

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Diamond Match Company; The William Gordon Corporation; Berst-Forster-Dixfield Company; Universal Match Corporation; Ohio Match Company; Lion Match Company, Inc.; Svenska Tandsticks Aktiebolaget (The Swedish Match Company); Transamerican Match Corporation; New York Match Co., Inc.; William A. Fairburn; Robert G. Fair burn; Howard F. Holman; Paul Bertil Lind; Frederick Atterberg, et al., U.S. District Court, S.D. New York, 1946-1947 Trade Cases ¶57,456, (Apr. 9, 1946)**

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United States v. The Diamond Match Company; The William Gordon Corporation; Berst-Forster-Dixfield Company; Universal Match Corporation; Ohio Match Company; Lion Match Company, Inc.; Svenska Tandsticks Aktiebolaget (The Swedish Match Company); Transamerican Match Corporation; New York Match Co., Inc.; William A. Fairburn; Robert G. Fair burn; Howard F. Holman; Paul Bertil Lind; Frederick Atterberg, et al.

1946-1947 Trade Cases ¶57,456. U.S. District Court, S.D. New York Civil No. 25-397. April 9, 1946.

**A consent decree entered in an action charging violations of the Sherman Anti-Trust Act contains provisions enjoining: entering into agreements to allocate markets, exclude others from markets, fixing prices, refrain from producing or restrict the production on importation of matches, match machinery or match chemicals; reviving prohibited agreements; acting as exclusive agent for other defendants, or having interlocking directorates with them; selling through or to certain defendants; voting stock of certain defendants; acquiring more stock of match companies; instituting patent infringement or royalty suits; and acquiring match companies except on affirmative showing that competition will not be lessened. Named defendants are directed to divest themselves of stock of other defendants. Certain defendants are directed to issue royalty-free licenses and to make available plans and specifications for match machinery. A foreign defendant is directed to issue licenses at reasonable royalties and to issue grants of immunity under foreign patents.**

For plaintiff: Wendell Berge, Assistant Attorney General; Seymour D. Lewis, Ernest S. Meyers and Lawrence S. Apsey, Special Assistants to the Attorney General; John F. X. McGohey, United States Attorney; and Henry V. Stebbins, Basil Estreich and Harry B. Swerdlow, Special Attorneys.

For defendant The Diamond Match Company: Dudley, Stowe & Sawyer, by Ansley W. Sawyer.

For defendants The William Gordon Company, B-F-D Company and Robert G. Fair-burn: Sumner S. Kittelle.

For defendant Universal Match Corporation: Sievers & Reagan, by Franklin E. Reagan.

For defendant Ohio Match Company: Wise, Roetzel & Maxon, by C. G. Roetzel.

For defendant Lion Match Company, Inc.: Weisman, Cellar, Quinn, Allan & Spett, by Henry S. Bodin.

For defendants The Swedish Match Company, Transamerican Match Corporation and Paul Bertil Lind: White & Case, by Orison S. Marden.

For defendants New York Match Company and Frederick Atterberg: Lord, Day & Lord, by Thomas F. Daly.

For defendants William A. Fairburn and Howard F. Holman: Bleakley, Platt & Walker, by Roswell P. C. May. Samuel Mandelbaum, United States District Judge.

**Final Judgment**

Plaintiff, the United States of America, having filed its complaint herein on May 1, 1944; the consenting defendants having appeared and filed their answers to such complaint denying the substantive allegations thereof and asserting their innocence of any violation of law; the parties hereto by their 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 by any consenting defendant in respect of any such issue, and defendant Svenska Tandsticks Aktiebolaget (The Swedish Match Company) consenting to accept jurisdiction of this Court for the purpose of this action and for the purpose of any further proceedings under this judgment upon condition that this judgment shall not be deemed an admission, agreement or finding that said defendant is now or was at any time transacting business or found in any district, state or territory of the United States;

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 as follows:

[ *Jurisdiction* ]

1. The Court has jurisdiction of the subject matter herein and of all the parties to this judgment and the complaint states a cause of action against the consenting defendants under Section 1 of the Act of Congress of July 2, 1890, Chap. 647, 26 Stat. 209, as amended.

[ *Applicability of Judgment* ]

2. The provisions of this judgment applicable to any defendant shall apply to each of its subsidiaries, successors, assigns and nominees and to each of its officers, directors, agents and employees, acting in such capacity, and to each person acting under, through or for them or any of them; provided, however, that nothing contained in this judgment shall enjoin:

(A) Business relationships, agreements and transactions, otherwise lawful, between a defendant and a wholly owned subsidiary, and for the purpose of this judgment only, (1) defendant Berst-Forster-Dixfield Company (now known as and hereinafter referred to as B-F-D Company) shall be deemed a wholly owned subsidiary of each of the defendants The Diamond Match Company (hereinafter referred to as Diamond) and The William Gordon Corporation so long as all the outstanding stock of B-F-D Company is owned by Diamond and The William Gordon Corporation, or by Diamond or The William Gordon Corporation, and (2) defendants Transamerican Match Corporation and New York Match Co. Inc. shall be deemed wholly owned subsidiaries of defendant The Swedish Match Company so long as a majority of the stock of Transamerican Match Corporation and New York Match Co. Inc. is directly or indirectly owned or controlled by The Swedish Match Company; or

(B) Business relationships (including common officers, directors, or managers), agreements and transactions, otherwise lawful, between The William Gordon Corporation and Diamond; or

(C) Business relationships, agreements and transactions, otherwise lawful, between or among any corporation and the directors, officers and employees of such corporation acting in such capacity.

[ *Entering into Agreements, Combinations, Conspiracies Enjoined; Proviso* ]

3. Each of the defendants Diamond, B-F-D Company, The William Gordon Corporation, Universal Match Corporation, Ohio Match Company, Lion Match Company, Inc., Svenska, Tandsticks Aktiebolaget (hereinafter referred to as The Swedish Match Company), Transamerican Match Corporation, New York Match Co., Inc., William A. Fairburn, Robert G. Fairburn, Howard F. Holman, Paul Bertil Lind, and Frederick Atterberg, is hereby severally and jointly enjoined and restrained from:

(A) Entering into, adhering to, maintaining or furthering directly or indirectly any combination, conspiracy, contract, agreement, understanding, plan or program with each other, or with any manufacturer with respect to the product of any manufacturer:

(1) To allocate or divide markets or to assign or allocate quotas or exclusive or dominant interests in any market for matches, match machinery or match chemicals;

- (2) To refrain from producing or distributing matches, match machinery or match chemicals;
- (3) To restrict or limit the production or distribution of matches match machinery or match chemicals;
- (4) To limit, restrict, or prevent the importation into or exportation from the United States, its territories or possessions, of matches, match machinery or match chemicals;
- (5) To exclude any person from any market for matches, match machinery or match chemicals or to determine the terms or conditions to be imposed upon or required of any person for the manufacture, purchase, sale or distribution of matches, match machinery or match chemicals;
- (6) To fix, maintain or adhere to prices, terms or conditions for matches, match machinery, or match chemicals, to be sold or distributed in, or imported into or exported from the United States, its territories or possessions;

provided, however, that the provisions of this Paragraph 3 shall not relate to any such combination, conspiracy, contract, agreement, understanding, plan or program relating to acts or operations which are outside the scope of "Commerce" as defined in Section 1 of the Act of Congress of October 15, 1914, Chapter 323, 38 Stat. 730, commonly known as the Clayton Act.

[ *Observing, Reviving Agreements Enjoined; Provisos*]

(B) Observing, carrying out in the future or reviving any of the agreements or understandings listed in Appendix A attached hereto and made part hereof; provided, however, that nothing contained herein or in said Appendix A shall prohibit agreements or understandings, otherwise lawful and not otherwise prohibited by any other provision of this judgment, between or among the parties to any of the agreements and understandings listed in said Appendix A.

[ *Exclusive Agency, Interlocking Directorates, Etc. Enjoined*]

4. Each of the defendants Diamond, B-F-D Company, The William Gordon Corporation, Universal Match Corporation, Ohio Match Company, Lion Match Company, Inc., The Swedish Match Company, Transamerican Match Corporation, and New York Match Co. Inc., is hereby severally and jointly enjoined and restrained from:

- (A) Acting as exclusive agent of, or being the exclusive purchaser from, any defendant other than a wholly owned subsidiary for the distribution or sale of matches, match machinery, or match chemicals;
- (B) Having any officer, director, or manager who at the same time is an officer, director, or manager of any other defendant or any domestic company, other than a wholly owned subsidiary, engaged in the manufacture, distribution or sale of matches, match machinery or match chemicals, except that any officer, director or manager of any of said consenting defendants who is, on the date of the entry of this judgment, an officer, director, or manager of defendant Eddy Match Company, Ltd., may remain at the same time an officer, director, or manager of said Eddy Match Company, Ltd., for not more than five (5) years after the date of the entry of this judgment.

5. Each of the defendants Diamond, B-F-D Company, The William Gordon Corporation, William A. Fairburn, Robert G. Fairburn, and Howard F. Holman is hereby severally and jointly enjoined and restrained from:

- (A) Distributing or selling matches made in the United States, its territories or possessions, in any foreign market through or to defendants, The Swedish Match Company, British Match Corporation, Ltd., Bryant & May, Ltd. or Eddy Match Company, Ltd., their subsidiaries, agents or successors, or any foreign match producer known to be controlled directly or indirectly by said defendants, The Swedish Match Company, British Match Corporation, Ltd., Bryant & May, Ltd., or Eddy Match Company, Ltd., their subsidiaries, agents or successors;
- (B) For a period of five years from the date of the entry of this judgment, directly or indirectly purchasing from or acting as an agent of defendants The Swedish Match Company, Transamerican Match Corporation, or New York Match Co. Inc., or any of their subsidiaries, agents, or successors known to be such, for the sale or distribution of matches, match machinery, or match chemicals in the United States, its territories or possessions;
- (C) Acting as an exclusive agent of, or being the exclusive purchaser from any foreign match producer or distributor for the distribution or sale of matches, match chemicals or match machinery in the United States, its territories or possessions.

*[ Divesting of Stock Directed]*

6. Defendant B-F-D Company is directed within five years from the date of the entry of this judgment to divest itself of its capital stock holdings in defendants Ohio Match Company and Lion Match Company, Inc.

7. Defendant The William Gordon Corporation is directed within three years from the date of the entry of this judgment to divest itself of its capital stock holdings in defendants Ohio Match Company and Lion Match Company, Inc.

*[ Voting Stock Owned in Certain Defendants, Acquiring More Stock Enjoined; Proviso]*

8. Each of the defendants Diamond, B-F-D Company, The William Gordon Corporation, William A. Fairburn and Robert G. Fairburn and his respective wife, children, parents, brothers and sisters, or nominees, is hereby enjoined and restrained from:

(A) Voting, in person or by proxy, stock which each respectively owns, controls or represents, of defendants Universal Match Corporation, Ohio Match Company, Lion Match Company, Inc., Eddy Match Company, Ltd., or British Match Corporation, Ltd.; provided that defendant The William Gordon Corporation may vote the stock which it owns of defendants Ohio Match Company and Lion Match Company, Inc. during the period of three years from the date of the entry of this judgment;

(B) Acquiring or controlling, directly or indirectly, any more stock of any domestic or foreign match company than he or it or any of its wholly owned subsidiaries held, beneficially or otherwise, on the date of the filing of the complaint herein, or on the date of entry of this judgment, whichever date represents the smaller amount of stock, unless such additional stock is acquired in the form of a regular stock dividend declared and issued by the corporation whose stock is thus held, or as a result of a change in the capital structure or a distribution of surplus or capital of such corporation which does not change the relative stock holding of any such defendant in relation to the total outstanding stock of the same class in such corporation at the time of such change in capital structure; provided, however, that, without passing upon the legality thereof, this judgment shall not prevent the defendants Diamond, B-F-D Company and The William Gordon Corporation, and William A. Fairburn and Robert G. Fairburn, and his respective wife, children, parents, brothers and sisters and nominees, from acquiring any additional stock in defendants Diamond and B-F-D Company; and provided, further, that without passing upon the legality thereof, this judgment shall not prevent the creation or acquisition of any wholly owned subsidiary in any foreign country or the acquisition of any interest in any foreign firm or corporation in which no interest is owned or held by any other defendant.

*[ Plans and Specifications To Be Made Available]*

9. Each of the defendants, Diamond and B-F-D Company is directed for a period of five (5) years from the date of the entry of this judgment to make available for inspection and copying at its office or other convenient place designated for such purpose by such defendant, upon request in writing addressed to the Secretary of such defendant, to any person engaged or intending to engage in the match manufacturing business, any and all existing plans and specifications, for match machinery in general commercial operation, which it owns or controls prior to or on the date of entry of this judgment, at a nominal and non-discriminatory price; provided, that each said defendant is not required to furnish such information to any other defendant unless said other defendant agrees reciprocally to furnish such plans and specifications as it may own or control prior to or on the date of the entry of this judgment. The provisions of this paragraph shall become effective one hundred and twenty (120) days after the date of the entry of this judgment unless the Court allows said defendants further time upon motion, of which fifteen (15) days' notice shall be given to the Attorney General, and a showing to the Court that said defendant has not been able, in the exercise of due diligence, to assemble the aforesaid plans and specifications within the time herein allowed.

*[ Defendants Diamond and B-F-D Directed To Issue Royalty-free Licenses; Patent Infringement, Royalty Suits Enjoined]*

10. Each of the defendants Diamond and B-F-D Company is hereby

(A) Directed to grant to any applicant making written request therefor, an unrestricted and royalty-free license to make, use and sell any product or process relating to matches or their manufacture, covered by any existing patent or patent application, including all divisions, continuations, extensions or reissues of such patents or patent applications owned or controlled by each said defendant on the date of the entry of this judgment;

(B) Enjoined from instituting or threatening to institute suits for patent infringement or suits to collect royalties which are based upon any of the patents or patent applications relating to matches or their manufacture including all divisions, continuations, extensions or reissues of such patents or patent applications owned or controlled by each said defendant on the date of the entry of this judgment.

*[ Non-discriminatory Sales Directed]*

11. Defendant Diamond, so long as it holds stock of Eddy Match Company, Ltd. or British Match Corporation, Ltd., is directed to sell and deliver in the United States at non-discriminatory prices, to any bona fide purchaser for export, except as prohibited in Paragraph 5(A) hereof, to any market in the world, matches made by it, with due regard to the requirements of its domestic customers and its then manufacturing capacity.

*[ Defendant Swedish Match Directed to Issue Royalty-free Licenses; Patent Infringement, Royalty Suits Enjoined]*

12. Defendant The Swedish Match Company is hereby

(A) Directed to grant to any applicant making written request therefor an unrestricted and royalty-free license to make, use and sell any product or process, directly or indirectly, relating to everlasting or reignitable matches or their manufacture covered by United States letters patent or patent applications, including all divisions, continuations, extensions or reissues of such patents or patent applications owned or controlled by said defendant on the date of the entry of this judgment, including, but not limited to, the following:

U. S. Nos. 2,015,383—Foldi and Koenig

2,093,516—Foldi and Koenig

1,903,838—Ringer

1,941,621—Ringer

2,059,807—Ringer

(B) Enjoined from instituting or threatening to institute suits for patent infringement or suits to collect royalties which are based upon any of the United States letters patent or patent applications, including all divisions, continuations, extensions, or reissues of such patents or patent applications owned or controlled by said defendant on the date of the entry of this judgment, referred to in subparagraph (A) hereof.

*[ Issuing of Grants of Immunity Directed]*

13. Defendant The Swedish Match Company is hereby directed to issue to any applicant making written request therefor, an unrestricted and unconditional grant of immunity under foreign patents or applications for foreign patents corresponding to the United States letters patent and patent applications referred to in Paragraph 12 hereof, to import into, and to sell or to use, and to have imported, sold or used in, any country, any match product made in the United States.

*[ Licensing Directed]*

14. Defendant The Swedish Match Company is directed to grant to any applicant therefor a non-exclusive, non-assignable and unrestricted license to make, use and sell, save for a uniform reasonable royalty, under any patented invention of The Swedish Match Company, its subsidiaries, successors, assigns or nominees, conceived within five years after the date of the entry of this judgment relating to everlasting or reignitable matches. Any applicant for such license who fails to agree with The Swedish Match Company upon a reasonable royalty may apply to this Court, after notice to the Attorney General, to determine the reasonable royalty for such license.



[ *Sales to Diamond Enjoined*]

15. Each of the defendants The Swedish Match Company, Transamerican Match Corporation and New York Match Co., Inc. is enjoined, for a period of five years from the date of the entry of this judgment, from directly or indirectly selling matches, match machinery or match chemicals to Diamond or having Diamond as an agent for the distribution or sale of matches, match chemicals or match machinery.

[ *Acquisitions Lessening Competition Enjoined; Provisos*]

16. Each of the consenting defendants is enjoined from acquiring any company other than a wholly owned subsidiary, engaged in the manufacture and sale of matches, match machinery or match chemicals in the United States, its territories or possessions, except after an affirmative showing that such acquisition will not unreasonably restrain or lessen competition; provided that, without passing upon the legality thereof, the provisions of this paragraph shall not apply to the first purchase by The Swedish Match Company of any domestic company, excepting a defendant herein, engaged in the manufacture of matches, match machinery or match chemicals. Such showing shall be made before this Court upon sixty (60) days' notice to the Attorney General, and if satisfied, the Court may, upon such terms and conditions as may be appropriate, permit such acquisition.

[ *Exempted Activities, Agreements*]

17. This judgment shall have no effect with respect to agreements or activities authorized or permitted by the Act of Congress of April 10, 1918, commonly called the Webb-Pomerene Act, or acts amendatory thereto, nor shall it have any effect with respect to agreements or activities authorized or permitted by the Act of Congress of 1937, commonly called the Miller-Tydings proviso to Section 1 of the Sherman Anti-Trust Act (15 U. S. C. Sec. 1).

[ *Access of Department of Justice to Records and Interviews; Reports*]

18. For the purpose of securing compliance with this judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or an Assistant Attorney General and on reasonable notice to any of the consenting defendants who may then maintain offices in the United States or otherwise is subject to the jurisdiction thereof, be permitted, subject to any legally recognized privilege, (1) access during the office hours of such defendants to all their books, ledgers, accounts, correspondence, memoranda and other of their records and documents in the possession or under the control of such defendants relating to any matters contained in this judgment; (2) subject to the reasonable convenience of such defendants and without restraint or interference from them, to interview officers or employees of such defendants, who may have counsel present, regarding any such matters; and (3) upon such request said defendants shall submit such reports in writing with respect to the matters contained in Paragraphs 5 to 15 inclusive, hereof, as may 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 any representative of the Department of Justice to any person other than a duly authorized representative of such Department except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment, or as otherwise required by law.

[ *Reports of Purchases in Russia, Japan*]

19. Each of the defendants Diamond and B-F-D Company is directed, for a period of five years from the date of the entry of this judgment, to file with the Attorney General an annual report of its respective purchases of matches, match machinery or match chemicals from any producer or distributor of said products in Russia or Japan.

[ *Jurisdiction Retained*]

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

#### **Appendix A.**

- (1) The 1903 Agreement between Diamond and The Swedish Match Company and renewals thereof alleged in paragraph 41 of the complaint.
- (2) The 1901 Agreement between Diamond and Bryant & May, Ltd, alleged in paragraph 43 of the complaint.
- (3) The 1920 Agency Agreement between Diamond and The Swedish Match Company alleged in paragraph 52 of the complaint.
- (4) The 1920 Memorandum Agreement between Diamond and The Swedish Match Company alleged in paragraphs 53 and 54 of the complaint.
- (5) The 1920 oral understanding between W. A. Fairburn and Ivar Kreuger alleged in paragraph 54 of the complaint.
- (6) The agreement or understanding among Diamond, B-F-D Company and British Match, Ltd. alleged in the last sentence of paragraph 62 of the complaint.
- (7) The 1928 Paris Agreement between W. A. Fairburn and Ivar Kreuger alleged in paragraph 68 of the complaint.
- (8) The May 1930 Renewal Agreement between Diamond and The Swedish Match Company alleged in paragraph 74 of the complaint.
- (9) The Agreement of November 20, 1929 between W. A. Fairburn and Ivar Kreuger alleged in paragraph 75 of the complaint.
- (10) The 1934 Agreements between Diamond and The Swedish Match Company alleged in paragraph 83 of the complaint.
- (11) The agreement of October 2, 1935 between Diamond and The Swedish Match Company alleged in paragraph 87 of the complaint.
- (12) The tentative Agency Agreement of July 1939 between Diamond and The Swedish Match Company and the 1940 Agreement with respect thereto alleged in paragraph 88 of the complaint.
- (13) The agreement of 1921 between Ohio Match Company and Diamond alleged in the first sentence of paragraph 90 of the complaint.
- (14) The agreements between Universal Match Corporation and Diamond and Lion Match Company, Inc. and Diamond alleged in paragraph 91 of the complaint.
- (15) The 1922 Agreement between Uniform Chemical Products, Inc. and Chemische Fabrik Griesheim Elektron of Germany, and all modifications, renewals and supplemental agreements and understandings alleged in paragraph 94 of the complaint.
- (16) The agreement between Uniform Chemical Products, Inc. and Oldbury Electro-Chemical Co. alleged in paragraph 95 of the complaint.
- (17) The understanding among Diamond, B-F-D Company, Universal Match Corporation, Ohio Match Company and Lion Match Company, Inc. alleged in the last sentence of paragraph 131 of the complaint: and all modifications, renewals or supplemental agreements and understandings relating to the agreements or understandings set forth in items 1 to 17 in this Appendix A referred to in paragraph 3 of this judgment.