under any patents upon a condition or requirement that the other party to such transaction shall agree:

(1) To manufacture, sell or use only daylight fluorescent devices of specified kinds or types;

(2) To manufacture, sell or use only such daylight fluorescent devices as may be covered by a specified patent or patents, or which are produced by or are the result of any process covered by a specified patent or patents;

(3) To adopt and to use on daylight fluorescent devices, trademarks or trade names owned or controlled by any person;

(4) To utilize in the manufacture or processing of the licensed daylight fluorescent devices only materials to be obtained from designated sources or only materials obtained from sources approved or in any way specified or designated by defendants;

(B) Granting or accepting any license under any trade-mark upon a condition or requirement that the other party to such transaction shall agree:

(1) To manufacture, sell, or use only such daylight fluorescent devices or materials as may be covered by a specified patent or patents, or which are produced by or are the result of any process covered by a specified patent or patents;

(2) To utilize in the manufacture of the licensed daylight fluorescent devices or materials only materials manufactured or processed by manufacturers or processors approved or in any way specified or designated by defendants.

(C) Granting any trade-mark license to any manufacturer, seller, or user of daylight fluorescent materials or devices which:

(1) Does not permit the trade-mark licensee to cancel the license, with or without reason or cause, upon thirty (30) days' notice to the licensor;

(2) Requires the licensee to use the licensed trade-mark on daylight fluorescent materials or devices of any given type or kind to the exclusion of other trade-marks.

IX

Nothing in this Final Judgment shall be deemed to prohibit the defendants:

(A) From issuing or maintaining a trade-mark license which requires the use of materials designated by name or manufacturer in cases where it is not possible to use any other designation and the licensee is in fact free to obtain equivalent materials from other sources;

(B) From issuing a patent license in connection with a trade-mark license; provided, the licensee, at his option, may take either a patent license or a trade-mark license;

(C) From issuing patent licenses describing the scope of the grant therein.

X

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 the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice to defendants, be permitted, subject to any legally recognized privilege, (a) access, during the office hours of defendants, to all books, papers, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of or under the control of defendants relating to any of the matters contained in this Final Judgment; and (b) subject to the reasonable convenience of defendants, to interview officers and employees of defendants, who may have counsel present, regarding such matters. Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice to defendants, defendants shall submit such written reports as may from time to time be reasonably necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section X shall be divulged by 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 is a party for the purpose of securing compliance with this Final Judgment or as otherwise provided by law.

XI

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final 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 Final 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.

San Francisco, California

DATED: OCTOBER 22, 1953

LOUIS E. GOODMAN
United States District Judge

We hereby consent to the entry of the foregoing Final Judgment.

/s/ Stanley N. Barnes
Assistant Attorney General

/s/ W. D. Kilgore, Jr.

/s/ Marcus A. Hollabaugh

/s/ Max Freeman

/s/ Lyle L. Jones
Trial Attorneys

/s/ Don H. Banks
Trial Attorneys

Attorneys for Plaintiff

/s/ T. J. McDowell
T. J. McDowell,

Attorney for Defendants

UNITED STATES v. GOLDEN GATE CHAPTER, NAT'L ELECS. DISTRIBS. ASS'N*, et al.*

Civil No. 31567

Year Judgment Entered: 1954

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Golden Gate Chapter, National Electronics Distributors Association; Associated Radio Distributors; Frank Quement Inc.; Kaemper & Barrett Dealers Supply Co.; Tilton Industries Inc.; Zack Radio Supply Co.; Louise N. Miller., U.S. District Court, N.D. California, 1954 Trade Cases ¶67,800, (Jun. 28, 1954)

United States v. Golden Gate Chapter, National Electronics Distributors Association; Associated Radio Distributors; Frank Quement Inc.; Kaemper & Barrett Dealers Supply Co.; Tilton Industries Inc.; Zack Radio Supply Co.; Louise N. Miller.

1954 Trade Cases ¶67,800. U.S. District Court, N.D. California, Southern Division. Civil No. 31567. Filed June 28, 1954. Case No. 1129 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decree—Practices Enjoined—Restraints of Trade—Boycotts—Exclusive Dealing.—An association of electronic and radio parts and equipment wholesalers and its members consented to the entry of a decree enjoining them from entering into any agreement (1) to boycott or otherwise refrain from buying electronic and radio parts and equipment from any manufacturer; (2) to induce or coerce any manufacturer to refrain from selling to any particular person or group of persons; (3) to give preference to such merchandise sold by any manufacturer who refrains or agrees to refrain from selling to any other person, and (4) to purchase or offer to purchase from any manufacturer on the condition or understanding that such manufacturer will not sell to any other person. The decree contained a permissive provision concerning exclusive distributorships.
Consent Decree—Practices Enjoined—Inducing Boycotts—Exclusive Dealing.—An association of electronic and radio parts and equipment wholesalers and its members consented to the entry of a decree enjoining them from inducing or coercing any manufacturer not to sell to any wholesale distributor, and from belonging to any organization of wholesale distributors which attempts to urge or compel any manufacturer to refrain from selling to any person. Each defendant was further enjoined from purchasing or offering to purchase electronic and radio parts and equipment on the condition or understanding that the, seller will not sell to any wholesale distributor or class of wholesale distributors. In addition, the defendant organization was ordered to admit to membership any bona fide wholesaler distributor making written application to join, and to furnish to each of its present and future, members a copy of this decree.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; Lloyd H. Burke, U. S. Attorney, by Charles Elmer Collett; W. D. Kilgore, Jr.; Charles F. B. McAleer; Lyle L. Jones; Marquis L. Smith.

For the defendants: Melvin, Faulkner, Sheehan & Wiseman, by F. Walter French; Athearn, Chandler & Hoffman, by Theodore P. Lambros; Dodd M. McRae; Elliot W. Seymour; Darwin Bryan.

Final Judgment

O. D. HAMLIN, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on May 26, 1952, and the defendants having appeared by their respective counsel, and plaintiff and defendants 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, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby ordered, adjudged and decreed as follows:

I.

[*Jurisdiction*]

The Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states a cause of action against the defendants under sections 1 and 2 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.

[*Definition*]

As used in this Final Judgment:

(A) "Defendants" shall mean each and all of the following: Golden Gate Chapter, National Electronics Distributors Association (of San Francisco, California); Associated Radio Distributors; Frank Quement, Inc.; Kaemper & Barrett Dealers Supply Co.; Tilton Industries, Inc.; Zack Radio Supply Co.; and Louise N. Miller;

(B) "Person" shall mean an individual, partnership, firm, corporation, association, trustee or any other business or legal entity;

(C) "Association" shall mean the defendant, Golden Gate Chapter, National Electronics Distributors Association, of San Francisco, California;

(D) "Electronic and radio parts and equipment" shall mean the various electronic and radio parts, supplies, accessories, attachments, component units and appurtenances, and equipment which are used to construct, repair, replace and improve electronic and radio sets and equipment owned and operated by private persons, radio broadcast stations, laboratories, amateur radio operators and experimenters, commercial and industrial plants and state and governmental agencies and institutions. As used herein the term also includes radio communications receivers and transmitters* wire and tape recorders, record changers, amplifiers, loud speakers, and other items of public address and sound equipment;

(E) "Wholesale distributor" shall mean any person engaged in the business of purchasing electronic and radio parts and equipment from a manufacturer thereof for resale;

(F) "Manufacturer" shall mean any person engaged in the business of manufacturing for sale electronic and radio parts and equipment, and any person acting as representative or selling agent for' any such manufacturer.

III.

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendants, its or his officers, agents, servants, employees and attorneys, and to those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

[*Practices Enjoined*]

The defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, plan or program among themselves or with any other wholesale distributor, to:

(A) Boycott or otherwise refrain from buying or threaten to boycott or otherwise refrain from buying electronic and radio parts and equipment from any manufacturer or from any group or class thereof;

(B) Induce, compel or coerce any manufacturer to refrain from selling electronic and radio parts and equipment to any particular person or group or class of persons;

(C) "Push" or give preference to electronic and radio parts and equipment sold by any manufacturer who refrains or agrees to refrain from selling any particular person or group or class of persons;

(D) Communicate, directly or indirectly, with any manufacturer for the purpose of inducing such manufacturer not to sell electronic and radio parts and equipment to any particular person or to any group or class of persons;

(E) Purchase or offer to purchase electronic and radio parts and equipment from any manufacturer on the condition or understanding that such manufacturer will not sell to any particular person or to any group or class of persons;

(F) Suppress, hinder, restrict or limit competition in the distribution or sale of electronic and radio parts and equipment.

V.

[*Restraint of Trade Enjoined*]

Each of the defendants is enjoined and restrained from:

(A) Inducing, persuading, coercing, or attempting to induce, persuade or coerce any manufacturer not to sell to any whole sale distributor or group or class of wholesale distributors;

(B) Purchasing or offering to purchase electronic and radio parts and equipment on the condition or understanding that the seller not sell to any wholesale distributor or group or class of wholesale distributors;

(C) Knowingly organizing, joining, belonging as a member of, adhering to, participating in the activities of or contributing anything of value to any organization, committee or group of wholesale distributors which urges, induces, coerces or compels, or attempts to urge, induce, coerce or compel any manufacturer to refrain from selling electronic and radio parts and equipment to any person.

VI.

[*Permissive Provisions*]

Nothing in this Final Judgment shall be deemed to enjoin any defendant wholesale distributor while acting singly and not in concert with any other person (1) from seeking, negotiating or entering into any exclusive or semi-exclusive distributorship with any manufacturer who now has or hereafter adopts a general or national policy of distributing his products through exclusive or semi-exclusive distributorships; or (2) from lawfully persuading or attempting to persuade any manufacturer to adopt a general or national policy of distributing his products through exclusive or semi-exclusive distributorships.

VII.

[*Notice; Association Membership*]

The defendant Association is ordered and directed to:

(A) Furnish to each of its present members and to each of its future members a copy of this Final Judgment, and to obtain and keep on file receipts showing delivery of said copies.

(B) Admit to membership any bona fide wholesale distributor making written application therefor, provided, however, such distributor may be dropped from membership for failure to pay dues.

VIII.

[*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:

(A) 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 Final Judgment, and

(B) 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.

Upon such written request the defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of said Final Judgment. No information obtained by the means provided in this Section VIII 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 Final Judgment or as otherwise required by law.

IX.

[*Jurisdiction Retained*]

Jurisdiction is retained 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 or carrying out of this Final Judgment or for the modification of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

UNITED STATES v. NAT'L ASS'N OF VERTICAL TURBINE PUMP MFRS., *et al.*

Civil No. 29446

Year Judgment Entered: 1954

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. National Association of Vertical Turbine Pump Manufacturers, now known as Vertical Turbine Pump Association; Turbine Pump Manufacturers Association; Food Machinery and Chemical Corporation; Fairbanks, Morse & Co.; Byron Jackson Co.; Wintroath Pumps, Incorporated; Layne & Bowler Corporation; Johnston Pump Company; Layne & Bowler, Incorporated; A. D. Cook, Incorporated, now known as Lawrenceburg Corporation; Worthington Pump and Machinery Corporation, now known as Worthington Corporation; The Deming Company; The American Well Works; Aurora Pump Company; and James A. Walstrom., U.S. District Court, N.D. California, 1954 Trade Cases ¶67,803, (Jun. 30, 1954)

United States v. National Association of Vertical Turbine Pump Manufacturers, now known as Vertical Turbine Pump Association; Turbine Pump Manufacturers Association; Food Machinery and Chemical Corporation; Fairbanks, Morse & Co.; Byron Jackson Co.; Wintroath Pumps, Incorporated; Layne & Bowler Corporation; Johnston Pump Company; Layne & Bowler, Incorporated; A. D. Cook, Incorporated, now known as Lawrenceburg Corporation; Worthington Pump and Machinery Corporation, now known as Worthington Corporation; The Deming Company; The American Well Works; Aurora Pump Company; and James A. Walstrom.

1954 Trade Cases ¶67,803. U.S. District Court, N.D. California, Southern Division. Civil No. 29446. Filed June 30, 1954. Case No. 1011 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decree—Practices Enjoined—Price Fixing—Refusal to Deal.—Two associations of turbine pump manufacturers and their members consented to the entry of a decree prohibiting contracts or plans among themselves; or with any other manufacturer of vertical turbine pumps (1) to fix prices or other sales terms in connection with the sale of vertical turbine pumps, pump parts or services, (2) to fix trade-in allowances or terms for used pumps, (3) to fix uniform discounts or allowances, (4) to urge or induce purchasers to resell pumps or parts on terms determined by any defendant or anyone other than the buyer for resale, (5) to boycott or refuse to sell to buyers because of terms at which the buyers had sold or proposed to sell, or to discriminate in discounts, and (6) to establish or recommend uniform shaft size selection charts, column capacity charts, efficiency or quality charts without extra charge, or other uniform pump parts, selection methods and procedures.
Consent Decree—Practices Enjoined—Dissemination of Information.—Two associations of turbine pump manufacturers and their members were restrained by a consent decree from recommending or disseminating to manufacturers, dealers, distributors, users, or consumers of vertical turbine pumps and parts (1) certain shaft size selection charts, and (2) certain charts represented to be approved or sponsored by a defendant trade association or any two or more defendants. The decree further prohibited compelling pump purchasers to resell at terms of sale determined by any defendant or anyone other than the purchaser for resale, the dissemination to manufacturers or trade associations of suggested prices or pricing methods, and the exchange or dissemination of prices or price lists prior to the date of adoption thereof.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General, William D. Kilgore, Jr., Max Freeman, Lloyd H. Burke, by Charles Elmer Collett, Lyle L. Jones and Marquis L. Smith.

For the defendants: Alfred C. Ackerson; Pat A. McCormick; Cree & Brooks, by John W. Brooks; Watkins and Charlton, by Charles Watkins; Morrison, Hohfeld, Foerster, Shuman & Clark, by Boice Gross; Chickering & Gregory, by Frederick M. Fisk; and Aaron, Aaron, Schimberg & Hess, by Ely M. Aaron.

Final Judgment

O. D. HAMLIN, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on the 26th day of. January, 1950, the defendants herein each having appeared herein by its or his respective counsel; and the plaintiff and said defendants, by their respective attorneys, having severally consented to the entry of this Final Judgment without the taking of any testimony, without trial or adjudication of any issue of fact or of law and without admission by any party herein in respect of any such issue; now, therefore, it is hereby ordered, adjudged and decreed as follows:

I.

[*Definitions*]

As used in this judgment:

(a) The term "vertical turbine pump" is a vertical shaft centrifugal or mixed flow pump with rotating impeller or impellers with discharge from the pumping element co-axial with the shaft, designed for operation in wells of restricted diameter. The pumping element is suspended by the conductor system which encloses a system of vertical shafting used to transmit power to the impellers, the prime mover being external to the flow stream.

(b) The term "pump parts" means the various items, components, parts, devices, and mechanisms which are incorporated in a completed vertical turbine pump, including but not limited to, discharge column, pipe, head assemblies, bowls and bowl assemblies, strainers, shafts, gears, and motors.

(c) The term "pump services" means those services incident to the installation and operation of a vertical turbine pump, including but not limited to laboratory tests, field tests, installation and pulling and removing, and other services involved in removing old pumps and installing new vertical turbine pumps.

(d) The term "subsidiary" of a defendant means any corporation or firm under the effective operating or managerial control of said defendant.

II.

[*Defendants*]

The following are the names of the corporate defendants:

Name of Corporation:	***State of Incorporation:***	***Principal Office and Place of Business:***
Vertical Turbine Pump Association, Formerly known as National Association of Vertical Turbin Pump Manufacturers	California	Los Angeles, California
Turbine Pump Manufacturers Association	California	Los Angeles, California
Food Machinery and Chemical Corporation	Delaware	San Jose, California
Fairbanks, Morse & Co.	Illinois	Chicago, Illinois
Byron Jackson Co.	Delaware	Vernon, California
Winworth Pumps, Incorporated	California	Alhambra, California
Layne & Bowler Corporation	California	Los Angeles, California
Johnston Pump Company	California	Vernon, California
Layne and Bowler, Incorporated	Delaware	Memphis, Tennessee
Lawrenceburg Corporation, formerly known as A. D. Cook, Incorporated	Indiana	Lawrenceburg, Indiana

Worthington Corporation, formerly known as Worthington Pump and Machinery Corporation	Delaware	Harrison, New Jersey
The Deming Company	Ohio	Salem, Ohio
The American Well Works	Illinois	Aurora, Illinois
Aurora Pump Company	Illinois	Aurora, Illinois

The following individual is a defendant herein: James A. Walstrom, Executive Manager and Secretary-Treasurer of defendant Associations, residing at Los Angeles, California.

III.

[*Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and the parties hereto. 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," commonly known as the Sherman Act, as amended.

IV.

[*Applicability*]

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

Nothing contained in this Judgment shall apply to any agreement between

(a) A manufacturer and its subsidiaries;

(b) A manufacturer and companies associated with it through common ownership and operating management; and

(c) The subsidiaries of any such manufacturer.

[*Price Fixing and Refusal to Deal*]

The defendants, and each of them, are hereby enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, plan or program, among themselves or with any other manufacturer of vertical turbine pumps;

(a) to fix, establish, stabilize or maintain prices, discounts, allowances, warranties: or other terms and conditions of sale of vertical turbine pumps, pump parts or pump services;

(b) to fix, establish, stabilize or maintain trade-in allowances or other terms and conditions at which used and second-hand vertical turbine pumps or pump parts will be accepted as a trade-in on new or used vertical turbine pumps or pump parts;

(c) to fix, establish, stabilize or maintain uniform or designated discounts or allowances or any classification thereof for vertical turbine pump dealers or distributors;

(d) to urge, advise, suggest, or induce any purchaser of vertical turbine pumps or pump parts to resell such pumps and parts at prices, discounts, or allowances, or on terms or conditions of resale determined by any defendant or anyone other than such purchaser for resale;

(e) to boycott, black-list, or refuse to sell to any purchaser of vertical turbine pumps and pump parts because of the prices, discounts, allowances, or other terms and conditions at which such purchaser has sold or proposes to sell such pumps and pump parts; or to discriminate in the granting of dealer or distributor discounts to any such purchaser because of the prices, discounts, allowances, or other terms and conditions at which such purchaser has sold or proposes to sell such pumps and pump parts;

(f) to establish, adopt, adhere to, or recommend uniform or designated shaft size selection charts, column capacity charts, pump efficiency evaluation charts, charts or tables showing maximum efficiency or quality of pump parts permissible without extra charge, or other uniform pump parts' selection methods and procedures.

VI.

[*Dissemination of Information*]

The defendants and each of them are jointly and severally enjoined and restrained from

(a) publishing, circulating, recommending, or disseminating to manufacturers, dealers, distributors, users, or consumers of vertical turbine pumps and pump parts:

(1) The shaft size selection charts heretofore published by defendant Vertical Turbine Pump Association at pages 28-34, inclusive, of a booklet entitled “Standards of the National Association of Vertical Turbine Pump Manufacturers"; provided, however, that a defendant manufacturer, in preparing and formulating any shaft size selection chart by its sole and independent action, may utilize established engineering formulae and experience, obtained independently of the charts referred to in the initial sentence of this subparagraph (1), even though such formulae and experience were used in the preparation of the last referred to charts;

(2) Any shaft size selection chart which is represented by the defendant disseminating it to be sponsored or approved in any manner by defendant Vertical Turbine Pump Association, or which is represented by such defendant to be jointly or collectively sponsored or approved in any manner by any two or more of the defendants named herein; provided, however, that nothing herein shall be deemed to prohibit any defendant manufacturer from individually recommending, disseminating or publishing any shaft size selection chart which has been formulated by its sole and independent action or from adopting or using formulae, charts or tables formulated and promulgated by the American Water Works Association; and provided further, that nothing herein shall be deemed to prohibit defendant Vertical Turbine Pump Association from disseminating, without express recommendation, upon receipt of an unsolicited request, any shaft size selection chart or charts which may be formulated and promulgated by the American Water Works Association.

(b) Compelling or coercing, by economic means or otherwise, any purchaser of vertical turbine pumps and pump parts to resell such pumps and pump parts at prices, discounts or allowances, or on terms or conditions of sale determined by any defendant or anyone other than such purchaser for resale; provided, however, that any lawful conduct authorized or permitted by the so-called Miller-Tydings Amendment (SO Stat. 593) to section 1 of the Sherman Act (15 U. S. C. sec. 1, as amended) shall not be deemed to be a violation of this subparagraph;

(c) Circulating, disseminating, or communicating to any other manufacturer of vertical turbine pumps or to any trade association of, or central agency or committee of such manufacturers for consideration, comment, discussion, or adoption, any prices or system or method of pricing suggested or under consideration for future adoption;

(d) Exchanging with, disseminating, or communicating to any other manufacturer of vertical turbine pumps any price or price list relating to vertical turbine pumps, and pump parts prior to the date of adoption or release thereof.

VII.

[*Specific Requirements*]

Each corporate defendant (except defendant Associations), its successors and assigns, is hereby ordered and directed to file with the Clerk of this Court, within seven months subsequent to the effective date of this Judgment a copy of each of its shaft size selection charts and a copy of its regularly issued and published price lists, discounts and terms and conditions of sale applicable to vertical turbine pumps, pump parts and pump services, which were in effect on the date which is six, months subsequent to the effective date of this Judgment.

VIII.

[*Enforcement Provisions*]

Defendants Vertical Turbine Pump Association and Turbine Pump Manufacturers Association are each ordered and directed

(A) to adopt and retain by-laws or a charter which requires that as a condition of membership each present and future member agree to abide by the terms of this Final Judgment, and which requires that each future member be given a true copy of this Final Judgment;

(B) Within sixty days from the date of entry of this Final Judgment, to file with this Court and the Plaintiff proof that the immediate requirements of subsection (A) of this Section VIII have been complied with.

IX.

[*Inspection and Compliance*]

For the purpose of securing compliance with this Judgment, duly authorized representatives of the Department of Justice shall upon written request of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to any defendant, 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 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 Assistant Attorney General in charge of the Antitrust Division 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 permitted by this article shall 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 is a party for the purpose of securing compliance with this Judgment or as otherwise required by law.

X.

[*Retention of Jurisdiction*]

Jurisdiction 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 or for the modification or termination of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

UNITED STATES v. R.P. OLDHAM CO., *et al.*

Civil No. 36385

Year Ataka Judgment Entered: 1958

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. R. P. Oldham Company, et al., U.S. District Court, N.D. California, 1958 Trade Cases ¶69,143, (Sept. 17, 1958)

United States v. R. P. Oldham Company, et al.

1958 Trade Cases ¶69,143. U.S. District Court, N.D. California, Southern Division. Civil No. 36385. Filed September 17, 1958. Case No. 1338 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Export and Import Control—Allocation of Markets and Customers.—An exporter of Japanese wire nails to the United States was prohibited by a consent decree from entering into any agreement with any person to (1) allocate sales territories in the United States among importers or among Japanese exporters with respect to Japanese wire nails or (2) determine or fix the amount of Japanese wire nails to be sold in the United States or in any sales territory in the United States.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Export and Import Control—Discriminations—Refusal to Sell.—An exporter of Japanese wire nails to the United States was prohibited by a consent decree from entering into any agreement with any person to restrict or prevent any person in the United States from buying or selling Japanese wire nails. The exporter was also enjoined from (1) urging or suggesting that any Japanese rod-maker, nail-maker, or exporter refuse to sell wire rods or wire nails to any person in the United States, (2) purchasing from any Japanese exporter except when it was represented that such exporter was selling to all United States importers without discrimination, (3) purchasing from any Japanese exporter with the knowledge that the nails were not being sold to all United States importers without discrimination, (4) refusing to sell Japanese wire nails, to the extent that they were available, to any United States importer who was financially able to purchase such nails, in pursuance of any agreement to exclude any United States importer from dealing in Japanese wire nails, and (5) discriminating in the sale or in the terms and conditions of sale among importers.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Export and Import Control—Price Fixing.—An exporter of Japanese wire nails to the United States was prohibited by a consent decree from entering into any agreement with any other person to fix, establish, or stabilize prices at which importers bought or sold Japanese wire nails in the United States and from entering into any agreement or common course of action with any importer to fix prices at which importers bought Japanese wire nails from Japanese exporters, rod-makers or nail-makers.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Export and Import Control—Exclusive Dealing.—An exporter of Japanese wire nails to the United States was prohibited by a consent decree from entering into any agreement with any other person to select or determine what persons in the United States should be permitted to buy Japanese wire nails. The exporter was also enjoined from accepting any exclusive or semi-exclusive arrangement for the purchase or sale of Japanese wire nails and from communicating with any importer for the purpose of determining what persons should not be allowed to buy Japanese wire nails for sale and distribution in the United States.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; and William D. Kilgore, Jr., Baddia J. Rashid, Lyle L. Jones, Jr., Marquis L. Smith and Gerald F. McLaughlin.

For the defendant: Irvin Goldstein, San Francisco, Calif.

Final Judgment as to Defendant Ataka New York, Inc.

[*Consent Decree*]

ALBERT E. WOLLENBERG, District Judge [*In full text*] : The plaintiff, United States of America, having filed its complaint herein on April 25, 1957, and the defendant Ataka New York, Inc., having appeared and filed its

answer to such complaint denying the substantive allegations thereof; the parties signatory hereto through their respective attorneys having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law therein, and without any admission by any such party 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 such parties, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and of the parties signatory hereto. The complaint states claims for relief against the defendant Ataka New York, Inc., 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, and under Section 73 of the Act of Congress of August 27, 1894, entitled “An Act To reduce taxation, to provide revenue for the Government and for other purposes,” commonly known as the Wilson Tariff Act, as amended.

II

[*Definitions*]

As used herein:

(A) “Japanese wire nails” means bright common nails, bright smooth box nails, bright casing nails, and bright finishing nails manufactured in Japan by Japanese nail-makers;

(B) “Person” means an individual, partnership, firm, association, corporation, or any other legal entity;

(C) “Importer” means a person engaged in the business of purchasing or acquiring nails from Japanese nail-makers or Japanese exporters for resale to wholesalers located on the West Coast of the United States; a Japanese exporter who sells nails in the United States directly to wholesalers is an importer with respect to such sales;

(D) “Japanese exporter” means a person and its agents, subsidiaries or affiliates in the United States who arrange for the export of Japanese wire nails to importers in the United States;

(E) “Japanese rod-maker” means a steel mill located in Japan which manufactures wire rod from which Japanese wire nails are made;

(F) “Japanese nail-maker” means a nail manufacturer located in Japan which manufactures wire nails from wire rod purchased from Japanese rod-makers.

III

[*Applicability*]

The provisions of this Final Judgment applicable to the defendant Ataka New York, Inc., shall apply as well to its successors, assigns, affiliates, subsidiaries, officers, directors, servants, employees and agents, and to all persons in active concert or participation with defendant Ataka New York, Inc., who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Export and Import Control*]

Defendant Ataka New York, Inc., is enjoined and restrained from, directly or indirectly, entering into, adhering to, maintaining, furthering or claiming any rights under, any agreement, understanding, plan, program or common course of action with any other person:

(A) To select or determine what persons in the United States should be permitted to buy Japanese wire nails;

(B) To hinder, restrict, limit or prevent any person in the United States from buying or selling Japanese wire nails;

(C) To allocate sales territories in the United States among importers or among Japanese exporters with respect to Japanese wire nails;

(D) To fix, establish or stabilize prices at which importers buy or sell Japanese wire nails in the United States;

(E) To determine or fix the amount of Japanese wire nails to be sold in the United States or in any sales territory in the United States.

As used in this Section IV, “any other person” does not include Ataka & Co., Ltd., Osaka and Tokyo, Japan, during such time as defendant Ataka New York, Inc., is owned by or under the effective control of said Ataka & Co., Ltd., or during such time as both of said companies are under the same ownership or effective control.

V

[*Exclusive Dealing*]

Defendant Ataka New York, Inc., is enjoined and restrained from:

(A) Urging or suggesting, directly or indirectly, to any Japanese rod-maker, Japanese nail-maker or Japanese exporter, other than Ataka & Co., Ltd., that such rod-maker, nail-maker or exporter refuse to sell wire rods or wire nails to any person or group of persons in the United States;

(B) Accepting any exclusive or semi-exclusive agency or other exclusive or semi-exclusive arrangement for the purchase or sale of Japanese wire nails, other than from Ataka & Co., Ltd.;

(C) Purchasing Japanese wire nails from any Japanese exporter, other than Ataka & Co., Ltd., except when such exporter represents that he is offering and selling Japanese wire nails without discrimination to all United States importers doing business on the West Coast;

(D) Purchasing Japanese wire nails from any Japanese exporter, other than Ataka & Co., Ltd., when defendant Ataka New York, Inc., has knowledge that such nails are not being offered and sold by said exporter without discrimination to all United States importers doing business on the West Coast;

(E) Entering into, adhering to, maintaining or furthering, directly or indirectly, any agreement, understanding, plan, program or common course of action with any other importer to fix, establish or stabilize prices at which importers purchase Japanese wire nails from Japanese exporters, Japanese rod-makers or Japanese nail-makers.

VI

Defendant Ataka New York, Inc., is enjoined and restrained from;

(A) Refusing to sell Japanese wire nails, to the extent that they are available, to any United States importer financially able to purchase such nails, pursuant to any plan, agreement, understanding, program or common course of action to exclude any United States importer from dealing in Japanese wire nails;

(B) Discriminating in the sale or in the terms and conditions of sale of Japanese wire nails among importers;

(C) Communicating, directly or indirectly, with any importer for the purpose of determining what other persons should or should not be allowed to buy Japanese wire nails for sale and distribution in the United States.

VII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in

charge of the Antitrust Division, and on reasonable notice to defendant Ataka New York, Inc., made to its principal office, be permitted, subject to any legally recognized privilege:

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

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

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

No information obtained by the means permitted in this Section VII shall 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 in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII

[*Jurisdiction Retained*]

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

UNITED STATES v. R. P. OLDHAM CO., *et al.*

Civil No. 36385

Year R. P. Oldham *et al.* Judgment Entered: 1959

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. R. P. OLDHAM COMPANY, WINTER WOLFF & CO., INC., THOS. D. STEVENSON & SONS, INC., BALFOUR, GUTHRIE & CO., LIMITED, JOHN P. HERBER & COMPANY, INC., KINOSHITA AND CO., LTD., U.S.A. THE NISSHO CALIFORNIA CORPORATION, MITSUBISHI INTERNATIONAL CORPORATION, ATAKA NEW YORK, INC., SUMITOMO SHOJI KAISHA, LTD., DAIICHI BUSSAN KAISHA, LTD., and MITSUI BUSSAN KAISHA, LTD., Defendants.	CIVIL ACTION NO. 36385 Filed: September 14, 1959

FINAL JUDGMENT

The Plaintiff, United States of America, having filed its complaint herein on April 25, 1957, and the defendants signatory hereto having appeared through their respective attorneys herein and having filed their answers denying the substantive allegations of the complaint; the parties signatory hereto through 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:

This Court has jurisdiction of the subject matter of this action and of the parties signatory hereto. The complaint states claims for relief against the defendants signatory hereto under Section 1 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, entitled

"An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended, and under Section 73 of the Act of Congress of August 27, 1894, c. 349, 28 Stat. 509, as amended, entitled "An Act To reduce taxation, to provide revenue for the Government and for other purposes," commonly known as the Wilson Tariff Act.

II

As used herein:

(A) "Japanese wire nails" means bright common nails, bright smooth box nails, bright casing nails, and bright finishing nails manufactured in Japan by Japanese nail-makers;

(B) "Person" means an individual, partnership, firm, association, corporation, or any other legal entity;

(C) "Importers" means persons engaged in the business of purchasing or acquiring nails from Japanese nail-makers or exporters for resale to wholesalers located on the West Coast of the United States; a Japanese exporter who is engaged in the activity of selling nails in the United States directly to such wholesalers is an importer with respect to such sales;

(D) "Japanese exporters" means persons and their agents, subsidiaries or affiliates in the United States, who arrange for the export of Japanese wire nails to importers;

(E) "Japanese rod-makers" means steel mills located in Japan which manufacture wire rod from which Japanese wire nails are made;

(F) "Japanese nail-makers" means nail manufacturers located in Japan who manufacture wire nails from wire rod purchased from Japanese rod-makers;

(G) "Defendant importers" means defendants R. P. Oldham

Company, Winter Wolff & Co., Inc., Thos. D. Stevenson & Sons, Inc., Balfour Guthrie & Co., Limited, and John P. Herber & Company, Inc.;

(H) "Defendant exporters" means Kinoshita and Co., Ltd., U.S.A., the Nissho California Corporation, Mitsubishi International Corporation, Ataka New York, Inc., Sumitomo Shoji Kaisha, Ltd., Daiichi Bussan Kaisha, Ltd., and Mitsui Bussan Kaisha, Ltd.

III

The provisions of this Final Judgment applicable to the defendants shall apply to the defendants signatory hereto and to their successors, assigns, affiliates, subsidiaries, officers, directors, servants, employees, and agents, and to all persons in active concert or participation with such a defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Each defendant exporter signatory hereto is enjoined and restrained from directly or indirectly entering into, adhering to or claiming any rights under any agreement or understanding, or in concert with any other person maintaining any plan or program:

(A) To allocate sales territories in the United States among importers with respect to Japanese wire nails;

(B) To fix, establish or stabilize prices at which importers sell Japanese wire nails in the United States;

(C) To select or designate what person or persons should be permitted to act as an importer or as importers.

For the purpose of this Section IV only, a defendant exporter and its parent Japanese corporation, or a defendant exporter and any Japanese business firm affiliated with it for whom it regularly acts as agent or representative in the sale and distribution of Japanese wire nails in the United States shall be deemed to be a single person,

provided that nothing contained in this paragraph shall make a defendant exporter liable for any separate act of such Japanese parent or affiliated business firm.

V

Each defendant exporter signatory hereto is enjoined and restrained from:

(A) Entering into, participating in or enforcing any contract, agreement or understanding with any importer:

(1) To select or determine what importers should be permitted or not permitted to buy Japanese wire nails;

(2) to select or determine what exporters in Japan should be permitted or not permitted to sell Japanese wire nails to importers;

(3) to hinder, restrict, limit or prevent any importer from buying or selling Japanese wire nails;

(4) to determine or fix the amount of Japanese wire nails to be sold in the United States;

(5) to fix, establish or stabilize prices at which any other importer buys Japanese wire nails;

(B) Discriminating in the sale of Japanese wire nails in favor of defendant importers against other importers by making available to the former quantities, prices or terms and conditions of sale not available to the latter.

(C) For the purpose of furthering, directly or indirectly, any agreement or understanding prohibited by Section IV or by subsection V(A) of this Final Judgment:

(1) Refusing to sell Japanese wire nails, to the extent they are available, to any importer financially able to purchase such nails; and

(2) Discriminating in the sale or in the terms and

conditions of sale of Japanese wire nails among importers.

VI

Each defendant importer signatory hereto is enjoined and restrained from entering into, adhering to, maintaining or furthering directly or indirectly, or claiming any rights under, any agreement, understanding, plan, program or common course of action among themselves or with any other person:

(A) To select or determine what persons should buy or distribute Japanese wire nails in the United States;

(B) To hinder, restrict, limit or prevent any person from buying or selling Japanese wire nails in the United States;

(C) To allocate sales territories in the United States with respect to Japanese wire nails;

(D) To fix, establish or stabilize prices at which importers buy Japanese wire nails;

(E) To fix, establish or stabilize prices at which importers sell Japanese wire nails; and

(F) To determine or fix the amount of Japanese wire nails to be sold in the United States or in any sales territory in the United States.

VII

Each defendant importer signatory hereto is enjoined and restrained from:

(A) Urging or suggesting, directly or indirectly, to any Japanese rod-maker, Japanese nail-maker, or Japanese exporter that such rod-maker, nail-maker or exporter refuse to sell wire rods or wire nails to any person or group of persons in the United States;

(B) Accepting any exclusive or semi-exclusive agency or

other exclusive or semi-exclusive arrangement for the purchase or sale of Japanese wire nails; and

(C) Purchasing any Japanese wire nails from any defendant exporter, knowing that such exporter is not complying with subsection B of Section V hereof.

VIII

Within 30 days after the entry of this Final Judgment, defendant Kinoshita and Co., Ltd., U.S.A. shall mail a copy thereof to each of the persons listed in Appendix I hereto.

IX

For the purpose of securing compliance with this Final Judgment duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal office, be permitted, subject to any legally recognized privilege:

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

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

Upon such written request, defendants shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section IX shall 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 in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

X

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

Dated September 14, 1959

/s/ George B. Harris
United States District Judge

We hereby consent to the entry of the foregoing Final Judgment:

For the Plaintiff:

/s/ Robert A. Bicks
Robert A. Bicks
Acting Assistant Attorney General

/s/ Lyle L. Jones
Lyle L. Jones

/s/ William D. Kilgore, Jr.
William D. Kilgore, Jr.

/s/ Marquis L. Smith
Marquis L. Smith

/s/ Lewis Bernstein
Lewis Bernstein

/s/ Gerald F. McLaughlin
Gerald F. McLaughlin

Attorneys, Department of Justice

For Defendants:

R. P. OLDHAM COMPANY

By /s/ Carl J. Schuck
Carl J. Schuck
of Overton, Lyman & Prince
Its Attorneys

WINTER WOLFF & CO., INC.

By /s/ Macklin Fleming
Macklin Fleming
of Mitchell, Silberborg & Knupp
Its Attorneys

THOS. D. STEVENSON & SONS, INC.

By /s/ Frank J. McCarthy
Frank J. McCarthy
of Dreher, McCarthy & Dreber
Its Attorneys

BALFOUR, GUTHRIE & CO., LIMITED

By /s/ Walker Lowry
Walker Lowry
of McCutchen, Brown, Doyle & Enersen
Its Attorneys

JOHN P. HERBER & COMPANY, INC.

By /s/ Joseph L. Alioto
Joseph L. Alioto
Its Attorney

KINOSHITA AND CO., LTD., U.S.A.

By /s/ Whitman Knapp
Whitman Knapp
of Root, Barrett, Cohen, Knapp & Smith

/s/ Hajime William Tanaka
Hajime William Tanaka

Its Attorneys

THE NISSHO CALIFORNIA CORPORATION

By /s/ A. J. Zirpoli
A. J. Zirpoli
Its Attorney

SUMITOMO SHOJI KAISHA, LTD.

By /s/ Henry W. Robinson
Henry W. Robinson
of Marcel E. Cerf, Robinson & Leland
Its Attorneys

DAIICHI BUSSAN KAISHA, LTD.

By /s/ Salvatore C. J. Fusco
Salvatore C. J. Fusco
Its Attorney

MITSUI BUSSAN KAISHA, LTD.

By /s/ Kenji Ito
Kenji Ito
Its Attorney

APPENDIX I

	Name	Address
1.	Associated Metals, Inc.	593 Market Street San Francisco, California
	Associated Metals, Inc.	75 West New York, New York
2.	James S. Baker Co., Inc. (James S. Baker Imports, Inc.)	311 California Street San Francisco, California
3.	Ataka New York, Inc.	405 Lexington Ave., Chrysler Bldg. New York 17, New York
	Ataka New York, Inc. (Branch Office)	426 South Spring Los Angeles, California
4.	The Banton Corporation	24 California Street San Francisco, California (There is no longer a New York Office)
5.	Berelson Inc.	244 California Street San Francisco, California
6.	The Brookman Co.	2833 - 3rd San Francisco, California
7.	California Bag & Metal Co.	2425 Northwest Nicolai Portland, Oregon
8.	Commercial Steel Co.	5722 South Stover, Vernon Station Los Angeles 58, California
9.	Del Rey International Company	16 Beale Street San Francisco, California
10.	Del Valle Kahman & Co.	260 California Street San Francisco, California
11.	Export Pacific	900 Milwaukee Waterway Tacoma, Washington
12.	S. E. Edgar & Company	21 South Park San Francisco, California
13.	Getz Brothers	640 Sacramento San Francisco, California
14.	Great Empire Trading Co.	908 - 8th Seattle, Washington
15.	A. W. Horton Company	724 South Spring Los Angeles, California
16.	Heidner & Company	Tacoma Building Tacoma 1, Washington
17.	Iwai & Company	350 - 5th New York, New York
18.	Lee Steel Company	7219 Cottage Street Huntington Park, California

	Name	Address
19.	Martin's Trading & Shipping Company	Olympic National Building 914 - 2nd Seattle, Washington
20.	H.L.E. Meyer Jr. & Company	149 California Street San Francisco, California
21.	Myers Sales Co.	1953 South C. Street Tacoma, Washington
	Myers Salem Co. (Branch Office)	Colman Building 811 - 1st Avenue Seattle, Washington
22.	McInnis & Co.	Northern Life Tower 3rd & University Seattle, Washington
23.	Mohns Commercial Company	24 California Street San Francisco, California
24.	Pacific Asiatic Company	405 Montgomery Street San Francisco, California
25.	Parker Trading Company	24 California Street San Francisco, California
26.	North America E.B. & Company	315 West 9th Los Angeles, California
27.	Philip Church Smith, Inc.	510 Battery Street San Francisco, California
28.	M. Paquet & Co.	17 Battery Place New York, New York
29.	Frank L. Robinson Company	3901 Grand Avenue Oakland, California
30.	Schnitzer & Wolf Machinery Co.	900 Southwest, 1st Ave. Portland, Oregon
31.	B. Franklin Soffee & Associates	767 South Harvard Los Angeles, California
32.	The Transpacific Trading Company	700 Montgomery Street San Francisco, California
33.	C. T. Takahashi & Co.	Third & Main Building 220 Third Ave., South P. O. Box 3626 Seattle, Washington
34.	Tricon, Inc.	864 South Robertson Los Angeles, California
35.	Tuteur & Company	52 Wall Street New York, New York
36.	Overseas Central Enterprises, Inc.	310 Sansome San Francisco, California
37.	Western Millwork & Builders Supply Co.	509 Puyallup Tacoma, Washington
38.	Rodolpho Nelson	P. O. Box 351 Calexico, California

UNITED STATES v. R. P. OLDHAM CO., *et al.*

Civil No. 36385

Year Mitsubishi Judgment Entered: 1960

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. R. P. OLDHAM COMPANY, * * MITSUBISHI INTERNATIONAL CORPORATION, et al., Defendants.	)	CIVIL NO. 36385 FILED: June 30, 1960

FINAL JUDGMENT

The Plaintiff, United States of America, having filed its complaint herein on April 25, 1957, and the defendant Mitsubishi International Corporation having appeared through its respective attorneys herein and having filed its answer denying the substantive allegations of the complaint; the parties signatory hereto through 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 said defendant 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

This Court has jurisdiction of the subject matter of this action and of the parties signatory hereto. The complaint states claims for relief against the defendant Mitsubishi International Corporation under Section 1 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended, and under Section 73 of the Act of Congress of August 27, 1894, c. 349, 28 Stat. 509, as amended, entitled "An Act to reduce taxation, to provide revenue for the Government and for other purposes," commonly known as the Wilson Tariff Act.

II

As used herein:

(A) "Japanese wire nails" means bright common nails, bright smooth box nails, bright casing nails, and bright finishing nails manufactured in Japan by Japanese nail-makers;

(B) "Person" means an individual, partnership, firm, association, corporation, or any other legal entity;

(C) "Importers" means persons engaged in the business of purchasing or acquiring nails from Japanese nail-makers or exporters for resale to wholesalers located on the West Coast of the United States; a Japanese exporter who is engaged in the activity of selling nails in the United States directly to such wholesalers is an importer with respect to such sales;

(D) "Japanese exporters" means persons and their agents, subsidiaries or affiliates in the United States, who arrange for the export of Japanese wire nails to importers;

(E) "Japanese rod-makers" means steel mills located in Japan which manufacture wire rod from which Japanese wire nails are made;

(F) "Japanese nail-makers" means nail manufacturers located in Japan who manufacture wire nails from wire rod purchased from Japanese rod-makers;

(G) "Defendant importers" means defendants R. P. Oldham Company, Winter Wolff & Co., Inc., Thos. D. Stevenson & Sons, Inc., Balfour Guthrie & Co., Limited, and John P. Herber & Company, Inc.

III

The provisions of this Final Judgment shall apply to defendant Mitsubishi International Corporation and to its successors, assigns, affiliates, subsidiaries, officers, directors, servants, employees, and agents, and to all persons in active concert or participation with said defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Defendant Mitsubishi International Corporation is enjoined and restrained from directly or indirectly entering into, adhering to or claiming any rights under any agreement or understanding, or in concert with any other person maintaining any plan or program:

(A) To allocate sales territories in the United States among importers with respect to Japanese wire nails;

(B) To fix, establish or stabilize prices at which importers sell Japanese wire nails in the United States;

(C) To select or designate what person or persons should be permitted to act as an importer or as importers.

For the purpose of this Section IV only, defendant Mitsubishi International Corporation and Mitsubishi Shoji Kaisha, Ltd., shall be deemed to be a single person as long as defendant Mitsubishi International Corporation is affiliated with or regularly acts as agent or representative for said Mitsubishi Shoji Kaisha, Ltd., in the sale and distribution of Japanese wire nails in the United States, provided that

nothing contained in this paragraph shall make said defendant liable for any separate act of Mitsubishi Shoji Kaisha, Ltd.

V

Defendant Mitsubishi International Corporation is enjoined and restrained from:

(A) Entering into, participating in or enforcing any contract, agreement or understanding with any importer:

(1) To select or determine what importers should be permitted or not permitted to buy Japanese wire nails;

(2) to select or determine what Japanese exporters should be permitted or not permitted to sell Japanese wire nails to importers;

(3) to hinder, restrict, limit or prevent any importer from buying or selling Japanese wire nails;

(4) to determine or fix the amount of Japanese wire nails to be sold in the United States;

(5) to fix, establish or stabilize prices at which any other importer buys Japanese wire nails;

(B) Discriminating in the sale of Japanese wire nails in favor of defendant importers against other importers by making available to the former quantities, prices or terms and conditions of sale not available to the latter.

(C) For the purpose of furthering, directly or indirectly, any agreement or understanding prohibited by Section IV or by subsection V(A) of this Final Judgment:

(1) Refusing to sell Japanese wire nails, to the extent they are available, to any importer financially able to purchase such nails; and

(2) Discriminating in the sale or in the terms and conditions of sale of Japanese wire nails among importers.

VI

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant Mitsubishi International Corporation made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during 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 Final Judgment;

(B) 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.

Upon such written request, said defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VII

Judgment is entered against defendant Mitsubishi International Corporation for costs in this proceeding in the amount of $640.61.

VIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties of this Final 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 Final Judgment, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Dated: June 30, 1960.

/s/ LLOYD H. BURKE
United States District Judge

We hereby consent to the entry of the foregoing Final Judgment:

For the Plaintiff:

/s/ ROBERT A. BICKS
Robert A. Bicks
Acting Assistant Attorney General

/s/ LYLE L. JONES
Lyle L. Jones

/s/ W. D. KILGORE, JR.
William D. Kilgore, Jr.

/s/ MARQUIS L. SMITH
Marquis L. Smith

/s/ LEWIS BERNSTEIN
Lewis Bernstein

/s/ GERALD F. McLAUGHLIN
Gerald F. McLaughlin

Attorneys, Department of Justice

For defendant MITSUBISHI INTERNATIONAL CORPORATION:

/s/ GEORGE YAMAOKA
George Yamaoka

/s/ JAY T. COOPER

Attorneys for said defendant.

UNITED STATES v. BLUE DIAMOND CORP., *et al.*

Civil No. 38703

Year Blue Diamond Defendants Judgment Entered: 1961

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	Civil No. 38703
BLUE DIAMOND CORPORATION, et al. Defendants.	)	

FINAL JUDGMENT

The plaintiff, United States of America, having filed its complaint herein on November 23, 1959; and the consenting defendants having appeared by their respective attorneys and having filed their answers to the complaint denying its substantive allegations and any violations of law; and the plaintiff and the consenting defendants by their respective attorneys having severally consented to the entry of this Final Judgment without admission by any party with respect to any issue herein, and the Court having considered the matter and being duly advised:

NOW, THEREFORE, before any testimony has been taken herein, and upon the consent of the plaintiff and consenting defendants hereto,

IT IS HEREBY ORDERED AND ADJUDGED as follows:

I

This Court has jurisdiction of the subject matter of this action and of the plaintiff and consenting defendants hereto. The complaint states a claim for relief against the consenting defendants under section 1 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209 (15 U.S.C. Sec. 1).

II

A As used herein,

(a) "Consenting defendant fabricators" means Blue Diamond Corporation, Ceco Steel Products Corporation, Herrick Iron Works, F. A. Klinger, Inc., Meehleis Steel Co., Pittsburgh-Des Moines Steel Company, Rutherford & Skoubye, Inc. of Los Angeles, Joseph T. Ryerson & Son, Inc., San Jose Steel Company, Inc., Soule' Steel Company, and Gilmore-Skoubye Steel Contractors.

(b) "Association" means the consenting defendant Western Reinforcing Steel Fabricators Association.

(c) "Western States" means the States of Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

(d) "Rebars" means all types and sizes of steel bars and rods used to reinforce concrete work in various types of construction, such as buildings, highways, abutments, bridges, viaducts, dams, and tunnels.

(e) "Foreign rebars" means rebars manufactured in foreign countries.

(f) "Fabrication" or "fabricating" means the performance of one or both of the following operations in the Western States:

(1) Supplying, cutting, bending and shaping rebars to meet specifications for particular construction jobs located in the Western States;

(2) Tying, placing and installing rebars at job sites in the Western States.

(g) "Fabricator" means an individual, partnership or corporation engaged in the business of fabrication.

(h) "Agreement or understanding to allocate and divide fabrication jobs" means an agreement that certain fabricators either will refrain from bidding on a job, or that they will submit high and non-competitive bids, to the end and purpose that a designated fabricator will be the only or the lowest bidder. Except when constituting an integral part of such a plan to allocate and divide fabrication jobs, it does not include (a) a bona fide joint venture between or among two or more fabricators, or (b) the contracting out of a job or parts

thereof by a successful bidder, either before or after the award of a job, to other fabricators where the job is of such size or nature, or performable at such time, that the successful bidder in good faith believes that it is undesirable to handle the entire job alone.

III

The provisions of this Final Judgment applicable to any consenting defendant shall apply to such defendant and its successors, officers, servants, employees and agents, and to those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

The Association and each of the consenting defendant fabricators are enjoined from entering into or adhering to any agreement or understanding among themselves or with any other fabricator in the Western States:

(a) To allocate and divide fabrication jobs;

(b) To fix and adopt a uniform interest rate on past due accounts;

(c) To buy or not to buy foreign rebars for fabrication jobs;

(d) Seeking to prevent any steel mill from selling rebars, or seeking to require any steel mill to limit its sale of rebars, in the Western States, to any general contractor or steel warehouse in any of said states.

V

For a period of two years from the effective date of this Final Judgment, each of the consenting defendant fabricators is enjoined from:

(a) Urging any steel mill to refrain from selling rebars in any of the Western States to any general contractor or steel warehouse;

(b) Reporting or complaining to any steel mill that any rebars sold in the Western States by said steel mills to persons other than a fabricator are being or may be resold or delivered to a general contractor;

provided, however, that nothing in this Section V shall prevent said consenting defendant fabricators from severally promoting the utility of the fabricators' function.

VI

The Association is enjoined from:

(a) Urging any steel mill to refrain from selling rebars in any of the Western States to any general contractor or steel warehouse;

(b) Reporting or complaining to any steel mill that any rebars sold in the Western States by said steel mill to persons other than a fabricator are being or may be resold or delivered to a specific general contractor;

provided, however, that nothing in this Section VI shall prevent the Association from promoting the utility of the fabricators' function.

VII

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any consenting defendant made to its principal office, be permitted, subject to any legally recognized privilege and with the right of such defendant to have counsel present:

(a) Access, during 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 matters contained in this Final Judgment;

(b) 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 such written request, any consenting defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section VII 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 in which the United States is a party for the purpose of securing compliance with this Final Judgment.

VIII

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

IX

The effective date of this Final Judgment shall be sixty (60) days from the date hereof.

Dated: January 17, 1961

/s/ Albert C. Wollenberg
United States District Judge

We hereby consent to the entry of the foregoing Final Judgment.

FOR PLAINTIFF:

/s/ Robert A. Bicks
Robert A. Bicks
Assistant Attorney General

/s/ Lyle L. Jones
Lyle L. Jones

/s/ W. D. Kilgore, Jr.
W. D. Kilgore, Jr.

/s/ Marquis L. Smith
Marquis L. Smith

/s/ Baddia J. Rashid
Baddia J. Rashid

/s/ William B. Richardson
William B. Richardson

/s/ Homer W. Hanscom
Homer W. Hanscom

Attorneys, Department of Justice

FOR THE CONSENTING DEFENDANTS:

/s/ Herbert W. Clark
Herbert W. Clark

/s/ Roy A. Weaver
Roy A. Weaver

/s/ Robert D. Raven
Robert D. Raven

/s/ Jones, Lane & Weaver
Jones, Lane & Weaver
Attorneys for defendant,
F. A. Klinger, Inc.

/s/ Morrison, Foerster, Holloway,
/ / Shuman & Clark
Morrison, Foerster, Holloway,
Shuman & Clark
Attorneys for defendant Ceco
Steel Products Corporation.

/s/ W. Floyd Cobb
W. Floyd Cobb
Attorney for defendant
Meehleis Steel Co.

/s/ Edward B. Kelly
Edward B. Kelly

/s/ Moses Lasky
Moses Lasky

/s/ Philip M. Jelley
Philip M. Jelley

/s/ Brobeck, Phleger & Harrison
Brobeck, Phleger & Harrison

/s/ Fitzgerald, Abbott & Beardsley
Fitzgerald, Abbott & Beardsley

Attorneys for defendant
Herrick Kron Works.

Attorneys for defendant
Pittsburgh-Des Moines Steel
Company.

/s/ Robert H. Moran
Robert H. Moran
Attorney for defendant Rutherford & Skoubye, Inc., of Los Angeles.

/s/ Moses Lasky
Moses Lasky

/s/ Brobeck, Phleger & Harrison
Brobeck, Phleger & Harrison

Attorneys for defendant Joseph T. Ryerson & Son, Inc.

/s/ George R. Hutchinson
George R. Hutchinson

/s/ Morgan, Beauzay, Smith & Holmes
Morgan, Beauzay, Smith & Holmes

Attorneys for defendant San Jose Steel Company, Inc.

/s/ Gordon Johnson
Gordon Johnson

/s/ Max Thelen, Jr.
Max Thelen, Jr.

/s/ Dario De Benedictis
Dario De Benedictis

/s/ Thelen, Marrin, Johnson & Bridges
Thelen, Marrin, Johnson & Bridges

Attorneys for defendant Soule' Steel Company.

/s/ Caspar W. Weinberger
Caspar W. Weinberger

Heller, Ehrman, White & McAuliffe
/s/ Heller, Ehrman, White & McAuliffe
Attorneys for defendant Gilmore-Skoubye Steel Contractors.

/s/ John A. Busterud
John A. Busterud

/s/ John W. Broad
John W. Broad

/s/ Brandt Nicholson
Brandt Nicholson

/s/ Broad and Busterud
Broad and Busterud

Attorneys for defendant Western Reinforcing Steel Fabricators Association.

/s/ Walker Lowry
Walker Lowry

/s/ Richard Murray
Richard Murray

/s/ McCutchen, Doyle, Brown & Enersen
McCutchen, Doyle, Brown & Enersen

Attorneys for defendant Blue Diamond Corporation.

UNITED STATES v. BLUE DIAMOND CORP., *et al.*

Civil No. 38703

Year Southwest Steel Judgment Entered: 1961

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 38703
	)	
BLUE DIAMOND CORPORATION, et al.,	)	
	)	
	)	
Defendants.	)	
	)	

FINAL JUDGMENT AGAINST DEFENDANT SOUTHWEST STEEL ROLLING MILLS

The plaintiff, United States of America, having filed its complaint herein on November 23, 1959; and the defendant Southwest Steel Rolling Mills having appeared by its attorneys and having filed an answer to the complaint denying its substantive allegations and any violations of law; and the plaintiff and said defendant by their respective attorneys having severally consented to the entry of this Final Judgment without admission by any party with respect to any issue herein, and the Court having considered the matter and being duly advised:

NOW, THEREFORE, before any testimony has been taken herein, and upon the consent of the plaintiff and said defendant hereto,

IT IS HEREBY ORDERED AND ADJUDGED as follows:

I.

This Court has jurisdiction of the subject matter of this action and of the parties signatory hereto. The complaint states a claim for relief against the defendant Southwest Steel Rolling Mills under section 1 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209 (15 U.S.C. Sec. 1).

II.

As used herein:

(a) "Association" means the defendant Western Reinforcing Steel Fabricators Association.

(b) "Western States" means the States of Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

(c) "Rebars" means all types and sizes of steel bars and rods used to reinforce concrete work in various types of construction, such as buildings, highways, abutments, bridges, viaducts, dams, and tunnels.

(d) "Foreign Rebars" means rebars manufactured in foreign countries.

(e) "Fabrication" or "fabricating" means the performance of one or both of the following operations in the Western States:

(1) Supplying, cutting, bending and shaping rebars to meet specifications for particular construction jobs located in the Western States;

(2) Tying, placing and installing rebars at job sites in the Western States.

(f) "Fabricator" means an individual, partnership or corporation engaged in the business of fabrication.

(g) "Agreement or understanding to allocate and divide fabrication jobs" means an agreement that certain fabricators either will refrain from bidding on a job, or that they will submit high and non-competitive bids, to the end and purpose that a designated fabricator will be the only or the lowest bidder. Except when constituting an integral part of such a plan to allocate and divide fabrication jobs, it does not include (a) a bona fide joint venture between or among two or more fabricators, or (b) the contracting out of a job or parts thereof by a successful bidder, either before or after the award of a job, to other fabricators where the job is of such size or nature, or performable at such time, that the successful bidder in good faith believes that it is undesirable to handle the entire job alone.

(h) "Other defendant mills" means Judson Steel Corporation, Pacific States Steel Corporation, United States Steel Corporation, and either Bethlehem Pacific Steel Corporation or Bethlehem Steel Company.

III.

The provisions of this Final Judgment shall apply to defendant Southwest Steel Rolling Mills and its successors, officers, servants, employees and agents, and to those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

Defendant Southwest Steel Rolling Mills is enjoined from entering into or adhering to any agreement or understanding with any other fabricator or with the Association:

(a) To allocate and divide fabrication jobs;

(b) To fix and adopt a uniform interest rate on past due accounts;

(c) To buy or not to buy foreign rebars for fabrication jobs;

(d) Seeking to prevent any steel mill from selling rebars, or seeking to require any steel mill to limit its sale of rebars, in the Western States, to any general contractor or steel warehouse in any of said States.

V.

For a period of two years from the effective date of this Final Judgment, defendant Southwest Steel Rolling Mills is enjoined from:

(a) Urging any steel mill to refrain from selling rebars in any of the Western States to any general contractor or steel warehouse;

(b) Reporting or complaining to any steel mill that any rebars sold in the Western States by said steel mills to persons other than a fabricator are being or may be resold or delivered to a general contractor;

provided, however, that nothing in this Section V shall prevent said defendant from severally promoting the utility of the fabricators' function.

VI.

Defendant Southwest Steel Rolling Mills is enjoined from:

(a) Refusing to sell rebars to general contractors and to steel warehouses for delivery in the Western States;

(b) Discriminating in the offering for sale and in the sale of rebars for delivery in the Western States in favor of fabricators as against general contractors and steel warehouses, by making available to fabricators prices, terms and conditions of sale not made available to general contractors and steel warehouses;

provided, however, that nothing in this Section VI shall be deemed to prohibit defendant Southwest Steel Rolling Mills from refusing to sell to any general contractor or steel warehouse for any of the following bona fide reasons:

(1) Quantity ordered is less than 400 tons;

(2) Order requires delivery of less than 200 tons per month;

(3) Quantity or size ordered is not available;

(4) Buyer's credit or proposed schedule of payment does not meet the requirements of said defendant's Credit Department;

(5) Quantity ordered is so large as to deplete unduly the inventory of said defendant or unreasonably disrupt the normal operations of the plant of said defendant;

and provided further that this Section VI shall not take effect unless a final judgment or judgments containing injunctions similar to those contained in this Section VI are entered and are in effect as a result of trial of this cause against at least one other defendant mill or by consent of all other defendant mills; and this Section VI shall

become effective on the date that such final judgment or judgments become effective against such other defendant mill or mills.

VII.

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant Southwest Steel Rolling Mills, made to its principal office, be permitted, subject to any legally recognized privilege and with the right of said defendant to have counsel present:

(a) Access, during office hours of said defendant, to all books, leggers, 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 Final Judgment;

(b) 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.

Upon such written request, said defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section VII 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 in which the United States is a party for the purpose of securing compliance with this Final Judgment.

VIII.

Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final 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 Final Judgment, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

IX.

The effective date of this Final Judgment shall be sixty (60) days from the date hereof.

DATED: January 17, 1961

/s/ Albert C. Wollenberg
United States District Judge

We hereby consent to the entry of the foregoing Final Judgment.

FOR PLAINTIFF:

/s/ ROBERT A. BICKS
Robert A. Bicks
Assistant Attorney General

/s/ LYLE L. JONES
Lyle L. Jones

/s/ W. D. KILGORE, JR.
W. D. Kilgore, Jr.

/s/ MARQUIS L. SMITH
Marquis L. Smith

/s/ BADDIA J. RASHID
Baddia J. Rashid

/s/ WILLIAM B. RICHARDSON
William B. Richardson

Attorneys, Department of Justice

/s/ HOMER W. HANSCOM
Homer W. Hanscom

FOR DEFENDANT Southwest Steel Rolling Mills:

/s/ JACK G. SCHAPIRO
Jack G. Schapiro

Schapiro & Malamed
Attorneys for said Defendant

UNITED STATES v. WILSON & GEO. MEYER & CO., *et al.*

Civil No. 38606

Year Judgment Entered: 1961

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Wilson & Geo. Meyer & Co., and Sunshine Garden Products, Inc., U.S. District Court, N.D. California, 1961 Trade Cases ¶70,020, (May 4, 1961)

United States v. Wilson & Geo. Meyer & Co., and Sunshine Garden Products, Inc.

1961 Trade Cases ¶70,020. U.S. District Court, N.D. California, Southern Division. Civil No. 38606. Dated May 4, 1961. Case No. 1484 in the Antitrust Division of the Department of Justice.

Sherman Act

Consent Decree—Canadian Peat Moss—Territorial Restrictions—Quotas—Price Fixing.—A consent decree signed by distributors for joint sales agencies representing groups of Canadian and domestic peat moss prohibits the distributor from acting as representatives for joint sales agencies or as exclusive distributors for more than one producer, allocating territories for sales of Canadian peat moss, fixing annual quotas, restricting territories or re-sale prices for jobbers and dealers, and granting "exclusive purchase" discounts. *Purchases* (other than on a restrictive basis) from producers generally would be permitted, as would valid quantity discounts with general notice. The defendants may exercise fair trade price rights only under the Miller-Tydings Act during the first 10 years following the decree; thereafter, they may fair trade under the Maguire amendment.

For the plaintiff: Lee Loevinger, Assistant Attorney General, Lyle L. Jones, W. D. Kilgore, Jr., Marquis L. Smith, George H. Schueller, and Franklin Knock, Attorneys Department of Justice.

For the defendants: Moses Lasky of Brobeck, Phleger & Harrison.

Final Judgment

SWEIGERT, District Judge [In full text]: The plaintiff, United States of America, having filed its complaint herein on October 21, 1959; and the defendants having appeared by their attorneys and having filed their answers to the complaint denying its substantive allegations and any violations of law; and the plaintiff and the defendants, by their respective attorneys, having severally consented to the entry of this Final Judgment without any admission by any party with respect to any issue herein, and the Court having considered the matter and being duly advised:

Now, therefore, before any testimony has been taken herein, and upon the consent of the plaintiff and defendants hereto,

It is hereby ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims for relief against the defendants under the antitrust laws of the United States.

II

As used herein:

(a) "Defendants" means Wilson & Geo. Meyer & Co. and Sunshine Garden Products, Inc,

(b) "Canadian peat moss" means peat moss produced from bogs located in the Province of British Columbia, Canada.

(c) "Person" means any individual, partnership or corporation.

(d) "Producer" means a person who produces Canadian peat moss. For the purposes of this Final Judgment, Western Peat Company Limited and Industrial Peat Products, Ltd. shall be deemed to be but one single

producer as long as at least 51%, in the aggregate, of the stock of one is owned by the other and/or officers, employees and directors of the other.

(e) “Distributor” means a person who purchases Canadian peat moss from producers for resale to jobbers.

(f)“Jobber” means a person who purchases peat moss from distributors for resale to dealers.

(g) “Dealer” means a person who purchases peat moss from jobbers for resale to users.

(h) “Agreement of Exclusive Distributorship” means an agreement or understanding between a distributor and a producer whereby the producer agrees not to sell Canadian peat moss to any person other than the distributor in a specified portion of the United States.

(i) “Western States” means the area covered by the States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming.

III

The provisions of this Final Judgment applicable to defendants shall apply to each defendant and its officers, agents, servants, employees and attorneys, and to those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Defendants, and each of them, effective July 1, 1961, are enjoined from entering into or adhering to any agreement or understanding with producers or any common sales agency of producers, or claiming any rights under any such agreement or understanding to which defendants or either is a party:

(a) To select or determine what other persons should act as distributors, jobbers and dealers in the United States;

(b) To allocate sales territories in the United States between or among distributors, jobbers, dealers, or any of them;

(c) To fix, establish or stabilize prices at which others resell Canadian peat moss as distributors, jobbers, or dealers.

Nothing in subdivisions (a) or (b) of this Section IV shall be construed as preventing a defendant from entering into, adhering to, or claiming any rights under, an agreement of exclusive distributorship not prohibited by Section V of this Final Judgment. Nothing in subdivision (c) of this Section IV or in Section VI hereof shall prohibit a defendant, during the ten years following the entry of this decree, from exercising such lawful rights as it may have under the Miller-Tydings Act, and after such ten-year period, from exercising such lawful rights as it may have under the Maguire Fair Trade Amendment.

V

Defendants, and each of them, effective July 1, 1961, are enjoined from:

(a) Acting as a distributor for Canadian Peat Moss, Ltd., or for any other common sales agency of two or more producers;

(b) Entering into, or continuing to act under, any agreement of exclusive distributorship with more than one producer or with respect to Canadian peat moss produced by other than said producer. This subdivision V (b) shall not prohibit any defendant from purchasing peat moss from one or more other producers providing such other producer or producers are, from year to year, contractually free to sell peat moss of their production to persons other than the defendant;

(c)Selling under the trademark “Sunshine Brand,” for a period of five years following the entry of this Final Judgment, Canadian peat moss produced by Atkins & Durbrow, Ltd., Acme Peat Products, Ltd., North American Peat Co., and their respective successors and assigns;

(d) Entering into any agreement or understanding limiting or restricting the sales territory or geographical area in the United States in which they or either of them may or will sell Canadian peat moss; provided that nothing in subdivisions (b) or (d) of this Section V shall prevent either defendant from accepting from Western Peat Company, Limited, an exclusive license to use the trademark "Sunshine," in the Western States, or any part thereof.

VI

Defendants, and each of them, are enjoined from:

(a) Entering into any agreement with any jobber or dealer (1) by which the quantity of peat moss said jobber or dealer agrees to buy from a defendant is expressed in terms of total annual requirements or any particular percentage of total annual requirements, (2) by which said jobber or dealer agrees to resell peat moss at a price designated by any defendant, or (3) by which said jobber or dealer agrees to limit his sales of peat moss to a designated territory;

(b) Forcing any jobber or dealer to resell peat moss at a price designated by any defendant by refusing to sell him or by threatening him with refusal to sell him any brand of peat moss or any products;

(c) Forcing any jobber or dealer to limit his sales of peat moss to a designated territory by refusing to sell him or by threatening him with refusal to sell him any brand of peat moss or any products; and

(d) Granting any discount or rebate to any jobber or dealer on condition that said jobber or dealer purchase his total annual requirements or any particular percentage of his total annual requirements of peat moss from any defendant.

Nothing in this Section VI shall prevent a defendant from suggesting to a jobber or other vendee of said defendant a resale price with respect to peat moss, or from granting nondiscriminatory discounts to its customers based upon the quantity of peat moss purchased, provided said quantity discounts have been first announced generally to the trade.

VII

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal office, be permitted, subject to any legally recognized privilege:

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

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

Upon such written request, defendants shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section VII 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 in which the United States is a party for the purpose of securing compliance with this Final Judgment.

VIII

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

UNITED STATES v. W. WINTER SPORTS REPRESENTATIVES ASS'N

Civil No. 40567

Year Judgment Entered: 1962

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Western Winter Sports Representatives Association, Inc., U.S. District Court, N.D. California, 1962 Trade Cases ¶70,418, (Aug. 31, 1962)

United States v. Western Winter Sports Representatives Association, Inc.

1962 Trade Cases ¶70,418. U.S. District Court, N.D. California, Southern Division. Civil No.40567. Entered August 31, 1962. Case No. 1652 in the Antitrust Division of the Department of Justice.

Sherman Act

Trade Association—Solicitation Rights—Sales Representatives—Sporting Goods— Consent Judgment.—An association of manufacturer's sales representatives for winter sports goods was prohibited from restricting or regulating the right of a manufacturer's representative to solicit business at any rate of commission acceptable to him or the right of a person to solicit employment or enter into an agency agreement with any manufacturer or wholesaler.

Trade Association—Participation in Trade Shows—Consent Judgment.—An association of manufacturer's sales representatives for winter sports goods was prohibited by a consent judgment from restricting participation in its trade shows, limiting invitations to its shows to certain retailers, preventing competing manufacturer's representatives from exhibiting at trade shows, and discriminating unreasonably among exhibitors participating or seeking to participate in a trade show or in the assessment of expenses, rents, advertising charges, and other costs of a trade show.

For the plaintiff: Lee Loevinger, Assistant Attorney General, Harry G. Sklarsky, W. D. Kilgore, Jr., Lyle L. Jones, Marquis L. Smith, and William B. Richardson, Attorneys, Department of Justice, and Cecil F. Poole, United States Attorney (by Charles Elmer Collett), Acting United States Attorney.

For the defendant: Jesse Feldman, of Feldman, O'Donnell & Waldman, and Ricardo J. Hecht.

Final Judgment

ZIRPOLI, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on March 7, 1962, the defendant having appeared generally and having waived service of process, 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 or estoppel of any party as to any such issue:

Now, therefore, it is ordered, adjudged and decreed as follows:

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim for relief against defendant Association under Sections 1 and 2 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 herein:

(A) “Defendant Association” shall mean the defendant Western Winter Sports Representatives, Association, Inc.;

(B) “Winter sports goods” shall mean any articles of clothing, equipment and gear which are used in connection with active ice and snow sports, including, but not limited to, ski suits, ski pants, stretch pants, socks, parkas,

jackets, sweaters, gloves and mittens, caps and headwear, goggles, eyeglasses, after-ski-wear, ski boots, skis and ski parts and accessories, ski poles and parts, ski racks and carriers, ski waxes and lacquers, ski packs and rucksacks, mountain boots, boot trees, water repellant, ice skates and shoes, hockey equipment and gear, toboggans and sleds, resort news guides and instruction books (not including solicitation of advertisements therein), locks and equipment, ski games and motion pictures;

(C) "Person" shall mean any individual, firm, partnership, corporation, association or other business or legal entity;

(D) "Manufacturer" shall mean any person engaged in the manufacture of winter sports goods. A manufacturer normally sells to wholesalers, importers or retailers, either through its own salesmen or through manufacturers' representatives;

(E) "Manufacturers' representative" shall mean any person engaged in business as a selling agent on a commission basis for two or more principals who are generally manufacturers or importers of winter sports goods;

(F) "Wholesaler" shall mean any person engaged in the business of purchasing winter sports goods from a manufacturer thereof for resale to retailers;

(G) "Importer" shall mean any wholesaler who purchases winter sports goods produced by manufacturers located in foreign countries;

(H) "Retailer" shall mean any person engaged in the business of purchasing winter sports goods for resale to users of said goods;

(I) "Trade show" shall mean any trade show at which winter sports goods are exhibited to retailers in hotels, auditoriums, and other public meeting places. Examples of "trade shows" are those known as "Western Winter Sports Market Weeks," sponsored, directed and controlled by defendant Association, and currently held annually in April and May in Seattle, Washington; Denver, Colorado; and Los Angeles and San Francisco, California.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to defendant Association, its members,, officers, directors, agents, employees, successors and assigns, and to those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Solicitation Rights*]

Defendant is enjoined and restrained from adopting, participating in, maintaining, or enforcing any bylaw, rule, regulation, contract, agreement, understanding, plan or program in concert with any of its members or any other person having the purpose or effect of:

(A) Restricting, regulating or limiting the right of any manufacturers' representative to solicit any line at any rate of commission acceptable to such manufacturers' representative;

(B) Restricting, regulating or limiting the right of any person to solicit employment from or an agency agreement with any manufacturer, wholesaler or importer; or

(C) Determining which retailers should or should not be entitled or permitted to purchase winter sports goods from manufacturers' representatives or others.

V

[*Trade Show Restrictions*]

Defendant is enjoined and restrained from:

(A) Prohibiting or regulating the issuance by any exhibitor of invitations to retailers to attend any trade show;

(B) Prohibiting or restricting the attendance at any trade show of any retailers holding such an invitation in writing;

(C) Refusing; to accept as an exhibitor or otherwise preventing any manufacturer, wholesaler, importer or manufacturers' representative, their officers and employees, from exhibiting and selling a line or lines of winter sports goods at any trade show, except a manufacturer, wholesaler, importer or manufacturers' representative, their officers and employees, whose same line or lines of winter sports goods are to be or are being exhibited at that particular trade show by a member of defendant Association who is a manufacturers' representative;

(D) Discriminating unreasonably between or among exhibitors participating or seeking to participate in a trade show in the allocation of space, exhibitor listings and advertisements;

(E) Charging or assessing any exhibitor at any trade show other than his pro rata share of the costs involved in the planning, promotion and operation of said trade show; provided that in any proceeding brought to enforce this subsection (E), the burden shall e on the defendant Association to establish that any such charge or assessment was the pro rata share of the costs involved in the planning, promotion and operation of the trade show involved;

(F) Discriminating unreasonably between or among exhibitors in the assessment of expenses, rents, advertising charges and other costs of said show; provided that in any proceeding brought to enforce this sub section. (F) the burden shall be on the defendant Association to establish that any such assessment was reasonable and non discriminatory.

VI

[*Bylaws*]

Defendant is ordered to rescind all of its bylaws, code of ethics, rules and regulations which contravene or conflict in any way with the provisions of this Final Judgment.

VII

[*Notice of Judgment*]

Defendant is ordered and directed:

(A) Within 30 days after the entry of this Final Judgment, to serve by mail upon each of its members a conformed copy of this Final Judgment. Said defendant is further ordered and directed to thereupon file an affidavit with the clerk of this court that it has done so, which affidavit shall set forth the name and address of each person so served;

(B) To furnish a copy of this Final Judgment to each new member of defendant Association at the time of acceptance of such membership, and obtain from each such new member and keep for ten years in its files, a receipt therefor, signed by each such new member;

(C) To publish annually in one or more western winter sports publications such information as will enable exhibitors and potential exhibitors properly and seasonably to make application to exhibit at trade shows sponsored each year by defendant Association.

VIII

[*Inspection and Compliance*]

On written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, and subject to any legally recognized

privilege and with the right of such defendant to have counsel present, duly authorized representatives of the Department of Justice, for the purpose of securing compliance with this Final Judgment, shall be permitted:

(A) Access, during 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 matters contained in this Final Judgment;

(B) 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 such written request defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX

[*Jurisdiction Retained*]

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

UNITED STATES v. W. WINTER SPORTS REPRESENTATIVES ASS'N

Civil No. 40-567

Year Judgment Modified: 1972

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Western Winter Sports Representatives Assn., Inc., U.S. District Court, N.D. California, 1983-1 Trade Cases ¶65,437, (Jun. 7, 1972)

United States v. Western Winter Sports Representatives Assn., Inc.

1983-1 Trade Cases ¶65,437. U.S. District Court, N.D. California, Civil No. 40567, Dated June 7, 1972 Case No. 1652, Antitrust Division, Department of Justice.

Sherman Act

Trade Associations: Participation in Trade Shows: Modification of Consent Decree..– A 1962 consent decree was modified in 1972 to allow non-members of a winter sports goods trade association to exhibit their goods at trade shows if their member-sponsors quit the association or ceased to sponsor them.
Modifying (by consent) 1962 Trade Cases ¶70,418.

Stipulation and Order Modifying Final Judgment

BURKE, D. J.: It Is Hereby Stipulated and Agreed by and between the respective attorneys for plaintiff, United States of America, and for defendant, Western Winter Sports Representatives Association, that Section V(C) of the Final Judgment entered herein on August 31, 1962, may be modified with the consent of the parties hereto, as follows:

1. Section V(C) of the Final Judgment now provides: Defendant is enjoined and restrained from:

*****

(C) Refusing to accept as an exhibitor or otherwise preventing any manufacturer, wholesaler, importer or manufacturers' representative, their officers and employees, from exhibiting and selling a line or lines of winter sports goods at any trade show, except a manufacturer, wholesaler, importer or manufacturers' representative, their officers and employees, whose same line or lines of winter sports goods are to be or are being exhibited at that particular trade show by a member of defendant Association who is a manufacturers' representative.

2. The words “who is a manufacturers' representative” appearing at the end of this Section V(C) will be stricken, and the following language added thereto:

... providing, however, that any person so excluded under said exception may nevertheless exhibit and sell at such trade show as a non-member exhibitor if said member or members representing him have resigned from defendant Association or are no longer representing him.

3. Said Section V(C) as modified will read: Defendant is enjoined and restrained from:

(C) Refusing to accept as an exhibitor or otherwise preventing any manufacturer, wholesaler, importer or manufacturers' representative, their officers and employees, from exhibiting and selling a line or lines of winter sports goods at any trade show, except a manufacturer, wholesaler, importer or manufacturers' representative, their officers and employees, whose same line or lines of winter sports goods are to be or are being exhibited at that particular trade show by a member of defendant Association, providing, however, that any person so excluded under said exception may nevertheless exhibit and sell at such trade show as a non-member exhibitor if said member or members representing him have resigned from defendant Association or are no longer representing him.

4. All other provisions of the aforesaid Final Judgment shall continue in full force and effect and are unaffected by the modification herein.

UNITED STATES v. N. CAL. PHARM. ASS'N

Civil No. 39629

Year Judgment Entered: 1963

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Northern California Pharmaceutical Association., U.S. District Court, N.D. California, 1963 Trade Cases ¶70,690, (Apr. 9, 1963)

United States v. Northern California Pharmaceutical Association.

1963 Trade Cases ¶70,690. U.S. District Court, N.D. California, Southern Division. Civil No. 39629. Entered April 9, 1963. Case No. 1580 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—State Pharmaceutical Association—Prescription Drugs—Consent Judgment.—A state pharmaceutical association was prohibited, under the terms of a proposed consent judgment, from conspiring to fix prices of prescription drugs sold by its member pharmacists, formulating and distributing prescription drug pricing schedules, urging or influencing members to adhere to pricing schedules and contacting individual members to fix prices. Also, members of the association are prohibited from agreeing to fix prices at which they will sell prescriptions.

For the plaintiff: Lee Loevinger, Assistant Attorney General, Harry G. Sklarsky, William D. Kilgore, Jr., Lyle L. Jones, Don H. Banks, Gilbert Pavlovsky, Attorneys, Department of Justice, and Cecil F. Poole, United States Attorney.

For the defendant: Broad, Busterud and Khourie, by John A. Busterud, for Northern California Pharmaceutical Association.

Final Judgment

SWEIGERT, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on December 28, 1960, and its amended complaint on July 12, 1961; defendant, Northern California Pharmaceutical Association, having filed its answer to said amended complaint on August 31, 1961; the Court having entered a preliminary injunction in this matter on September 21, 1961; 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 or estoppel of any party as to any such issue.

Now, therefore, it is hereby ordered, adjudged and decreed, as follows:

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The amended complaint states a claim upon which relief may be granted against the defendant 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 herein:

(a) “Prescription drug” is a medication for treatment of humans, sold to fill a pre scription written by a physician, or other person duly licensed to prescribe for the treatment of human ailments;

(b) “Pharmacist” is an individual duly licensed to fill prescriptions written for the treatment of human ailments;

(c) “Prescription pricing schedule” is a formula or price list designed for use in computing prices to be charged for prescrip tion drugs;

(d) “Person” is any individual, firm, partnership, corporation, association, trustee or any other business or legal entity.

III

[*Applicability*]

The provisions of this Final Judgment applicable to defendant, Northern California Pharmaceutical Association, shall apply to defendant, its officers, directors, agents and employees, and other persons in active concert or participation with defendant who shall receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Practices Prohibited*]

Defendant is hereby perpetually enjoined and restrained from, directly or indirectly:

(a) Combining or conspiring to establish and maintain uniform consumer prices for prescription drugs in the State of California;

(b) Entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program (i) to fix, determine, maintain or suggest prices or other terms or conditions for the sale of prescription drugs, (ii) to formulate, adopt, issue, distribute, recommend or suggest the use by any pharmacist or any other person of any prescription pricing schedule or other list, formula, guide, schedule or method for pricing prescription drugs, or a professional fee to be charged in connection with the sale of a prescription drug;

(c) Advocating, suggesting, urging, inducing, compelling, or in any other manner influencing or attempting to influence any person to use or adhere to any prescription pricing schedule or schedules or any other list, formula, guide, schedule or method for pricing prescription drugs, or a professional fee to be charged in connection with the sale of a prescription drug;

(d) Policing or making individual con tact with any pharmacist or other person or devising or putting into effect any procedure to ascertain, determine, fix, influence, or suggest the price at which any prescription drug is or may be sold by any pharmacist, or a professional fee to be charged in connection with the sale of a prescription drug.

V

[*Restrictions as to Members*]

Each of the members of defendant Association, including pharmacists and pharmacy owners who become members of defendant Association after the filing of this judgment, are hereby perpetually enjoined and restrained from directly or indirectly:

Entering into, adhering to, maintaining or furthering any contract, agreement or understanding with any other pharmacist or pharmacy owner or group or association of pharmacists or pharmacy owners (1) to fix, determine, maintain or suggest prices, terms or conditions for the sale of prescription drugs, or (2) to formulate, adopt, issue, distribute, recommend or suggest the use by any pharmacist or any other person of any prescription pricing schedule or other list, formula, guide, schedule or method for pricing prescription drugs, or a professional fee to be charged in connection with the sale of a prescription drug.

VI

[*Permissive Provisions*]

Nothing in this Final Judgment shall be construed to restrain (1) any member owner or operator of a pharmacy from requiring his employees to sell prescription drugs at prices, and upon terms and conditions of sale, established by such pharmacy owner or operator; (2) the co-owners or co-operators of a pharmacy from agreeing together as to the prices, terms and conditions of sale at which prescription drugs are to be sold in said pharmacy.

VII

[*Dissolution of Pricing Committee*]

Defendant having been ordered and directed to dissolve its Suggested Prescription Pricing Committee by the preliminary injunction filed herein on September 21, 1961, is hereby perpetually enjoined and restrained from forming, appointing, or maintaining such committee or any similar committee.

VIII

[*Compliance*]

(a) Defendant is ordered and directed, within 30 days after the entry of this Final Judgment, to serve by mail upon each of its members a conformed copy of this Final Judgment. Said defendant is further ordered and directed to thereupon file an affidavit with the clerk of this Court that it has done so, which affidavit shall set forth the name and address of each person so served;

(b) Defendant is ordered and directed to furnish a copy of this Final Judgment to each new member thereof at the time of acceptance of such membership and to ob tain from each such member, and keep for ten years in its files, a receipt therefor signed by each such new member.

IX

[*Inspection*]

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 defendant, and subject to any legally recognized privilege, be permitted:

(a) Reasonable access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the posses sion or under the control of said defendant relating to any matters contained in this Final Judgment; and

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

Upon written request, defendant shall submit such written reports to the Department of Justice with respect to matters contained in this Final Judgment as from time to time may be necessary to the enforcement of said Final Judgment. No information obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of plaintiff, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

X

[*Jurisdiction Retained*]

Jurisdiction is retained 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 or

carrying out of the Final Judgment, for the modification or vacating of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violation thereof.

UNITED STATES v. JOS. SCHLITZ BREWING CO., *et al.*

Civil No. 42127

Year Judgment Entered: 1966

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. JOS. SCHLITZ BREWING COMPANY and GENERAL BREWING COMPANY, Defendants.	Civil Action No. 42127 FINAL JUDGMENT AND DECREE Entered: 3/28/66

Plaintiff, United States of America, having filed its complaint herein on February 19, 1964, defendant Jos. Schlitz Brewing Company having appeared and filed its answer to the complaint denying the substantive allegations thereof, and defendant General Brewing Corporation, sued herein as General Brewing Company, having appeared and filed its answer thereto admitting the substantive allegations thereof, the testimony having been taken at the trial hereof, and the Court having fully considered the matter, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

(A) This Court has jurisdiction of the subject matter of this action and the parties hereto pursuant to Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. Section 25).

(B) The acquisition by defendant Jos. Schlitz Brewing

Company of the business and assets of Burgermeister Brewing Corporation, as charged in the complaint herein, constitutes a violation of Section 7 of the Clayton Act (15 U.S.C. Section 18).

(C) The acquisition by said defendant of common capital stock in John Labatt Limited, as charged in the complaint herein, constitutes a violation of Section 7 of the Clayton Act (15 U.S.C. Section 18).

II

As used in this Final Judgment and Decree:

(A) "Person" means any individual, partnership, firm, corporation, association, trustee or other business or legal entity.

(B) "Schlitz" means defendant Jos. Schlitz Brewing Company, its successors and assigns.

(C) "General Brewing" means defendant General Brewing Company, its successors and assigns.

(D) "Burgermeister" means Burgermeister Brewing Corporation prior to December 31, 1961, a corporation organized and existing under the laws of the State of California.

(E) "Labatt" means John Labatt Limited, a Dominion Corporation, organized and existing under the laws of the Dominion of Canada, with its principal office in London, Ontario, Canada.

III

This Final Judgment and Decree is binding upon Schlitz and General Brewing, their respective subsidiaries, affiliates, directors, officers, agents and employees as well as upon all other persons who shall have received actual notice of this Final Judgment and Decree by personal service or otherwise.

IV

(A) Schlitz is permanently enjoined and restrained from

acquiring, holding, or exercising any control over, directly or indirectly, any shares of stock of any corporation engaged in the brewing of beer in the State of California or any interest, directly or indirectly, in any brewery facility, plant or other assets of any person engaged in the brewing of beer in the State of California.

(B) For a period of ten (10) years from the date of entry of this Final Judgment and Decree, Schlitz is enjoined and restrained from acquiring, holding or exercising any control over, directly or indirectly, any shares of stock of any corporation engaged in the brewing of beer outside of the State of California or any interest in any brewery facility, plant or other asset of any person engaged in the brewing of beer outside of the State of California except (1) with the prior written consent of the plaintiff herein or (2) if such consent is refused or withheld, after approval by this Court upon an affirmative showing by Schlitz that the effect of the acquisition, holding or control will not be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the country.

(C) For a period of five (5) years after the date of entry of this Final Judgment and Decree, General Brewing is enjoined and restrained from transferring any shares of stock in General Brewing owned by Labatt, Capital Estates, Inc., or Lucky Lager Breweries, Ltd., and from selling any brewing facility or plant owned by General Brewing at the time of entry of this Final Judgment and Decree except after delivery of written notice of any such proposed transfer or sale to the Assistant Attorney General in charge of the Antitrust Division at least sixty (60) days in advance of the intended effective date of each such transfer or sale.

V

(A) Schlitz shall, upon and subject to the terms of this Final Judgment and Decree, divest itself of all of the business and assets of Burgermeister acquired by Schlitz on or about December 31, 1961 and all additional assets or improvements which have since been added thereto by Schlitz (hereinafter all said business, assets, additions and improvements are collectively referred to as "the Burgermeister assets").

(B) (1) Schlitz is ordered and directed to make bona fide, persistent and sustained efforts to divest itself of the Burgermeister assets by sale, to publicize the availability thereof for sale in appropriate trade and financial publications and to promote the expeditious sale thereof. Sale shall be at a price and upon terms approved by this Court which will consider, among other things, the reasonable market value of the Burgermeister assets, the importance of effectuating a prompt sale and the desirability of sale as a going business to a purchaser who will use the Burgermeister assets as a viable competitor in the sale and production of beer.

(2) Schlitz shall render monthly written reports to this Court, with copies to the Assistant Attorney General in charge of the Antitrust Division, detailing its efforts to divest itself of the Burgermeister assets and the results of such efforts. Plaintiff or Schlitz may apply to this Court for approval or disapproval of any proposal for sale by Schlitz of the Burgermeister assets. All parties shall have the right to be heard thereon.

(C) (1) Schlitz shall take such steps as are necessary to maintain the Burgermeister assets until the time of sale thereof at the standard of operating performance applicable thereto during the year preceding entry of this Final Judgment

and Decree. Pending such sale, Schlitz shall not permit the Burgermeister brewery to be diminished in capacity nor turned to uses other than the production of beer. Schlitz shall furnish, to all bona fide prospective purchasers of the Burgermeister assets, information regarding said brewery and permit them to have such access to, and to make such inspection of, the Burgermeister assets and records as are reasonably appropriate.

(2) Schlitz is ordered and directed to continue to use and operate the Burgermeister assets until the time of sale thereof in substantially the same manner in which they have been used and operated during the year preceding entry of this Final Judgment and Decree and to continue the production, advertising and sale of Burgermeister beer in substantially the same manner that such production, advertising and sale has been carried on during that year. Schlitz is ordered and directed to continue to offer to sell Burgermeister beer to the distributors who at the time of entry of this Final Judgment and Decree distribute Burgermeister beer, and to use its best efforts to retain for the purchaser of the Burgermeister assets those distributors presently selling Burgermeister beer.

(3) Schlitz shall not increase its sales, if any, of Old Milwaukee beer to distributors who sell Burgermeister beer nor its advertising or promotion of Old Milwaukee beer, if any, for sale in States where Burgermeister beer is sold until six months after Schlitz has sold the Burgermeister assets as hereinabove required.

VI

Schlitz is ordered to divest itself, completely and unconditionally, of all of those shares of capital stock it holds in Labatt to a person or persons satisfactory to the Court.

Within ninety (90) days after the date of entry of this Final Judgment and Decree, Schlitz is ordered to submit to the Court (with copies to plaintiff and General Brewing) a plan for the sale of said stock, setting forth to the extent then known all of the terms and conditions of sale and the identity of the proposed purchaser or purchasers. Pending the complete divestiture of said stock, Schlitz is enjoined and restrained from exercising any dominion or control over said stock, directly or indirectly.

VII

(A) For the purpose of securing compliance with this Final Judgment and Decree and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to defendants at their respective principal offices, be permitted (1) reasonable access during the office hours of defendants to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendants relating to any of the matters contained in this Final Judgment and Decree; (2) subject to the reasonable convenience of defendants, and without restraint or interference, to interview officers, directors, agents and employees of defendants regarding such matters. All those so interviewed may have their own counsel present during all such interviews and shall, prior to interview, be advised of this provision therefor.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, said defendants shall submit such reports in writing with respect to the matters contained in this Final Judgment and

Decree as may from time to time be necessary for its enforcement.

(C) No information obtained by the means permitted in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment and Decree or as otherwise required by law.

VIII

This Court expressly retains full jurisdiction for the purpose of enabling any of the parties to this Final Judgment and Decree 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 Final Judgment and Decree or for the modification or termination of any of the provisions thereof or for modifications which, consistently with the purposes thereof, may better comport with sound business practices or for making different or additional provisions for the divestiture by Schlitz of the Burgermeister assets and the Labatt stock if such divestitures have not been completed with all reasonable dispatch or for modification or termination of any of the provisions thereof by this Court on its own motion, and for the enforcement of compliance therewith and punishment of violations thereof. The retention of jurisdiction herein provided for shall not be exercised to relieve Schlitz of its duty, under this Final Judgment and Decree, to divest itself of the Burgermeister assets and of its stock in Labatt. No person shall subvert any provision of this Final Judgment and Decree by indirection or otherwise.

IX

Plaintiff's costs shall be taxed against defendant Schlitz.

Dated: March 24, 1966.

STANLEY A. WEIGEL

Judge

UNITED STATES v. COAST MFG. & SUPPLY CO.

Civil No. 43028

Year Judgment Entered: 1967

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Coast Manufacturing and Supply Co., U.S. District Court, N.D. California, 1967 Trade Cases ¶72,011, (Mar. 20, 1967)

United States v. Coast Manufacturing and Supply Co.

1967 Trade Cases ¶72,011. U.S. District Court, N.D. California, Southern Division. Civil Action No. 43028. Entered March 20, 1967. Case No. 1828 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Glass Fiber Industrial Fabrics—Consent Decree.—A manufacturer of glass fiber industrial fabrics was prohibited by a consent decree from agreeing to or maintaining a plan to fix prices or limit territories for the sale of its products, forcing distributors to adhere to particular resale prices or other terms, and preventing distributors from purchasing from sources of their choice.

For the plaintiff: Donald F. Turner, Assistant Attorney General, Antitrust Division, Charles D. Mahaffie, Jr., Acting Chief, General Litigation Section, and Gordon B. Spivack, William D. Kilgore, Jr., Samuel B. Prezis, William F. Costigan, and John P. Radnay, Attorneys, Department of Justice.

For the defendant: Knox, Goforth & Ricksen.

Final Judgment

SWEIGERT, District Judge: Plaintiff, United States of America, having filed its complaint herein on November 23, 1964, defendant Coast Manufacturing and Supply Company having appeared herein, and the plaintiff and defendant, 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 this Final Judgment constituting any evidence or admission by any party 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 consent of the plaintiff and defendant, it is hereby Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states a claim against the defendant upon which relief may be granted, 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) “Glass fiber industrial fabrics” means fabrics woven from glass fiber yarns and sold for industrial application or use, and includes woven roving and tape, but does not include decorative fabrics and insect screening.

(B) “Person” means any individual, partnership, firm, association, corporation or other business or legal entity other than a subsidiary of defendant.

(C) “Distributor” means any person engaged, in whole or in part, in the business of purchasing glass fiber industrial fabrics for resale.

III

[*Applicability*]

The provisions of this Final Judgment applicable to the defendant shall also apply to each of its officers, directors, agents and employees, its subsidiaries, successors and assigns and to all other persons in active concert or participation with defendant who shall have received actual notice of this Final Judgment by personal service or otherwise; provided, however, that such provisions shall not be applicable to activities conducted outside the United States and not in unreasonable restraint of the domestic or foreign commerce of the United States; and provided further that defendant in the course of making sales for export may comply with the laws of the foreign countries involved.

IV

[*prices and Territories*]

(A) Defendant is enjoined and restrained from entering into, adhering to, maintaining or enforcing any contract, agreement, understanding, plan or program with any distributor, directly or indirectly, to fix, determine, or stabilize the price or prices, terms or conditions at or upon which glass fiber industrial fabrics shall be sold to any third person.

(B) The defendant is enjoined and restrained from entering into, adhering to or maintaining any contract, agreement, understanding, plan or program with any distributor, to restrict or limit the territories or fields within which or the persons to whom glass fiber industrial fabrics may be sold.

V

[*Distributors*]

Defendant is enjoined and restrained from directly or indirectly:

(A) Prohibiting any distributor or other person from purchasing glass fiber industrial fabrics from whomever said distributor or other person may desire.

(B) Canceling or threatening to cancel a distributorship contract because of the price or prices, terms or conditions at or upon which such distributor has sold, or offered to sell glass fiber industrial fabrics purchased from defendant.

(C) Furnishing to any distributor any resale price list for the sale of glass fiber industrial fabrics.

VI

[*Miller-Tydings and McGuire Rights*]

Nothing contained in this Final Judgment shall be deemed to prevent defendant from exercising such rights as it may have under the Act of Congress of August 17, 1937, commonly known as the Miller-Tydings Act, and the Act of Congress of July 14, 1952, commonly known as the McGuire Act. For a period of one year from the date of entry of this Final Judgment, this Paragraph VI shall not apply to glass fiber industrial fabrics of the types and character sold by defendant on the date of entry of this Final Judgment.

VII

[*Revision and Notification*]

Defendant is ordered and directed:

(A)(i) Within thirty (30) days after the date of entry of this Final Judgment to revise its catalogs, price lists, and other promotional materials so as to omit therefrom, subject to Paragraph VI hereof, any prescribed prices, terms, and conditions for the resale of glass fiber industrial fabrics;

(ii) Within forty-five (45) days after the date of entry of this Final Judgment to file with this Court and serve upon the plaintiff an affidavit as to the fact and manner of compliance with Subparagraph (A)(i) of this paragraph.

(B)(i) Forthwith to serve a copy of this Final Judgment upon (a) each member of its Board of Directors, and (b) each of its executive and principal officers having responsibility for the sale of glass fiber industrial fabrics;

(ii) Within thirty (30) days after the date of entry of this Final Judgment, to file with this Court, and serve upon the plaintiff, an affidavit as to the fact and manner of its compliance with the foregoing Subparagraph (B)(i), including the names, titles and addresses of the persons so served.

(C) Forthwith, and in any event not later than thirty (30) days after the entry of this Final Judgment, to mail a copy of this Final Judgment to each distributor to whom defendant, on the date of this Final Judgment and for a period of five (5) years prior thereto, is selling or has sold, glass fiber industrial fabrics; and thereafter, for a period of five (5) years from the date of entry of this Final Judgment, to any new distributor of defendant.

(D)(i) Forthwith, and in any event, not later than thirty (30) days after the date of entry of this Final Judgment to notify, in writing, each of its present distributors and (ii) for a period of five (5) years from the date of entry of this Final Judgment, upon the appointment of any new distributor at the time of appointment, that such distributors are free to sell to any agency or instrumentality of the United States Government, wherever located, glass fiber industrial fabrics at any price or prices and upon any terms or conditions which such distributor may individually determine.

(E) Not later than thirty (30) thirty days after the date of entry of this Final Judgment to file with this Court and serve upon the plaintiff an affidavit setting forth the fact and manner of its compliance with Subsections (C), and (D) (i), (ii) of this Section VII.

(F) For a period of five (5) years after the date of entry of this Final Judgment, to furnish a copy of this Final Judgment to any person upon request and without charge.

VIII

[*Association Activities*]

Defendant is enjoined and restrained from belonging to or participating in any of the activities of any trade association or other organization, with knowledge that the activities or objectives of such trade association or other organization would violate any of the terms of this Final Judgment, if such trade association or other organization were a consenting defendant to this Final Judgment.

IX

[*Retention of Records*]

Defendant is ordered and directed, until the expiration of a period of five (5) years from the date of entry of this Final Judgment or until such time as all cases consolidated into the civil action pending in the United States District Court for the Southern District of New York, known as *United States of America v. Burlington Industries, Inc., et al*., Civil Action No. 64 Civil 3090 are disposed of, whichever shall first occur, to retain and preserve its records and documents relating to the subject matter of the aforesaid consolidated cases. Upon approval of the Court, defendant may alter, remove, or destroy any of such records and documents.

X

[*Inspection and Compliance*]

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

(A) Access, during the office hours of defendant, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant regarding any subject matter contained in this Final Judgment; and

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

Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division for the purposes of securing compliance with this Final Judgment and for no other purposes, defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment. No information obtained by the means provided in this Paragraph X shall be divulged by any representative of the Department of Justice to any person (other than a duly authorized representative of the Executive Branch of the United States) 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 is retained for the purpose of enabling either of the parties to this Final Judgment to apply to the Court at any time (i) for such further orders or directions as may be necessary or appropriate for the construction of carrying out of this Final Judgment, (ii) for the modification of any of the provisions thereof, and (iii) for the enforcement of compliance therewith and the punishment of violations thereof.

UNITED STATES v. KIMBERLY-CLARK CORP.

Civil No. 40529

Year Judgment Entered: 1967

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff,	)	Civil Action No. 40529
v.	)	Entered: May 11, 1967
KIMBERLY-CLARK CORPORATION, Defendant.	)	

FINAL JUDGMENT

This cause having been heard and the Court having fully considered the evidence, arguments and briefs and being fully advised herein and the Court having filed its Opinion, Findings of Fact and Conclusions of Law on February 17, 1967, it is hereby

ORDERED, ADJUDGED AND DECREED that:

I

The acquisition by defendant Kimberly-Clark Corporation of the assets and business of Blake, Moffitt & Towne, as charged in the complaint herein, constitutes a violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and the defendant is directed to complete the divestiture ordered herein.

II

As used herein:

(A) "Defendant" means defendant Kimberly-Clark Corporation;

(B) "New BMT" means Blake, Moffitt & Towne, Inc., an existing Wisconsin corporation, all of whose issued and outstanding shares of

capital stock on the date hereof are owned by defendant;

(C) "Person" includes individuals, partnerships, corporations, and associations;

(D) "Business of the BMT Division" means all real, personal and intangible property, assets, rights, goodwill, obligations and liabilities, including the right to use the name Blake, Moffitt & Towne and any derivation thereof,

(1) of the Blake, Moffitt & Towne Division of defendant as of February 17, 1967, except such as have been disposed of the normal course of business;

(2) acquired by the Blake, Moffitt & Towne Division of defendant subsequent to February 17, 1967 but prior to the divestiture under this Final Judgment, except such as have been disposed of in the normal course of business; and

(3) acquired by defendant in its acquisition of the assets and business of Blake, Moffitt & Towne on June 30, 1961, which do not form a part of the Blake, Moffitt & Towne Division of defendant, except such as have been disposed of in the normal course of business.

III

The provisions of this Final Judgment applicable to defendant, new BMT, or any person acquiring new BMT or the business of the BMT Division, shall also apply to each of their respective directors, officers, agents and employees acting on behalf of any one of said principals, their affiliates or subsidiaries, successors or assigns, and to all other persons in active concert or participation with any one or all of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

(A) Within twenty-seven (27) months from the date of this Final Judgment, defendant shall divest itself of all right, title and interest

in and to the business of the BMT Division;

(B) The divestiture ordered by this Final Judgment shall be made in good faith and shall be absolute and unqualified;

(C) No divestiture under this Final Judgment shall be to a person or persons not approved by the plaintiff;

(D) At least sixty (60) days in advance of the closing date specified in any contract of sale pursuant to this Final Judgment, defendant shall supply plaintiff with the name of the proposed purchaser and with informational material respecting the proposed sale, together with any pertinent additional information plaintiff may request;

(E) The business of the BMT Division shall be divested as a going concern engaged in the wholesale distribution of paper and paper products;

(F) Any contract of sale pursuant to this Final Judgment shall require the purchaser to file with this Court its representation that it intends to continue the business of the BMT Division as a going concern engaged in the wholesale distribution of paper and paper products and its agreement to submit to the jurisdiction of this Court and to be bound by the applicable terms of this Final Judgment.

V

(A) Where necessary, defendant shall seek to obtain the landlord's consent to the full substitution of new BMT or of the purchaser under this Final Judgment to all rights and obligations under leases covering any warehouse, office, or other establishment being used by the Blake, Moffitt & Towne Division of defendant. If any such required consent is not obtained, defendant shall continue as the lessee of those premises with respect to which substitution has been refused, with the right of possession and occupancy in BMT on a reimbursable basis, until relieved thereof by consent of plaintiff or by order of this Court.

(B) In the event that defendant receives, as consideration for the divestiture ordered in this Final Judgment, stock of any other corporation engaged in the manufacture, distribution, or sale of paper

or paper products, or of any corporation owning or controlling new BMT or the purchaser of the business of the BMT Division, defendant shall dispose of such stock within such reasonable period of time as shall be approved by plaintiff, and, pending such disposal, shall cause such stock to be voted by a third person or persons neither employed, engaged, or holding any interest in any company engaged in the manufacture, distribution or sale of paper or paper products; nor directly or indirectly affiliated with defendant, new BMT, or the person owning or controlling the business of the BMT Division, or the officers or directors of any of them; nor directly or indirectly owning any interest in defendant, new BMT, or the person owning or controlling the business of the BMT Division.

VI

(A) For a period of ten (10) years beginning six (6) months after the date of divestiture pursuant to this Final Judgment, no person shall serve as an officer, director or executive employee of new BMT, the person acquiring the business of the BMT Division pursuant to this Final Judgment, or any subsidiary or affiliate of such person, or hold more than 1% of the outstanding stock of new BMT or of the person acquiring the business of the BMT Division if, at the same time, such person serves as an officer, director, or executive employee of defendant or if such person, directly or indirectly, holds more than 1% of the outstanding stock of defendant.

(B) In the event that defendant achieves divestiture under this Final Judgment by the distribution to its own shareholders of all or any part of the stock of new BMT or of the person acquiring the business of the BMT Division, any stock which would be distributed to a person disqualified by Subsection (A) of this Section VI shall instead be held in trust and voted by a third person or persons neither employed, engaged in the manufacture, distribution, or sale of paper or paper products; nor directly or indirectly affiliated with defendant, new BMT, or the person owning or controlling the business of the BMT Division.

All stock held in trust pursuant to this Subsection (B) shall be sold or otherwise disposed of within such reasonable period of time as shall be approved by plaintiff, but any person whose stock is or would be held in trust may elect to retain such stock upon removal of the reason or reasons for his disqualification under this Section VI.

VII

For a period of ten (10) years from the date of any divestiture pursuant to this Final Judgment, defendant shall have no financial transactions with Blake, Moffitt & Towne, its officers or directors, except as approved by this Court in connection with the divestiture required herein, other than purchases and sales made in the normal course of business between defendant and Blake, Moffitt & Towne.

VIII

For a period of ten (10) years from the date of this Final Judgment, defendant is enjoined from directly or indirectly acquiring the stock, assets (except in the normal course of business) or business of any person engaged as a paper merchant in the wholesale distribution of paper or paper products in any state of the United States, without the prior approval of this Court.

IX

Plaintiff shall recover its taxable costs from defendant.

X

For the purpose of determining and securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to the principal office of the defendant, new BMT, or the person acquiring the business of the BMT Division, be permitted, subject to any legally recognized privilege, access during the office hours of defendant, new BMT, or the person acquiring the business of the BMT Division, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda and other records and documents in

the possession or under the control of defendant, new BMT, or the person acquiring the business of the BMT Division, regarding the subject matters contained in this Final Judgment; and, subject to the reasonable convenience of defendant, new BMT, or the person acquiring the business of the BMT Division, and without restraint or any interference from them, to interview officers or employees of any of them, who may have counsel present, regarding any such matters.

Upon such written request, the defendant, new BMT, or the person acquiring the business of the BMT Division, shall submit reports in writing in respect to any such matters as may from time to time be requested.

No information obtained pursuant to 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 Executive Branch of the United States, except in the course of a legal proceeding in 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 of this cause is retained by the Court for the purpose of enabling any of the parties to this Final Judgment, new BMT, or the persons acquiring the business of the BMT Division, and their successors and assigns, to apply 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 Final Judgment, the modification of any of the provisions thereof, the enforcement of compliance therewith, and the punishment of violations thereof.

Dated: May 11, 1967

/s/ ALFONSO J. ZIRPOLI
United States District Judge

UNITED STATES v. DYMO INDUS.

Civil No. 42672

Year Judgment Entered: 1967

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. DYMO INDUSTRIES, INC., Defendant.	Civil Action No. 42,672 Entered: June 15, 1967

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on August 3, 1964, and defendant, Dymo Industries, Inc., having filed its answer thereto denying the substantive allegations thereof; and the parties hereto, by their respective attorneys, having consented to the making and 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 to any such issue:

NOW, THEREFORE, before the taking of any testimony and upon said consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and the parties hereto. The complaint states claims against defendant upon which relief may be granted under Section 1 of the Act of

Congress of July 2, 1890 (15 U.S.C. §1) entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended, and under Section 7 of the Act of Congress of October 15, 1914 (15 U.S.C. §18), commonly known as the Clayton Act.

II

As used herein:

(a) "Embossing tools and tape" means hand operated embossing tools capable of stamping letters and figures on adhesive backed plastic tape, and the tape used in said tools;

(b) "Dymo product" means any embossing tool or tape now or hereafter produced or offered for sale by defendant Dymo;

(c) "Defendant" means defendant Dymo Industries, Inc., a corporation organized and existing under the laws of the State of California, and each subsidiary thereof;

(d) "Subsidiary" means a corporation of which defendant possesses effective voting control and which is engaged in the production or sale of Dymo products in the United States;

(e) "Person" means any individual, corporation, partnership, association, firm or other legal entity and includes, wherever applicable, any federal, state or local government or agency or instrumentality thereof;

(f) "Jobber" means any person who buys any Dymo product from defendant for resale to retail dealers or distributors;

(g) "Retail dealer" means any person who buys any Dymo product from defendant or from a jobber for resale to the general public;

(h) "Distributor" means any person who buys any Dymo product from defendant or from a jobber for resale to commercial,

industrial or governmental buyers.

(i) "Existing patent" means any United States letters patent or patent application, and any division, continuation, reissue or extension thereof, relating to embossing tools or tape or to processes, materials, or machinery for the manufacture thereof, owned or controlled, directly or indirectly, by the defendant on August 3, 1964, or under which the defendant, on such date, had and now has power or authority to grant licenses or sublicenses to others; a list of all existing patents is attached hereto as Exhibit A;

III

(A) The provisions of this Final Judgment applicable to the defendant shall also be applicable to each of its officers, directors, agents and employees and to each of its subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

(B) For the purpose of this Final Judgment, defendant and its subsidiaries, and its and their officers, directors and employees, or any of them, shall be deemed to be one person when acting in such capacity.

IV

Defendant is ordered and directed:

(A) Forthwith to serve a copy of this Final Judgment upon (1) each member of its Board of Directors, (2) each of its principal managerial officers who are not members of its Board of Directors, (3) each of its sales employees or representatives who has sales responsibility over a geographical area, and (4) each of the principal managerial officers of each of its subsidiaries;

(B) Within 90 days after the date of entry of this Final Judgment

to cancel each provision of every contract or agreement between and among defendant and any of its distributors, jobbers or retail dealers which is contrary to or inconsistent with any provision of this Final Judgment;

(C) Within 90 days after the date of entry of this Final Judgment to furnish to each jobber, distributor and retail dealer in the United States who has purchased any Dymo product from defendant within the preceding 12-month period and to each person in the United States currently receiving regular trade informational mailings relating to any Dymo product from the defendant a letter which includes a statement substantially identical in form to Exhibit B which is attached hereto and made a part hereof, together with a copy of this Final Judgment;

(D) For a period of five (5) years after the date of the entry of this Final Judgment, to furnish, without cost, to any person so requesting, a copy of this Final Judgment, together with a list of unexpired existing patents;

(E) To file with this Court and serve upon the plaintiff within 105 days after the date of the entry of this Final Judgment affidavits as to the fact and manner of compliance with subsections (A), (B) and (C) of this Section IV.

V

Defendant is enjoined and restrained from, directly or indirectly:

(1) Fixing, determining or approving the price or prices, terms or conditions at or upon which any other person may advertise for sale, sell or offer to sell any Dymo product in the United States provided, however, that defendant shall not be prohibited from issuing suggested price lists to jobbers, distributors or retailers if said list shall bear the statement, on each piece constituting a price list, in easily legible type, that "The prices set forth herein are suggested only and you are

free to charge whatever prices you wish in selling Dymo products";

(2) Hindering, restricting, limiting or preventing, or attempting to hinder, restrict, limit or prevent any other person from advertising for sale, selling or offering to sell any Dymo product to any third person, or class of persons in the United States;

(3) Limiting or restricting, or attempting to limit or restrict the territory or area within which any other person may advertise for sale, sell or offer to sell any Dymo product in the United States;

(4) Hindering, restricting, limiting or preventing, or attempting to hinder, restrict, limit or prevent any other person in the United States from advertising, selling or offering for sale in export, or exporting any Dymo product from the United States, its territories and possessions;

(5) Investigating or policing the prices, terms or conditions at which, the customers to whom or territories or areas within which any other person in the United States may have advertised for sale, sold or offered to sell any Dymo product;

(6) Refusing to sell, or offer to sell or discriminating in the sale of any Dymo product to any jobber, distributor or retail dealer in the United States based in whole or in part on prices, terms or conditions at which, or the person or persons to whom, or territory or area in which any such jobber, distributor or retail dealer in the United States may have advertised for sale, sold or offered to sell any Dymo product;

(7) Inducing or threatening to induce or suggesting to any jobber, distributor or retail dealer of Dymo products in the United States to refuse to deal with any other jobber, distributor or retail dealer of Dymo products.

PROVIDED, HOWEVER, THAT subject to the foregoing provisions of this Section V, defendant (a) shall not be prohibited from entering into cooperative advertising arrangements with its jobbers, distributors or retail dealers and, in performance thereof, from providing that such cooperative advertising shall otherwise be subject to the approval of the defendant, and (b) shall not be prohibited from conducting legitimate marketing studies. And provided further, that nothing in this decree shall prevent defendant Dymo from bringing actions in foreign countries to enforce such rights as it may have under the laws of such countries.

VI

(A) Defendant is enjoined and restrained from selling, offering for sale, or conditioning the sale of, any Dymo product upon, accompanied by, or pursuant to any term, condition, agreement, understanding, plan or program the purpose or effect of which is, or may be, in any manner contrary to or inconsistent with any of the provisions of Section V of this Final Judgment.

(B) Upon expiration of a period of five (5) years following the date of entry of this Final Judgment, nothing contained in this Final Judgment shall be deemed to prohibit defendant from exercising such lawful rights, if any, as it may have under the Miller-Tydings Act.

VII

(A) Defendant is ordered and directed to grant to any applicant making written request therefor, a nonexclusive license to make, have made, use and sell in the United States embossing tools and tape under any, some or all, as the applicant may choose, existing patents.

(B) (1) Any license granted by the defendant under subsection (A) of this section VII shall be nondiscriminatory and unrestricted except that such license:

(a) May provide that a reasonable and nondiscriminatory royalty may be charged and collected;

(b) May contain a reasonable provision for periodic reports to defendant by the

licensee as to the amount of royalty due and payable only and no other information;

(c) May contain a reasonable provision for periodic inspection of the books and records of the licensee by an independent auditor who may report to defendant only the amount of royalty due and payable and no other information;

(d) May contain a provision that the license shall be nontransferable;

(e) May contain a reasonable provision for cancellation of the license upon failure of the licensee to make the reports which may be required by (b) above, pay the royalties due or permit the inspection of its books and records as herein provided;

(f) Must contain a provision that the licensee may cancel the license at any time by giving thirty (30) days notice in writing to the licensor;

(g) May contain a provision that the licensee will mark all licensed products in accordance with the provisions of U.S. Code, Title 35, Section 287;

(C) (1) Upon receipt of any such application, defendant is ordered and directed forthwith to advise said applicant of the royalty it deems reasonable and nondiscriminatory for the license requested in the application, and to furnish said applicant with a copy of this Final Judgment. If defendant and said applicant are unable to agree upon what constitutes a reasonable and nondiscriminatory royalty, either defendant or said applicant, with notice

thereof to each other and to plaintiff herein, may apply to this Court for a determination of a reasonable and nondiscriminatory royalty, and defendant shall make such application forthwith upon request of said applicant.

(2) Upon application to the Court in accordance with this provision and pending completion of any such proceedings, said applicant, shall have the right, subject to payment of interim royalties, if any, to be determined by the Court, to make, have made, use and sell embossing tools and tape under the patents to which said application for license pertains.

(3) If this Court fixes such an interim royalty rate, defendant shall then issue to said applicant a license pursuant to subsection B(1) of this Section VII providing for the periodic payment of royalties at such interim rate from the date of application to this Court for a determination of reasonable and nondiscriminatory royalty; and whether or not such interim rate is fixed, any final order by this Court may provide for such readjustments, including retroactive royalties, as this Court may order after final determination of a reasonable and nondiscriminatory royalty; if said applicant fails to accept within a reasonable time any license terms determined by this Court under this subsection (D) of this Section VII, or fails to pay the royalties agreed upon or established by this Court, such failure shall be grounds for the dismissal by this Court of said applicant's license application, and as to said applicant, defendant shall have no further obligation or duty under this Final Judgment.

(D) This Final Judgment shall not prevent any person from attacking in the aforesaid proceedings or in any other controversy the

validity or scope of any existing patent, nor shall this Final Judgment be construed as importing any validity or value to any of said patents.

(E) This Section VII shall not be deemed to prohibit defendant from defending or prosecuting to Final Judgment any suit or proceeding by or against any person or persons other than plaintiff instituted prior to, and pending on, the date of entry of this Final Judgment, except that on and after such date each such person shall be entitled to apply for and to receive a license in accordance with the provisions of this Final Judgment.

(F) Defendant is enjoined and restrained from hereafter issuing or granting any license under existing patents except in accordance with and pursuant to this Section VII.

VIII

Defendant is enjoined and restrained from making any disposition of any existing patent which deprives it of the power or authority to grant the licenses or immunities required by Section VII of this Final Judgment, unless, when selling, transferring or assigning any of said patents or any rights thereunder, it requires, as a condition of such sale, transfer or assignment that the purchaser, transferee or assignee shall observe the provisions of this Final Judgment with respect to said patents or rights thereunder so acquired, and the purchaser, transferee or assignee files with this Court with a copy to the plaintiff herein, prior to the consummation of said transaction, an undertaking to be bound by the provisions of this Final Judgment with respect to said patents or rights thereunder so acquired.

IX

Defendant is ordered and directed to insert in an appropriate trade journal of general circulation once in each of the second, fourth and sixth months following the date of entry of this Final Judgment, a notice that, pursuant to this Final Judgment, it is required to grant licenses under existing patents, and that upon written request, a list of such patents and a copy of this Final

Judgment will be furnished by the defendant.

X

For the purpose of securing compliance with this Final Judgment, and subject to any legally recognized privilege, 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 defendant, made through its principal office, be permitted (1) access during reasonable office hours to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant relating to any of the subject matters contained in this Final Judgment, and (2) subject to the reasonable convenience of defendant, and without restraint or interference from it to interview officers or employees of the defendant, who may have counsel present, regarding any such matters; and upon such request, defendant shall submit such reports in writing to the Department of Justice with respect to any of the matters contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided 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 Executive Branch of plaintiff, 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 Final Judgment or as otherwise required by law.

XI

Jurisdiction is retained for the purpose of enabling any of the parties to this Final 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 Final Judgment or for the modification or termination of any of the provisions

thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Dated: June 15, 1967

/s/ LLOYD H. BURKE
United States District Judge

EXHIBIT A

LIST OF EXISTING PATENTS

Patents

Patented	Patent No.	Title
2/23/60	2,925,625	Contrast Color Embossed Plastics and Method of Production
4/11/61	2,979,179	Tape Embossing and Label Making Machine
8/22/61	2,996,822	Contrast Color Embossed Plastic
10/31/61	3,006,451	Hand Operated Embossing Tool
5/29/62	3,036,945	Embossable Plastic Assembly
7/31/62	3,047,443	Embossing Tape
4/2/63	3,083,807	Hand Operated Embossing Device
5/28/63	3,091,318	Cutting and Punching Attachment for Embossing Tool
5/28/63	3,091,319	Tape Marking Tool and Cut-Off Mechanism
11/26/63	3,111,872	Tape Backing Stripper
4/7/64	3,127,989	Coiled Tape Magazine for Embossing Machines and the Like
5/19/64	3,133,495	Apparatus and Method for Cutting Tapes and Removing the Liner Therefrom
10/4/66	3,276,559	Embossing Tool Having Plural Triggers with Interlock Means

Applications

2/19/64	345,923	Hand Operated Embossing Tool

Design Patents

9/19/61	191,382	Tape Embossing Tool
3/26/63	194,891	Tape Embossing Machine
9/24/63	196,398	Hand Operated Tape Embossing Tool
3/10/64	197,677	Tape Embossing Tool

UNITED STATES v. SWIFT INSTRUMENTS, INC.

Civil No. C-73-0300 CBR

Year Judgment Entered: 1973

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Swift Instruments, Inc., U.S. District Court, N.D. California, 1973-2 Trade Cases ¶74,762, (Dec. 11, 1973)

United States v. Swift Instruments, Inc.

1973-2 Trade Cases ¶74,762. U.S. District Court, N.D. California. Civil No. C-73-0300 CBR. Entered December 11, 1973. Case No. 2309, Antitrust Division, Department of Justice.

Sherman Act

Resale Price Fixing—Customers and Territories—Bids to Educational Institutions— Microscopes—Consent Decree.—A microscope manufacturer was prohibited by a consent decree from suggesting, urging or requiring any dealer: (1) to adopt or adhere to any fixed, suggested or specified price, discount or markup in the sale of microscopes; (2) to modify or withdraw its bid to any educational institution or other public agency because of the price or discount at which the dealer bid microscopes; and (3) to establish, adopt or adhere to any limit on the classes of customers to whom, or the territory in which such dealer may bid or sell microscopes. Additionally, the decree prohibits the firm from terminating or threatening to terminate, discontinuing or limiting the sale of microscopes to, or otherwise penalizing any dealer because of the prices at which or the persons to whom the dealer sells or offers to sell, or the territories in which the dealer operates.

For plaintiG: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, Anthony L. Desmond, Gary R. Spratling and Robert J. Ludwig, Attys., Dept. of Justice.

For defendant: George A. Sears and Roland W. Selman, of Pillsbury, Madison & Sutro, San Francisco, Cal.

Final Judgment

WOLLENBERG, D. J.: Plaintiff, United States of America, having filed its complaint herein on February 26, 1973; defendant, Swift Instruments, Inc., having appeared by its counsel; and plaintiff and defendant, by their respective attorneys, each having consented to the entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or an admission by any party consenting hereto with respect to any such issue,

Now, Therefore, before any testimony or evidence has been taken herein, and with out 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

[*Jurisdiction*]

The Court has jurisdiction of the subject matter hereof and the parties hereto. The complaint states a claim upon which relief may be granted against defendant under Section 1 of the Act of Congress of July 2, 1890 (as amended), commonly known as the Sherman Act (15 U. S. C. § 1).

II

[*Definitions*]

As used in this Final Judgment:

(A) “Person” shall mean any individual, partnership, firm, corporation or other business or legal entity;

(B) “Swift” shall mean the defendant Swift Instruments, Inc.;

(C) “Dealer” shall mean a person engaged in the purchase of microscopes from Swift for resale; and

(D) “Microscopes” shall mean microscopes and microscope parts and accessories, including lenses.

III

[*Applicability*]

The provisions of this Final Judgment applicable to Swift shall also apply to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and all persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall apply to sales of defendant's microscopes in the United States.

IV

[*Prices, Territories, Customers*]

Swift is enjoined and restrained from entering into, adhering to, maintaining, enforcing, or claiming, directly or indirectly, any rights under any contract, agreement, combination, understanding, plan or program with any dealer to:

(A) Fix, establish, maintain or adhere to prices or discounts at which microscopes are bid, sold, offered for sale, or advertised by any such dealer; and

(B) Limit or restrict the sales territories within which, or the persons to whom dealers may bid, sell, offer for sale or advertise microscopes.

V

Swift is enjoined and restrained from:

(A) Suggesting, urging, compelling or requiring any dealer to establish, maintain, adopt, advertise or adhere to any fixed, suggested or specified price, discount, markup or margin of profit in the sale of microscopes ;

(B) Encouraging the report of, or taking action in response to any complaint by dealers regarding bidding or selling at discounted prices in connection with the sale of Swift microscopes by any other dealer;

(C) Suggesting, urging, compelling or requiring any dealer to establish, maintain, adopt, adhere to or enforce adherence to any limit on the classes of customers to whom, or the territory in which, such dealer may bid, sell, offer to sell or advertise microscopes;

(D) Suggesting, urging, compelling or requiring any dealer to modify or withdraw its bid to any educational institution or other public agency because of the price or discount at which said dealer bid microscopes;

(E) Terminating or threatening to terminate the dealer sales agreement of any dealer because of the prices at which, the persons or classes of persons to whom, or the markets or territories in which such dealer has bid, sold or offered to sell Swift microscopes; and

(F) Discontinuing, curtailing or limiting the sale of microscopes to, or otherwise penalizing any dealer because of the prices at which, the persons or classes of persons to whom, or the markets or territories in which such dealer has bid, sold or offered to sell Swift microscopes.

VI

[*Suggested Prices; Fair Trade*]

(A) Nothing in this Final Judgment shall prohibit Swift from unilaterally suggesting retail prices, markups or margin of profit to dealers for the sale of microscopes; provided, however, that the page (or the first page of a multipage document) containing such a suggestion shall include a statement that each dealer is free to sell at whatever prices, markups or margins of profit he may choose.

(B) Nothing in this Final Judgment shall be deemed to prohibit Swift from availing itself of rights it may have under the Miller-Tydings Act and the McGuire Act.

VII

[*Contracts*]

(A) Swift is ordered and directed, within ninety (90) days after the date of entry of this Final Judgment, to revise any portion of its contracts and agreements with dealers which are inconsistent with any provision of this Final Judgment.

(B) Swift is ordered and directed, within ninety (90) days after entry of this Final Judgment, to notify each such dealer in writing, in a form acceptable to plaintiff, that he may sell Swift products at such prices as, and to whomever and wherever he may please.

(C) Swift is ordered and directed, for a period of ten (10) years after entry of this Final Judgment, to deliver to each new dealer with whom Swift commences business relations a notice in writing in the same form as that approved for use pursuant to subsection VII(B) above withing thirty (30) days after commencing such business relations.

(D) Swift is ordered and directed, within ninety (90) days after the entry of this Final Judgment, to serve a copy of this Final Judgment upon each of Swift's officers, directors and each of its employees or representatives who has responsibility for the sale of Swift products, and to advise each such person that violation by him of this Final Judgment could result in a conviction for contempt of court and could subject him to imprisonment and/or fine.

(E) Swift is ordered and directed, for a period of ten (10) years after entry of this Final Judgment, to serve a copy of this Final Judgment upon each successor to those officers, directors and supervisory employees of Swift described in subsection (D) of this section VII, within thirty (30) days after each successor is employed by or becomes associated with Swift.

(F) Swift is ordered and directed, within one hundred and twenty (120) days after the entry of this Final Judgment to serve upon plaintiff affidavits concerning the fact and manner of compliance with subsections (B) and (D) of this section VII.

VIII

[*Reports*]

For a period of ten (10) years from the date of the entry of this Final Judgment, Swift is ordered to file with the plaintiff, on each anniversary date of such entry, a report setting forth the steps which Swift has taken during the prior year to advise Swift's appropriate officers, directors and employees of their obligations under this Final Judgment. Such report shall further contain the name and address of any dealer whose dealership was terminated by Swift and state the reasons for such termination.

IX

[*Inspection and Compliance*]

For the purpose of determining or securing compliance with this Final Judgment, authorized representatives of the Department of Justice, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, subject to reasonable notice to Swift and applicable legal privilege, shall be permitted:

(A) To examine the books, ledgers, accounts, correspondence, memoranda and other records in the possession or under the control of Swift relating to matters in this Final Judgment; and

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

Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, Swift shall submit written reports relating to matters in this Final Judgment as may from time to time be requested.

No information obtained pursuant to this paragraph IX shall be divulged by any representative of the Department of Justice to any person other than another authorized representative of the Executive Branch, except in the course of legal proceedings to secure compliance with this Final Judgment, or as otherwise required by law.

X

[*Retention of Jurisdiction*]

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

UNITED STATES v. UNITED SCI. CO.

Civil No. C-73-0299 ACW

Year Judgment Entered: 1973

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. United Scientific Co., Inc., U.S. District Court, N.D. California, 1973-2 Trade Cases ¶74,776, (Dec. 11, 1973)

United States v. United Scientific Co., Inc.

1973-2 Trade Cases ¶74,776. U.S. District Court, N.D. California. Civil No. C-73-0299 ACW. Entered December 11, 1973. Case No. 2311, Antitrust Division, Department of Justice.

Sherman Act

Resale Price Fixing—Customers and Territories—Bids to Educational Institutions—Suggested Prices—Fair Trade Rights—Microscopes—Consent Decree.—A microscope manufacturer was prohibited by a consent decree from suggesting, urging or requiring any dealer: (1) to adopt or adhere to any fixed, suggested or specified price, discount or markup in the sale of microscopes; (2) to modify or withdraw its bid to any educational institution or other public agency because of the price or discount at which the dealer bid microscopes; and (3) to establish, adopt or adhere to any limit on the classes of customers to whom, or the territory in which such dealer may bid or sell microscopes. Additionally, the decree prohibits the firm from terminating or threatening to terminate, discontinuing or limiting the sale of microscopes to, or otherwise penalizing any dealer because of the prices at which or the persons to whom the dealer sells or offers to sell, or the territories in which the dealer operates. The decree, as with 1973-2 TRADE CASES ¶ 74,762, does not prohibit suggestions of prices markups or profit margins provided that the page containing such a suggestion (or the first page of a multipage document) containing the suggestion includes a statement that each dealer is free to sell at whatever prices, markups or margins of profit he may choose. Also, the decree does not prevent the defendant from availing itself of rights it may have under the Miller-Tydings Act and the McGuire Act.

For plaintiG: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, Anthony E. Desmond, Gary R. Spratling and Robert J. Ludwig, Attys., Dept. of Justice.

For defendant: David R. Harrison, of Long & Levit, San Francisco, Cal.

Final Judgment

WOLLENBERG, D. J.: Plaintiff, United States of America, having filed its complaint herein on February 26, 1973; defendant, United Scientific Co., Inc., having appeared by its counsel; and plaintiff and defendant, by their respective attorneys, each having consented to the entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or an admission by any party consenting hereto with respect to any such issue,

Now, Therefore, before any testimony or evidence has 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 Decreed as follows:

I

[*Jurisdiction*]

The Court has jurisdiction of the subject matter hereof and the parties hereto. The complaint states a claim upon which relief may be granted against defendant under Section 1 of the Act of Congress of July 2, 1890 (as amended), commonly known as the Sherman Act (15 U. S. C. § 1).

II

[*Definitions*]

As used in this Final Judgment:

(a) “Person” shall mean any individual, partnership, firm, corporation or other business or legal entity;

(b) “United” shall mean the defendant United Scientific Co., Inc.;

(c) “Dealer” shall mean a person engaged in the purchase of microscopes from United for resale; and

(d) “Microscopes” shall mean microscopes and microscope parts and accessories, including lenses.

III

[*Applicability*]

The provisions of this Final Judgment applicable to United shall also apply to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and all persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall apply to sales of defendant's microscopes in the United States.

IV

[*Prices, Territories, Customers*]

United is enjoined and restrained from entering into, adhering to, maintaining, enforcing, or claiming, directly or indirectly, any rights under any contract, agreement, combination, understanding, plan or program with any dealer to:

(A) Fix, establish, maintain or adhere to prices or discounts at which microscopes are bid, sold, offered for sale, or advertised by any such dealer; and

(B) Limit or restrict the sales territories within which, or the persons to whom dealers may bid, sell, offer for sale or advertise microscopes.

V

United is enjoined and restrained from:

(A) Suggesting, urging, compelling or requiring any dealer to establish, maintain, adopt, advertise or adhere to any fixed, suggested or specified price, discount, markup or margin of profit in the sale of microscopes;

(B) Encouraging the report of, or taking action in response to any complaint by dealers regarding bidding or selling at discounted prices in connection with the sale of United microscopes by any other dealer;

(C) Suggesting, urging, compelling or requiring any dealer to establish, maintain, adopt, adhere to or enforce adherence to any limit on the classes of customers to whom, or the territory in which, such dealer may bid, sell, offer to sell or advertise microscopes;

(D) Suggesting, urging, compelling or requiring any dealer to modify or withdraw its bid to any educational institution or other public agency because of the price or discount at which said dealer bid microscopes;

(E) Terminating or threatening to terminate the dealer sales agreement of any dealer because of the prices at which, the persons or classes of persons to whom, or the markets or territories in which such dealer has bid, sold or offered to sell United microscopes; and

(F) Discontinuing, curtailing or limiting the sale of microscopes to, or otherwise penalizing any dealer because of the prices at which, the persons or classes of persons to whom, or the markets or territories in which such dealer has bid, sold or offered to sell United microscopes.

VI

[*Suggested Prices; Fair Trade*]

(A) Nothing in this Final Judgment shall prohibit United from unilaterally suggesting retail prices, markups or margin of profit to dealers for the sale of microscopes; provided, however, that the page (or the first page of a multipage document) containing such a suggestion shall include a statement that each dealer is free to sell at whatever prices, markups or margins of profit he may choose.

(B) Nothing in this Final Judgment shall be deemed to prohibit United from availing itself of rights it may have under the Miller-Tydings Act and the McGuire Act.

VII

[*Contracts*]

(A) United is ordered and directed, within ninety (90) days after the date of entry of this Final Judgment, to revise any portion of its contracts and agreements with dealers which are inconsistent with any provision of this Final Judgment.

(B) United is ordered and directed, within ninety (90) days after entry of this Final Judgment, to notify each such dealer in writing, in a form acceptable to plaintiff, that he may sell United products at such prices as, and to whatever customers and wherever he may please.

(C) United is ordered and directed, for a period of ten (10) years after entry of this Final Judgment, to deliver to each new dealer with whom United commences business relations a notice in writing in the same form as that approved for use pursuant to subsection VII(B) above within thirty (30) days after commencing such business relations.

(D) United is ordered and directed, within ninety (90) days after the entry of this Final Judgment, to serve a copy of this Final Judgment upon each of United's officers, directors and each of its employees or representatives who has responsibility for the sale of United products, and to advise each such person that violation by him of this Final Judgment could result in a conviction for contempt of court and could subject him to imprisonment and/or fine.

(E) United is ordered and directed, for a period of ten (10) years after entry of this Final Judgment, to serve a copy of this Final Judgment upon each successor to those officers, directors and supervisory employees of United described in subsection (D) of this section VII, within thirty (30) days after each successor is employed by or becomes associated with United.

(F) United is ordered and directed, within one hundred and twenty (120) days after the entry of this Final Judgment to serve upon plaintiff affidavits concerning the fact and manner of compliance with subsections (B) and (D) of this section VII

VIII

[*Reports*]

For a period of ten (10) years from the date of the entry of this Final Judgment, United is ordered to file with the plaintiff, on each anniversary date of such entry, a report setting forth the steps which United has taken during the prior year to advise United's appropriate officers, directors and employees of their obligation under this Final Judgment. Such report shall further contain the name and address of any dealer whose dealership was terminated by United and state the reasons for such termination.

IX

[*Inspection and Compliance*]

(A) For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to the defendant made to its principal office, be permitted:

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

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

(B) Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal offices, the defendant shall submit such reports in writing, to the Department of Justice with respect to any of the matters contained in this Final Judgment as from time to time may be requested;

(C) No information obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff 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.

X

[*Retention of Jurisdiction*]

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

UNITED STATES v. H.S. CROCKER CO., *et al.*

Civil No. C-74-0560 CBR

Year H.S. Crocker Defendants Judgment Entered: 1975

CORRECTED JUDGMENT

FILED

NOV 25 1975

WILLIAM L. WHITTAKER, CLERK

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

H. S. CROCKER CO., INC.;
STECHER-TRAUNG-SCHMIDT CORPORATION;
DIAMOND INTERNATIONAL CORPORATION;
INTERNATIONAL PAPER COMPANY;
FORT DEARBORN LITHOGRAPH CO.;
MICHIGAN LITHOGRAPHING CO.;
PIEDMONT LABEL COMPANY;
H. M. SMYTH CO., INC. ; and
LITTON BUSINESS SYSTEMS, INC.,

Defendants.

Civil Action
No. C-74-0560 CBR

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on March 12, 1974, and the Plaintiff and the Defendants, 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 this Final Judgment constituting any evidence against or admission by any party with respect to any issue of fact or law herein:

NOW, THEREFORE, without any testimony being taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of all parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED:

I

This Court has jurisdiction of the subject matter herein and of the parties hereto. The Complaint states a claim upon which relief may be granted against the Defendants under Section 1 of the Act of Congress of July 2, 1890, 15 U.S.C. Section 1, entitled "an Act to protect trade and commerce against unlawful restraints and monopolies," as amended, commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Person" shall mean any individual, corporation, partnership, firm, association or other business or legal entity;

(B) "Paper label" shall mean any label made, in whole or in part, of paper;

(C) "Defendants" and "Defendant" as used herein shall not include any party named as a defendant herein which has not consented to the entry of this Final Judgment.

III

The provisions of this Final Judgment are applicable to all Defendants herein and shall also apply to each of said Defendants' officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them, who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Each Defendant is enjoined and restrained from:

(A) Entering into, directly or indirectly, any contract, agreement, understanding, plan, program, combination or conspiracy with any other manufacturer or

seller of paper labels to (1) allocate or divide customers, territories or markets for the sale of any paper label or (2) raise, fix, stabilize or maintain the price, discount, markup or any other term or condition for the sale of any paper label to any third person;

(B) Expressly or implicitly furnishing to or requesting from any other manufacturer or seller of any paper label any price, term or condition, or warehousing charge or engraving charge with respect to the sale of any paper label, unless the information in question has been made generally available to users of paper labels;

(C) Belonging to, or participating in, or contributing anything of value to any trade association or other group with knowledge that the activities thereof are contrary to or inconsistent with the provisions of this Final Judgment.

V

Nothing contained in this Final Judgment shall apply to any negotiation or communication between a Defendant and any other Defendant or any other manufacturer or seller of paper labels or any of their agents, brokers, distributors or representatives, whose sole purpose is a proposed or actual bona fide purchase or sale.

VI

Each Defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of the assets used by it in the design, printing, sale and distribution of paper labels, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court, and serve upon the Plaintiff, its consent to be bound by this Final Judgment.

VII

Each Defendant shall take affirmative steps (including written directives setting forth corporate compliance policies, distribution of this Final Judgment, and meetings to review its terms and the obligations it imposes), to advise each of its officers, directors, managing agents and employees who has responsibility for or authority over the establishment of prices or bids by which said Defendant sells or proposes to sell any paper labels, and all paper label salesmen and saleswomen of its and their obligations under this Final Judgment and of the criminal penalties for violation of Section IV of this Final Judgment. In addition, each Defendant shall, for so long as it remains in the business of selling any paper labels, cause a copy of this Final Judgment to be distributed at least once each year to each of its officers responsible for the conduct of such business and all paper label salesmen and saleswomen.

VIII

For a period of 10 years from the date of entry of this Final Judgment, each Defendant shall file with this Court and with Plaintiff, on the anniversary date of this Final Judgment, a sworn statement by a responsible officer, designated by that Defendant to perform such duties, setting forth all steps it has taken during the preceding year to discharge its obligations under Paragraph VII above. Said report shall be accompanied by copies of all written directives issued by said Defendant during the prior year with respect to compliance with the terms of this Final Judgment. In addition, a responsible officer of Defendants, H. S. Crocker, Stecher-Traung-Schmidt, Diamond International and International Paper, shall appear annually during said

period before this Court to give sworn testimony on the manner of compliance with Paragraph VII of this Final Judgment.

IX

(A) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, Defendants shall permit duly authorized representatives of the Department of Justice, on written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice, subject to any legally recognized privilege:

(1) Access during the business hours of Defendants, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Defendants which relate to any matters contained in this Final Judgment;

(2) Subject to the reasonable convenience of Defendants and without restraint or interference from them, to interview individuals who are officers or employees of Defendants, any of whom may have counsel present, regarding any matters contained in this Final Judgment.

(B) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, upon written request of the Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit such reports in writing, with respect to the matters contained in this Final Judgment as may from time to time be requested.

(C) No information obtained by the means provided in this Section IX of this Final Judgment shall be divulged by a

representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the Plaintiff 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.

X

To the extent any Defendant was bound by the decree entered in United States v. Schmidt Lithograph Company, et al., Civil No. 2424-BH in the United States District Court for the Central District of California that decree shall be superseded by the terms of this Final Judgment as to paper labels.

XI

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final 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 modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

XII

Entry of this Final Judgment is in the public interest.

Dated: November 25, 1975

Charles B. Renfrew

UNITED STATES DISTRICT JUDGE

UNITED STATES v. H.S. CROCKER CO., *et al.*

Civil No. C-74-0560 CBR

Year Litton Judgment Entered: 1976

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. H. S. Crocker Co., Inc., Stecher-Traung-Schmidt Corp., Diamond International Corp., International Paper Co., Fort Dearborn Lithograph Co., Michigan Lithographing Co., Piedmont Label Co., H. M. Smyth Co., Inc., and Litton Business Systems, Inc., U.S. District Court, N.D. California, 1978-1 Trade Cases ¶61,883, (Nov. 30, 1976)

United States v. H. S. Crocker Co., Inc., Stecher-Traung-Schmidt Corp., Diamond International Corp., International Paper Co., Fort Dearborn Lithograph Co., Michigan Lithographing Co., Piedmont Label Co., H. M. Smyth Co., Inc., and Litton Business Systems, Inc.

1978-1 Trade Cases ¶61,883. U.S. District Court, N.D. California, Civil Action No. C-74-0560 CBR, Entered November 30, 1976, (Competitive impact statement and other matters filed with settlement: 41 *Federal Register* 39800).

Case No. 2373, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Paper Labels: Consent Decree: Court Appearance by Company Officer.– A manufacturer of paper labels was prohibited by a consent decree from allocating or dividing customers, territories or markets, fixing prices, or furnishing price information unless it is generally available to users of paper labels. A company officer was required to appear in court each year for 10 years to give sworn testimony on the manner of compliance with the decree.

For plaintiG: Donald I. Baker, Asst. Atty. Gen., William E. Swope, Richard J. Favretto, Charles F. B. McAleer, Gerald A. Connell, Jill Nickerson, J. E. Waters, and Anthony E. Desmond, Attys., Dept. of Justice. **For defendants:** Theodore F. Craver.

Final Judgment to Litton Business Systems, Inc.

RENFREW, D. J.: Plaintiff, United States of America, having filed its complaint herein on March 12, 1974, and the Plaintiff and Defendant, 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 this Final Judgment constituting any evidence against or admission by any party with respect to any issue of fact or law herein:

Now, Therefore, without any testimony being 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 Decreed:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The Complaint states a claim upon which relief may be granted against the Defendant under Section 1 of the Act of Congress of July 2, 1890, 15 U. S. C. Section 1, entitled“an Act to protect trade and commerce against unlawful restraints and monopolies,”as amended, commonly known as the Sherman Act.

II

[*Definitions*]

As used in this Final Judgment:

(A)“Person”shall mean any individual, corporation, partnership, firm, association or other business or legal entity;

(B)“Paper label”shall mean any label made, in whole or in part, of paper;

(C)“Defendant”shall mean Litton Business Systems, Inc.

III

[*Applicability*]

The provisions of this Final Judgment are applicable to Defendant herein and shall also apply to said Defendant's officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them, who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

[*Allocation; Prices; Information*]

Defendant is enjoined and restrained from:

(A) Entering into, directly or indirectly, any contract, agreement, understanding, plan, program, combination or conspiracy with any other manufacturer or seller of paper labels to (1) allocate or divide customers, territories or markets for the sale of any paper label or (2) raise, fix, stabilize or maintain the price, discount, markup or any other term or condition for the sale of any paper label to any third person;

(B) Expressly or implicitly furnishing to or requesting from any other manufacturer or seller of any paper label any price, term or condition, or warehousing charge or engraving charge with respect to the sale of any paper label, unless the information in question has been made generally available to users of paper labels;

(C) Belonging to, or participating in, or contributing anything of value to any trade association or other group with knowledge that the activities thereof are contrary to or inconsistent with the provisions of this Final Judgment.

V

[*Sales Negotiations*]

Nothing contained in this Final Judgment shall apply to any negotiation or communication between Defendant and any other manufacturer or seller of paper labels or any of their agents, brokers, distributors or representatives, whose sole purpose is a proposed or actual bona fide purchase or sale.

VI

[*Acquirers*]

Defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of the assets used by it in the design, printing, sale and distribution of paper labels, that the acquiring party agree to be bound by the provisions of this Final Judgment. Such acquiring party shall file with the Court, and serve upon the Planitiff, its consent to be bound by this Final Judgment.

VII

[*Compliance*]

Defendant shall take affirmative steps (including written directives setting forth corporate compliance policies, distribution of this Final Judgment, and meetings to review its terms and the obligations it imposes), to advise each of its officers, directors, managing agents and employees who has responsibility for or authority over the establishment of prices or bids by which said Defendant sells or proposes to sell any paper labels, and all

paper label salesmen and saleswomen of its and their obligations under this Final Judgment and of the criminal penalties for violation of Section IV of this Final Judgment. In addition, Defendant shall, for so long as it remains in the business of selling any paper labels, cause a copy of this Final Judgment to be distributed at least once each year to each of its officers responsible for the conduct of such business and all paper label salesmen and saleswomen.

VIII

[*Reports; Court Appearances*]

For a period of 10 years from the date of entry of this Final Judgment, should Defendant re-enter the business of selling any paper labels, Defendant shall file with this Court and with Plaintiff, on the anniversay date of this Final Judgment, a sworn statement by a responsible officer, designated by Defendant to perform such duties, setting forth all steps it has taken during the preceding year to discharge its obligations under Paragraph VII above. Said report shall be accompanied by copies of all written directives issued by said Defendant during the prior year with respect to compliance with the terms of this Final Judgment. In addition, a responsible officer of Defendant shall appear annually during said period before this Court to give sworn testimony on the manner of compliance with Section VII of this Final Judgment.

IX

[*Inspection*]

(A) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, Defendant shall permit duly authorized representatives of the Department of Justice, on written request of the Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice, subject to any legally recognized privilege:

(1) Access during the business hours of Defendant, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Defendant which relate to any matters contained in this Final Judgment;

(2) Subject to the reasonable convenience of Defendant and without restraint or interference from it, to interview individuals who are officers or employees of Defendant, any of whom may have counsel present, regarding any matters contained in this Final Judgment.

(B) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, upon written request of the Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, Defendant shall submit such reports in writing, with respect to the matters contained in this Final Judgment as may from time to time be requested.

(C) No information obtained by the means provided in this Section IX of this Final Judgment shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the Plaintiff except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

X

[*Retention of Jurisdiction*]

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final 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 modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

XI

[*Public Interest*]

Entry of this Final Judgment is in the public interest.

UNITED STATES v. ALAMEDA CTY. VETERINARY MED. ASS'N

Civil No. 75-2398-CBR

Year Judgment Entered: 1977

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. ALAMEDA COUNTY VETERINARY MEDICAL ASSOCIATION, Defendant.	Civil No. 75-2398-CBR FINAL JUDGMENT File: August 8, 1977 Entered: October 31, 1977

Plaintiff, United States of America, having filed its complaint herein on November 14, 1975 and defendant, Alameda County Veterinary Medical Association, having appeared by its counsel, and both parties by their respective attorneys having consented to the making and entry of this Final Judgment without admission by any party in respect to any issue;

NOW, THEREFORE, before any testimony has been taken herein, without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED, as follows:

I

This Court has jurisdiction over the subject matter of this action and the parties hereto. The complaint states claims upon which relief may be granted against the defendant under Section 1 of the Sherman Act.

II

As used in this Final Judgment:

(A) "Person" shall mean any individual, partnership, firm, association, corporation or other business or legal entity;

(B) "Defendant" means the defendant Alameda County Veterinary Medical Association;

(C) "Fee" or "Fees" means any fee, price charge, markup, quotation, discount, or other compensation for any veterinary service or drug or combination of veterinary services and drugs;

(D) "Fee Schedule" means any list of veterinary services showing a fee, range of fees, or method of computing fees for such services;

(E) "Fee Survey" means the results of a survey of fees charged by veterinarians for particular services and lists tabulating or summarizing the results of such surveys;

(F) "Animal welfare agency" means any nonprofit organization which acts to refer animal owners to veterinarians for veterinary services.

III

The provisions of this Final Judgment shall apply to the defendant and to each of its officers, directors, agents, employees, successors and assigns, and to all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Defendant is enjoined and restrained from directly or indirectly:

(A) Fixing, establishing, maintaining, or stabilizing any fee for veterinary services;

(B) Advocating, suggesting, urging, advising, inducing, or recommending that any veterinarian adhere to or otherwise base his or her fees on any particular fee, fee schedule or fee survey;

(C) Conducting, publishing, or distributing any fee survey or fee schedule which relates to fees or ranges of fees for services;

(D) Adopting, formulating, adhering to, maintaining, enforcing, suggesting, disseminating, or claiming any rights under any bylaw, rule, statement of policy, resolution, canon of ethics, plan or program which discourages, hinders, limits, prevents or prohibits any veterinarian from accepting or agreeing to accept referrals from animal welfare agencies for veterinary services at ordinary, reduced or discounted fees;

(E) Making any individual contact, devising or putting into effect any procedure, or taking any disciplinary action with reference to any member because of the fees charged or person from whom said member accepts referrals.

V

Nothing in paragraph IV of this Final Judgment shall be construed to prevent:

(A) The Association from negotiating on behalf of its members concerning the fee prescribed by a governmental agency for rabies vaccinations or rabies clinics;

(B) The Animal Care Foundation operated by the Association from accepting donation pledges representing an amount of veterinary services, supplies and drugs, or from accepting a donating member's valuation of such veterinary services rendered, including supplies and drugs, to be deducted from the member's pledge; provided that said

valuation must be determined by the donating member independently, without consultation with the Association; and provided further that information concerning fees received by said Foundation shall not be disseminated to other veterinarians;

(C) The Association's Ethics Committee from considering complaints of members' clients, provided that the Ethics Committee may not consider, recommend or suggest a specific fee for veterinary services in any case. With regard to any fee charged for veterinary services, the Ethics Committee's action shall be limited to a recommendation to the member and the client that they consult further regarding the matter, and the Ethics Committee shall not consider the matter further. In any such case, the Ethics Committee shall make and retain for five years a written summary of the proceedings setting forth the name of the complainant, the name of the veterinarian, a concise statement of the complaint and of the veterinarian's response and any action taken by the Committee. Said summary shall not mention the amount of any fee involved; or

(D) The Association from sponsoring programs or disseminating materials advising veterinarians generally regarding the economics of practice. Such programs and materials may discuss factors veterinarians consider in setting their fees independently; provided that no such program or materials use or suggest amounts, ranges of figures, markups, margins or other percentage figures or any other quantification to be applied to such factors, and provided further that no such programs or materials may incorporate, refer or relate to any fee survey or fee schedule, or any other information which would tend to stabilize fees.

VI

Defendant is ordered and directed:

(A) Within sixty (60) days from the entry of this Final Judgment, to send a copy of this Final Judgment together with a letter identical in text to that attached to this Final Judgment as Appendix A, to each member and to cause the publication of this Final Judgment in defendant"s newsletter.

(B) To serve a copy of this Final Judgment together with a letter identical in text to that attached to this Final Judgment as Appendix A, upon all of its future members at such time as they become members.

(C) To direct its members to return to defendant all fee schedules and fee surveys distributed or mailed to members by defendant and to mail or deliver to plaintiff all fee schedules and fee surveys received from members in response thereto.

(E) To file with this Court and serve upon the plaintiff within sixty (60) days after the date of entry of this Final Judgment an affidavit as to the fact and manner of compliance with subsections (A) and (C) of this Section VI.

VII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:

(1) Access during office hours of such defendant to inspect and copy all

books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

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

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law. If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the

Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which that defendant is not a party.

VIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final 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 Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

IX

Entry of this Final Judgment is in the public interest.

Dated: October 31, 1977

/s/ CHARLES B. RENFREW
UNITED STATES DISTRICT JUDGE

APPENDIX A

Re: Final Judgment in United States v. Alameda County Veterinary Medical Association, Civil No. 75-2398 CBR

Dear Sir:

Enclosed herewith is a copy of a Final Judgment entered , 1977 in United States v. Alameda County Veterinary Medical Association, Civil No. 75-2398 CBR. The terms of the Final Judgment require that a copy of the Judgment as well as this letter be sent to you. You should read the terms of the Final Judgment carefully and note that you, as an individual, under certain circumstances are bound by its provisions. The purpose of this letter is to help you understand those provisions.

The essence and intent of the Final Judgment is that the Alameda County Veterinary Medical Association may not in any way prepare, publish, adopt, sponsor, or distribute any minimum, recommended, suggested, or advisory fee schedule or fee survey. The principal purpose of the Judgment is to prohibit the association and its members from engaging in fee activity of any sort except as specifically permitted by subsections (A), (B), (C), and (D) of Section V of the Judgment. Under the law and this decree, you or your veterinary hospital must set your own veterinary fees independently without consultation or agreement with the Association or with any other veterinarians.

The Judgment also prohibits the Association and its members from agreeing on a rule of ethics or policy which inhibits you from deciding to accept referrals from animal welfare agencies for veterinary services at reduced fees. You must decide independently whether to accept such referrals.

The Association is required to collect all fee schedules, results of fee surveys, and similar documents (including

copies thereof) you may have received from the Association. Accordingly, you are instructed to return any such fee schedules to the secretary of the association within seven (7) days of your receipt of this letter.

UNITED STATES v. FEDERATED DEP'T STORES, INC., *et al.*

Civil No. 76-858 RHS

Year Judgment Entered: 1978

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Federated Department Stores, Inc., d/b/a I. Magnin & Co., and Saks & Co., d/b/a Saks Fifth Avenue., U.S. District Court, N.D. California, 1978-1 Trade Cases ¶62,129, (Mar. 10, 1978)

United States v. Federated Department Stores, Inc., d/b/a I. Magnin & Co., and Saks & Co., d/b/a Saks Fifth Avenue.

1978-1 Trade Cases ¶62,129. U.S. District Court, N.D. California, Civil No. 76-858 RHS, Entered March 10, 1978, (Competitive impact statement and other matters filed with settlement: 42 *Federal Register* 59125, 43 *Federal Register* 9659).

Case No. 2516, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Exchange of Information: Women's Clothing Industry: Consent Decree.– A women's clothing retailer was enjoined by a consent decree from fixing prices or markups, and from acting to coerce or attempt to influence others to adhere to any suggested price or markup in connection with any women's clothing offered for sale at retail. The defendant was also enjoined from exchanging information as to prices, price changes, markups, or markup changes, and as to any third person's refusals to adhere to, or to change prices or markups. The decree barred the defendant from soliciting, accepting or offering lists of actual or proposed prices or markups involving other retailers; and any list promulgated and offered to any manufacturer should be labeled as confidential.

Department of Justice Enforcement and Procedure: Consent Decree: Administrative Provisions: Notice of Compliance: Applicability of Provisions.– A women's clothing retailer was required, under the terms of a consent decree, to advise its officers and employees, for a period of ten years, of the obligations under the decree. On each anniversary of the decree, during that period, defendant was also required to report all steps taken to discharge its obligations. The provisions of the decree applied solely to a division of the defendant or its successors and successors should be required by the defendant to consent to be bound by the decree.

For plaintiG: John H. Shenefield, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Anthony E. Desmond, David W. Raub, Glenda R. Jermanovich, and Elizabeth B. Wurzburg, Attys., Dept. of Justice. **For defendants:** Jerome I. Chapman of Arnold & Porter, Washington, D. C.

Final Judgment

SCHNACKE, D. J.: Plaintiff, United States of America, having filed its complaint herein on April 28, 1976, and Defendant Federated Department Stores, Inc., doing business as I. Magnin & Co., having appeared by its attorneys, and the Plaintiff and the Defendant, 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 this Final Judgment constituting evidence or an admission by any party with respect to any such issue;

Now, Therefore, before the taking of any testimony and upon the consent of the parties hereto, it is hereby,

Ordered, Adjudged and Decreed as follows:

I.

[*Jurisdiction*]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a claim upon which relief may be granted against the Defendant under Section I of the Sherman Act (15 U. S. C.§1).

II.

[*Definitions*]

As used in this Final Judgment:

(A) "Person"means any individual, corporation, partnership, firm, association or other business or legal entity.

(B) "Women's clothing"means dresses, suits, coats, separates, sportswear, and other items of outerwear intended to be worn by women, but excluding shoes, furs, millinery, and accessories.

(C) "Markup"means the difference between the cost price of an item and its retail price.

(D) "Operation"means a division or component portion of Federated Department Stores, Inc. which sells women's clothing at retail.

III.

[*Applicability*]

The provisions of this Final Judgment shall apply solely:

(A) To each of the following operations of Defendant:

(1) The I. Magnin & Co. division of the Defendant; or

(2) Any operation of the Defendant in any form (including but not limited to subsidiary, branch or division) which shall at any time succeed to the business of the I. Magnin & Co. division, whether by transfer of stock or assets, reorganization or otherwise; and

(3) Any operation of the Defendant which engages in the business of selling women's clothing under a trade name incorporating the words"I. Magnin"or any variation thereof.

(B) To each officer, director, agent, employee, subsidiary, successor or assign of each operation specified in Part III (A) above;

(C) To all other persons in active concert or participation with any of those specified in Part III(A) or III(B) above who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

[*Successors*]

The Defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of the assets used in any operation specified in Part III(A) above, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court, and serve upon the Plaintiff, its consent to be bound by this Final Judgment.

V.

[*Price Fixing*]

(A) The Defendant is enjoined and restrained from entering into, adhering to, maintaining, furthering or enforcing, directly or indirectly, any agreement, understanding, plan or program with any other person to raise, fix, stabilize or maintain prices, markups or other terms or conditions at which women's clothing is offered for sale at retail.

(B) The Defendant is enjoined and restrained from acting, either unilaterally or in concert with any other person, directly or indirectly, to induce, coerce or attempt to influence any other retailer to adhere to any manufacturer's suggested or other retail prices or markups for any women's clothing offered for sale at retail.

VI.

[*Price Information*]

(A) The Defendant is enjoined and restrained from communicating directly or indirectly to any other retailer of women's clothing information concerning:

(1) The actual or proposed prices, price changes, markups, or markup changes of any women's clothing Defendant offers or proposes to offer for sale at retail;

(2) The actual or proposed prices, price changes, markups or markup changes of any women's clothing offered or proposed to be offered for sale at retail by any person other than the Defendant;

(3) Any third person's refusal to adhere to or intention not to adhere to any manufacturer's suggested or other retail prices or markups for any women's clothing offered or proposed to be offered for sale at retail;

(4) Any third person's refusal to change or intention not to change its prices or markups for any women's clothing offered or proposed to be offered for sale at retail.

(B) The Defendant is enjoined and restrained from:

(1) Soliciting or accepting from any person any list of actual or proposed prices or markups pertaining to any women's clothing where the Defendant knows or has reason to believe that the list was promulgated by any retailer other than the Defendant;

(2) Offering to any person any list of actual or proposed prices or markups pertaining to any women's clothing for the purpose of dissemination to any retailer other than Defendant.

(C) Any written list of actual or proposed prices or markups pertaining to women's clothing which is promulgated and offered to any manufacturer of women's clothing by any operation specified in Part III (A) above shall contain the following legend at the top of each page thereof:“Confidential--Not for distribution to any retailer outside of Federated Department Stores, Inc.”

(D) Nothing in this Final Judgment shall apply to any communications from the Defendant to the general public concerning prices or markups, nor, except as provided in Part VII below, to any communications or transactions concerning prices, markups or any other subject solely between or among any employees of Federated Department Stores, Inc.

VII.

[*Notice*]

The Defendant is ordered and directed to:

(A) Distribute a copy of this Final Judgment to each of its Directors and, for a period of ten (10) years from the date of entry of this Final Judgment, take affirmative steps (including, but not limited to, distribution of this Final Judgment, written directives setting forth corporate compliance policies and meetings to review the terms and obligations of this Judgment) to advise each of its officers, merchandise managers, buyers, assistant buyers, store managers and other employees having managerial or supervisory responsibility for the purchasing or pricing of women's clothing offered for sale at retail (i) by any operation specified in Part III (A) above and (ii) by the Bullock's Northern California division of the Defendant or any operation that succeeds to the business thereof, of their obligations under this Final Judgment and of the criminal penalties for engaging in conduct prohibited in Parts V and VI of this Final Judgment.

(B) Within sixty (60) days after receipt from the attorney for the Plaintiff, following the entry of this Final Judgment, of a written listing of the names and mailing addresses of persons offering women's clothing for sale at retail in Northern California, distribute a conformed copy of this Final Judgment to each person so listed.

(C) For a period of ten (10) years from the date of entry of this Final Judgment, on each anniversary date thereof, file with this Court and mail to the Plaintiff an affidavit of the person responsible for the performance of the Defendant's obligations under Subsection (A) of this Part VII setting forth all steps that Defendant has taken during the preceding year to discharge such obligations.

(D) Within ninety (90) days after receipt of the written listing provided for in Subsection (B) of this Part VII, file with this Court and mail to the Plaintiff an affidavit setting forth the manner of compliance with that Subsection.

VIII.

[*Inspection*]

(A) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, the Defendant shall permit duly authorized representatives of the Department of Justice, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant at its principal office, subject to any legally recognized privilege:

(1) Access, during the regular business hours of Defendant, who may have counsel present, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the Defendant which relate to any matters contained in this Final Judgment;

(2) Subject to the reasonable convenience of the Defendant, and without restraint or interference from it, to interview any officers or employees of Defendant, who may have counsel present, regarding any matters contained in this Final Judgment.

(B) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, the Defendant shall submit such reports in writing, under oath if so requested, with respect to any matters contained in this Final Judgment as may from time to time be requested in writing by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division.

(C) No information obtained by the means provided in this Part VIII shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at any time information or documents are furnished by Defendant to Plaintiff, and Defendant represents and identifies in writing the material in any such information or documents of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said Defendant marks each pertinent page of such material,“Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,”then 10 days notice shall be given by Plaintiff to Defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the Defendant is not a party.

IX.

[*Retention of Jurisdiction*]

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

X.

[*Public Interest*]

Entry of this Final Judgment is in the public interest.

UNITED STATES v. GREAT W. SUGAR CO., *et al.*

Civil No. 74-2674 SW

Year Judgment Entered: 1978

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Great Western Sugar Co., Holly Sugar Corp., California and Hawaiian Sugar Co., Amalgamated Sugar Co., and National Sugarbeet Growers Federation., U.S. District Court, N.D. California, 1978-2 Trade Cases ¶62,235, (Sept. 13, 1978)

United States v. Great Western Sugar Co., Holly Sugar Corp., California and Hawaiian Sugar Co., Amalgamated Sugar Co., and National Sugarbeet Growers Federation.

1978-2 Trade Cases ¶62,235. U.S. District Court, N.D. California, Civ. No. 74-2674 SW, Entered September 13, 1978, (Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 27252).

Case No. 2430, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Price Change Announcements: Exchange of Information: Bona Fide Sales: Permitted Transmission of Price Lists or Announcements: Refined Sugar: Consent Decree.– Four sugar refiners and a federation of sugarbeet growers were enjoined by a consent decree from agreeing to fix prices or announce price changes in advance for the sale of refined sugar. The defendants also were enjoined from exchanging information, directly or indirectly, as to the sale of refined sugar. Prohibitions contained in the decree would not apply to proposed or actual bona fide sales of refined sugar. Transmission to a broker of a refiner's own price lists or price announcements was not prohibited under the decree as long as such information was publicly disseminated.

For plaintiG: John H. Shenefield, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Anthony E. Desmond, Christopher S. Crook, and Glenda R. Jermanovich, Attys., Dept. of Justice. **For defendants:** Bruce L. Montgomery, of Arnold & Porter, Washington, D. C., for Great Western Sugar Co.; Rayner M. Hamilton, of White & Case, New York, N. Y., for Holly Sugar Corp.; Brobeck, Phleger & Harrison, San Francisco, Cal., for California and Hawaiian Sugar Co.; Robert P. Mallory, of Lawler, Felix & Hall, Los Angeles, Cal., for Amalgamated Sugar Co.; Charles J. Kall, of Holme, Roberts & Owen, Denver, Colo., for National Sugarbeet Growers Federation.

Final Judgment

Peckham, D. J.: Plaintiff, United States of America, having filed its complaint herein on December 19, 1974 and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment in the above-captioned case, without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or admission by any party with respect to any issue of fact or law herein:

Now, Therefore, without any testimony being taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent of all parties hereto, it is hereby Ordered, Adjudged, and Decreed:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter herein and the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under Section I of the Act of Congress of July 2, 1890, commonly known as the Sherman Act, as amended (15 U. S. C. §1).

II

[*Definitions*]

As used in this Final Judgment:

(A) “Person” means any individual, partnership, firm, corporation, association, or any other business or legal entity;

(B) “Refined sugar” means any grade or type of refined dry or liquid sugar derived from sugar beets or raw cane sugar;

(C) “Refiner” means any company engaged in the processing of sugar beets or the refining of raw cane sugar into, and the sale of, refined sugar;

(D) “Basis price” means the list price of refined sugar sold by a refiner f. o. b. its refinery or processing factory;

(E) “Prepaid freight application,” commonly known as a “prepay,” means a portion of the delivered price for refined sugar equal in amount to a freight charge from a basing point to the customer's location;

(F) “Delivered price” means the price of refined sugar delivered to the customer and generally consists of the basis price plus the prepaid freight application;

(G) “Allowance” means a discount from delivered price;

(H) “Effective selling price” means the price actually charged to the customer by the refiner and generally consists of the delivered price, less any allowance;

(I) “Prices, terms or conditions for the sale of refined sugar” includes, but is not limited to basis prices, prepaid freight applications, allowances, delivered prices or effective selling prices;

(J) “Broker” means a person not an employee of a refiner who arranges the sale of sugar for one or more refiners in exchange for a commission;

(K) “Jobber” means a person who purchases sugar from refiners for resale to industrial users or to wholesalers of grocery sugar;

(L) “Sugarbeet grower representative” means a person who represents one or more associations or organizations of sugarbeet growers;

(M) “Future Prices” means (1) changes or revisions in the prices at which, or the terms or conditions upon which a refiner then sells or offers to sell sugar or (2) the prices, terms or conditions of sale which have been announced publicly by a refiner but have not yet become effective pursuant to the terms of the announcement.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to the defendants and to each of their respective officers, directors, agents and employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them, including brokers, and sugarbeet grower representatives, who shall receive actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment, each defendant, together with its parent company, its controlled subsidiaries, and commonly controlled affiliates along with each of its officers, directors and employees when acting solely in such capacity shall be deemed to be one person. The provisions of this Final Judgment shall apply to acts or transactions of any defendant occurring within, or affecting any acts or transactions within, the States of Indiana, Illinois, Iowa, Minnesota,

(A) Entering into, adhering to, participating in, maintaining, enforcing, or claiming any right under any agreement, contract, understanding, or combination between two or more refiners or jobbers to fix, raise, maintain or stabilize the prices, terms or conditions for the sale of refined sugar;

(B) Requesting, requiring or coercing any refiner or jobber to enter into, adhere to, participate in, maintain or enforce any agreement, contract, understanding or combination between two or more refiners or jobbers to fix, raise, maintain or stabilize the prices, terms or conditions for the sale of refined sugar;

(C) Transmitting or communicating among two or more refiners or jobbers any information concerning prices, terms or conditions for the sale of refined sugar;

(D) Nothing in this Paragraph VII shall apply to any prices, terms or conditions of sale communicated between a sugarbeet grower representative and a refiner solely in connection with a proposed or actual bona fide sale of sugar beets to that refiner.

VIII

[*Notice to Employees*]

Each refiner defendant is ordered and directed:

(A) Within sixty (60) days from the entry of the Final Judgment to (1) serve a copy of this Final Judgment upon each of its officers, directors, agents and employees who have any responsibility for the sale of refined sugar, and (2) obtain a written statement from each such person evidencing his receipt of the Final Judgment, such statement to be retained in the files of the President of each defendant for a period of ten (10) years from the date of service;

(B) Within sixty (60) days after each new officer, director, agent or employee having any responsibility for the sale of refined sugar becomes employed by a defendant, that defendant shall serve a copy of the Final Judgment on that person and obtain a written statement evidencing his receipt of the Judgment, such statement to be retained in the files of the President of each defendant for a period of ten (10) years from the date of service;

(C) Within ninety (90) days from the entry of this Final Judgment, to serve upon plaintiff and to file with the Court, an affidavit concerning the fact and manner of compliance with Subsection (A) of this Section VIII.

IX

[*Notice to Brokers*]

Each refiner defendant is ordered and directed to:

(A) Within sixty (60) days of entry of this Final Judgment to (1) serve by certified mail, return receipt requested, a copy of this Final Judgment upon each broker who, within the past five years has sold its refined sugar, and (2) retain the certified mail receipts evidencing the mailing of the Final Judgment, such receipts to be retained in the files of the President of each defendant for a period of ten (10) years from the date of mailing;

(B) To (1) serve by certified mail, return receipt requested, a copy of this Final Judgment upon each of its future brokers at the time the broker begins selling its refined sugar, and (2) retain the certified mail receipts evidencing the mailing of the Final Judgment, such receipts to be retained in the files of the President of each defendant for a period of ten (10) years from the date of mailing;

(C) Within ninety (90) days from the entry of this Final Judgment, to serve upon the United States and to file with the Court, an affidavit concerning the fact and manner of compliance with Subsection (A) of this Section IX, including the identity of the brokers served.

X

[*Notice to Members*]

The defendant National Sugarbeet Growers Federation is ordered and directed:

(A) Within sixty (60) days from the entry of the Final Judgment to (1) serve a copy of this Final Judgment upon each of its officers, agents, directors and all directors of those sugarbeet grower organizations which are members of the National Sugarbeet Growers Federation, and (2) obtain a written statement from each such person evidencing his receipt of the Final Judgment, such statement to be retained in the files of the National Sugarbeet Growers Federation for a period of ten (10) years from the date of service;

(B) To serve a copy of the Final Judgment on any new director of any sugarbeet grower organization which is a member of the National Sugarbeet Growers Federation and on any new officer, director or employee of the National Sugarbeet Growers Federation within sixty (60) days of his employment or election and obtain a written statement evidencing his receipt of the Judgment, such statements to be retained in the files of the National Sugarbeet Growers Federation for a period of ten (10) years from the date of service;

(C) Within ninety (90) days from the entry of this Final Judgment, to serve upon the United States and to file with the Court an affidavit concerning the fact and manner of compliance with Subsection (A) of this Section X.

XI

[*Inspection*]

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted.

(1) Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

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

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section XI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law. If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, “Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,” then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which that defendant is not a party.

XII

[*Retention of Jurisdiction*]

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final 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 modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

XIII

[*Public Interest*]

Entry of this Final Judgment is in the public interest.

UNITED STATES v. UTAH-IDAHO SUGAR CO., *et al.*

Civil No. 74-2676 SC

Year Judgment Entered: 1978

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Utah-Idaho Sugar Co., and California and Hawaiian Sugar Co., U.S. District Court, N.D. California, 1978-2 Trade Cases ¶62,237, (Sept. 13, 1978)

United States v. Utah-Idaho Sugar Co., and California and Hawaiian Sugar Co.

1978-2 Trade Cases ¶62,237. U.S. District Court, N.D. California, Civ. No. 74-2676 SC, Entered September 13, 1978, (Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 27252).

Case No. 2431, Antitrust Division, Department of Justice.

Sherman Act

Refusal to Deal: Agreements to Refuse to Sell: Private Label Sugar: Consent Decree.– Two sugar refiners were barred by a consent decree from entering or participating in any concerted refusal to sell private label sugar.

For plaintiG: John H. Shenefield, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Anthony E. Desmond, Christopher S. Crook, and Glenda R. Hermanovich, Attys., Dept. of Justice. **For defendants:** James F. Kirkham, of Pillsbury, Madison & Sutro, San Francisco, Cal., for Utah-Idaho Sugar Co.; Brobeck, Phleger & Harrison, San Francisco, Cal., for California and Hawaiian Sugar Co.

Final Judgment

Peckham, D. J.: Plaintiff, United States of America, having filed its complaint herein on December 19, 1974 and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment in the above-captioned case, without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or admission by any party with respect to any issues of fact or law herein:

Now, Therefore, without any testimony being taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent of all parties hereto, it is hereby Ordered, Adjudged, and Decreed:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter herein and the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under Section I of the Act of Congress of July 2, 1890, commonly known as the Sherman Act, as amended (15 U. S. C. §1).

II

[*Definitions*]

As used in this Final Judgment:

(A) “Person” means any individual, partnership, firm, corporation, association, or any other business or legal entity;

(B) “Refined sugar” means any grade or type of refined dry or liquid sugar derived from sugar beets or raw cane sugar;

(C) “Refiner” means any company engaged in the processing of sugar beets or the refining of raw cane sugar into, and the sale of, refined sugar;

(D) “Private label sugar” means refined sugar packed by a refiner for resale to the general public as sugar, and sold under the brand name of a non-refiner purchaser and which does not reveal the identity of the refiner of the sugar on the package.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to the defendants and to each of their respective officers, directors, agents and employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them, including brokers, jobbers and sugarbeet grower representatives, who shall receive actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall apply to acts or transactions of any defendant occurring within, or affecting any acts or transactions within, the States of Washington, Oregon, Utah, Idaho and Wyoming (west of the town of Rawlins).

IV

[*Private Label Sugar*]

Each refiner defendant is enjoined and restrained from entering into, adhering to, participating in, maintaining, enforcing or claiming any right under any agreement, contract, understanding, or combination reached directly with any other refiner or indirectly through any intermediary, including but not limited to brokers, sugarbeet grower representatives and sugar cane grower representatives, to refrain from selling private label sugar.

V

[*Notice to Employees*]

Each refiner defendant is ordered and directed for a period of ten (10) years:

(A) Within sixty (60) days from the entry of the Final Judgment to (1) serve a copy of this Final Judgment upon each of its officers, directors, agents and employees who have any responsibility for the sale of refined sugar, and (2) obtain a written statement from each such person evidencing his receipt of the Final Judgment, such statement to be retained in the files of the President of each defendant for a period of ten (10) years from the date of service;

(B) Within sixty (60) days after each new officer, director, agent or employee having any responsibility for the sale of refined sugar becomes employed by a defendant, that defendant shall serve a copy of the Final Judgment on that person and obtain a written statement evidencing his receipt of the Judgment, such statement to be retained in the files of the President of each defendant for a period of ten (10) years from the date of service;

(C) Within ninety (90) days from the entry of this Final Judgment, to serve upon plaintiff and to file with the Court, an affidavit concerning the fact and manner of compliance with Subsection (A) of this Section V.

VI

[*Notice to Brokers*]

Each refiner defendant is ordered and directed to:

(A) Within sixty (60) days of entry of this Final Judgment to (1) serve by certified mail, return receipt requested, a copy of this Final Judgment upon each broker who, within the past five years has sold its refined sugar, and (2) retain the certified mail receipts evidencing the mailing of the Final Judgment, such receipts to be retained in the files of the President of each defendant for a period of ten (10) years from the date of mailing;

(B) Serve by certified mail for a period of 10 years, return receipt requested, a copy of this Final Judgment upon each of its future brokers at the time the broker begins selling its refined sugar, and (2) retain the certified mail

receipts evidencing the mailing of the Final Judgment, such receipts to be retained in the files of the President of each defendant for a period of ten (10) years from the date of mailing;

(C) Within ninety (90) days from the entry of this Final Judgment, to serve upon the United States and to file with the Court, an affidavit concerning the fact and manner of compliance with Subsection (A) of this Section VI, including the identity of the brokers served.

VII

For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:

(1) Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

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

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law. If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, “Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,” then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which that defendant is not a party.

VIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final 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 modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

IX

Entry of this Final Judgment is in the public interest.

UNITED STATES v. CALIFORNIA & HAWAIIAN SUGAR CO., *et al.*

Civil No. 74-2675 RHP

Year Judgment Entered: 1978

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. California and Hawaiian Sugar Co., Holly Sugar Corp., and Consolidated Foods Corp., U.S. District Court, N.D. California, 1978-2 Trade Cases ¶62,236, (Sept. 14, 1978)

United States v. California and Hawaiian Sugar Co., Holly Sugar Corp., and Consolidated Foods Corp.

1978-2 Trade Cases ¶62,236. U.S. District Court, N.D. California, Civ. No. 74-2675 RHP, Entered September 14, 1978, (Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 27252).

Case No. 2428, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Exchange of Information: Bona Fide Sales: Permitted Transmission of Price Lists or Announcements: Consent Decree.– Three sugar refiners were enjoined by a consent decree from agreeing to fix prices or to announce price changes in advance for the sale of refined sugar. The prohibitions contained in the decree would not apply to proposed or actual bona fide sales of refined sugar. Transmission to a broker of a refiner's own price lists or price announcements were not prohibited under the decree as long as such information was publicly disseminated.

For plaintiG: John H. Shenefield, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Anthony E. Desmond, Christopher S. Crook, Glenda R. Jermanovich, Attys., Dept. of Justice. **For defendants:** Brobeck, Phleger & Harrison, San Francisco, Cal., for California and Hawaiian Sugar Co.; Rayner M. Hamilton, of White & Case, New York, N. Y., for Holly Sugar Corp.; Lawrence W. Keeshan, of Heller Ehrman White & McAuliffe, San Francisco, Cal., for Union Sugar Div. of Consolidated Foods Corp.

Final Judgment

Peckham, D. J.: Plaintiff, United States of America, having filed its complaint herein on December 19, 1974 and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment in the above-captioned case, without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or admission by any party with respect to any issue of fact or law herein:

Now, Therefore, without any testimony being taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent of all parties hereto, it is hereby Ordered, Adjudged, and Decreed:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter herein and the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under Section I of the Act of Congress of July 2, 1890, commonly known as the Sherman Act, as amended (15 U. S. C. §1).

II

[*Definitions*]

As used in this Final Judgment:

(A) “Person” means any individual, partnership, firm, corporation, association, or any other business or legal entity;

(B) “Refined sugar” means any grade or type of refined dry or liquid sugar derived from sugar beets or raw cane sugar;

(C) “Refiner” means any company engaged in the processing of sugar beets or the refining of raw cane sugar into, and the sale of, refined sugar;

(D) “Basis price” means the list price of refined sugar sold by a refiner f. o. b. its refinery or processing factory;

(E) “Prepaid freight application,” commonly known as a “prepay,” means a portion of the delivered price for refined sugar equal in amount to a freight charge from a basing point to the customer's location;

(F) “Delivered price” means the price of refined sugar delivered to the customer and generally consists of the basis price plus the prepaid freight application;

(G) “Allowance” means a discount from delivered price;

(H) “Effective selling price” means the price actually charged to the customer by the refiner and generally consists of the delivered price, less any allowance;

(I) “Prices, terms or conditions for the sale of refined sugar” includes, but is not limited to basis prices, prepaid freight applications, allowances, delivered prices or effective selling prices;

(J) “Broker” means a person not an employee of a refiner who arranges the sale of sugar for one or more refiners in exchange for a commission;

(K) “Jobber” means a person who purchases sugar from refiners for resale to industrial users or to wholesalers of grocery sugar;

(L) “Sugarbeet grower representative” means a person who represents one or more associations or organizations of sugarbeet growers;

(M) “Future Prices” means (1) changes or revisions in the prices at which, or the terms or conditions upon which a refiner then sells or offers to sell sugar or (2) the prices, terms or conditions of sale which have been announced publicly by a refiner but have not yet become effective pursuant to the terms of the announcement.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to the defendants and to each of their respective officers, directors, agents and employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them, including brokers, and sugarbeet grower representatives, who shall receive actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment, each defendant, together with its parent company, its controlled subsidiaries, and commonly controlled affiliates along with each of its officers, directors and employees when acting solely in such capacity shall be deemed to be one person. The provisions of this Final Judgment shall apply to acts or transactions of any defendant occurring within, or affecting any acts or transactions within, the States of California and Arizona and the Cities of Las Vegas and Reno, Nevada.

IV

[*Price Fixing Announcements*]

Each refiner defendant is enjoined and restrained from entering into, adhering to, participating in, maintaining, enforcing or claiming any right under any agreement, contract, understanding, or combination reached directly with any other refiner, jobber or other seller of refined sugar (except retail grocers), or indirectly through any intermediary, including but not limited to brokers, sugarbeet grower representatives and sugar cane grower representatives, to:

(A) Fix, raise, maintain or stabilize the prices, terms or conditions for the sale of refined sugar;

(B) Give any prior notice of or announce in advance any change or contemplated change in prices, terms or conditions for the sale of refined sugar.

V

[*Exchange of Information*]

Each refiner defendant is enjoined and restrained from:

(A) Directly communicating to any other refiner information concerning Future Prices.

(B) Requesting, requiring or coercing any third person, including but not limited to brokers and sugarbeet grower representatives, to communicate to any other refiner, information concerning Future Prices.

(C) For a period of ten (10) years from the date of entry of this Final Judgment,

(1) Directly communicating to any other refiner information concerning:

(a) the prices at which, or terms or conditions upon which, refined sugar is then being sold or offered for sale; or

(b) the prices at which, or terms or conditions upon which, other than prices or terms or conditions described in subsection (1)(a) of this paragraph (C), refined sugar has been sold or offered for sale within the one (1) year period ending on the date of the communications;

(2) Requesting, requiring or coercing any third person, including but not limited to brokers and sugarbeet growers representatives, to communicate to any other refiner, information concerning the prices at which, or terms or conditions upon which, refined sugar is then being sold or offered for sale.

VI

[*Bona Fide Sales*]

Without limiting the provisions of Sections IV and V nothing in Paragraphs IV and V above shall prohibit:

(A) The communication or exchange, either directly or indirectly, of any prices, terms or conditions of sale from any refiner defendant to another refiner solely in connection with a proposed or actual bona fide sale of refined sugar from one refiner to another refiner or to any agreement to the prices, terms or conditions at which any such bona fide sale is actually made;

(B) The communication or exchange, either directly or indirectly, of any prices, terms or conditions of sale, between any refiner defendant and a buyer of refined sugar (other than a refiner) concerning a proposed or actual bona fide sale by such a refiner or any other refiner to such buyer or to any agreement to the prices, terms or conditions at which any such bona fide sale is actually made;

(C) The communication or exchange, either directly or indirectly, of any prices, terms or conditions of sale between a sugarbeet grower representative or a sugar cane grower representative and a refiner solely in connection with a proposed or actual bona fide sale of sugar beets or sugar cane to that refiner or to any agreement to the prices, terms or conditions at which any such bona fide sale is actually made;

(D) The communication or exchange, either directly or indirectly, between any refiner defendant and any broker of any prices, terms or conditions of sale communicated between a refiner and a buyer of refined sugar (other than a refiner) concerning a proposed or actual bona fide sale of refined sugar; and

(E) The transmission to a broker of a refiner's own price lists or price announcements, including price announcements whose terms have not yet become effective, at the same time or after such price lists or announcements are released for publication by such refiner, with the request that such information be publicly disseminated.

VII

[*Notice to Employees*]

Each refiner defendant is ordered and directed:

(A) Within sixty (60) days from the entry of the Final Judgment to (1) serve a copy of this Final Judgment upon each of its officers, directors, agents and employees who have any responsibility for the sale of refined sugar, and (2) obtain a written statement from each such person evidencing his receipt of the Final Judgment, such statement to be retained in the files of the President of each defendant for a period of ten (10) years from the date of service;

(B) Within sixty (60) days after new officer, director, agent or employee having any responsibility for the sale of refined sugar becomes employed by a defendant, that defendant shall serve a copy of the Final Judgment on that person and obtain a written statement evidencing his receipt of the Judgment, such statement to be retained in the files of the President of each defendant for a period of ten (10) years from the date of service;

(C) Within ninety (90) days from the entry of this Final Judgment, to serve upon plaintiff and to file with the Court, an affidavit concerning the fact and manner of compliance with Subsection (A) of this Section VII.

VIII

[*Notice to Brokers*]

Each refiner defendant is ordered and directed to:

(A) Within sixty (60) days of entry of this Final Judgment to (1) serve by certified mail, return receipt requested, a copy of this Final Judgment upon each broker who, within the past five years has sold its refined sugar, and (2) retain the certified mail receipts evidencing the mailing of the Final Judgment, such receipts to be retained in the files of the President of each defendant for a period of ten (10) years from the date of mailing;

(B) To (1) serve by certified mail, return receipt requested, a copy of this Final Judgment upon each of its future brokers at the time the broker begins selling its refined sugar, and (2) retain the certified mail receipts evidencing the mailing of the Final Judgment, such receipts to be retained in the files of the President of each defendant for a period of ten (10) years from the date of mailing;

(C) Within ninety (90) days from the entry of this Final Judgment, to serve upon the United States and to file with the Court, an affidavit concerning the fact and manner of compliance with Subsection (A) of this Section VIII, including the identity of the brokers served.

IX

[*Inspections*]

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:

(1) Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

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

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law. If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which that defendant is not a party.

X

[*Retention of Jurisdiction*]

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final 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 modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

XI

[*Public Interest*]

Entry of this Final Judgment is in the public interest.

UNITED STATES v. ENDERLE METAL PRODS. CO., *et al.*

Civil No. C77-1579 CFP

Year Judgment Entered: 1979

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Enderle Metal Products Co., Noll Manufacturing Co., Sugden Engineering Co., and Wellmade Metal Products Co., U.S. District Court, N.D. California, 1979-1 Trade Cases ¶62,517, (Jan. 29, 1979)

United States v. Enderle Metal Products Co., Noll Manufacturing Co., Sugden Engineering Co., and Wellmade Metal Products Co.

1979-1 Trade Cases ¶62,517. U.S. District Court, N.D. California, No. C77-1579 CFP, Entered January 29, 1979.

(Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 51857). Case No. 2599, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Exchange of Information: Furnace Pipe and Fittings: Consent Decree.– Four California furnace pipe and fitting firms were enjoined by a consent decree from fixing prices and exchanging information concerning prices, conditions, price changes and future prices in connection with the sale of furnace pipe and fittings. The exchange of information prohibition should not apply to *bona fide* transactions and to the transmission of price lists regularly issued in the course of business, previously released and circulated to the trade generally. One of the defendants was ordered to send copies of its current price book to each account or former account in the Northern California Market to which it sold furnace pipe and fittings during a two-year period immediately preceding. April 1975.

For plaintiff: John H. Shenefield, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Anthony E. Desmond, William S. Farmer, Jr., Irene Saal Holmes, Attys., Dept. of Justice. For defendants: Melby & Anderson, by Henry Melby, Glendale, Cal., for Enderle Metal Products Co.; Ehrlich, Allison & Sparks, by Philip Ehrlich, San Francisco, Cal., for Noll Manufacturing Co.; Garfield, Tepper & Ashworth, by Franklin Garfield, Century City, Cal., for Sugden Engineering Co.; Kipperman, Shawn, Keker & Brockett, by Steven M. Kipperman, San Francisco, Cal., for Wellmade Products Co.

Final Judgment

POOLE, D. J.: Plaintiff, United States of America, having filed its complaint herein on July 21, 1977, and plaintiff and defendants by their respective attorneys having each consented to the entry of this Final Judgment without trial or adjudication of any issues of fact or law herein, and without this Final Judgment constituting evidence against or admission by any party hereto with respect to any such issue;

Now, Therefore, before the taking of any testimony and without trial or adjucation of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed, as follows:

I

[*Jurisdiction*]

This Court has jurisdiction over the subject matter of this action and of the parties hereto. The Complaint states claims upon which relief may be granted against the defendants under Section 1 of the Sherman Act (15 U. S. C. §1).

II

As used in this Final Judgment:

(A) “Person” means any individual, partnership, corporation, association, firm or other business or legal entity;

(B) “Furnace pipe and fittings” means pipe, ducts and fittings used to install heating and air conditioning systems in residential and commercial structures;

(C) “Manufacturer” means a person who produces and sells furnace pipe and fittings, and includes each of the defendants;

(D) “Northern California market” means Reno, Nevada and California generally north of Bakersfield;

III

[*Applicability*]

The provisions of this Final Judgment shall apply to each defendant and to each of defendants' officers, directors, employees, agents, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment, each defendant together with its controlled subsidiaries and each of its officers, directors and employees when acting solely in such capacity shall be deemed to be one person.

IV

[*Price Fixing*]

Each defendant is enjoined and restrained from entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program with any other person, directly or indirectly:

(A) To fix, establish, raise, maintain or stabilize the price or prices at which furnace pipe and fittings are sold to third persons whom furnace pipe and fittings may be sold.

V

[*Exchange of Information*]

Each defendant is enjoined and restrained from:

(A) Communicating to, requesting from, or exchanging with any other manufacturer, information concerning:

(1) Prices or terms or conditions upon which furnace pipe and fittings would then be or are then being sold or offered for sale by any manufacturer;

(2) Future prices or terms or conditions upon which furnace pipe and fittings will be sold or offered for sale;

(3 Consideration of changes or revisions in the prices or terms or conditions upon which any manufacturer sells or offers to sell furnace pipe and fittings;

(B) Complaining or otherwise commenting to any manufacturer concerning prices charged by that manufacturer.

VI

[*Business Transactions*]

Nothing in Section V hereof shall prohibit:

(A) The communication of information, by employees of defendant who routinely conduct furnace pipe and fittings purchase and sale transactions, to such employees of another manufacturer in the course of, and related to, negotiating for, entering into, or carrying out a bona fide purchase or sale transaction between such defendant and such other manufacturer;

(B) The transmission by a defendant, without additional comment or explanation, to another manufacturer upon the request of said manufacturer, of such defendant's price list or price book (or any change therein) for furnace pipe and fittings regularly issued in the course of business, which price book or price list (or said change) such defendant had previously released and circulated to the trade generally, prices included in such price list or price book (or said change).

VII

[*Current Prices*]

Defendant Enderle Metal Products Company shall:

(A) Send copies of its current price book to each account or former account in the Northern California Market to which it sold furnace pipe and fittings during the two (2) year period immediately preceding April 1975

(B) Within ninety (90) days after the entry of this Final Judgment, file with the Court, and serve a copy on plaintiff, an affidavit concerning the fact and manner of compliance with this Section VII.

VIII

[*Notice*]

Each defendant is ordered and directed to:

(A) Within sixty (60) days after the entry of this Final Judgment furnish a conformed copy hereof to: (1) each of its own officers and directors; (2) each of its own employees and agents who has any responsibility for the pricing or sale of furnace pipe and fittings; and (3) each officer, director and aforementioned employee and agent of a domestic subsidiary of said defendant engaged in the manufacture or sale of furnace pipe and fittings; and advise and inform each such person that violation of this Final Judgment could result in a conviction for contempt of court and imprisonment and/or fine.

(B) Within ninety (90) days after the entry of this Final Judgment, file with the Court, and serve a copy on plaintiff, an affidavit concerning the fact and manner of compliance with Paragraph (A) of this Section VIII.

(C) Furnish a copy of this Final Judgment to each successor to an officer, director, or employee described in Paragraph (A) of this Section, together with the advice specified by said paragraph, within thirty (30) days after such succession occurs.

(D) For a period of five (5) years from the entry of this Final Judgment, obtain, and retain in its files, from each officer, director, employee and agent furnished with a copy of this Final Judgment pursuant to Paragraph (A) or Paragraph (C) of this Section VIII, a signed statement evidencing each such person's receipt of a copy of this Final Judgment.

IX

[*Inspections*]

(A) For the purpose of determining or securing compliance with this Final Judgment:

(1) 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 a defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(a) Access during the office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the 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, directors, employees and agents of the defendant, who may have counsel present regarding

any such matters. Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, shall submit such reports in writing, under oath if requested, with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

(B) No information or documents obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at any time information or documents are furnished by a defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents which is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, “Subject to Claim of Protection under the Federal Rules of Civil Procedure,” then ten (10) days' notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

X

[*Retention of Jurisdiction*]

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

XI

[*Public Interest*]

Entry of this Final Judgment is in the public interest.

UNITED STATES v. GOLDEN GATE SPORTFISHERS, INC.

Civil No. C78-1608 WWS

Year Judgment Entered: 1979

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Golden Gate Sportfishers, Inc., U.S. District Court, N.D. California, 1979-1 Trade Cases ¶62,571, (Mar. 22, 1979)

United States v. Golden Gate Sportfishers, Inc.

1979-1 Trade Cases ¶62,571. U.S. District Court, N.D. California, Civil No. C78-1608 WWS Entered March 22, 1979.

(Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 56289). Case No. 2647, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Charter Fishing Boats: Consent Decree.– A trade association of charter fishing boat operators was barred by a consent decree from price fixing activities in connection with the prices charged for passage on sportfishing boats.

For plaintiG: John H. Shenefield, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Anthony E. Desmond, and Robert B. Ross, Attys., Dept. of Justice. **For defendant:** John Connell.

Final Judgment

SCHWARZER, D. J.: Plaintiff, United States of America, having filed its complaint herein on July 19, 1978, and defendant, Golden Gate Sportfishers, Inc., having appeared by its counsel, and both parties by their respective attorneys having consented to the making and entry of this Final Judgment without admission by any party in respect to any issue;

Now, Therefore, before any testimony has been taken herein, without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed, as follows:

I

[*Jurisdiction*]

This Court has jurisdiction over the subject matter of this action and of the parties hereto. The complaint states claims upon which relief may be granted against the defendant under Section I of the Sherman Act [15 U. S. C. §1].

II

[*Definitions*]

As used in this Final Judgment:

(A) “Defendant” means defendant Golden Gate Sportfishers, Inc.;

(B) “Person” means any individual, partnership, corporation, association, firm, or any other business or legal entity;

III

[*Applicability*]

The provisions of this Final Judgment shall apply to the defendant and to each of its officers, directors, agents, employees, chapters, successors and assigns, and to all other persons, including members of the defendant, in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Price Fixing*]

Defendant is enjoined and restrained from directly or indirectly:

(A) Entering into, adhering to, maintaining, or furthering any contract, agreement, understanding, plan or program, to fix, establish, or maintain prices charged by sportfishing boats to carry passengers.

(B) Advocating, suggesting, urging, inducing, compelling, or in any other manner influencing or attempting to influence members of the defendant and/or any other person to use or adhere to any price to be charged for passage on sportfishing boats;

(C) Policing, urging, coercing, influencing, or attempting to influence in any manner any member or any other person, or devising or putting into effect any procedure (including but not limited to picketing) the effect of which is to fix, maintain, or stabilize prices to be charged by members or any other persons for passage on sportfishing boats.

V

[*Notice*]

Defendant is ordered and directed:

(A) Within 60 days after entry of this Final Judgment to serve a copy of this Final Judgment together with a letter identical in text to that attached to this Final Judgment as Appendix A, upon each of those persons who are or have been officers or members of defendant at any time since January 1, 1977.

(B) To serve a copy of this Final Judgment together with a letter identical in text to that attached to this Final Judgment as Appendix A, upon all of its future members at such time as they become members;

(C) To file with this Court and serve upon the plaintiff within sixty (60) days after the date of entry of this Final Judgment an affidavit as to the fact and manner of compliance with subsection A of this Section V.

VI

[*Inspections*]

(A) For the purpose of determining or securing compliance with this Final Judgment, any duly authorized representative 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 defendant made to its principal office, be permitted, subject to any legally recognized privilege:

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

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

(B) Defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at the time information or documents are furnished by a defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents which is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to Claim of Protection under the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

VII

[*Retention of Jurisdiction*]

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final 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 Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

VIII

[*Public Interest*]

Entry of this Final Judgment is in the public interest.

UNITED STATES v. SPECTRA-PHYSICS, INC., *et al.*

Civil No. C 78-1879 TEH

Year Judgment Entered: 1981

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. SPECTRA-PHYSICS, INC. and LASERPLANE CORPORATION, Defendants.	Civil No. C 78-1879 TEH FINAL JUDGMENT Filed: June 2, 1981 Entered: Sept. 3, 1981 Judge Henderson

Plaintiff, United States of America, having filed its complaint on August 18, 1978, and plaintiff and defendants by their respective attorneys having consented to the entry of this Final Judgment, without trial or adjudication of any issue of fact or law and without this Final Judgment constituting evidence or admission by any party with respect to any issue of fact or law:

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law, and upon the consent of the parties, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto. The complaint states claims upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II.

As used in this Final Judgment:

A. "Defendants" shall mean Spectra-Physics, Inc. and/or Laserplane Corporation.

B. "Machine Control Laser Systems" ("MCL Systems") shall mean controls for earth-moving machines generally consisting of (1) a command post or tripod-mounted laser transmitter, (2) a detector or receiver, (3) a control box or electronic interface to the machine, and (4) either a hydraulic system which automatically controls the machine or an indicator or read-out that enables the machine operator to control the machine.

C. "Machine Control Laser Systems Components" ("MCL Systems Components") shall mean one or more of the following components for Machine Control Laser Systems: (1) a command post or tripod-mounted laser transmitter, (2) a detector or receiver, (3) a control box or electronic interface to the machine, and (4) either a hydraulic system which automatically controls the machine or an indicator or read-out that enables the machine operator to control the machine.

D. "MCL Systems Technical Information" shall mean any written information, process, formula, or method for the manufacture of MCL Systems or MCL Systems Components.

E. "Person" shall mean any individual, partnership, firm, corporation, association, or any other business or legal entity.

III.

The provisions of this Final Judgment shall apply to defendants and their officers, directors, agents, employees, subsidiaries, affiliates, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

A. Defendants are ordered and directed to grant to any person who makes a written application therefor within a period of seven (7) years after the date of entry of this Final Judgment:

1. a nonexclusive royalty-free license to make, use and sell MCL Systems or MCL Systems Components under each United States letters patent which defendants had a right to license as of January 1, 1980, such license to be for the full unexpired term of each licensed patent; and

2. a nonexclusive royalty-free license to use for the purpose of making, using and selling MCL Systems or MCL Systems Components, any MCL Systems Technical Information within the possession of defendants as of January 1, 1980, such license to be for the duration requested by the applicant, and to be terminable by the licensee at any time if the MCL Systems Technical Information becomes within the public domain.

B. Defendants are enjoined and restrained from including any restrictions whatsoever in any license granted pursuant to Section IV except as hereinafter provided:

1. A reasonable fee designed to cover the defendants' administrative costs of issuing the license may be charged;

2. Reasonable provisions may be made to forbid the unauthorized use or disclosure to third parties of MCL Systems Technical Information. Defendants also shall have the right to apply restrictive legends to such MCL Systems Technical Information indicating its proprietary and secret nature and to require the return of all copies of such MCL Systems Technical Information upon the termination of the right to use it.

3. Reasonable provisions may be made for cancellation of the license upon breach by the licensee of any of the provisions included in the license.

V.

A. Within fifteen (15) days of the date of this decree, defendants shall file with this Court on the public record and submit in writing to those persons set forth by plaintiff in Appendix A hereto as well as to all other persons known by defendants to be engaged in the manufacture or sale of MCL Systems or MCL Systems Components in the United States, a listing of all patents and MCL Systems Technical Information subject to licensing under this decree. Defendants also shall submit in writing this listing to all other persons identified by plaintiff, from time to time, within fifteen (15) days of such identification. Said listing shall generally describe the technology covered by said patents and MCL Systems Technical Information. Within ninety (90) days of the date of this decree, defendants shall by general description advertise all patents and MCL Systems Technical Information available for licensing under this decree in at least two major trade journals of the general construction industry.

B. Beginning ninety (90) days after the date of this decree and continuing annually thereafter, for seven (7) years, defendants shall submit to this Court and to the Assistant Attorney General in charge of the Antitrust Division written reports setting forth the patents and MCL Systems Technical Information which are available for license pursuant to Section IV, the fact and manner of compliance with Paragraph A of this Section V, a listing of persons submitting applications or making inquiries hereunder, and all licenses issued by defendants pursuant to this Final Judgment during the preceding year.

VI.

Nothing in this Final Judgment shall prevent any person from attacking at any time the validity or scope of any patent nor shall this Final Judgment be construed as imputing any validity to any patent.

VII.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to its principal offices, be permitted:

1. Access during regular office hours of defendants to inspect and copy all relevant books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants and without restraint or interference from them, who may have counsel present; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview officers, employees, and agents of defendants, who may have counsel present;

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendants' principal offices, defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested;

C. No information or documents obtained by the means provided in this Section VII shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with the Final Judgment, or as otherwise required by law; and

D. If at the time information or documents are furnished by defendants to plaintiff in accordance with this Section VII, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendants mark each pertinent page of such material "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceedings (other than a grand jury proceeding) to which defendants are not a party.

VIII.

Defendants shall require, as a condition of the sale or other disposition of all, or substantially all, of the assets of the Construction Systems Division or the Laserplane Division that the acquiring party agrees to be bound by the provisions of this Final Judgment. An acquiring party subject to this provision shall file with the Court, and serve upon the plaintiff, its consent to be bound by this Final Judgment.

IX.

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be

necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance therewith and for the punishment of any violation hereof.

X.

The entry of this Final Judgment is in the public interest.

/s/ Judge Henderson

UNITED STATES DISTRICT JUDGE

APPENDIX A

AGL Corp.
2615 W. Main
Jacksonville, AR

Blount Industries
Box 3511, Hwy. 70 East
North Little Rock, AR 72117

Construction Laser Systems Industries
6383 Arizona Circle
Los Angeles, CA 90045

Control Instruments, Inc.
P. O. Box 1825
Grand Rapids, MI 49501

Laser Alignment
63320 28th St., S.E.
Grand Rapids, MI 49506

Laser Electronics Pty. Ltd.
P. O. Box 359 Southport
Queensland, Australia 4215

Laser Systems of Arizona
10314 W. Montecito
Phoenix, Arizona

Industries Universal
P. O. Box 2028
Calexico, CA 92231

Komatsu Ltd.
Komatsu Building, 2-3-6, Akasaka
Minato-Ku
Tokyo 107, Japan

Reno Energy Systems, Inc.
195 N. Edison
Reno, NV 89502

Vari-Tech Company
546 Leonard St. N.W.
Grand Rapids, MI 49504

Lasertron Company, Inc.
1026 Courtesy Street
Houston, Texas 77032

Honeywell Inc.
Honeywell Plaza
Minneapolis, MN 55408

Deere & Company
John Deere Road
Moline, IL 61265

Caterpillar Tractor Co.
100 N.E. Adams Street
Peoria, IL 61629

UNITED STATES v. ACORN ENG'G CO.

Civil No. C 80-3388 TEH

Year Judgment Entered: 1982

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Acorn Engineering Co., U.S. District Court, N.D. California, 1982-1 Trade Cases ¶64,697, (Mar. 30, 1982)

Click to open document in a browser

United States v. Acorn Engineering Co.

1982-1 Trade Cases ¶64,697. U.S. District Court, N.D. California, Civil No. C 80-3388 TEH, Entered March 30, 1982, (Competitive impact statement and other matters filed with settlement: 47 *Federal Register* 3435, 12886).

Case No. 2792, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions: Vandal-Resistant Plumbing Fixtures: Partial Divestiture of Assets: Trademarks and Patents.– A producer of vandal-resistant, heavy-gauge stainless steel plumbing fixtures was required by a consent decree to divest assets of an acquired competition consisting of all tooling and component parts, all associated engineering drawings, and all patents relating to vandal-resistant plumbing fixtures obtained in the challenged acquisition. Associated trademarks or trade names also had to be sold, and a 10-year ban on acquisitions in the industry, without prior government approval, was imposed. Otherwise, the merger of the companies was allowed to stand.

For plaintiG: William F. Baxter, Asst. Atty. Gen., Mark Leddy, Anthony E. Desmond, Howard J. Parker, and Polly L. Frenkel, Attys., Dept. of Justice. **For defendant:** John J. Hanson, of Gibson, Dunn & Crutcher, Los Angeles, Cal.

Final Judgment

Henderson, D. J.: Plaintiff, United States of America, having filed its complaint on August 19, 1980, defendant having filed its answer thereto, plaintiff's motion for preliminary relief having been heard and granted by the Court, and plaintiff and defendant by their respective attorneys having consented to the entry of this Final Judgment, and without this Final Judgment constituting evidence or an admission by any party with respect to any issue consented to:

Now, Therefore, and upon a determination by this Court that entry of this Judgment will be in the public interest, it is hereby

Ordered, Adjudged and Decreed as follows:

I.

[*Jurisdiction*]

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto. The complaint states a claim upon which relief may be granted against defendant under Section 7 of the Clayton Act, as amended (15 U. S. C. §18).

II.

[*Definitions*]

As used in this Final Judgment:

A. “Acorn” shall mean defendant Acorn Engineering Company.

B. “APFC” shall mean Aluminum Plumbing Fixture Corporation, all the stock of which Acorn acquired on March 19, 1979.

C. “Vandal-resistant plumbing fixtures” shall mean aluminum and stainless steel urinals, lavatory wash basins, water closets, and combination water closet/wash basins of a configuration and with characteristics designed to be break-resistant, tamperresistant, and to be used in an environment where there is a significant potential for fixture abuse, such as in a jail.

D. “Super Secur tooling and component parts” shall mean the tooling (dies and patterns) and component parts identified in Appendix A hereto.

E. “Person” shall mean any individual, partnership, firm, corporation, association, or any other business or legal entity.

III.

[*Applicability*]

The provisions of this Final Judgment shall apply to Acorn and its officers, directors, agents, employees, subsidiary companies, affiliates, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

[*Divestiture*]

A. Acorn is ordered and directed to use its best efforts to divest itself completely, within 180 days of the date of this Final Judgment, as hereinafter provided, of all of its right, title, interest and obligations in the following: the Super Secur tooling and component parts; all engineering drawings associated with such tooling and component parts as listed in Appendix B; all letters patent relating to vandal-resistant plumbing fixtures, accessories, or fittings obtained by Acorn in its acquisition of APFC and in its prior acquisition of certain assets of Kelsey Hayes, which patents are listed in Appendix C.

B. Acorn is ordered and directed to use its best efforts to divest itself completely, within 180 days of the date of this Final Judgment, as hereinafter provided, of all of its right, title, and interest, except as expressly provided below, in the trademarks or trade names “Super Secur,”“Super Secur Ware,” and “Super Secur Manufacturing Co.” and in all other trade names, trademarks, symbols and distinctive logos associated with APFC's vandal-resistant plumbing fixture line, all of which are identified in Appendix D. For a period of eighteen months from the date of entry of this Final Judgment, Acorn may use, in marketing, its prefabricated metal building catalogs printed before November 1, 1981, provided that after the divestiture ordered herein closes, each such catalog reveals on the cover in a conspicuous way that Acorn has divested its rights to use the “Super Secur” name, but printed the catalog before such divestiture.

C. The divestiture described in the two immediately preceding paragraphs shall be made to a single purchaser who shall reasonably demonstrate to the plaintiff and/or the Court, as hereinafter provided, that (1) the purchase is for the purpose of competing with Acorn in the United States in the vandal-resistant plumbing fixtures market, and (2) the purchaser has the management, operational and financial capability to compete effectively with Acorn. The purchaser shall not be Waltec, Inc. or any of its subsidiaries or affiliates, or any subsidiary or affiliate of Acorn.

V.

[*Prospective Purchasers*]

A. Acorn shall utilize its best efforts to make the divestiture herein ordered and to make known promptly the availability of the assets by all ordinary and usual means. Acorn shall permit prospective purchasers to make such inspection of the assets as may be helpful in promoting the divestiture. In the event that the divestiture has not been completed within seventy-five (75) days from the entry of this Final Judgment, Acorn shall augment its

best efforts by causing an advertisement offering the assets for sale to be published for a reasonable period in at least two trade or business publications of national circulation, including one circulated to the plumbing fixtures industry.

B. Acorn shall furnish to prospective purchasers all revenue and cost data for the operation formerly carried on by APFC, in the form prepared by APFC for calendar years 1976, 1977 and 1978; information concerning sources of supply for raw materials and parts for APFC vandal-resistant plumbing fixtures, specifically including the name and address of all such vendors indicating the item supplied; a list of all persons, and the address of each, who were sales representatives in 1978 or 1979 for vandalresistant plumbing fixtures produced by APFC; and the name and address of major purchasers who placed orders, in 1978 and 1979, with APFC for the purchase of any vandal-resistant plumbing fixtures. Acorn shall not be required to submit any such information or materials to anyone unless the recipient thereof executes an affidavit requiring recipient to keep such information and/or materials confidential, not to reproduce the same, and to return the same to Acorn in the event a sale to such recipient is not consummated.

VI.

[*Reacquisition of Assets*]

The divestiture ordered and directed by this Final Judgment shall be made in good faith and shall be absolute and unqualified. Except upon written approval by the plaintiff or the Court, Acorn shall not reacquire any of the assets divested, nor accept any lien, mortgage, deed of trust or other form of security on or interest in any portion of the assets sold. Acorn shall take no action which will impair or impede the divestiture ordered by this Final Judgment.

VII.

[*Compliance*]

Each sixty (60) days following the entry of this Final Judgment until divestiture has been completed, or until the end of six (6) months from the date of entry of this Final Judgment, whichever first occurs, Acorn shall file with this Court and serve upon plaintiff an affidavit describing in detail the fact and manner of its efforts to accomplish the divestiture ordered by this Final Judgment. Such reports shall be supplemented by such additional information as the plaintiff may request.

VIII.

[*Proposed Purchasers*]

At least thirty (30) days in advance of the anticipated closing date of the contract of divestiture pursuant to this Final Judgment, Acorn shall submit to plaintiff the name of the proposed purchaser and all pertinent information respecting the proposed divestiture together with such additional information as plaintiff may request in writing. Within fourteen (14) days after Acorn has supplied the name of the proposed purchaser, the pertinent information regarding the proposed divestiture, and any requested additional information, plaintiff will advise Acorn in writing of plaintiff's approval or objections to the proposed divestiture. If plaintiff objects to the proposed divestiture, then such contract of divestiture shall not be consummated unless (1) plaintiff notifies Acorn in writing of any subsequent approval or unless (2) the Court approves after a hearing at which Acorn shall have the burden of proving that the proposed divestiture is to a person (a) who has the purpose of competing with Acorn in the vandal-resistant plumbing fixtures market, and (b) who has the management, financial and operational capability to compete effectively with Acorn.

IX.

[*Trustee Selection*]

If Acorn has not notified the plaintiff within one hundred twenty (120) days following the date of entry of this Final Judgment that it has entered into a contract of divestiture, each party shall notify the other in writing of the name and description of not more than two persons it wishes to nominate as a trustee to conduct a sale of the assets to be divested upon sealed or public bids. The parties shall seek to agree upon one of the nominees to serve. If they are unable to agree, the Court may select from said nominees after hearing the parties as to the qualifications of the candidates.

X.

[*Trustee Sale*]

If Acorn is unable to complete the divestiture required by this Final Judgment within the period prescribed in Section IV above, the Court shall appoint a trustee to serve for a maximum period of six (6) months except as hereinafter provided. The trustee's main endeavor shall be effectively to advertise the prospective sale of the assets to be divested and to conduct a sale to a single purchaser of such assets upon sealed or public bids, in order to accomplish a prompt and full divestiture of such assets for the purpose of effectively promoting competition in the vandal-resistant plumbing fixture market in the United States. The purchaser shall not be Waltec, Inc. or any of its subsidiaries or affiliates or any subsidiary or affiliate of Acorn.

XI.

[*Compensation*]

The trustee, who may be an investment banker or broker, a person engaged in the business of selling industrial plants or equipment, or a similarly qualified person, shall perform at the expense of Acorn under a schedule of court-approved fees, incentive compensation and costs to be fixed at the time of the trustee's appointment. The compensation shall be based at least in significant part on a commission arrangement which shall be contingent on the trustee causing the sale of the assets.

XII.

[*Powers*]

A. The trustee shall have all such powers as are necessary and proper to accomplish divestiture in accordance with the provisions of this Final Judgment. The trustee may require Acorn to convey all rights, titles, interests and obligations in the assets to be divested to any purchaser. Such conveyance shall be absolute and unqualified. The trustee shall have the right to assemble and permit inspection by prospective purchasers of the assets to be divested and to furnish to prospective purchasers the information furnished to prospective purchasers by Acorn, as described in paragraph B of Section V of this Final Judgment, and such other information pertaining to the assets to be divested as is reasonably necessary to accomplish the main endeavor of the trustee, as described in Section X of this Final Judgment.

B. Acorn shall also provide the trustee the revenue and cost data kept by Acorn in accord with paragraph 12 of the Preliminary Relief Order entered in this case on June 18, 1981 who shall have the right to furnish such data to prospective purchasers, provided however, Acorn may petition the Court to limit the disclosure permitted by this paragraph upon a showing that such disclosure would not aid the trustee in accomplishing his main endeavor, as described by Section X of this Final Judgment.

C. The trustee shall advise the parties of all significant matters arising in his efforts to make the divestiture ordered herein.

D. Acorn shall provide such reasonable assistance as the trustee may request to enable him to sell the assets to be divested.

XIII.

[*Extension of Term*]

In the event the trustee is unable to accomplish or complete the divestiture required by this Final Judgment during the term of the trust, such term shall be extended pending further orders of the Court. Plaintiff may apply to the Court for further instructions for the trustee in order to accomplish prompt and complete divestiture.

XIV.

[*Notice to Buyers*]

For two years following the date of closing of the contract of divestiture ordered herein, any person inquiring of Acorn, Elmco Sales, Inc., or Mechanical Sales, Inc., orally or in writing, about the possible purchase of any "Super Secur" vandal-resistant plumbing fixtures, including Super Secur replacement parts, promptly shall be informed of Acorn's divestiture of the Super Secur assets, and of the name and address of the person to whom Acorn divested such assets.

XV.

[*Acquisition Ban*]

At any time during the period of ten (10) years from the date of entry of this Final Judgment, without prior written approval of the plaintiff, Acorn is enjoined and restrained from acquiring:

A. Any capital stock of any person engaged in the vandal-resistant plumbing fixture business in the United States;

B. All or any part of the assets (except for the purchase of products, inventory, or equipment in the normal course of business) of a person engaged in the vandal-resistant plumbing fixture business in the United States.

XVI.

[*Sales*]

At any time during the period of ten (10) years from the date of entry of this Final Judgment, without prior written approval of the plaintiff, Acorn is enjoined and restrained from transferring, except as expressly provided in Section IV herein:

A. Any of its capital stock to any person engaged in the vandal-resistant plumbing fixture business in the United States;

B. All or any part of its assets (except for the transfer of products, inventory, or equipment in the normal course of business) to a person engaged in the vandal-resistant plumbing fixture business in the United States.

XVII.

[*Inspection*]

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Acorn made to its principal offices, be permitted:

1. Access during regular office hours of Acorn to inspect and copy all relevant books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Acorn and without restraint or interference from Acorn, who may have counsel present; and

2. Subject to the reasonable convenience of Acorn and without restraint or interference from Acorn, to interview officers, employees, and agents of Acorn, who may have counsel present;

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to Acorn's principal offices, Acorn shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested;

C. No information or documents obtained by the means provided in this Section XVII shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with the Final Judgment, or as otherwise required by law; and

D. If at the time information or documents are furnished by Acorn to plaintiff in accordance with this Section XVII, Acorn represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Acorn marks each pertinent page of such material "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to Acorn prior to divulging such material in any legal proceedings (other than a grand jury proceeding) to which Acorn is not a party.

XVIII.

[*Acquiring Parties*]

Acorn shall require, as a condition of the sale or other disposition of all, or substantially all, of the assets of its vandal-resistant plumbing fixtures business, that the acquiring party agrees to be bound by the provisions of this Final Judgment. An acquiring party subject to this provision shall file with the Court, and serve upon the plaintiff, its consent to be bound by this Final Judgment.

XIX.

[*Retention of Jurisdiction*]

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

XX.

[*Public Interest*]

Entry of this Final Judgment is in the public interest.

UNITED STATES v. DOMTAR INC., *et al.*

Civil No. C-87-0689 RFP

Year Judgment Entered: 1987

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Domtar Inc., Domtar Industries, Inc., Domtar Gypsum America, Inc., The Flintkote Co., Inc., and Genstar Gypsum Products Co., U.S. District Court, N.D. California, 1987-1 Trade Cases ¶67,639, (May 13, 1987)

United States v. Domtar Inc., Domtar Industries, Inc., Domtar Gypsum America, Inc., The Flintkote Co., Inc., and Genstar Gypsum Products Co.

1987-1 Trade Cases ¶67,639. U.S. District Court, N.D. California, Civil Action No. C-87-0689 RFP, Filed May 13, 1987, (Competitive impact statement and other matters filed with settlement: 52 *Federal Register* 7226), Case No. 3393, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions: Gypsum Board: Divestiture of Manufacturing Facilities: Consent Decree.– A Canadian company was required by a consent decree to divest gypsum board manufacturing facilities in the Pacific Southwest United States to settle charges that its acquisition of a competitor violated Sec. 7 of the Clayton Act.

For plaintiG: Charles F. Rule, Actg. Asst. Atty. Gen., Roger B. Andewelt, Judy Whalley, Anthony V. Nanni, Robert E. Bloch, John Schmoll, Peter H. Goldberg and Joseph Allen, Attys., Antitrust Div., U.S. Dept. of Justice, Washington, D.C. **For defendants:** Covington & Burling, of McCutchen, Doyle, Brown & Enersen, Washington, D.C., for Domtar Inc., Domtar Industries, Inc., and Domtar Gypsum America, Inc.; Shearman & Sterling and Sullivan & Cromwell, New York, N.Y., for the Flintkote Co., Inc., and Genstar Gypsum Products Co.

Final Judgment

Peckham, Ch. J.: Whereas, plaintiff, United States of America, having filed its Complaint herein on February 25, 1987 and plaintiff and defendants, 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 this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And Whereas, the defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, prompt and certain divestiture is the essence of this agreement and the defendants have represented to the plaintiff that the divestiture required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I. [*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and of each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. §18).

II. [*Definitions*]

As used in this Final Judgment:

A. “Defendants” means Domtar Inc.; Domtar Industries, Inc.; Domtar Gypsum America, Inc.; The Flintkote Company, Inc.; and Genstar Gypsum Products Company, each division, subsidiary or affiliate of any of them, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

B. “Domtar” means Domtar Inc.; Domtar Industries, Inc.; Domtar Gypsum America, Inc.; and Genstar Gypsum Products Company, each division, subsidiary or affiliate of any of them, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

C. “Gypsum board” means material that consists primarily of a solid, flat core of processed gypsum between two sheets of paper surfacing, and which is used principally for constructing interior walls and ceilings of commercial and residential buildings.

D. “Pacific Southwest Operations” means the gypsum board plant and gypsum quarry, real property, capital equipment, and any other interests, assets or improvements owned by Genstar Gypsum Products Company, located in or near Las Vegas, Nevada; that company's sales and marketing organization in California, Arizona and Nevada; and that company's warehouse and sales office in Vernon, California. The assets of the Pacific Southwest Operations, as they currently exist, are generally described in Schedule A of the Stipulated Hold Separate Order which is attached hereto as Attachment I and incorporated by reference in Section IX of this Final Judgment.

E. “Person” means any natural person, corporation, association, firm, partnership or other business or legal entity.

III. [*Applicability*]

A. The provisions of this Final Judgment shall apply to the defendants, their successors and assigns and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

IV. [*Divestiture*]

A. Domtar is hereby ordered and directed to divest all of its direct and indirect ownership in and control over the Pacific Southwest Operations within six (6) months of the date of filing of this Final Judgment, but in no event later than September 1, 1987.

B. Unless plaintiff otherwise consents, divestiture of the Pacific Southwest Operations shall be accomplished in such a way as to satisfy plaintiff that, as of the time of divestiture, the Pacific Southwest Operations can and will be operated by the purchaser or purchasers as a viable, on-going business engaged in the manufacture and sale of gypsum board. Divestiture shall be made to a purchaser or purchasers for whom it shall be demonstrated to the plaintiff that (i) the purchase is for the purpose of competing effectively in the manufacture and sale of gypsum board, and (ii) the purchaser or purchasers have the managerial, operational and financial capability to compete effectively in the manufacture and sale of gypsum board. Nothing in this Final Judgment shall preclude plaintiff from approving a divestiture by means of a “spin-off,” “leveraged buy-out,” or public offering.

C. In accomplishing the divestiture ordered by this Final Judgment, Domtar promptly shall make known in the United States, by usual and customary means, the availability of the Pacific Southwest Operations for sale as an on-going business. Domtar shall notify any person making an inquiry regarding the possible purchase of the Pacific Southwest Operations that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Domtar shall also furnish to all bona fide prospective purchasers who so request, subject to customary confidentiality assurances, all pertinent information regarding the Pacific Southwest Operations. Domtar shall provide such information to the plaintiff at the same time that it furnishes such information to any other person. Domtar shall permit such prospective purchasers to make such inspection

of the facility and of all financial, operational, or other documents and information as may be relevant to the sale of the facility.

D. Domtar agrees to take all reasonable steps to accomplish quickly said divestiture.

V. [*Trustee*]

A. If Domtar has not accomplished the divestiture required by Section IV of this Final Judgment by September 1, 1987, the Court shall, upon application of plaintiff, appoint a trustee to effect the divestiture. Such appointment shall become effective on September 1, 1987 or as soon thereafter as the Court appoints the trustee. After the trustee's appointment becomes effective, only the trustee, and not Domtar, shall have the right to sell the Pacific Southwest Operations. The trustee shall be a business broker or a member of the investment banking community with experience and expertise in acquisitions and divestitures. The trustee shall have the power and authority to accomplish the divestiture at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, to a purchaser acceptable to the plaintiff, subject to the provisions of Section VI of this Final Judgment. The trustee shall have such other powers as the Court deems appropriate. Defendants shall use all reasonable efforts to assist the trustee in accomplishing the required divestiture. Defendants shall not object to a sale by the trustee on any grounds other than malfeasance. Any such objection by the defendants must be conveyed in writing to the plaintiff and the trustee within fifteen (15) days after the trustee has notified the defendants of the proposed sale.

B. If Domtar has not divested all of its ownership interest in the Pacific Southwest Operations by July 1, 1987, Domtar shall notify plaintiff of that fact. If Domtar still has not divested all of its ownership interest in the Pacific Southwest Operations within ten (10) days thereafter, the plaintiff shall provide Domtar with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Domtar will notify plaintiff within ten (10) days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to Domtar, plaintiff shall notify the Court of the person or persons upon whom the parties have agreed and the Court shall appoint one of the nominees as the trustee. If neither of such nominees is acceptable to Domtar, it shall furnish to the plaintiff, within ten (10) days after the plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Plaintiff shall furnish the Court the names and qualifications of its proposed nominees and the names and qualifications of the nominees proposed by Domtar. The Court may hear the parties as to the qualifications of the nominees and shall appoint one of the nominees as the trustee.

C. The trustee shall serve at the cost and expense of Domtar, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from a sale of the Pacific Southwest Operations and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees and expenses for its services, all remaining monies shall be paid to Domtar, and the trust shall be terminated. The compensation of such trustee shall be based on a fee arrangement providing the trustee with an incentive to accomplish the required divestiture quickly at the best price and terms reasonably obtainable.

D. The trustee shall have full and complete access to the personnel, books, records and facilities of the defendants relevant to the business or assets to be divested, and the defendants shall develop such financial or other information relevant to the business or assets to be divested as the trustee may request. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the plaintiff and Domtar setting forth the trustee's efforts to accomplish divestiture as contemplated under this Final Judgment. The reports shall include, but not be limited to, the name, address and telephone number of each person who was contacted, or who offered or expressed an interest or desire to acquire any ownership interest in the Pacific Southwest Operations, together with full details of such contact or interest. If the trustee has not accomplished such divestiture within six (6) months after the trustee's appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's

judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the plaintiff and Domtar, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include extending the term of the trust and the term of the trustee's appointment.

VI. [*Notice*]

At least thirty (30) days prior to the scheduled closing date of any proposed divestiture pursuant to Section IV or V of this Final Judgment, Domtar or the trustee, whichever is then responsible for effecting the divestiture required by this Final Judgment, shall notify the plaintiff of the proposed divestiture. If a trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and for each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in the Pacific Southwest Operations, the name, address, and telephone number of that person together with full details of that person's interest or desire to acquire such ownership interest. Within fifteen (15) days after receipt of notice of the proposed divestiture, the plaintiff may request from the defendants and the proposed purchaser additional information concerning the proposed divestiture. Defendants and the proposed purchaser shall furnish the additional information requested from them within fifteen (15) days of the receipt of the request, unless plaintiff shall agree to extend the time. Until plaintiff certifies in writing that it is satisfied that defendants and the proposed purchaser have provided the additional information requested from them, the divestiture shall not be consummated. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information from defendants and the proposed purchaser, whichever is later, unless defendants shall agree to extend the time, plaintiff shall notify defendants and the trustee, if there is one, in writing, if it objects to the proposed divestiture. If plaintiff fails to object within the period specified, or if plaintiff notifies defendants and the trustee, if there is one, in writing, that it does not object, the divestiture may be consummated, subject only to defendants' right to object to the sale under Section V.A. Upon objection by the plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by the plaintiff, a divestiture proposed under Section V shall not be consummated unless approved by the Court. Upon objection by defendants under Section V.A., the proposed divestiture shall not be consummated unless approved by the Court.

VII. [*Financing*]

Domtar shall not finance all or any part of the purchase of the Pacific Southwest Operations pursuant to the divestiture required by Section IV or V of this Final Judgment without plaintiff's permission.

VIII. [*Compliance Report*]

Thirty (30) days from the date of filing of the Complaint in this civil action and every thirty (30) days thereafter until the divestiture required by Section IV or V has been completed, Domtar shall submit in writing to the plaintiff a verified written report setting forth in detail the fact and manner of compliance with Section IV or V, as the case may be, of this Final Judgment. Each such report of compliance with Section IV shall include, for each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest or desire to acquire, entered into negotiations to acquire, or made an inquiry about acquiring any ownership interest in the Pacific Southwest Operations, the name, address, and telephone number of that person and a detailed description of each contact with that person during that period. Domtar shall maintain full records of all efforts made to divest the Pacific Southwest Operations.

IX. [*Hold-Separate Order*]

The terms of the Stipulated Hold Separate Order entered into by the plaintiff and the defendants, filed with the Court, and attached hereto as Attachment I [*Not reproduced.*—CCH], are incorporated herein by reference.

X. [*Inspections*]

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal offices, be permitted:

(1) Access during office hours of that defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of that defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

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

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to any defendant's principal office, that defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided 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 Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, “Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,” then ten (10) days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceedings (other than a grand jury proceeding).

XI. [*Retention of Jurisdiction*]

Jurisdiction is retained by this Court for the purpose of enabling plaintiff and the defendants to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. [*Term*]

This Final Judgment will expire on the third anniversary of the completion of the divestiture required herein.

XIII. [*Public Interest*]

Entry of this Final Judgment is in the public interest.