

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Electrical Solderless Service Connector Institute; Frank H. Baxter; Jasper Blackburn Products Corporation; Burndy Engineering Company, Inc.; Fargo Mfg. Company; James R. Kearney Corporation; Line Material Company, Milwaukee, Wisconsin; W. N. Matthews Corporation; Penn-Union Electric Corporation; Reliable Electric Company; H. B. Sherman Manufacturing Co.; Stephen P. Becker; Jasper Blackburn; Ford Pennell; Frank E. L. Whitesell; Bern Dibner; James R. Kearney; James R. Kearney, Jr.; Joseph D. Hoffman; Claude L. Matthews; M. Carlton Cooley; Wallace L. Cook; John Brown Cook; Earl P. Shnable; Gilbert L. Smrz; Edward D. Sperry; and Charles L. Stoeltzlen., U.S. District Court, S.D. New York, 1940-1943 Trade Cases ¶56,081, (Jan. 4, 1941)

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United States of America v. Electrical Solderless Service Connector Institute; Frank H. Baxter; Jasper Blackburn Products Corporation; Burndy Engineering Company, Inc.; Fargo Mfg. Company; James R. Kearney Corporation; Line Material Company, Milwaukee, Wisconsin; W. N. Matthews Corporation; Penn-Union Electric Corporation; Reliable Electric Company; H. B. Sherman Manufacturing Co.; Stephen P. Becker; Jasper Blackburn; Ford Pennell; Frank E. L. Whitesell; Bern Dibner; James R. Kearney; James R. Kearney, Jr.; Joseph D. Hoffman; Claude L. Matthews; M. Carlton Cooley; Wallace L. Cook; John Brown Cook; Earl P. Shnable; Gilbert L. Smrz; Edward D. Sperry; and Charles L. Stoeltzlen.

1940-1943 Trade Cases ¶56,081. U.S. District Court, S.D. New York. January 4, 1941. Civil action No. 12-217.

Proceedings under the Sherman Anti-Trust Act against defendant manufacturers and sellers of electrical solderless service connectors and their trade association are terminated by entry of a consent decree enjoining the defendants from participating in any price fixing program; from participating in any program resulting in the dissemination of information concerning prices charged or to be charged when such program will involve any understanding or concerted action or will limit the conduct of any manufacturer; from participating in any program, the purpose of which is to allocate customers or to underbid any manufacturer or seller; and from participating in any program which adopts methods involving duress and is designed to compel adherence to plans for the dissemination of statistical information.

It is also provided that nothing in the decree shall limit any defendant in circulating price lists which are fully and fairly available to the purchasing trade nor shall anything in the decree prohibit lawful conduct of one or more of the defendants authorized under the patent laws, provided however, that the latter provision shall be without prejudice to the right of the plaintiff to institute proceedings alleging the use of patents in violation of the Federal Anti-Trust laws.

Thurman Arnold, Assistant Attorney General, Herbert A. Berman, John N. Cole, Nelson A. Sharfman, Special Assistants to the Attorney General, Attorneys for the United States.

Wise, Corlett & Canfield by Robert E. Canfield (Albert E. Sawyer of counsel); Harry Ernest Rubens; Gann Secord, Stead & McIntosh, by Layn McIntosh; Burroughs & Brown, by H. Lewis Brown, Attorneys for the Defendants.

Before Goddard, D. J.

Final Judgment

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The United States of America filed its complaint herein December 30, 1940; each of the above named defendants appeared and filed his or its answer to such complaint and no testimony having been taken, each of said defendants consents to the entry of this decree, without any finding of fact, on condition that neither such consent nor this decree shall be evidence, admission, or adjudication that he or it has violated any law of the United States; and the United States, by counsel, having consented to the entry of this and to each and every provision thereof, and having moved for this injunction.

Now, therefore, before any testimony has been taken, and without any findings of fact or adjudication of the issues, and upon the consent of all parties hereto, it is hereby

Ordered and decreed as follows:

[*Jurisdiction*]

1. The Court has jurisdiction of the parties to this decree; and for the purposes of this decree and proceedings for the enforcement thereof, and for no other purpose, the Court has jurisdiction of the subject matter hereof; and the complaint states a cause of action against said defendants, and each of them, under [Section 1 of the Sherman Act](#) (15 U. S. C. A. Section 1);

[*Definitions*]

2. The term “commodity or commodities” as hereinafter used in this decree shall be construed to include electrical solderless service connectors and any other commodity or commodities produced, transported or sold by the defendants herein, or which hereafter may be produced, transported, or sold by said defendants.

The term “said defendants” as hereinafter used, shall mean each and all of the corporations, firms and individuals made defendant herein.

The term “representatives” as hereinafter used, shall mean all the directors, officers, employees, servants, and agents of said defendants, or any of them, and all persons acting under, through, by, or in behalf of said defendants, or any of them, or claiming so to act.

The term “program” as hereinafter used, shall mean any agreement, combination, understanding or concerted action, including, but without limiting the generality of the foregoing, any plan, scheme, device, rule, resolution, policy or statement thereof concertedly adopted, endorsed, or maintained. The term “Institute” as hereinafter used shall mean the Electrical Solderless Service Connector Institute, an unincorporated trade association, composed of manufacturers and sellers of electrical solderless service connectors.

[*Practices Enjoined*]

3. Said defendants herein and their successors, and each of them, and their respective representatives, or any of them, be, and they are hereby, perpetually enjoined and restrained—

(a) From, directly or indirectly, by any means whatsoever, entering into or carrying out any program, or aiding or abetting any program of other manufacturers of such commodity or commodities, to raise, depress, establish, maintain or adhere to the prices to be charged for any such commodity or commodities;

(b) From sponsoring, calling or holding any meeting or conference or participating in any meeting or conference, held for the purpose of raising, depressing, establishing, maintaining or adhering to the prices to be charged for such commodity or commodities (with the exception of meetings or conferences held by a single manufacturer, attended only by its own officers or employees, and concerning its own price policies);

(c) From reporting, collecting, auditing, compiling, disseminating or exchanging with any other manufacturer information concerning offers for sale, or concerning prices to be charged otherwise than in actually consummated sales and in bona fide contracts to sell, duly executed and unconditionally binding the seller to sell and the buyer to accept delivery at a certain price;

(d) From disseminating or exchanging with any other manufacturer any Information which shall permit the identification of any seller deviating from announced prices, terms or conditions of sale, or the identification of any purchaser from any such seller;

(e) From adopting, contributing to or participating in any program resulting in the dissemination of information concerning or relating to prices charged or to be charged for such commodity or commodities, when the dissemination of such information will involve any understanding or agreement or concerted action or coercion limiting the conduct of any manufacturer or when the dissemination of such information will be used to urge any change or limitation in the current or future sales policy, price policy, or production policy of any manufacturer, or when the dissemination shall involve any explanation of or criticism with respect to prices charged or to be charged for such commodity or commodities;

(f) From adopting, contributing to or participating in any program resulting in the dissemination or publication of any recommendation as to current or future sales policy, price policy, or production policy applicable to the production or sale of said commodity or commodities;

(g) From allocating, or by agreement, refraining from soliciting customers of manufacturers of such commodity or commodities, allocating production quotas, allocating markets or marketing territories among the several manufacturers of such commodity or commodities, or promoting any uniform method of marketing, or adopting any program for the determination or maintenance of resale prices;

(h) From adopting contributing to or participating in any program for the purpose of underbidding or underselling any manufacturer or seller;

(i) From adopting, contributing to or participating in any program which adopts methods involving coercion or duress and is designed to compel adherence to plans for the collection and dissemination of statistical information; provided, however that procedures designed and executed solely to give assurance of the completeness and accuracy of data lawfully collected and disseminated shall not per se be deemed to involve elements of coercion and duress.

[*Circulation of Price Lists*]

4. Nothing contained in this decree limits the right of any defendant to issue and circulate lists of his or its current prices, terms, and conditions of sale generally applicable to the sale and distribution of said commodity or commodities, provided such lists are made, or are readily, fully, and fairly available to the purchasing and distributing trade at the time of their initial dissemination, and that nothing be done to commit any such defendants to adherence to any such prices, terms or conditions of sale.

[*Membership in Institute*]

5. Membership in the defendant Institute shall be open on proportionately equal terms to any bona fide manufacturers or sellers of such commodity or commodities.

[*Patent Laws*]

6. Nothing contained in this decree shall be construed to prohibit lawful conduct of one or more of the defendants authorized or permitted under the patent laws, but this provision shall be without prejudice to the right of the plaintiff to institute any appropriate action alleging the use of patents in violation of the Federal anti-trust laws or to the right of defendants to defend such action.

[*Compliance With Decree*]

7. 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 as to time and subject matter, be permitted

(1) 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 enjoined by this decree;

(2) upon written notice to the defendants and subject to their reasonable convenience, and without restraint or interference from them and subject to any legally recognized privilege, to interview the individual defendants and officers, employees, or agents of any of said defendants, in the presence of counsel, 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.

8. 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 (including, without limitation, any modification upon application of said defendants, or any of them, required in order to conform this decree to any act of Congress, enacted after the date of entry of this decree or to the laws or regulations of any State), for the enforcement of compliance therewith and the punishment of violations thereof.