

APPENDIX A:

UNITED STATES v. SCHMIDT LITHOGRAPH CO., ET AL.

CIVIL NO. 2424 BH

JUDGMENT ENTERED SEPT. 14, 1942

U.S. vs. SCHMIDT LITHOGRAPH CO., ET AL.

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

Civil Action No. 2424 BH.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

SCHMIDT LITHOGRAPH COMPANY, ET AL., DEFENDANTS.

FINAL JUDGMENT.

The complainant, United States of America, having filed its Complaint herein on September 14, 1942; and all parties hereto, by their respective attorneys herein, have severally consented to the entry of this Final Decree herein without trial and without admission by any party in respect of any issue;

NOW, THEREFORE, before any testimony has been taken herein, and upon consent of all parties hereto, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

I.

That the Court has jurisdiction of the subject matter hereof 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.

II.

For the purpose of this Decree:

1. The term "lithography" shall be deemed to refer to the art or process of making an impression, as of a picture or of printed matter, often in color, reproduced from a smooth, flat, porous surface of stone or other material on which the design has been laid down by the

use of grease and water in such a way that when the whole surface is inked, only certain parts as desired will take the ink or print.

2. The term "lithographic products" shall be deemed to refer to all those lithographed articles and products classified as "advertising" and "labels" and to printed labels manufactured, distributed, and offered for sale by manufacturers of lithographs and printers of labels.

III.

Defendants, their directors, officers, agents, and employees, and their successors and all persons acting under, through, or for them or any of them, be and they hereby are perpetually enjoined and restrained from agreeing, combining, or conspiring among themselves or with others:

1. To fix, determine, maintain, or adhere to prices, price differentials, terms and conditions of sale, or amounts to be included in or deducted from the prices charged or quoted for lithographic products or any of them.

2. To allocate or divide business, markets, customers, orders, sales or territories for any lithographic product, or to refrain from competing in any territory or market or for the business of any customer or group or class of customers.

3. To fix, determine, designate or maintain sales or distribution quotas for lithographic products or to permit any party to sell without competition in any territory or market or to any customer or class of customers.

4. To exchange with any lithographer, or to publish or adopt price lists or other written matter pertaining to the computation of prices for the sale of lithographic products.

5. To establish or maintain any kind of depository or reporting system whereby information or data as to sales, contemplated or consummated, of any lithographer is reported or made available to any other lithographer; or whereby the prices being charged or to be charged

by any lithographer are reported to any other lithographer.

6. To organize, form, or conduct any association, group, or agency, or to employ or engage any person to effectuate the acts and practices prohibited by this Decree.

7. To add to the cost of the lithographic product the cost of art work, engravings, or plates.

8. To require that the title or the exclusive possession of art work, engravings, or plates be retained by the lithographer when all or any part of the cost thereof is charged to the customer.

9. To prevent or hinder any individual, firm, or corporation from engaging in the business of manufacturing or distributing lithographic products or to coerce, compel, advise or persuade any person to refrain from dealing with any manufacturer or distributor of lithographic products.

10. To collect, compile, disseminate or disclose to competitors:

(a) information or data as to the sales, orders, shipments, deliveries, inventories, costs, prices, pricing formulae; or

(b) bids of any lithographer, or information or data as to sales, quotations or transactions with named or unidentified customers; or

(c) any other information or data; which can readily be used as a basis for the continuance or establishment of any plan, program, or arrangement for fixing prices, or for the allocation of business, customers, or trade areas by competitors in the lithographic industry.

IV.

The defendants, their directors, officers, 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 individually and perpet-

ually enjoined and restrained from engaging in any of the following specific acts and practices:

1. Sponsoring, calling, holding, or participating in any meeting or conference held for the purpose of fixing, establishing, maintaining, or securing adherence to prices, price differentials, discounts, terms, and conditions of sale, amounts to be included in or deducted from the prices charged for lithographic products, quotas, or allocations of business, or for the purpose of preventing or hindering, any individual, firm or corporation from engaging in the business of manufacturing or distributing lithographic products;

2. Exerting pressure by acts, suggestion, or otherwise, upon one or more competitors to maintain, or adhere to prices, price differentials, discounts, terms and conditions of sale, allocations of business, quotas, or amounts to be deducted from or included in the prices charged or quoted for lithographic products, provided this section IV-2 shall not prohibit bargaining negotiations between a purchaser and a seller, which are otherwise lawful and are not part of a plan or program or arrangement otherwise prohibited by this Judgment;

3. Restricting, coercing, persuading, or influencing any lithographer in the free acceptance or rejection of orders or in the free and untrammelled individual establishment of prices for lithographic products in the conduct of his own business;

4. Distributing or disseminating information or statistics so as to disclose to competitors data as to transactions with, or bids or quotations submitted to others, or as to sales to named or identified customers.

V.

Except as specifically provided in paragraph IV, subparagraphs 2, 3, and 4, of this Decree, nothing contained herein shall be deemed to affect relations, which are otherwise lawful, between a defendant, its directors, officers, employees, principals, agents, or subsidiaries, or between subsidiaries of a defendant, where such rela-

tions 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 directors, officers, employees, principals, or agents with respect to the lawful operation of its business.

VI.

Nothing in this Decree shall be construed to restrict or prohibit in any way any action taken by any defendant, its successors, subsidiaries, officers, or employees in good faith and within the fair intendment of the letter of the Attorney General of the United States to the General Counsel of the Office of Production Management, dated April 29, 1941, (a copy of which is attached hereto as Exhibit "A")¹, or within any amendment or amplification thereof by the Attorney General, or in accordance with any arrangement of similar character between the Attorney General and any National Defense Agency in effect at the time, provided such letter or arrangement has not at the time of such action been withdrawn or cancelled with respect thereto.

VII.

For the purpose of securing compliance with this Decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General, and on reasonable notice to the defendants made to the principal office of the defendants, be permitted, subject to any legally recognized privilege, (1) access, during the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendants, relating to any matter contained in this Decree, (2) without restraint or interference from the defendants to interview officers or employees of the defendants, who may have counsel present, regarding any such matters, and (3) to require

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the defendants, on such written request, to 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 for the purpose of securing compliance with this Decree in which the United States is a party or as otherwise required by law.

VIII.

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

Dated at Los Angeles, California, this 14th day of September, 1942.

BEN HARRISON
United States District Judge

EXHIBIT "A"

APRIL 29, 1941

JOHN LORD O'BRIAN, ESQUIRE,
*General Counsel, Office of Production Management,
Washington, D. C.*

DEAR JOHN: The marshaling of the nation's industrial assets for a maximum productive effort in the national defense will doubtless require the allocation of orders, the curtailment of some kinds of production so as to increase production in defense fields, and the establishment of priorities and price ceilings. Furthermore, many of these steps must necessarily affect the production of goods used to satisfy our normal needs, as well as the production of materials and implements used directly in our defense effort.

Some of these acts if accomplished by private contract or arrangement within an industry and carried on for private advantage would probably constitute violations of the antitrust laws. On the other hand, it is obvious that in the present emergency acts performed by industry under the direction of public authority, and designed to promote public interest and not to achieve private ends, do not constitute violations of the antitrust laws. In these circumstances, the Department of Justice recognizes that business interests which are asked to comply with public plans for increasing production and preventing inflation are entitled to the cooperation of agencies of the Government in eliminating any uncertainties which may exist as to the application of the antitrust laws to their activities.

Accordingly, this Department has formulated a policy which it proposes to follow in its relations with the Office of Production Management and the Office of Price Administration and Civilian Supply and with all industries or contractors acting in compliance with the orders or request of either of these organizations. The important points of this policy are:

Meetings of the industry with the Office of Production Management and the Office of Price Administration and Civilian Supply or their representatives are not illegal. In-

dustrial committees may be formed at the request of the Office of Production Management or the Office of Price Administration and Civilian Supply, to work with representatives of such offices on problems involving defense. There will be nothing unlawful in the industry cooperating in the selection of its representatives or in selecting members for committees, or in the activities of such committees provided they are kept within the scope of this letter.

Questions as to whether there is need for such a committee, and if so, how it shall be chosen, and by whom constituted, shall be the sole responsibility of the Office of Production Management or the Office of Price Administration and Civilian Supply. This Department will not participate in these decisions beyond the suggestion now made that any such committee should be generally representative of the entire industry and satisfactory to the Office of Production Management or the Office of Price Administration and Civilian Supply.

Each industry committee shall confine itself to collecting and analyzing information and making recommendations to the Office of Production Management or the Office of Price Administration and Civilian Supply, and shall not undertake to determine policies for the industry, nor shall it attempt to compel or to coerce any one to comply with any request or order made by a public authority.

All requests for action on the part of any unit of an industry shall be made to such unit by the Office of Production Management or the Office of Price Administration and Civilian Supply and not by the industry committee. That is to say, the function of determining what steps should be taken in the public interest should in each case be exercised by the public authority which may seek the individual or collective advice of the industry. But the determination shall not be made by the industry itself or by its representatives.

Requests for action within a given field, such as the field of allocation of orders, shall be made only after the general character of the action has been cleared with the Department of Justice. If the general plan is approved, thereafter each request for specific action in carrying out such plan shall be

made in writing and shall be approved by the Office of the General Counsel of the Office of Production Management or the office of the General Counsel of the Office of Price Administration and Civilian Supply, but need not be submitted to the Department of Justice. In the case of any change in the personnel of such offices or if serious practical difficulties arise, this latter arrangement may be revoked upon notice from me.

Acts done in compliance with the specific requests made by the Office of Production Management or the Office of Price Administration and Civilian Supply and approved by their General Counsel in accordance with the procedure described in this letter will not be viewed by the Department of Justice as constituting a violation of the antitrust laws and no prosecutions will be instituted for acts performed in good faith and within the fair intendment of instructions given by the Office of Production Management or the Office of Price Administration and Civilian Supply pursuant to this procedure.

In the case of all plans or procedure, however, the Department reserves complete freedom to institute civil actions to enjoin the continuing of acts or practices found not to be in the public interest and persisted in after notice to desist.

With kind personal regards,

Sincerely,

(S) ROBERT H. JACKSON,

Attorney General.