

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Decca Records, Inc. and The Decca Record Co., Ltd., U.S. District Court, S.D. New York, 1952-1953 Trade Cases ¶67,402, (Oct. 12, 1952)

United States v. Decca Records, Inc. and The Decca Record Co., Ltd.

1952-1953 Trade Cases ¶67,402. U.S. District Court, S.D. New York. Civil No. 46-779. Filed December 10, 1952. Case No. 937 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decrees—Practices Enjoined—Allocation of Markets, Limiting Imports or Exports, and Sublicensing Rights—Phonograph Records.—Two defendant companies engaged in the business of recording musical compositions and selling records are enjoined by a consent decree from entering into any understanding with each other or with a company named as a co-conspirator which has the effect of (1) allocating markets for the manufacture, distribution or sale of records; (2) limiting importation of records into, or exportation of records from, the United States; or (3) transferring or exercising any right to sublicense or sublease any right in any matrix (a master recording) except for use in a country where the grantor or owner is unable to obtain payments in the currency of its own country; provided that nothing shall prohibit the defendant companies from asserting any right which they may possess in its matrices or records under the statutory or other law of any country.

Consent Decrees—Practices Enjoined—Price Fixing.—Two defendant companies engaged in the business of recording musical compositions and selling records are enjoined by a consent decree from entering into any understanding with each other or with a company named as a co-conspirator which has the effect of fixing or maintaining prices, discounts, or other terms or conditions for the sale of records to third persons.

Consent Decrees—Specific Relief—Termination of Agreements— Terms of Agreements and Negotiations—Permissive Provision.—Two companies engaged in the business of recording musical compositions and selling records are directed to cancel specified agreements.

The consent decree also provides that any agreement between the companies or between one of the companies and a named co-conspirator for the leasing of matrices shall not be in excess of three years duration, including renewal options, and any such agreement shall provide that the grantee will receive only individual options to acquire a lease in individual matrices of the grantor, such options to be exercised not later than 120 days following their availability for use by the grantee and to extend for a maximum period of one year or until the expiration of the agreement, whichever is the lesser. In the event negotiations by a third party for the acquisition from the grantor of a lease to a matrix in which the grantee's rights have expired or its option has not been exercised, the companies are ordered to give the right of first refusal to such third party; or, where the grantee does not make a substantial offer, to accept any reasonable offer for such lease. The judgment shall not be construed to prevent the companies from entering into any exclusive agreement for the leasing of matrices, provided that the agreement does not prohibit the importation of records into, or the exportation of records from, the United States.

Consent Decrees—Modification by Government—No Necessity of Showing Changed Circumstances. —A consent decree provides that the Government may, at any time after three years from the date of the entry of the decree, apply to the court for the termination or modification of a specified provision of the consent decree, and any relief sought by the application may be granted without the necessity of a showing by the Government of any change of circumstances since the entry of the decree.

For the plaintiff: Newell A. Clapp, Acting Assistant Attorney General; Marcus A. Hollabaugh, W. D. Kilgore, Jr., Joseph F. Tubridy, and Alfred Karsted, Attorneys; and Myles J. Lane, United States Attorney for the Southern District of New York.

For the defendants: Cohen and Bingham, by Henry Cohen, for Decca Records, Inc.; and Friedin and Littauer, by Sidney A. Diamond, for Decca Record Co., Ltd.

Final Judgment

[Consent to Entry of Decree]

SUGARMAN, District Judge [In full text]: The plaintiff, United States of America, having filed its complaint herein on August 3, 1948; the defendants herein having filed their several answers to said complaint denying 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 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

[Cause of Action Under Sherman Act]

This Court has jurisdiction of the subject matter hereof and of all parties hereto. The complaint states a cause of action against the defendants under Sections 1 and 3 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) "Matrix" shall mean a master recording or any derivative thereof, such as a mother or a stamper, other than a record;
- (B) "Record" shall mean a commercial phonograph record, i.e., one produced primarily for sale to the general public;
- (C) "American Decca" shall mean the defendant Decca Records, Inc.;
- (D) "British Decca" shall mean the defendant The Decca Record Co., Ltd.;
- (E) "EMI" shall mean Electric and Musical Industries, Limited, named as a co-conspirator in the complaint herein, its subsidiaries and affiliated companies.

III

[Applicability of Judgment]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its subsidiaries, successors and assigns, and to each of their officers, directors, agents and employees, and to all other persons acting or claiming to act under, through or for such defendant. The provisions of this Final Judgment are intended to relate exclusively to acts, agreements, arrangements or understandings in or affecting the foreign or domestic commerce of the United States.

IV

[Agreements Prohibited]

Defendants are jointly and severally enjoined and restrained from entering into, adhering to or claiming any rights under any contract, agreement or understanding with each other or with EMI which has the purpose or effect of:

- (A) Allocating or dividing territories or markets for the manufacture, distribution or sale of records;
- (B) Limiting, restricting or preventing importation of records into, or exportation of records from, the United States;

(C) Determining, fixing or maintaining prices, discounts or other terms or conditions for the sale of records to third persons;

(D) Transferring or exercising any right to sublicense or sublease any right in any matrix except for use in a country where the grantor or owner is unable to obtain payments in the currency of its own country. Provided, however, that nothing in this Final Judgment shall prohibit either defendant from asserting or enforcing any right which such defendant now or at any time hereafter may possess in its matrices or records under the statutory or other law of any country.

V

[Required Terms of Agreements and Practices]

(A) Any agreement between defendants or between a defendant and EMI for the leasing of matrices or the licensing of the rights in matrices shall not be in excess of three years duration, including renewal options, and any such agreement shall provide that the grantee will receive only individual options to acquire a lease of or license in individual matrices of the grantor, such options to be exercised not later than 120 days following their availability for use by the grantee and to extend for a maximum period of one year or until the expiration of the agreement, whichever is the lesser, renewable by the grantee for successive one year periods but in no event extending beyond the expiration of such agreement.

(B) Each defendant is ordered and directed, in the event of negotiations by a third party for the acquisition from the grantor of a lease to or license in a matrix in which the grantee's rights have expired or its option has not been exercised, to give the right of first refusal to such third party; or, where the grantee does not make a substantial offer, to accept any reasonable offer for such lease or license.

(C) Nothing contained in this Final Judgment shall be construed to prevent the defendants from entering into any exclusive agreement with each other or with EMI for the leasing of matrices or the licensing of the rights in matrices, including the right to distribute records pressed therefrom in a specified area, provided that the agreement does not prohibit the importation of records into, or exportation of records from, the United States, and provided, further, that the plaintiff may, upon reasonable notice, at any time after three years from the date of entry of this Final Judgment, apply to this Court for the termination or modification of this Section V, in whole or in part, and any relief sought by the application may be granted without the necessity of a showing by the plaintiff of any change of circumstances since the entry of the Final Judgment.

VI

[Order Contracts Terminated]

(A) The following agreements are hereby adjudged to be unlawful and each of the defendants is ordered and directed to cancel and terminate any of the following agreements which have not already been cancelled and terminated and any agreements and arrangements amendatory thereof or supplemental thereto:

- (1) Agreement of August 29, 1934, between American Decca and British Decca;
- (2) Agreements of October 23, 1935, between American Decca and EMI, and subsidiaries;
- (3) Agreement of October 23, 1935, between British Decca and EMI;
- (4) Agreement of April 1, 1936, between American Decca and British Decca;
- (5) "Superseding Agreement", "Supplemental Agreement" and "Correction Agreement" of July 21, 1937, between American Decca and British Decca;
- (6) Agreement of May 6, 1942, between American Decca and The Parlophone Company Limited, Industrias Electricas Y Musicales Odeon, (Argentina), Transoceanic Trading Corporation, and Industrias Electricas Y Musicales Odeon, (Chile) (all EMI subsidiaries);
- (7) "Main Agreement" of October 4, 1946, between American Decca and British Decca;

- (8) Supplement of September 25, 1947 to "Main Agreement" between American Decca and British Decca;
- (9) "Sales Agreement" of October 4, 1946, between Decca and British Decca;
- (10) Modification of September 25, 1947 to "Sales Agreement" between American Decca and British Decca;
- (11) Agreement of June 3, 1949, between American Decca and British Decca;

(B) Each of the defendants is enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under, any contract, agreement, understanding, plan or program which has the purpose or effect of continuing or renewing any contract, agreement or understanding described in subsection (A) of this Section VI.

VII

[*Effective Date*]

This Final Judgment shall become effective on January 1, 1953.

VIII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment 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 defendants made to their principal offices, be permitted:

- (A) 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 defendant relating to any of the matters contained in this Final Judgment; and
- (B) Subject to the reasonable convenience of said defendants and without restraint or interference from them, to interview the officers and employees of defendants, who may have counsel present, regarding any such matters.

For the purpose of securing compliance with this Final Judgment, any defendant, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, made to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this 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 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 or amendment of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.