

UNITED STATES OF AMERICA v. UNDERWOOD
ELLIOTT FISHER COMPANY (Del.), ET AL.,

DEFENDANTS.

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

Civil Action No. 8-317.

UNITED STATES OF AMERICA, PLAINTIFF

VS.

UNDERWOOD ELLIOTT FISHER COMPANY (DEL.), UN-
DERWOOD ELLIOTT FISHER COMPANY (N. J.), REMINGTON
RAND, INC., ROYAL TYPEWRITER COMPANY, INC., L. C.
SMITH & CORONA TYPEWRITERS, INC., PHILIP D. WAGO-
NER, JAMES H. RAND, JR., EDMUND C. FAUSTMANN, AND
HURLBUT W. SMITH, DEFENDANTS.

FINAL DECREE.

I. The United States of America filed its petition here-
in on April 20, 1940; each of the defendants appeared
and filed their answers to such petition, and asserted the
truth of their answers and their innocence of any viola-
tion of law; no testimony having been taken, each of
the defendants consented to the entry of this decree
without any findings of fact, upon condition that neither
such consent nor this decree shall be evidence, admission
or adjudication that they have violated any statute of
the United States; and the United States of America by
is counsel having consented to the entry of this decree
and to each and every provision thereof, and having
moved the Court for this injunction,

Therefore, it is ordered adjudged, and decreed as
follows:

II. That the Court has jurisdiction of all persons and
parties hereto; and for the purposes of this decree and
proceedings for the enforcement thereof, and for no
other purpose, that the Court has jurisdiction of the sub-
ject-matter hereof and the petition states a cause of
action against the defendants under the Act of July 2,

1890, entitled "An Act to Protect Trade and Commerce
Against Unlawful Restraints and Monopolies."

III. Whenever the word "typewriter" is used herein-
after, it shall be understood to mean a typewriting ma-
chine designed to be used primarily for letter writing.

IV. The defendants and each of them, their successors,
officers, directors, managers, employees and agents, be
and they hereby are perpetually enjoined and restrained
from agreeing, combining or conspiring among them-
selves or any of them or with any other manufacturer of
typewriters:

(1) To fix or determine the prices to be charged in
the sale of typewriters or the trade-in allowances to be
granted on used typewriters; or

(2) To maintain or adhere to uniform prices or
allowances in the sale of typewriters; or

(3) To make uniform changes in prices or allow-
ances in the sale of typewriters; or

(4) To prevent, obstruct, retard, or restrain any
change in prices or allowances in the sale of type-
writers; or

(5) To refrain from competing with each other in
the sale of typewriters; or

(6) To cut or manipulate prices in the sale of type-
writers; or

(7) To obstruct, restrain, or prevent any individ-
ual, corporation or association from undertaking to
manufacture and sell typewriters; or

(8) To break up or otherwise remove permanently
from the market the used typewriters of any manu-
facturer traded in on the sale of new typewriters for
the purpose of eliminating a competitor from the busi-
ness of the manufacture and sale of typewriters; or

(9) To investigate, inquire into, discuss or obtain
disclosures, orally or in writing with regard to the
prices or allowances to be made by any competitor in
the sale of typewriters; or

(10) That one of the defendants or any other manu-

facturer of typewriters shall purchase from another defendant or other manufacturer of typewriters all or substantially all of the used typewriters of the former's make which have been taken in trade upon the sale of new typewriters, for the purpose of maintaining or stabilizing the prices of typewriters.

Nothing contained herein shall be construed to restrain or prohibit any defendant, its successors, officers, directors, managers, employees and agents from doing any of the foregoing with respect to the individual business of each corporate defendant and its successors, except as hereinafter provided.

V. The defendants and each of them, their successors, officers, directors, managers, employees, and agents, be and they hereby are perpetually enjoined and restrained from taking any action individually:

(1) To cut or manipulate prices in the sale of typewriters for the purpose of eliminating a competitor from the business of the manufacture and sale of typewriters; or

(2) To break up or otherwise remove permanently from the market the used typewriters of any manufacturer traded in on the sale of new typewriters for the purpose of eliminating a competitor from the business of the manufacture and sale of typewriters.

(3) To discriminate in price in the sale of typewriters among purchasers by granting discounts, allowances, or concessions on the basis of the number of typewriters in use by a purchaser. The provisions of this paragraph shall be of no effect in the event of a declaration by a commission or court, which is either acquiesced in by the government or from which no appeal or other proceeding for review is taken by the government, that such discrimination is not in violation of Section 2 of the Clayton Act as amended by the Act of June 19, 1936, known as the Robinson-Patman Act, or in the event of the repeal of those provisions of Section 2 of the Clayton Act which were added thereto by the said Robinson-Patman Act. Nothing

contained in this paragraph shall apply to the sale of typewriters to a bona fide school to be used in teaching typewriting.

VI. Nothing in this decree shall be construed to affect the rights or obligations of the defendants under any inventions, patent applications, patents, copyrights or trade-marks, or agreements (whether of license or otherwise) in connection therewith respecting typewriters; but whereas the parties may be in disagreement as to the validity under the antitrust laws of certain provisions of agreements providing for the licensing and cross-licensing of patents respecting typewriters and parts thereof, this decree shall be without prejudice to the rights of the plaintiff to institute an appropriate action to determine the validity of such provisions or the rights of defendants to contest such action.

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 the 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 (1) reasonable access, during the office hours of the corporate 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 of the matters contained in this decree, (2) subject to the reasonable convenience of the defendants and without restraint or interference from them, to interview officers or employees of the corporate defendants, who may have counsel present, regarding any such matters; and the corporate 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 repre-

sentative 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.

VIII. No defendant shall acquire ownership or control directly or indirectly by means of stock ownership, purchase of assets, or otherwise, of the whole or a major part of the domestic typewriter manufacturing business or domestic typewriter plant of any competitor engaged as a going concern in the continental United States in the manufacture and sale of typewriters, provided, that in case any such acquisition is desired, a petition may be presented to this Court stating the reasons therefor, and, unless the Court, upon investigation of all of the circumstances of the case, and after such notice to the Attorney General as the Court may direct, but not less than 60 days, to provide opportunity to the Attorney General to be heard, shall determine that such acquisition will be a violation of the antitrust laws, then jurisdiction is reserved and the Court shall enter an order permitting the same.

IX. 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 of or carrying out of this decree, for the modification thereof (including, but without being limited to, any modification upon application of the defendants or any of them in order to conform this decree to any Act of Congress enacted or repealed after the date of entry of this decree), for the enforcement of compliance therewith, and for the punishment of violations thereof. Whenever obligations are imposed upon the defendants by the laws or regulations of any State with which the defendants by law must comply in order to do business within such State, the Court, upon application of the defendants or any of them, shall from time to time enter orders relieving the defendants from compliance with any requirements of this decree in conflict with such laws or regulations, and the right of the defendants to

make such application and to obtain such relief is expressly granted.

X. This decree shall have no effect with respect to defendants' acts and operations without the continental United States or to their acts and operations within the continental United States relating exclusively to acts and operations without the continental United States provided, however, that nothing in this paragraph shall be construed to permit any action which is or becomes unlawful under any existing or future law of the United States or of any political subdivision thereof.

XI. This decree shall go into effect 60 days after the date of entry hereof.

Dated April 23, 1940.

HENRY W. GODDARD (S),
United States District Judge.