

APPENDIX A:

FINAL JUDGMENTS

(Ordered by Year Judgment Entered)

United States v. Aluminum Co. of Am.

Civil Action No.: 159

Year Judgment Entered: 1912



U. S. v. ALUMINUM COMPANY OF AMERICA.

IN THE UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF PENNSYLVANIA.

In Equity No. 159.

UNITED STATES OF AMERICA, PETITIONER,
VS.

ALUMINUM COMPANY OF AMERICA, DEFENDANT.

DECREE.

This cause coming on to be heard on this 7th day of June, 1912, before the Hon. James M. Young, District Judge, and the petitioner having appeared by its district attorney, John H. Jordan, and by Wm. T. Chantland, its special assistant to the Attorney General, and having moved the court for an injunction in accordance with the prayer of its petition, and it appearing to the court that the allegations of the petition state a cause of action against the defendant under the provisions of the act of July 2, 1890, known as the Anti-Trust Act, that it has jurisdiction of the subject matter, and that the defendant has been regularly served with proper process, and has appeared in open court, by George B. Gordon, its counsel, and has given its consent to the entering and rendition of the following decree:

Now, therefore, it is ordered, adjudged, and decreed:

1. That sections 2, 4, and 5 of the agreement entered into as of date September 25, 1908, between the Societe Anonyme pour l'Industrie de l'Aluminum of Neuhausen

and the Northern Aluminum Company (Ltd.), acting on behalf of the defendant corporation, as follows, to wit:

2. The N. A. Co. agree not to knowingly sell aluminum directly or indirectly in the European market.

3. The A. J. A. G. agree not to knowingly sell aluminum directly or indirectly in the American market.

4. The total deliveries to be made by the two companies shall be divided as follows:

European market, 75 per cent to A. J. A. G., 25 per cent to N. A. Co.

American market, 25 per cent to A. J. A. G., 75 per cent to N. A. Co.

Common market, 50 per cent to A. J. A. G., 50 per cent to N. A. Co.

The Government sales to Switzerland, Germany, and Austria-Hungary are understood to be reserved to the A. J. A. G.

The sales in the U. S. A. are understood to be reserved to the Aluminum Company of America.

Accordingly the A. J. A. G. will not knowingly sell aluminum directly or indirectly to the U. S. A. and the N. A. Co. will not knowingly sell directly or indirectly to the Swiss, German, and Austria-Hungarian Governments.

5. The N. A. Co. engages that the Aluminum Company of America will respect the prohibitions hereby laid upon the N. A. Co.

be and the same are hereby declared null and void, and that the defendant Aluminum Company of America, and all its agents and representatives in whatever capacity, are hereby perpetually enjoined from directly or indirectly requiring the parties to said contract to abide by its terms, and defendant is further enjoined from either directly or indirectly entering into, through said Northern Aluminum Company, or any other person or corporation, and from making or aiding in making any agreement containing provisions of the nature of those hereinbefore set out, in so far as they relate to the sale of aluminum in the United States, or its importation into or exportation from the United States, or any contract or agreement, either verbal

or written, the purpose and effect of which would be to restrain the importation into the United States, from any part of the world, of aluminum, or alumina, or bauxite, or any other material from which aluminum can be manufactured, or to fix or illegally affect the prices of aluminum, alumina, bauxite, or other material, when imported.

2. That the fourth and eighth paragraphs of the agreement entered into, under date of July 5, 1905, between the defendant Aluminum Company of America, under its former name, Pittsburgh Reduction Company, and the General Chemical Company, a corporation, which paragraphs read as follows:

Fourth. Said Chemical Company further expressly covenants and agrees that it will not use or knowingly sell any of the bauxite sold to it by the said Bauxite Company hereunder, or any other bauxite, or the products thereof for the purpose of conversion into the metal aluminum, and that upon proof that any of said bauxite or products thereof have been put to any such use it will not make any further sales or deliveries to the purchaser thereof.

Eighth. It is understood and agreed that the bauxite sold hereunder by the said Bauxite Company to the said Chemical Company shall be used by the said Chemical Company and by companies under its control of whose stock is largely held by it, and by no other person or party, and only for the manufacture of alum, alum salts, alumina sulphate or alumina hydrate for alum and its compounds, and for no other purpose whatsoever—

be, and they are, hereby declared null and void and are stricken out of said contract; and that the fifth section of said contract which reads as follows:

Fifth. The said Reduction Company agrees to use its good offices in the interest of said Chemical Company so far as relates to promoting the trade of the latter in alum and alum products in the United States and in foreign countries; and said Chemical Company reciprocally undertakes and agrees to use its good offices in the interest of said Reduction Company so far as relates to promoting

the metal business of the latter in the United States and in foreign countries—

in so far as it may be considered as an agreement upon the part of the General Chemical Company to antagonize the interests of the competitors of the defendant company, be and it is hereby declared to be null and void, and that defendant and all its agents and representatives be, and they are, hereby perpetually enjoined from in any manner, and to any extent, requiring an enforcement of said provisions, and from entering into or acting in pursuance of any contract or agreement the purpose and effect of which would be to place any restraint upon the General Chemical Company with reference to the right of said company to acquire and sell, or the quantity which it may acquire and sell, or the price at which it may acquire and sell any bauxite, alumina or aluminum of which it may become the owner by purchase, manufacture, or otherwise.

3. That the tenth and eighteenth sections of the contract entered into under date of April 20, 1909, between the defendant Aluminum Company of America and the Norton Company, which sections read as follows, to wit:—

Tenth. Norton Company may mine and use bauxite from the said forty-acre tract of bauxite land referred to in paragraph D above, which shall be used for the purpose of manufacturing aluminum, and may mine and sell from the said property bauxite or other mineral taken therefrom for any purpose except for the manufacture of aluminum, and Norton company shall not sell or otherwise dispose of said forty-acre tract except subject to the above restrictions.

Eighteenth. Norton Company shall not at any time during the continuance of this agreement use or sell any of the bauxite contained on the said forty-acre tract described in paragraph D above, or any other bauxite, or the products thereof, hereafter acquired by Norton Company, in the United States of America or the Dominion of Canada for the purpose of conversion into aluminum—and all other parts of said contract, in so far as they restrain or seek to restrain the Norton Company from exer-

cising its free and independent will in using and disposing of the bauxite which it may receive under the provisions of said contract, or any other bauxite which it may obtain, be and the same are hereby declared null and void and are abrogated; and that the defendant, and its officers and agents, be perpetually enjoined from in any manner or to any extent enforcing or requiring recognition by the Norton Company of such provisions, and from hereafter entering into any contract with said Norton Company, the purpose and effect of which would be to restrain said Norton Company in the disposition of any bauxite which may be obtained from any source, or any alumina or aluminum which it may manufacture from such bauxite, or may otherwise obtain.

4. That the following clause in a contract between defendant and the Pennsylvania Salt Manufacturing Company to wit:

The Pennsylvania Salt Manufacturing Company agrees not to enter into the manufacture of aluminum as long as this agreement is in force—

and the ratification and extension of said clause contained in a letter from the Pennsylvania Salt Manufacturing Company to defendant, dated January 1, 1907, be and the same are hereby declared null and void; and that defendant Aluminum Company of America and its officers and agents be and they are hereby perpetually enjoined hereafter from in any manner or to any extent enforcing or relying upon said clause and its ratification, and from entering into any contract with said Pennsylvania Salt Manufacturing Company, the purpose and effect of which would be to restrain said Pennsylvania Salt Manufacturing Company from freely making any disposition that it may see proper, and at any price it may deem proper, of any bauxite, alumina or aluminum, the ownership of which it may acquire from any source.

5. That that part of the agreement entered into as of date November 16, 1910, by defendant Aluminum Company of America and Gustave A. Kruttschnitt, of Newark,

New Jersey, and James C. Coleman, of Newark, New Jersey, which provides that—

As part consideration for the execution of this agreement by Aluminum Company, Kruttschnitt and Coleman hereby severally agree that for the period of twenty years from the date hereof, in that part of the United States east of a north and south line through Denver, Colorado, neither Kruttschnitt nor Coleman will directly or indirectly engage or become interested in the manufacture or fabrication or sale of aluminum or any article made substantially of aluminum, provided that either or both the said Kruttschnitt and Coleman may be employed by or become interested in the Aluminum Company or said Aluminum Goods Manufacturing Company without committing a breach of this contract—

in so far as it constitutes a restraint upon said Kruttschnitt and Coleman from freely engaging in any part or branch of the aluminum business, be and the same is hereby declared to be null and void, and that the defendant, and its officers, agents, and representatives be and they are hereby perpetually enjoined from entering into a contract with said Kruttschnitt or Coleman or with any other individual, firm, or corporation of a like or similar character to the above-quoted provisions of said contract, except as the same may be a lawful incident to the purchase of good will.

6. That the defendant and its officers, agents, and representatives be and they are hereby perpetually enjoined from entering into a contract with any other individual, firm, or corporation of a like or similar character to the above-quoted provisions in the contracts between the Aluminum Company of America and the General Chemical Company, between said Aluminum Company and the Norton Company, between said Aluminum Company and the Pennsylvania Salt Manufacturing Company, and between said Aluminum Company and Kruttschnitt and Coleman, or either of them, and from entering into or participating in any combination or agreement the purpose or effect of which is to restrict or control the output

or the prices of aluminum or any material from which aluminum is directly or indirectly manufactured, and from making any contract or agreement for the purpose of or the effect of which would be to restrain commerce in bauxite, alumina, or aluminum, or to prevent any other person, firm or corporation from or to hinder him or it in obtaining a supply of either bauxite, alumina, or aluminum of a good quality in the open market in free and fair and open competition, and from themselves entering into or compelling or inducing, under any pretext, or in any manner whatsoever, the making of any contact between any persons, firms, or corporations engaged in any branch of the business of manufacturing aluminum goods the purpose or effect of which would be to fix or regulate the prices of any of their raw or manufactured products in sale or resale.

7. To prevent all undue discrimination upon the part of defendant and its officers and agents, or upon the part of any firm or corporation in whose business defendant owns or hereafter acquires a financial interest by stock ownership or otherwise, against any competitor of defendant, and thus to prevent the unlawful acquisition by defendant of a monopoly in any branch of manufacturing from crude or semifinished aluminum, defendant and its officers, agents, and representatives, are hereby perpetually enjoined from committing the following acts, to wit:

(a) Combining either by stock ownership or otherwise with any one or more manufacturers for the purpose or with the effect of controlling or restraining the output of any product manufactured from aluminum, or fixing or controlling the price thereof.

(b) Delaying shipments of material to any competitor without reasonable notice and cause, or refusing to ship or ceasing to continue shipments of crude or semifinished aluminum to a competitor on contracts or orders placed, and particularly on partially filled orders, without any reasonable cause and without giving notice of same, or purposely delaying bills of lading on material shipped to any competitor, or in any other manner making it im-

possible or difficult for such competitor promptly to obtain the material upon its arrival, or from furnishing known defective material.

(c) Charging higher prices for crude or semifinished aluminum from any competitor than are charged at the same time under like or similar conditions from any of the companies in which defendant is financially interested, or charging or demanding higher prices for any kind of crude or semifinished aluminum from any competitor for the purpose or which under like or similar conditions will have the effect of discriminating against such manufacturers in bidding on proposals or contracts to the advantage of said defendant or any company in which it is financially interested.

(d) Refusing to sell crude or semifinished aluminum to prospective competitors in any branch of the manufacturing aluminum goods industry on like terms and conditions of sale, under like or similar circumstances, as defendant sells such crude or semifinished aluminum to any firm or corporation engaged in similar business in which defendant is financially interested.

(e) Requiring, as a condition precedent to selling crude or semifinished aluminum to a competitor, that such competitor divulge to defendant the terms which such competitor proposes to make in order to secure the work in which the desired aluminum is to be used, and from imparting to any one the purpose or purposes for which said competitor is intending to use said metal.

(f) Requiring or compelling the making of agreements by competitors not to engage in any line of business nor to supply any special order in competition with defendant or with any company in which it is financially interested as a condition precedent to the procurement of aluminum metal.

(g) Representing or intimating to competitors that unless they dealt with defendant or with companies in which defendant has a financial interest for their supply of metal such competitor will not be able to obtain a sufficient supply of metal or obtain it at a price that will

permit them to engage in competition with defendant or with companies in which defendant is financially interested; or in like manner representing or intimating to consumers of aluminum in any stage of manufacture that unless they deal with defendant or with a company in which it is financially interested, their supply of material or manufactured products will be cut off for that reason.

(h) Taking the position with persons, firms, or corporations engaged in the manufacture of any kind of aluminum goods that if they attempt to enlarge or increase any of their industries or engage in enterprises that are or will be competitive with defendant or with the business of any firm or corporation in which defendant is financially interested such persons, firms, or corporations will for that reason be unable to procure their supply of material from defendant or any of the companies in which it is financially interested.

The term "competitor," as used above, shall be construed to mean all persons, firms, or corporations engaged in or who are actually desiring or about to engage in the manufacture of any kind of products or goods from crude or semifinished aluminum, whose business is not controlled or not subject to be controlled by defendant, its officers and agents, either by virtue of ownership of all or a part of the capital stock of such concerns or through any other form or device of financial interest.

Provided, however, that nothing contained in this decree shall be construed to prevent or restrain the lawful promotion of the aluminum industry in the United States.

Provided, further, that nothing herein contained shall obligate defendants to furnish crude aluminum to those who are not its regular customers to the disadvantage of those who are whenever the supply of crude aluminum is insufficient to enable defendant to furnish crude aluminum to all persons who desire to purchase from defendant, but this proviso shall not relieve defendant from its obligation to perform all its contract obligations, and neither shall this proviso, under the conditions of insufficient supply of crude aluminum referred to, be or constitute a permission

to defendant to supply such crude aluminum to its regular customers mentioned with the purpose and effect of enabling defendant or its regular customers, under such existing conditions, to take away the trade and contracts of competitors.

Provided, further, that nothing in this decree shall prevent defendant from making special prices and terms for the purpose of inducing the larger use of aluminum, either in a new use or as a substitute for other metals or materials.

Provided, further, that nothing in this decree shall prevent the acquisition by defendant of any monopoly lawfully included in any grant of patent right.

Provided, further, that the raising by defendant of prices on crude or semifinished aluminum to any company which it owns or controls or in which it has a financial interest, regardless of market conditions, and for the mere purpose of doing likewise to competitors while avoiding the appearance of discrimination, shall be a violation of the letter and spirit of this decree.

This decree having been agreed to and entered upon the assumption that the defendant, Aluminum Company of America, has a substantial monopoly of the production and sale of aluminum in the United States, it is further provided that whenever it shall appear to the court that substantial competition has arisen, either in the production or sale of aluminum in the United States, and that this decree in any part thereof works substantial injustice to defendant, this decree may be modified upon petition to the court after notice and hearing on the merits, provided that such applications shall not be made oftener than once every three years.

It is further ordered that the defendants pay the costs of suit to be taxed.

Per curiam:

JAMES M. YOUNG,
Judge.



U. S. v. ALUMINUM COMPANY OF AMERICA

IN THE UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF PENNSYLVANIA.

November Term, 1912.

In Equity No. 159.

UNITED STATES OF AMERICA, PETITIONER,
VS.

ALUMINUM COMPANY OF AMERICA, DEFENDANT.

SUPPLEMENTAL DECREE.

And now, to wit, October 25, 1922, this cause came on for further hearing on the petition of the Aluminum Co. of America for a modification of the original decree entered in this case on the 7th day of June, 1912, and upon the waiver of notice of said petition and consent to the entrance of this decree by the United States of America, the plaintiff, expressed by the honorable the Attorney General of the United States, it is hereby ordered and decreed that the said decree entered in this case on the 7th day of June, 1912, shall be and the same is hereby modified so that nothing therein contained shall be considered or construed to enjoin or restrain the defendant, the Aluminum Co. of America, or any company or companies subsidiary to or affiliated with it from, at once or from time to time, acquiring, holding, exercising all rights of ownership in, and disposing of, any interest or interests, either controlling or otherwise, in the capital stock or securities of the companies mentioned in the fifth paragraph of the petition, or either of them, that is to say, the Aktieselakabet Hoyangfaldene Norak Aluminum Co. and the Norak-Nitrid Co., or in any properties, plants, power rights, or contracts of said companies now or hereafter acquired by them, or either of them, or in any corporation or corporations or unincorporated associations, companies, or partnerships which may at any time be organized or formed to take over the whole, or any part of the capital stock, securities, rights or properties of said corporations, or either of them.

PROVIDED, HOWEVER, That this shall not be considered as an adjudication under the decree heretofore entered

herein upon the question of the right of the defendant to own or acquire any interest or interests in, or ownership or control of any corporation or corporations, unincorporated associations, companies, or partnerships, directly or indirectly owning or controlling plants, properties, or facilities for the production or manufacture of bauxite, alumina, or aluminum in its crude, finished, or other form, except the plants, properties, and facilities of said Aktieselakabet Hoyangfaldene Norak Aluminum Co. and the Norak-Nitrid Co., but decision upon such question is hereby expressly reserved.

W. H. S. THOMPSON,
United States District Judge.

Filed October 25, 1922.

United States v. Nat'l Ass'n of Master Plumbers of the United States, et al.

Civil Action No.: 151

Year Judgment Entered: 1917



UNITED STATES v. NATIONAL ASS'N OF MASTER
PLUMBERS.

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA, PETITIONER,

VS.

NATIONAL ASSOCIATION OF MASTER PLUMBERS OF THE
UNITED STATES ET AL., DEFENDANTS.

Equity No. 151.

FINAL DECREE.

The United States of America, having filed its petition herein on the 19th day of May, 1917, and all the defendants having duly appeared by Clark McKercher, Esquire, and George H. Calvert, Esquire, their solicitors of record, and answered, and the cause being now at issue on the petition and answers:

Now comes the United States of America, by Edwin Lowry Humes, its attorney for the Western District of Pennsylvania, and Lincoln R. Clark, Special Assistant to the Attorney General of the United States, and come also all the defendants herein by their solicitors, as aforesaid; and it appearing to the court that the allegations of the petition state a cause of action against the defendants under the provisions of the Act of July 2, 1890, known as the Anti-Trust Act, and that it has jurisdiction of the subject matter alleged in the petition; and the petitioner having moved the court for an injunction against the defendants as hereinafter decreed; and the court having duly considered the pleadings and the statements of counsel for the respective parties; and it appearing to the satisfaction of the court that the petitioner is entitled to the relief hereinafter granted and adjudged; and all the defendants, through their solicitors, now and here consenting to the rendition and entering of the following decree:

Now, therefore, it is ordered, adjudged and decreed as follows:

I. That the term "plumbing goods" as used in this decree embraces all fixtures for use in connection with plumbing work and intended to be connected with (to) water and sewer systems, and includes, among others, such articles as iron, lead and brass pipes and fittings, bath tubs, lavatories, water-closets, faucets, and other accessories; and that a master plumber, as the term is herein used, is one who undertakes the work of contracting for, superintending or directing the installation of plumbing goods.

II. That in the year 1903 divers persons who were

then engaged as retail dealers in and installers of plumbing goods, and who were located and doing business in various States of the United States, organized and caused to be organized the defendant National Association of Master Plumbers of the United States, hereafter referred to as the National Association, for the purposes, among others, of becoming members thereof and of thereby mutually recognizing each other as master plumbers; of causing the National Association so organized to adopt certain by-laws and prescribe certain standards of eligibility for membership under which membership in the National Association should be confined exclusively to persons, firms and corporations recognized and classified by the National Association as master plumbers and to affiliated and subordinate associations of recognized master plumbers; of causing all members of the National Association to look upon master plumbers satisfactory to the National Association as the sole legitimate retail dealers in and installers of plumbing goods, of causing them to be so regarded and dealt with by all other persons, and particularly of preventing, by cooperation among themselves and by joint and united effort, all manufacturers of and wholesale dealers in plumbing goods from selling, shipping or distributing plumbing goods in interstate commerce to any one not recognized and classified by the National Association as a master plumber.

III. That the defendant National Association, for the purpose, among others, of preventing manufacturers of and wholesale dealers in plumbing goods from selling, shipping or distributing plumbing goods directly to consumers or to any one else, whether dealer or installer, not recognized and classified by the National Association as a master plumber, adopted certain by-laws and prescribed certain standards, by virtue of which the members of the National Association were to confine their purchases of plumbing goods solely to those manufacturers and wholesale dealers who should sell, ship and distribute plumbing goods exclusively to persons, firms

and corporations recognized and classified by the National Association as master plumbers, thereby hindering and preventing manufacturers and wholesale dealers from selling, shipping or distributing plumbing goods directly to consumers, or to retail dealers or installers not recognized and classified by the National Association as master plumbers.

IV. That thereafter and prior to the time of the filing of the petition herein all of the other defendants, both associations and individuals, became members of the National Association either directly or through one or another of the defendant State and local associations, all of which are affiliated with and members of the National Association, and thereby became parties to the combination and conspiracy now adjudged illegal by this decree.

V. That the National Association and its constituent member associations, both State and local, particularly—
 Master Plumbers Association of Connecticut, Inc.,
 Master Plumbers Association of the State of Georgia,
 Illinois Master Plumbers Association,
 The Indiana State Association of Master Plumbers,
 Iowa Master Plumbers Association,
 Kansas Master Plumbers Association,
 The Montana Master Plumbers Association,
 New York State Association of Master Plumbers,
 Associated Master Plumbers of Texas,
 Wisconsin Master Plumbers Association,
 Alabama Master Plumbers Association,
 The Association of Master Plumbers of the State of Arkansas,
 State Association of Master Plumbers of California,
 Colorado Master Plumbers Association,
 Master Plumbers Association of Wilmington, Delaware,
 Master Plumbers Association of Washington, District of Columbia,
 Florida State Association of Master Plumbers,
 State Association of Master Plumbers of Kentucky,

The State Association of Master Plumbers of the State of Maine,

The Association of Master Plumbers of the State of Maryland,

The Massachusetts Association of Master Plumbers,
 The Michigan State Association of Master Plumbers,
 The Minnesota Master Plumbers Association,
 Missouri State Association of Master Plumbers,
 Nebraska Master Plumbers Association,
 Master Plumbers Association of Manchester, New Hampshire,

The New Jersey Association of Master Plumbers,
 The North Carolina Association of Master Plumbers,
 Ohio State Association of Master Plumbers,
 Oregon Master Plumbers Association,
 The Pennsylvania State Association of Master Plumbers,

Rhode Island Master Plumbers Association,
 South Carolina State Association of Master Plumbers,
 Tennessee Association of Master Plumbers,
 Association of Master Plumbers of Utah,
 Master Plumbers Association of Roanoke, Virginia,
 Association of Master Plumbers of the State of Washington, and

Master Plumbers Association of the State of West Virginia, comprising all the defendant associations, voluntary and corporate; and also all the individual defendants, namely,

David H. Roberts, individually and as president, director and member of National Association,

L. McNamara, individually and as vice president, director and member of National Association,

Eb. Ellen, individually and as secretary, director and member of National Association,

William McCoach, individually and as treasurer, director and member of National Association;

James S. Cassedy,

A. Selden Walker,

John Trainor,

E. D. Hornbrook,

and to hinder and prevent all persons, firms and corporations engaged or desirous of engaging in the plumbing industry as master plumbers or installers of plumbing goods, and proper to be known and dealt with as such, but who are not members of defendant National Association or any of its member associations, from purchasing plumbing goods in interstate or foreign commerce or in the District of Columbia.

(c) To hinder and prevent all persons, firms and corporations engaged or desirous of engaging in the business of a retail dealer in plumbing goods, but who are not members of the National Association or any of its member associations, and who are not recognized or classified by the National Association as master plumbers, from purchasing plumbing goods in interstate or foreign commerce or in the District of Columbia from manufacturers or wholesale dealers or from anyone else; that is to say, to prevent all retail dealers not members of the National Association or any of its member associations from purchasing plumbing goods for the retail trade.

(d) To hinder and prevent all persons, firms and corporations engaged or desirous of engaging in the plumbing industry as retail dealers, and proper to be known and dealt with as such whether or not they be also engaged as master plumbers or installers of plumbing goods, but who are not members of the National Association or any of its member associations, from being recognized and dealt with as legitimate retail dealers in, or purchasers and sellers of plumbing goods, by defendant National Association and its members, or by manufacturers, wholesale dealers or others engaged in any branch of the plumbing industry, or by consumers.

(e) To restrict the demand and curtail the field of plumbing goods produced or held for sale by manufacturers and wholesale dealers to purchases made by those retail dealers only who are recognized by the National Association as master plumbers and who are purchasing such goods to be thereafter resold and installed by themselves as master plumbers.

(f) To hinder, prevent and dissuade manufacturers

and wholesale dealers engaged, or desiring to engage, in selling, shipping or distributing plumbing goods in interstate commerce or in the District of Columbia from selling, shipping or distributing such goods directly to consumers or to retail dealers or others not recognized or classified as master plumbers by defendant National Association; that is to say, to hinder, prevent and dissuade manufacturers and wholesale dealers from selling, shipping or distributing plumbing goods to any one not a member of the National Association or any of its member associations.

(g) To hinder and prevent consumers from purchasing plumbing goods in interstate or foreign commerce or in the District of Columbia directly from the manufacturer or wholesale dealer or from any one else save retail dealers who are recognized and classified as master plumbers by defendant National Association; that is to say, from any one save members of the National Association or any of its member associations.

(h) To eliminate all competition for trade in the purchase and sale of plumbing goods in interstate and foreign commerce and in the District of Columbia, except competition between manufacturers selling to wholesale dealers, and between manufacturers and wholesale dealers selling to persons, firms and corporations recognized and classified as master plumbers by the National Association.

VII. That among the means and methods adopted and used by the defendants for the purpose of carrying the combination and conspiracy into effect, and accomplishing the objects thereof, which means and methods are hereby adjudged to be in violation of the Anti-Trust Act of July 2, 1890, were the following:

(a) The defendant associations and their directors, officers, committees and members have from time to time held meetings, conventions and conferences for the purpose and with the effect of bringing about concert of action and uniformity of practice among the defendants in the accomplishment of the objects hereinbefore adjudged illegal.

(b) The defendant associations, through their directors, officers, committees, members and agents, have from time to time ascertained the names of manufacturers and wholesale dealers who were selling, shipping or distributing plumbing goods directly to consumers or to retail dealers or others not recognized and classified by the National Association as master plumbers, and have from time to time protested to the manufacturers and wholesale dealers whose names were thus ascertained, and have circulated the names of such offending manufacturers and wholesale dealers amongst the members of defendant associations and endeavored by means of boycotting and by actual or threatened withdrawal of patronage or custom to induce such manufacturers and wholesale dealers to discontinue sales directly to consumers or to retail dealers or others not recognized and classified by the National Association as master plumbers; and the members of the defendant associations have been concertedly conducting their business strictly upon a plan involving the purchase by them of plumbing goods only from manufacturers and wholesale dealers who agree or have agreed, or whose avowed policy it is, to sell exclusively to members of defendant associations and to refrain from selling plumbing goods to consumers, retail dealers or others who are not members of any of said associations.

(c) The defendant associations, their directors, officers, committees, and members, cooperating among themselves, have from time to time compiled and published lists of manufacturers and wholesale dealers recognized by the defendants as conducting their several businesses in accord with the dictates and objects of the defendants, and especially have from time to time printed and published lists of such manufacturers and wholesale dealers in the form of a pamphlet commonly known as the "Brown Book"; and have caused such lists to be distributed and circulated among the several members of the defendant associations with the purpose and effect of notifying them severally and collectively to confine their custom and patronage to the manufacturers and

wholesale dealers whose names appeared therein, and to refrain from purchasing plumbing goods from all other persons, firms, or corporations.

(d) The defendant associations, their directors, officers, committees, and members, cooperating among themselves, have from time to time compiled and published lists of persons, firms and corporations recognized and classified by the National Association as master plumbers, and especially have from time to time printed and published lists of such persons, firms and corporations in the form of a book commonly known as the "Red Book," and have caused such lists to be distributed and circulated among the members of the several defendant associations with the purpose and effect of causing them concertedly to hinder and prevent all other persons, firms and corporations than those appearing in such lists as recognized master plumbers from purchasing or obtaining plumbing goods from the manufacturers and wholesale dealers therein, and from selling or distributing plumbing goods to consumers; and have likewise caused such lists to be distributed and circulated among manufacturers of and wholesale dealers in plumbing goods with the purpose and effect of notifying them to sell plumbing goods only to the persons, firms and corporations whose names appeared in such lists as master plumbers recognized as such by the National Association.

(e) The defendant associations, their directors, officers and members have established and maintained a system of espionage over the business of manufacturers and wholesale dealers and over the business of non-member retail dealers, master plumbers and others, and have systematically gathered and disseminated among themselves information touching acts of such manufacturers and wholesale dealers, and of such non-member retail dealers, master plumbers and others, which were not in accord with the above described unlawful objects of the combination and conspiracy, particularly information touching sales of plumbing goods by manufacturers and wholesale dealers to consumers and non-member retail dealers, master plumbers and others, and touching pur-

chases and installations of plumbing goods by consumers and non-member retail dealers, master plumbers and others; and the members of said associations, by agreement among themselves and with the purpose and effect, among others, of hindering and preventing consumers from purchasing or obtaining plumbing goods from anyone but the members of the defendant associations, have concertedly refused to sell any plumbing goods which they do not severally and separately install, and concertedly refused to install any plumbing goods which they do not severally and separately sell.

VIII. That the defendants, and each of them, and their members, directors, officers, agents, servants and employees, and all persons acting under, through, by, or in behalf of them or any of them, or claiming so to act, be, and they are hereby, perpetually enjoined, restrained and prohibited from directly or indirectly engaging in or carrying into effect the combination and conspiracy hereby adjudged illegal; from entering into or engaging in any like combination or conspiracy the effect of which would be to restrain trade and commerce in plumbing goods among the several States or Territories of the United States or in the District of Columbia, or with foreign nations, and from making any express or implied agreement or arrangement together or one with another, or with others, or extending from the National Association downward to its constituent member associations or from any or all of the constituent member associations upward to the National Association, like that hereby adjudged illegal, the effect of which would be to prevent the free and unrestrained flow of interstate and foreign trade and commerce in plumbing goods from the manufacturer and wholesale dealer to the consumer, or from the manufacturer and wholesale dealer to the retail dealer, master plumber or installer, or from the retail dealer, master plumber or installer to the consumer.

IX. That the defendants, and each of them, and their members, directors, officers, agents, servants and employees, and all persons acting under, through, by, or in

behalf of them or any of them, or claiming so to act, be and they are hereby perpetually enjoined, restrained, and prohibited from pursuing any of the objects, or employing any of the means and methods, hereinbefore enumerated and adjudged illegal; and in particular from combining, conspiring, confederating or agreeing with each other or one with another, or with others, expressly or impliedly, directly, or indirectly, or doing any act or thing in pursuance or execution of any such combination, conspiracy, confederation, or agreement—

(a) To monopolize trade or commerce among the several States and Territories of the United States or with foreign nations or in the District of Columbia in the purchase of plumbing goods for the retail trade.

(b) To hinder or prevent any person, firm, or corporation engaged or desirous of engaging in the plumbing industry as a master plumber or installer of plumbing goods, but who is not a member of defendant National Association or any of its member associations, from purchasing plumbing goods in interstate or foreign commerce or in the District of Columbia.

(c) To hinder or prevent any person, firm, or corporation engaged or desiring to engage in the business of a retail dealer in plumbing goods, but who is not a member of the National Association or any of its member associations, or who is not recognized or classified by it as a master plumber, from purchasing plumbing goods in interstate or foreign commerce or in the District of Columbia from the manufacturers of or wholesale dealers in plumbing goods or from anyone else.

(d) To restrict the demand for or to curtail the field of plumbing goods produced or held for sale by manufacturers or wholesale dealers to purchases made by retail dealers who are recognized by the defendant associations as master plumbers, or who purchase plumbing goods to be thereafter resold and installed by themselves as master plumbers.

(e) To hinder, prevent or dissuade manufacturers or wholesale dealers engaged or desiring to engage in selling, or shipping or distributing plumbing goods in inter-

state or foreign commerce or in the District of Columbia from selling, shipping or distributing such goods directly to consumers or to retail dealers or to others not recognized or classified as master plumbers by defendant associations.

(f) To hinder or prevent consumers from purchasing plumbing goods in interstate or foreign commerce or in the District of Columbia directly from the manufacturer or wholesale dealer or from anyone else selling or desiring to sell plumbing goods to consumers.

(g) To eliminate competition for trade in the purchase and sale of plumbing goods in interstate or foreign commerce or in the District of Columbia.

(h) To boycott or threaten with loss of custom or patronage any manufacturer or wholesale dealer engaged or desiring to engage in selling, shipping or distributing plumbing goods in interstate or foreign commerce or in the District of Columbia, for having sold or being about to sell plumbing goods directly to consumers or to retail dealers or others who are not members of any defendant associations or recognized or classified by them as master plumbers.

(i) To intimidate or coerce manufacturers or wholesale dealers into selling plumbing goods only to such persons, firms or corporations as are classified or recognized by defendant associations as master plumbers or as legitimate purchasers of plumbing goods.

(j) To do or to refrain from doing any thing, the purpose or effect of which would be to prevent or hinder by intimidation, coercion, or withdrawal or threatened withdrawal of patronage or custom, any person, firm or corporation from buying or selling plumbing goods in interstate or foreign commerce or in the District of Columbia, wheresoever, whensoever, from or to whomsoever or at whatsoever price may be agreed upon between the seller and the purchaser.

(k) To communicate, directly or indirectly, with any manufacturer, wholesale or retail dealer or other person, firm or corporation, for the purpose of inducing such

manufacturer, wholesale or retail dealer or other person, firm or corporation not to sell plumbing goods to any person, firm or corporation not recognized or classified by the defendants as a legitimate purchaser of plumbing goods.

(l) To communicate, directly or indirectly, with any dealer or master plumber for the purpose of inducing such dealer or master plumber not to purchase plumbing goods, or not to favor with his patronage or custom, any manufacturer of or dealer in plumbing goods because of the practice of such manufacturer or dealer in selling or not selling plumbing goods to any certain class of customers.

X. That the defendants, and each of them, and their members, directors, officers, agents, servants and employees, and all persons acting under, through, by, or in behalf of them or any of them, or claiming so to act, be and they are hereby perpetually enjoined, restrained and prohibited from publishing or distributing or causing to be published or distributed, or aiding or assisting in the publication or distribution of—

(a) The names of any manufacturers or wholesale dealers, or any list or lists of manufacturers or wholesale dealers, who agree or have agreed, expressly or impliedly, directly or indirectly, or whose avowed policy it is, to confine sales of plumbing goods to persons, firms or corporations recognized or classified by the defendants as master plumbers or as legitimate purchasers of plumbing goods, or listed as such in the hereinbefore described "Red Book," or in any book, pamphlet, list or device of like character; or the names of any manufacturers or wholesale dealers, or any list or lists of manufacturers or wholesale dealers, who agree or have agreed, expressly or impliedly, directly or indirectly, or whose avowed policy it is not to sell plumbing goods to consumers or to persons, firms or corporations not included in said Red Book or other list of like character.

(b) The names of any manufacturers of or wholesale dealers in plumbing goods, or any list or lists of such manufacturers or wholesale dealers, who have been or

are selling, shipping or distributing plumbing goods to any person, firm or corporation not classified or recognized by defendants as a master plumber or legitimate purchaser of plumbing goods, or to any person, firm or corporation not listed in said "Red Book" or any book, pamphlet or list of like character, or similar device, as master plumbers, or the names or any list thereof, of any manufacturers or wholesale dealers from whom any such person, firm or corporation has been, or is supposed to be, receiving plumbing goods.

(c) The names of any persons, firms or corporations, or any list or lists thereof, who agree or have agreed, expressly or impliedly, directly or indirectly, to purchase plumbing goods from or to favor with their patronage or custom only those manufacturers and wholesalers who agree or have agreed, expressly or impliedly, directly or indirectly, or whose avowed policy it is, not to sell, ship or distribute plumbing goods directly to consumers or to persons, firms or corporations not approved by the defendants.

(d) The names of any persons, firms or corporations, or any list or lists thereof, engaged or desirous of engaging in the plumbing business as master plumbers or as retail dealers in plumbing goods who are not satisfactory to the defendants or recognized or classified by them as legitimate purchasers of plumbing goods from wholesale dealers or manufacturers.

XI. That defendant National Association of Master Plumbers of the United States, its officers and members, and defendant State and local associations, and all their officers and members, are not restrained from maintaining said organizations for social or legitimate trade purposes, not inconsistent with this decree and not in violation of law; nor are they restrained from publishing and distributing lists of the members of their associations in furtherance of the legitimate purposes thereof, provided that in so doing the effect shall not be to accomplish any of the objects condemned by this decree.

XII. It is further ordered, adjudged and decreed that the petitioner have and recover of the defendants judg-

ment for the costs in this behalf expended, for which let an execution issue.

Dated at Pittsburgh, Pennsylvania, this 19th day of May, 1917.

Per Curiam.

United States v. Candy Supply Co., et al.

Civil Action No.: 2162

Year Judgment Entered: 1928



**UNITED STATES OF AMERICA v. CANDY SUPPLY
COMPANY, ET AL., DEFENDANTS.**

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

In Equity No. 2162 (2189).

UNITED STATES OF AMERICA, PETITIONER

VS.

CANDY SUPPLY COMPANY ET AL.

DECREE.

The United States of America, having filed its petition herein on the 8th day of June 1928, and the defendants, Candy Supply Company and the following stockholders in said Candy Supply Company: Alva C. Anderson, Joseph H. Apter, Charles Apter, John W. Birch, Monroe Bolner, The Campbell & Hemphill Co. Inc., Charles O. Campbell, Capital Candy Company, David L. Clark, Frank I. Clements & Sons Company Inc., Samuel Cohen, Alexander Cohen, Antonio Colatch, Samuel Colatch, James B. Cook, Adam B. Cook, Joseph L. Cook, Nathan Daly, Harry Daly, Samuel E. Davis, Frank DeSimone, Concerttina DeSimone, Roy W. Dils, Harry N. Dippel, Brose C. Elliott, Floyd H. Elliott, John S. Elliott, The Gildisch Company Inc., Meyer Glass, Oscar Green, Louis Greenbarg, Martin Greenbarg, Oliver Greenbarg, Philip Greenbarg, Charles A. Hedges, The Hein Company Inc., Louis Huck, Frank J. Kocher, Samuel Kraus, Henry S. Lamp, jr., Jacob C.

UNITED STATES v. CANDY SUPPLY COMPANY

Lamp, Louis L. Lancaster, Abraham H. Landay, Maurice J. Samolsky, Benjamin D. Lazar, Josiah D. Lazar, Herbert Lechner, Edward A. Lechner, Sidney Lechner, Lloyd Company Inc., Benjamin Lipsitz, Charles C. Luehn, Robert A. Manns, Joseph Mandel, Joseph B. Lytle, Merle C. Maffei, Elick L. Marcus, Guisto E. Mariani, Sherman Mason, John O. Shannon, Samuel A. McAnlis, Leo T. Connair, J. K. McKee Company Inc., John L. Messer, Samuel Minsky, Joseph J. Minsky, Louis M. Minsky, Meyer E. Minsky, Max Mittleman, Model Candy Co. Inc., Morris Moidel, Max Mullen, Max M. Plesset, Milton J. Plesset, Louis M. Plesset, Charles T. Plesset, Marvin Plesset, John Rahn, Joseph H. Rossen, The Raubitschek Company Inc., James C. Reed, Reymer Brothers Inc., Nathan Rice, Harry Rice, Erastus C. Robertson, Hugh C. Robertson, Lynn B. Robertson, Frank S. Roderick, D. J. Roderick, Howard J. Wisser, Frank Rackley, J. Knox McConnell, Morris Rosen, George Rosenthal, Ernest H. Sackville, John Salisbury, Emery P. Sands, William W. Seaman, Nathan Silver, Isaac Silverblatt, Harry P. Sisser, Edward Smith, Joseph D. Snitger, Jacob E. Spanko, Julius P. Staiger, The Stallings Company, R. G. Stephens & Company, Samuel R. Tamburo, Uniontown Candy Company, Louis E. Walk, Meyer Walk, Waverly Candy Company, Weaver, Costello & Company Inc., Jacob C. Wedner, Harry Weisman, Samuel M. Weisman, Louis Whiteman, Israel Whiteman, Arthur J. Woodside, Frank Zasloff, Jacob B. Zasloff, and Wesley C. Zediker, having duly appeared by R. T. McCready, their solicitor;

Comes now the United States of America by John D. Meyer, its attorney for the Western District of Pennsylvania, and by John G. Sargent, the Attorney General, William J. Donovan the Assistant to the Attorney General, and Mary G. Connor, Special Assistant to the Attorney General, and comes also the defendants named herein by their solicitor as aforesaid;

And it appearing to the court by admission of the parties consenting to this decree that the petition herein states a cause of action; that the court has jurisdiction of the subject matters alleged in the petition; and that

the petitioner has moved the court for an injunction and for other relief against the defendants as hereinafter decreed; and the court having duly considered the statements of counsel for the respective parties; and all of the defendants through their said representatives now and here consenting to the rendition of the following decree:

Now, therefore, it is ordered, adjudged, and decreed as follows:

1. That the combination and conspiracy in restraint of interstate trade and commerce, and the acts, agreements, and understandings among the defendants in restraint of interstate trade and commerce, as described in the petition herein, are in violation of the Act of Congress of July 2, 1890, entitled "An Act To protect trade and commerce against unlawful restraints and monopolies," and acts amendatory thereof and supplemental or additional thereto.

2. That the defendants, their officers, agents, servants, or employees are perpetually enjoined and prohibited:

(a) From combining, conspiring, agreeing, or contracting together, or with one another, or with others, orally or in writing, expressly or impliedly, directly or indirectly, to withhold their patronage from any manufacturer or producer of the candy and confectionary products dealt in by the defendants, for or on account of such manufacturer or producer having sold such products in the counties of Allegheny, Armstrong, Beaver, Butler, Fayette, Greene, Mercer, Washington, and Westmoreland, in the Western District of Pennsylvania, wherein defendants are engaged in the candy jobbing business, to persons, firms, or corporations other than the above-named stockholders in defendant Candy Supply Company;

(b) From combining, conspiring, agreeing, or contracting, together, or with one another, or with others, orally or in writing, expressly or impliedly, directly or indirectly, to prevent manufacturers or producers, or

UNITED STATES v. CANDY SUPPLY COMPANY

their agents, engaged in shipping or selling such commodities among the several States, from shipping and selling such commodities freely in the open market;

(c) From sending to manufacturers or producers, or their agents, engaged in selling and shipping said commodities among the several States, communications, oral or written, suggesting directly or indirectly that such manufacturers or producers, or their agents, shall refuse to sell or refrain from selling such commodities directly to the consuming or retail trade, or to jobbers other than the defendants herein;

(d) From issuing and sending to manufacturers or producers, or their agents, engaged in selling and shipping candy products among the several States, lists of the names of jobbers who are stockholders in defendant Candy Supply Company, or members of any other association of candy jobbers, for the purpose and with the intent to coerce, intimidate, or influence said manufacturers, or their agents, to refuse to make or refrain from making sales of said commodities in the above-named nine counties, or elsewhere in the Western District of Pennsylvania, to jobbers or dealers in said products whose names do not appear upon such lists; and from issuing and sending to candy jobbers, who are stockholders in said Candy Supply Company, or members of any other association of candy jobbers, lists of names of manufacturers or producers of said commodities for the purpose and with the intent to coerce, intimidate, or influence said jobbers to boycott manufacturers whose names do not appear upon said list;

(e) From combining, conspiring, or agreeing together, or with one another, or with others, to fix, establish, or maintain among themselves the prices to be charged for said candy products.

3. That jurisdiction of this cause is hereby retained for the purpose of giving full effect to this decree, and for the purpose of making such other and further orders, decrees, amendments, or modifications, or taking such other action, if any, as may be necessary to the carrying

out and enforcing of said decree; and for the purpose of enabling any of the parties to this decree to make application to the court at any time for such further orders and directions as may be necessary or proper in relation to the execution of the provisions of this decree, and for the enforcement of strict compliance therewith and the punishment of evasions thereof.

4. That the United States shall recover its costs.

June 8, 1928.

United States District Judge.

United States v. Voluntary Code of the Heating, Piping, and Air Conditioning
Indus. for Allegheny County, et al.

Civil Action No.: 698

Year Judgment Entered: 1939



U. S. v. AIR CONDITIONING INDUSTRY

**UNITED STATES OF AMERICA vs. VOLUNTARY
CODE OF THE HEATING, PIPING, AND AIR-
CONDITIONING INDUSTRY, ET AL., DEFENDANTS.**
IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF PENNSYLVANIA.

Civil Action No. 698.

UNITED STATES OF AMERICA, PLAINTIFF

VS.

VOLUNTARY CODE OF THE HEATING, PIPING, AND AIR-
CONDITIONING INDUSTRY FOR ALLEGHENY COUNTY,
PENNSYLVANIA, HEATING AND PIPING CONTRACTORS
PITTSBURGH ASSOCIATION, PAUL J. HEENAN, UNITED
ASSOCIATION OF STEAM, HOT WATER, REFRIGERATION,
PNEUMATIC TUBE, HYDRAULIC, AIR, OIL, GASOLINE,
GAS, AND PROCESS PIPE FITTERS, WELDERS AND
HELPERS LOCAL UNION No. 449 OF PITTSBURGH, PENN-
SYLVANIA, UNITED HEATING Co., BAKER SMITH & Co.,
INC., BARTLEY-O'NEILL COMPANY, WM. M. CLARK
& COMPANY, JOS. C. MEYER Co., F. E. GEISLER & COM-
PANY, INCORPORATED, THE G. F. HIGGINS COMPANY,
IRON CITY HEATING COMPANY, LANGDON-KASCHUB
COMPANY, MCGINNESS, SMITH & MCGINNESS COM-
PANY, MOSS AND BLAKELEY PLUMBING COMPANY, W.
N. SAUER COMPANY, GEORGE H. SOFFEL COMPANY,
WAYNE CROUSE, INC., THE HUFFMAN-WOLFE COM-
PANY, EASTERN PLUMBING AND HEATING COMPANY,
FRANK A. SPRAGUE, NORMAN S. SPRAGUE, JR., ROBERT
E. DAUME, WILLIAM J. GRAHAM, WILLIAM S. WILSON,
THOMAS KING, EDWARD F. CASS, PAUL G. CASS,
ADOLPH C. MATTER, LOUIS J. MATTER, GEORGE B.
STEWART, W. C. NIEBAUM, FRED E. HUBBS, JOHN M.
CUDDYRE, F. P. MADIGAN, JOSEPH G. HERTWECK, J. H.
CLARK, CHAS. A. DEVLIN, ALBERT JOHNS, THOMAS
E. KINSELLA, JOHN J. MORRISON, ALBERT J. NEIDEN-
BERGER, HOWARD THOMPSON, HARRY HAIGMEIR, JOHN
A. MCGUIRE, LEO A. GREEN, FRANK R. JOHNSTON,
JAMES AHEARN, AND JOSEPH C. O'TOOLE, DEFENDANTS.

This cause coming on to be heard on the 8th day of December 1939, and the defendants having waived process and service and having appeared herein,

And counsel for the plaintiff and for the defendants having consented to the making and entering of this judgment,

Now, therefore, without taking any testimony or evidence and in accordance with said consent of counsel, it is hereby

ORDERED, ADJUDGED, and DECREED AS FOLLOWS:

1. That the Court has jurisdiction of the subject matter 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.

2. That United Heating Co. be dissolved not later than March 1, 1940.

3. That the Voluntary Code of the Heating, Piping, and Air Conditioning Industry for Allegheny County, Pennsylvania, hereinafter referred to as the Voluntary Code, be dissolved forthwith.

4. That the defendants and each of them and all of their respective officers, directors, agents, servants, employees, and all persons acting or claiming to act on behalf of the defendants or any of them, and all members of defendant United Association of Steam, Hot Water, Refrigeration, Pneumatic Tube, Hydraulic, Air, Oil, Gasoline, Gas and Process Pipe Fitters, Welders and Helpers Local Union No. 449 of Pittsburgh, Pennsylvania, hereinafter referred to as Local 449, be and they hereby are perpetually enjoined and restrained

A. From in any way engaging in, maintaining, extending, continuing, or reviving, either directly or indirectly, in whole or in part, by any means whatsoever, the combination and conspiracies in restraint of trade

and commerce in heating materials, parts, supplies, apparatus, and equipment used in connection with heating and ventilating systems, described in the complaint herein, as follows:

16. Beginning on or about August 4, 1937, the defendants or some of them, have engaged in an unlawful combination and conspiracy to restrain and burden, and pursuant thereto to have actually restrained and burdened, the aforesaid interstate trade and commerce in heating equipment, in violation of the Act of Congress approved July 2, 1890, entitled "An Act To protect trade and commerce against unlawful restraints and monopolies," and acts amendatory thereof and supplementary thereto, in the manner and by the means as follows:

17. Local 449, Leo A. Green, Frank R. Johnston, Howard Thompson, the Contractors Association, E. J. Deere, J. J. Sneider, H. E. Kaschub, Chas. F. Ruege, William J. Graham, and Jacob Soffel, caused the organization of the Voluntary Code as aforesaid, on or about October 6, 1937. Shortly after such organization the Voluntary Code formulated and placed into effect its constitution and bylaws which provided, among other things, (a) that no member of the Voluntary Code could take any heating contract at less than the estimated cost of the heating equipment and labor used, exclusive of cash discounts, (b) that members of the Voluntary Code must submit copies of all heating and ventilating bids, other than bids on Public Works Administration projects, to a bid depository operated by said Voluntary Code, to be opened, tabulated, and made available to the other members of the Voluntary Code, (c) that each member of the Voluntary Code pay fees and dues to said Voluntary Code an amount equal to $\frac{1}{2}$ of 1% of each contract or order for work exceeding \$250.00, other than contracts financed by the Public Works Administration, and (d) that violations of said provisions be punishable by any monetary fine which the Board of Directors may levy, and by sus-

pension from participation in the Voluntary Code. Said provisions have been enforced so as to prevent contractor members from freely making their estimates for heating equipment and installation services, from lowering their prices therefor after their bids have been submitted, and from fully competing with one another in the sale at competitive prices of heating equipment moving in interstate commerce.

18. Upon the organization of the Voluntary Code as described above, Local 449 entered into an agreement with the Voluntary Code and its members, and the Contractors Association and its members, to limit employment of the members of Local 449 to the members of the Voluntary Code, to the exclusion of all other heating contractors and all other persons, firms, and corporations, irrespective of the readiness of such other contractors to adhere to union requirements respecting wages, hours, conditions of employment, and collective bargaining. The purpose and effect of said agreement has been to force substantially all heating contractors doing business in Pittsburgh to submit to the unreasonable code provisions, fees, and restraints enumerated above, or to make payments to contractor members for avoidance of said unreasonable provisions, fees, and restraints.

19. On or about April 20, 1936, Local 449, Leo A. Green, Wm. J. Kinsella, John M. Cuddyre, John L. Curley, and John A. McGuire caused to be formed defendant United Heating Co., for the purpose of entering into a nonprofit heating contracting business. Since such organization and continuously up to and including the time of filing this complaint, said company has been wholly owned and operated by Local 449. The said United Heating Co. has consistently submitted bids on heating equipment and installations against contractors and builders who are not members of the Voluntary Code, at prices below cost. The said bids have been submitted and the operations of the United Heating Co. generally have been carried on not for the purpose of obtaining profit but to compel

contractors and builders to become members of the Voluntary Code and to drive out of business those contractors and builders who purchase heating equipment directly from manufacturers or from dealers who are not members of the Voluntary Code.

20. The defendants have conspired together as aforesaid with the purpose and intent of unlawfully (a) monopolizing for the benefit of the members of the Voluntary Code, and of the Contractors Association, to the exclusion of substantially all other heating contractors, the sale and installation of heating equipment in the City of Pittsburgh; (b) raising prices of heating equipment and installation services, as described above; (c) obstructing and eliminating the purchase of heating equipment by general contractors or builders direct from manufacturers or from dealers who are not members of the Voluntary Code; (d) preventing heating contractors having their principal place of business outside the Commonwealth of Pennsylvania from coming into the City of Pittsburgh, competing therein for the business of furnishing heating equipment and services, and transporting heating equipment in interstate commerce into the said city; and (e) interfering with and restraining interstate trade and commerce in heating equipment.

B. From entering into or carrying out, directly or indirectly, by any means whatsoever, any combination or conspiracy of like or similar character or effect; and

C. From doing, performing, agreeing upon, entering upon, or carrying out (without limitation of the foregoing) any of the following things:

(a) Creating, operating, or participating in the operation of any association of heating contractors maintaining a bid depository or similar device designed to maintain or to fix the prices of heating equipment or to limit competition in bidding on heating installations, or having the effect of maintaining or fixing prices of heating equipment or of limiting competition in bidding on heating installations.

(b) Operating or participating in the operation of United Heating Co., or creating, operating, or participating in the operation of any like or similar organization, company, firm, or corporation used to discriminate, as described in the complaint herein, against contractors, builders, or other persons who are not members of an association such as is described in subparagraph (a) hereof, or against contractors, builders, or other persons who purchase heating equipment directly from manufacturers or from dealers who are not members of such an association.

(c) Agreeing to limit or limiting employment of members of Local 449 to contractors, builders, or other persons who are members of an association of heating contractors such as is described in subparagraph (a) hereof, or otherwise discriminating against any contractor, builder, or other person who is not a member of such an association or who purchases heating equipment directly from manufacturers or from dealers who are not members of such an association.

(d) Accepting or contracting for any fees, dues, moneys, payments, or other property, the consideration for which is the procurement of or a promise to procure labor for contractors or others who are not members of the Voluntary Code, of the Contractors Association, or of any other like or similar association.

5. That all constitutions, bylaws, resolutions, and agreements of and between Local 449, the Voluntary Code, and the Contractors Association insofar as they authorize, provide for, or relate to a bid depository, or authorize, provide for, or relate to any limitation of employment of members of Local 449 to members of the Voluntary Code or to members of the Contractors Association, are hereby declared illegal, void, and of no force and effect.

6. That the terms of this judgment shall be binding upon and shall extend to each and every one of the successors in interest of any and all of the defendants herein, and to any and all corporations, partnerships, firms,

and individuals who may acquire the ownership or control, directly or indirectly, of the property, business and assets of the defendants or any of them, whether by purchase, merger, consolidation, reorganization, or otherwise.

7. That for the purpose of securing compliance with the judgment, authorized representatives of the Department of Justice shall, upon the request of the Attorney General or an Assistant Attorney General, be permitted access, within the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or control of the defendants or any of them, relating to any of the matters contained in this judgment; that any authorized representative of the Department of Justice shall, subject to the reasonable convenience of the defendants, be permitted to interview officers or employees of defendants, without interference, restraint, or limitation by defendants; that defendants, upon the written request of the Attorney General, shall submit such reports with respect to any of the matters contained in this judgment as may from time to time be necessary for the proper enforcement of this judgment.

8. That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this judgment and for the enforcement of strict compliance therewith, and for the further purpose of making such other and further orders and judgments or taking such other action as may from time to time be necessary.

Dated December 8, 1939.

F. P. SCHOONMAKER,
United States District Judge.

United States v. W. Pa. Sand and Gravel Ass'n, et al.

Civil Action No.: 780

Year Judgment Entered: 1940



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Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Western Pennsylvania Sand and Gravel Association, Raymond V. Warren, Dravo Corporation, Wilber A. Bliss, A. W. Dann, J. K. Davison & Bro., George McC. Davison, H. S. Davison, Iron City Sand and Gravel Corporation, George Vang, W. S. Giles, McCrady-Rodgers Company, W. F. McCrady, Howard McCrady., U.S. District Court, W.D. Pennsylvania, 1940-1943 Trade Cases ¶56,014, (Feb. 21, 1940)

Federal Antitrust Cases

Trade Regulation Reporter - Trade Cases (1932 - 1992) ¶56,014

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United States of America v. Western Pennsylvania Sand and Gravel Association, Raymond V. Warren, Dravo Corporation, Wilber A. Bliss, A. W. Dann, J. K. Davison & Bro., George McC. Davison, H. S. Davison, Iron City Sand and Gravel Corporation, George Vang, W. S. Giles, McCrady-Rodgers Company, W. F. McCrady, Howard McCrady.

1940-1943 Trade Cases ¶56,014. U.S. District Court, W.D. Pennsylvania, February 21, 1940.

Headnote

Price control of sand and gravel products through concerted agreement upon, or by maintenance or issuance of minimum prices and similar activities effectuating the control of dealers' resale prices or influencing federal public works' contract prices are permanently enjoined, upon consent of all parties, in civil proceedings under the Sherman Anti-Trust Act.

M. Neil Andrews, George P. Cheney, Jr.; Attorneys for Plaintiff.

Moorhead & Knox; Attorneys for Dravo Corporation and its defendant officers.

Alter, Wright & Barron; Attorneys for J. K. Davison & Bro., and its defendant officers, and for Iron City Sand and Gravel Corporation and its defendant officers.

McCrady, McClure, Nicklas & Hirshfield; Attorneys for defendant members of the Western Pennsylvania Sand and Gravel Association, and for McCrady-Rodgers and its defendant officers.

Before Schoonmaker, District Judge.

Final Decree

This cause coming on to be heard on the 21st day of February, 1940, and the defendants having waived process and service and having appeared herein,

[Consent to Decree]

And counsel for each of the defendants having consented to the making and entering of this decree without contest before any testimony had been taken and without any findings of fact, upon condition that neither such consent nor this decree shall be considered as evidence, admission or adjudication that any of said defendants have violated any statute of the United States or be considered in any other proceeding as an admission by any of the defendants of any of the facts alleged in the complaint; provided, however, that proceedings to enforce this decree shall not be deemed to be "other proceedings"; and the United States by its counsel, having consented to the entry of this decree and having moved the Court for this injunction;

Now, Therefore, without taking any testimony or evidence, or making findings of fact, and in accordance with said consent of counsel, it is hereby

Ordered, Adjudged and Decreed as Follows:

[*Jurisdiction*]

I. That the Court has jurisdiction of the subject-matter hereof and of all persons and parties hereto, and that the complaint states a cause of action against the defendants under the Acts of Congress of July 2, 1890, commonly known as the Sherman Anti-Trust Act

[*Concerted Price Fixing*]

II. That the defendants, their members, directors, officers, agents and employees and all persons acting under, through or for them, or any of them, be and they are hereby perpetually enjoined and restrained:

1. From carrying out or continuing to carry out directly or indirectly, expressly or impliedly, any combination and conspiracy to restrain interstate commerce and trade through the use of any one or more of the following means, to wit:

- (a) Agreeing upon or concertedly fixing, maintaining or issuing prices or minimum prices of sand and gravel;
- (b) Agreeing upon or concertedly fixing, maintaining, issuing or controlling dealers' minimum resale prices of sand and gravel.

[*Prices on Government Contracts*]

2. From doing, performing, agreeing upon, entering upon, or carrying out any of the following acts or things;

- (a) Concertedly fixing, maintaining or issuing prices of sand and gravel, directly or indirectly, with actual knowledge that such prices are to be used in conjunction with a bid submitted in connection with a proposed contract with the United States Government or a contract where the United States Government is furnishing all or part of the money by grant or by loan, or in connection with any direct bid for a subcontract with a contractor bidding upon a contract with the United States Government or a contract wherein the United States is furnishing all or a part of the money.

[*Access to Records*]

III. That for the purpose of securing compliance with this decree, authorized representatives of the Department of Justice shall, upon the request of the Attorney General or an Assistant Attorney General, and on reasonable notice, be permitted access, within the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or control of the defendants or any of them, relating to any of the matters contained in this decree; that any authorized representative of the Department of Justice shall, subject to the reasonable notice to and convenience of the defendants, be permitted to interview officers or employees of defendants relating to any of the matters contained in this decree, without interference or restraint by defendants; that defendants, upon the written request of the Attorney General, shall submit such reports with respect to any of the matters contained in this decree as may from time to time be necessary for the proper enforcement of this decree.

[*Conclusion*]

IV. That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of compliance therewith, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be appropriate in relation to the construction of or carrying out of this decree or for the modification thereof on the application of any of the parties thereto.

[The signatures of the parties are omitted.]

United States v. Marble Contractors Ass'n, et al.

Civil Action No.: 805

Year Judgment Entered: 1940



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Marble Contractors' Association, Charles C. Guenther, John Eberhardt, C. A. Powell, George Sibel, J. E. Crawford, Harry Butler, Star Marble & Tile Company, Pittsburgh Marble Company; Iron City Marble Company; Charles C. Guenther Marble Company, Inc.; Rampa Marble & Tile Company; R. E. Logan; G. C. Chirichigno; A. M. Danzilli; Pliny Ignelzi; Fleming Rampa., U.S. District Court, W.D. Pennsylvania, 1940-1943 Trade Cases ¶56,020, (Feb. 29, 1940)

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United States of America v. Marble Contractors' Association, Charles C. Guenther, John Eberhardt, C. A. Powell, George Sibel, J. E. Crawford, Harry Butler, Star Marble & Tile Company, Pittsburgh Marble Company; Iron City Marble Company; Charles C. Guenther Marble Company, Inc.; Rampa Marble & Tile Company; R. E. Logan; G. C. Chirichigno; A. M. Danzilli; Pliny Ignelzi; Fleming Rampa.

1940-1943 Trade Cases ¶56,020. U.S. District Court, W.D. Pennsylvania, February 29, 1940.

Civil proceedings under the Sherman Anti-Trust Act against associated marble contractors are terminated, upon agreement of all parties, by entry of a consent decree permanently enjoining concerted action by defendants involving maintenance of a price-fixing bid depository, refusal of union labor to non-acquiescing contractors and imposition of charges for procuring labor for contractors not affiliated with defendant trade association, and voiding all bylaws and agreements of the defendants that make provision for proscribed activities.

Thurman Arnold, Assistant Attorney General; M. Neil Andrews, Irving I. Axelrad, Special Assistants to the Attorney General; George Mashank, Acting United States Attorney; Attorneys for Plaintiff.

S. V. Albo; Attorney for Defendants.

Before Schoonmaker, District Judge.

Decree

SCHOONMAKER, D. J.: This cause came on to be heard on this 29th day of February 1940, the complainant being represented by George Mashank, Acting United States Attorney for the Western District of Pennsylvania and M. Neil Andrews and Irving I. Axelrad, Special Assistants to the Attorney General, and the defendants being represented by their counsel, said defendants having appeared voluntarily and generally and having waived service of process.

It appears to the Court that the defendants have consented in writing to the making and entering of this decree;

It further appears to the Court that this judgment will provide suitable relief concerning the matters alleged in the complaint, and that by reason of the aforesaid consent of the parties it is unnecessary to proceed with the trial of the cause, or to take testimony therein, or that any adjudication be made of the facts. Now, therefore, upon motion of complainant, and in accordance with said consent, it is hereby

Ordered, Adjudged, and Decreed

[*Jurisdiction*]

1. That the Court has jurisdiction of the subject matter set forth in the complaint and of all parties hereto with full power and authority to enter this judgment and 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. That the

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defendants and each of them and each and all of their respective officers, directors, agents, servants, and employees, and all persons acting or claiming to act on behalf of the defendants or any of them, are hereby perpetually enjoined and restrained from engaging in, carrying out, maintaining, or extending, directly or indirectly, any combination or conspiracy in the Western District of Pennsylvania, to restrain interstate trade or commerce by the restriction and elimination of competitive bidding among marble contractors such as is alleged in the complaint, and by entering into or carrying out, directly or indirectly, by any means whatsoever any combination of like character or effect, and more particularly (but the enumeration following shall not detract from the inclusiveness of the foregoing) by doing, performing, agreeing upon, entering upon, or carrying out any of the following acts or things:

[Activities Enjoined]

(A) From in any way engaging in, maintaining, extending, continuing, or reviving, either directly or indirectly, in whole or in part, by any means whatsoever, combinations and conspiracies in restraint of trade and commerce in marble described in the complaint herein as follows:

21. Heretofore, to wit, during the months of September to December, 1936, inclusive, and during January, February, and March of 1937, certain of the individual defendants operating as the defendant Marble Contractors' Association of Pittsburgh commenced and maintained a bid depository plan which had the effect of interfering with the free and open competitive bidding on various construction projects in the Western District of Pennsylvania, and thereby hindered, burdened, and restrained interstate commerce as described in Paragraphs 19 and 20. (Of the complaint.)

22. Under this plan of procedure, the defendants and each of them agreed that at any time a contractor member wished thereafter to submit a bid in an amount in excess of \$300 upon a given construction project he would immediately notify the office of the association and submit to the defendant C. A. Powell, as Secretary of the aforesaid association, prior to the time fixed by the awarding authority for the receipt of the proposal, a summary of his estimated cost of labor and materials. The said Secretary of the Association acting in furtherance of said procedure, would, in conjunction with the members of the Association interested in bidding a particular project, determine the average of all said proposed cost estimates submitted and arbitrarily eliminate those cost estimates which fell within a fixed percentage of the lowest and a fixed percentage of the highest of said cost estimates. It was a further part of said procedure that those persons who submitted said eliminated cost estimates would thereafter be prohibited from submitting a bid for the same work at a figure lower than the lowest of the bidders who had not been eliminated. It was further agreed that the Association should choose one of its members to submit the lowest bid and assure him thereby of obtaining the contract for a particular project.

23. It was a further part of said procedure to coerce the various contractor members of said Association to adhere thereto by the imposition of fines and by threats of withdrawal and actual withdrawal of union workmen from the employ of those contractor members who should refuse to obey the rules of the defendant Association.

24. The aforesaid procedure or plan was discontinued in March or April of 1937 and a new form of bid depository was substituted. It was a part of the plan of the second bid depository to organize the Joint Arbitration Board for the Marble Industry with the defendant, C. A. Powell, as secretary. The said Joint Arbitration Board consisted of three representatives of the Stone and Marble Masons Local No. 33 affiliated with the Bricklayers, Masons and Plasterers International Association of America, and three members of the aforesaid Marble Contractors' Association of Pittsburgh.

25. It was a further part of the plan of the second bid depository to require that all contractors in order to secure union marble setters must join the Joint Arbitration Board for the Marble Industry and to do so, pay an initiation fee varying from \$25.00 to \$100.00 and a fixed percentage of the gross business done by each of said marble contractors. Each contractor was required to belong to the said Joint Arbitration Board notwithstanding the fact that some of them were not members of the Marble Contractors Association

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and were actually refused membership therein, and accordingly had no voice in the policy of the Joint Arbitration Board.

26. The aforesaid Joint Arbitration Board maintained a bid depository and it was the rule of the Arbitration Board that any time a contractor member wished to submit a bid in an amount in excess of \$300.00 upon a given construction project he would immediately notify the office of the Joint Arbitration Board and mail to said office before midnight of the day before the date set for bids to be closed by the awarding authority, a copy of his proposal.

27. A tabulation of the bids as submitted to the Joint Arbitration Board as aforesaid was sent to each of the contractor members submitting a bid on a given project and a copy of the tabulation was also sent to Robert Mill, Business Agent of the Stone and Marble Masons Local No. 33, affiliated with the Bricklayers, Masons and Plasterers International Association of America.

28. It was a further part of the bid depository plan as administered by the Joint Arbitration Board that if the awarding authority consummated a contract for marble on a given project with any contractor other than one who was the low bidder, as shown by the records of the bid depository, that contractor would not be permitted to use union men on the project and that the marble contractor would further be subjected to fines and penalties by the Marble Contractors' Association.

29. Pursuant to the above described plan for enforcing the rules of the Joint Arbitration Board, penalties or fines were actually imposed and there were threats of withdrawal and actual withdrawal of union workmen from the employ of those contractor members who should refuse to obey the rules of the Joint Arbitration Board.

(B) From entering into or carrying out, directly or indirectly, by any means whatsoever, any combination or conspiracy of like or similar character or effect; and

[*Maintenance of Bid Depository*]

(C) From doing, performing; agreeing upon, entering upon, or carrying out (without limitation of the foregoing) any of the following things:

1. Creating, operating, or participating in the operation of any association of marble contractors maintaining a bid depository or similar device designed to maintain or to fix the price of marble and marble installation or to limit competition in bidding on marble installations, or having the effect of limiting the free choice of the awarding authority of the firm to be the successful marble contractor on a given project.

2. Agreeing to limit or limiting employment of members of Local No. 33 to contractors, builders, or other persons who are members of an association of marble contractors or an arbitration board or otherwise discriminating against any contractor, builder, or other person who is not a member of such an association or board and who in all other respects is willing and able to comply with the minimum labor requirements agreed to by the members of such association or board.

3. Demanding, accepting, or contracting for any fees, dues, monies, payments, or other property, the consideration for which is the procurement of or a promise to procure labor for contractors or others who are not members of the Joint Arbitration Board or of the Marble Contractors' Association of Pittsburgh or of any other like or similar association.

[*Nullification of By Laws and Agreements*]

2. That all constitutions, bylaws, resolutions, and agreements of the Marble Contractors' Association of Pittsburgh and the Joint Arbitration Board for the Marble Industry insofar as they authorize, provide for, or relate to a bid depository, or authorize, provide for, or relate to any limitations of employment of members of Local No. 33 to members of the Marble Contractors' Association of Pittsburgh or to the members of the Joint Arbitration Board for the Marble Industry, are hereby declared illegal, void, and of no force and effect.

[*Application of Decree*]

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3. That the terms of this judgment shall be binding upon and shall extend to each and every one of the successors in interest of any and all of the defendants herein, and to any and all corporations, partnerships, firms, and individuals who may acquire the ownership or control, directly or indirectly, of the property, business, and assets of the defendants or any of them, whether by purchase, merger, consolidation, reorganization or otherwise.

[*Access to Records*]

4. That for the purpose of securing compliance with this decree, authorized representatives of the Department of Justice shall, upon the request of the Attorney General or an Assistant Attorney General, be permitted access, within the office hours of the defendants, to books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or the control of the defendants, or any of them, relating to any of the matters contained in this decree; that any authorized representative of the Department of Justice shall, subject to the reasonable convenience of the defendants, be permitted to interview officers or employees of defendants, without interference, restraint, or limitation by defendants; that defendants, upon the written request of the Attorney General, shall submit such reports with respect to any of the matters contained in this decree as may from time to time be necessary for the purpose and enforcement of this decree.

[*Retention of Jurisdiction*]

5. That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance therewith, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary.

[Signatures of parties consenting are omitted.]

United States v. Pittsburgh Tile & Mantel Contractors' Ass'n, et al.

Civil Action No.: 806

Year Judgment Entered: 1940



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Pittsburgh Tile & Mantel Contractors' Association, E. W. Gibson, C. J. Spellman, C. A. Powell, R. E. Logan, Phillip Miller, John C. Coates, Dormont Mantel & Tile Company, Beechview Mantel & Tile Company, Star Marble & Tile Company; Rampa Marble & Tile Company; Lincoln Mantel & Tile Company; W. H. Spellman and M. J. Spellman Company., U.S. District Court, W.D. Pennsylvania, 1940-1943 Trade Cases ¶56,021, (Feb. 29, 1940)

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United States of America v. Pittsburgh Tile & Mantel Contractors' Association, E. W. Gibson, C. J. Spellman, C. A. Powell, R. E. Logan, Phillip Miller, John C. Coates, Dormont Mantel & Tile Company, Beechview Mantel & Tile Company, Star Marble & Tile Company; Rampa Marble & Tile Company; Lincoln Mantel & Tile Company; W. H. Spellman and M. J. Spellman Company.

1940-1943 Trade Cases ¶56,021. U.S. District Court, W.D. Pennsylvania, February 29, 1940.

Civil proceedings under the Sherman Anti-Trust Act against associated tile contractors are terminated, upon agreement of all parties, by entry of a consent decree permanently enjoining concerted action by defendants involving maintenance of a price-fixing bid depository, refusal of union labor to non-acquiescing contractors and imposition of charges for procuring labor for contractors not affiliated with defendant trade association, and voiding all by-laws and agreements of the defendants that make provision for proscribed activities.

Thurman Arnold, Assistant Attorney General; M. Neil Andrews, Irving I. Axelrad, Special Assistants to the Attorney General; George Mashank, Acting United States Attorney; Attorneys for Plaintiff.

S. V. Albo; Attorney for Defendants.

Before Schoonmaker, District Judge.

Decree

SCHOONMAKER, D. J.: This cause came on to be heard on this 29th day of February 1940, the complainant being represented by George Mashank, Acting United States Attorney for the Western District of Pennsylvania and M. Neil Andrews and Irving I. Axelrad, Special Assistants to the Attorney General, and the defendants being represented by their counsel, said defendants having appeared voluntarily and generally and having waived service of process.

It appears to the Court that the defendants have consented in writing to the making and entering of this decree;

It further appears to the Court that this decree will provide suitable relief concerning the matters alleged in the complaint, and that by reason of the aforesaid consent of the parties it is unnecessary to proceed with the trial of the cause, or to take testimony therein, or that any adjudication be made of the facts. Now, therefore, upon motion of complainant, and in accordance with said complaint, it is hereby

Ordered, Adjudged, and Decreed

[*Jurisdiction*]

1. That the Court has jurisdiction of the subject matter set forth in the complaint and all of the parties hereto with full power and authority to enter this decree and 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. That the

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defendants and each of them and each and all of their respective officers, directors, agents, servants, and employees, and all persons acting or claiming to act on behalf of the defendants or any of them, are hereby perpetually enjoined and restrained from engaging in, carrying out, maintaining, or extending, directly or indirectly, any combination or conspiracy in the Western District of Pennsylvania, to restrain interstate trade or commerce by the restriction and elimination of competitive bidding among tile contractors such as is alleged in the complaint, and by entering into or carrying out, directly or indirectly, by any means whatsoever any combination of like character or effect, and more particularly (but the enumeration following shall not detract from the inclusiveness of the foregoing) by doing, performing, agreeing upon, entering upon, or carrying out any of the following acts or things:

[Activities Enjoined]

(A) From in any way engaging in, maintaining, extending, continuing, or reviewing, either directly or indirectly, in whole or in part, by any means whatsoever, combinations and conspiracies in restraint of trade and commerce in tile described in the complaint herein as follows:

18. Heretofore, to wit, beginning in May 1939 and continuing to November 1939, the individual defendants operating as the Pittsburgh Tile & Mantel Contractors' Association commenced and maintained a bid depository plan which had the effect of interfering with the free and open competitive bidding on various construction projects in the Western District of Pennsylvania, and thereby hindered, burdened, and restrained interstate commerce as described in Paragraphs 16 and 17 of the complaint.

19. It was a part of the aforesaid plan to organize the Joint Arbitration Board for the Tile Industry with the defendant, C. A. Powell, as secretary. The said Joint Arbitration Board consisted of three representatives of the Tile Setters Union affiliated with the Bricklayers, Masons and Plasterers International Association of America, and three members of the aforesaid Pittsburgh Tile & Mantel Contractors' Association.

20. It was a further part of the plan of the aforesaid bid depository to require that all contractors in order to secure union tile setters must join the joint Arbitration Board for the Tile Industry and to do so, pay an initiation fee of \$25.00 and a fixed percentage of the gross business done by each of said tile contractors. Each contractor was required to belong to the Joint Arbitration Board in order to obtain union labor.

21. The aforesaid Joint Arbitration Board maintained a bid depository and it was a rule of the Arbitration Board that any time a contractor member wished to submit a bid in an amount in excess of \$300.00 upon a given construction project he would immediately notify the office of the Joint Arbitration Board and mail to said office before midnight of the day before the date set for bids to be closed by the awarding authority, a copy of his proposal.

22. A tabulation of the bids as submitted to the Joint Arbitration Board as aforesaid was sent to each of the contractor members submitting a bid on a given project and a copy of the tabulation was also sent to Jack Dorsey, Business Agent of the Tile Setters Union affiliated with the Bricklayers, Masons and Plasterers International Association of America.

23. It was a further part of the bid depository plan as administered by the Joint Arbitration Board that if the awarding authority consummated a contract for tile on a given project with any contractor other than one who was the low bidder, as shown by the records of the bid depository, that contractor would not be permitted to use union men on the project and that the tile contractors would further be subjected to fines and penalties by the Pittsburgh Tile & Mantel Contractors' Association.

24. Pursuant to the above described plan for enforcement of the rules of the Joint Arbitration Board for the Tile Industry, penalties or fines were actually imposed and there were threats of withdrawal of union workmen from the employ of those contractor members who should refuse to obey the bid depository rules of the Joint Arbitration Board for the Tile Industry.

(B) From entering into or carrying out, directly or indirectly, by any means whatsoever, any combination or conspiracy of like or similar character or effect; and

(C) From doing, performing, agreeing upon, entering upon, or carrying out (without limitation of the foregoing) any of the following things:

[Maintenance of Bid Depository]

1. Creating, operating, or participating in the operation of any association of tile contractors maintaining a bid depository or similar device designed to maintain or to fix the price of tile and tile installation or to limit competition in bidding on tile or tile installations, or having the effect of limiting the free choice of the awarding authority with respect to the successful tile contractor on a given project.

[Discrimination in Labor Supply]

2. Agreeing to limit or limiting employment of members of the Tile Setters Union, affiliated with the Bricklayers, Masons and Plasterers International Association of America, to contractors, builders, or other persons who are members of an association of tile contractors or an arbitration board or otherwise discriminating against any contractor, builder, or other person who is not a member of such an association or board and who, in all other respects, is willing and able to comply with the minimum labor requirements agreed to by the members of such association or board.

3. Demanding, accepting, or contracting for fees, dues, monies, payments, or other property, the consideration for which is the procurement of or a promise to procure labor for contractors or others who are not members of the Joint Arbitration Board or of the Pittsburgh Tile & Mantel Contractors' Association or of any other like or similar association.

[Nullification of By-Laws and Agreements]

2. That all constitutions, by-laws, resolutions, and agreements of the Pittsburgh Tile & Mantel Contractors' Association and the Joint Arbitration Board for the Tile Industry insofar as they authorize, provide for, or relate to a bid depository, or authorize, provide for, or relate to any limitations of employment of the Tile Setters Union, affiliated with the Bricklayers, Masons and Plasterers International Association of America to members of the Pittsburgh Tile & Mantel Contractors' Association or to the members of the Joint Arbitration Board for the Tile Industry, are hereby declared illegal, void, and of no force and effect.

[Application of Decree]

3. That the terms of this decree shall be binding upon and shall extend to each and every one of the successors in interest of any and all of the defendants herein, and to any and all corporations, partnerships, firms, and individuals who may acquire the ownership or control, directly or indirectly, of the property, business, and assets of the defendants or any of them, whether by purchase, merger, consolidation, reorganization, or otherwise.

[Access to Records]

4. That for the purpose of securing compliance with this judgment, authorized representatives of the Department of Justice shall, upon the request of the Attorney General or an Assistant Attorney General, be permitted access, within the office hours of the defendants, to books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or the control of the defendants, or any of them, relating to any of the matters contained in this decree; that any authorized representative of the Department of Justice, shall, subject to the reasonable convenience of the defendants, be permitted to interview officers or employees of defendants, without interference, restraint, or limitation by defendants; that defendants, upon the written request of the Attorney General, shall submit such reports with respect to any of the matters contained in this decree as may from time to time be necessary for the purpose and enforcement of this decree.

[Retention of Jurisdiction]

5. That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance therewith, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary.

[Signatures of parties consenting are omitted.]

United States v. Employing Plasterers' Ass'n of Allegheny County, et al.

Civil Action No.: 840

Year Judgment Entered: 1940



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Employing Plasterers' Association of Allegheny County; G. W. Bender Sons Company; Ellsworth W. Bender; Harry M. Bender; Hartlep L. Bender; Louis J. Bender; Floyd R. L. Bender; Dougherty & Jennings; Gerald P. Dougherty; M. J. Jennings; L. & E. T. Plastering Company; John F. Taylor; Wilson Taylor; Charles Taylor; Lail & Strayer; William H. Lail; Elmer J. Strayer; Bellem Plastering Company; A. W. Bellem; Louis DeCecco & Sons; James DeCecco; Joseph A. Evers; Anthony I. Schuchert; Vincent Shonka; George P. Smith; Howard F. Walker; James A. Brennan; I. N. Dunn; John T. Farina; J. Lowry Hovis; John J. Morris; John McKay Smith; Carl J. Thomas; Carl Zadach; McNulty Bros. Company of Pennsylvania; W. B. Laufman, Jr.; J. Ream Evans; Journeymen Plasterers' Local Union No. 31, Operative Plasterers' and Cement Finishers' International Association of Allegheny County, Pa.; Samuel Eagleson; Samuel Elliott; Samuel Gray; Edward J. Leonard; Charles J. McCarthy; Thomas A. Nauman; Richard J. Walker; Local Union No. 33 of the Wood, Wire and Metal Lathers International Union of Pittsburgh, Pa., and Vicinity; F. T. Blaisdell; Joseph H. Duty; Ray Henderson; Joseph McNally; Michael McNulty; James B. Rairich; Ray Roesch; H. F. Thompson, and Nervin Welty., U.S. District Court, W.D. Pennsylvania, 1940-1943 Trade Cases ¶56,025, (Mar. 18, 1940)

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United States of America v. Employing Plasterers' Association of Allegheny County; G. W. Bender Sons Company; Ellsworth W. Bender; Harry M. Bender; Hartlep L. Bender; Louis J. Bender; Floyd R. L. Bender; Dougherty & Jennings; Gerald P. Dougherty; M. J. Jennings; L. & E. T. Plastering Company; John F. Taylor; Wilson Taylor; Charles Taylor; Lail & Strayer; William H. Lail; Elmer J. Strayer; Bellem Plastering Company; A. W. Bellem; Louis DeCecco & Sons; James DeCecco; Joseph A. Evers; Anthony I. Schuchert; Vincent Shonka; George P. Smith; Howard F. Walker; James A. Brennan; I. N. Dunn; John T. Farina; J. Lowry Hovis; John J. Morris; John McKay Smith; Carl J. Thomas; Carl Zadach; McNulty Bros. Company of Pennsylvania; W. B. Laufman, Jr.; J. Ream Evans; Journeymen Plasterers' Local Union No. 31, Operative Plasterers' and Cement Finishers' International Association of Allegheny County, Pa.; Samuel Eagleson; Samuel Elliott; Samuel Gray; Edward J. Leonard; Charles J. McCarthy; Thomas A. Nauman; Richard J. Walker; Local Union No. 33 of the Wood, Wire and Metal Lathers International Union of Pittsburgh, Pa., and Vicinity; F. T. Blaisdell; Joseph H. Duty; Ray Henderson; Joseph McNally; Michael McNulty; James B. Rairich; Ray Roesch; H. F. Thompson, and Nervin Welty.

1940-1943 Trade Cases ¶56,025. U.S. District Court, W.D. Pennsylvania, March 18, 1940.

A decree is entered by consent enjoining defendants from engaging in any combination or conspiring to restrain interstate trade in plaster, lath and related materials by creating or operating any association of contractors maintaining a bid depository to fix the price of plaster and lath installation or to limit competition in bidding; from enforcing rules of such association by strikes or threats of strikes; from

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enforcing any agreement resulting in uniform bids; from agreeing to limit employment of the members of defendant unions to contractors and others who are members of any association or otherwise discriminating against contractors and others who are not members of such an association and who are in other respects willing to comply with lawful agreements between defendant unions and members of such association; from refusing to enter into labor contracts with any contractor who does not conduct both plastering and lathing business; from restraining the sale and installation of lath and plaster substitutes; and from denying to any contractor who has entered into an agreement with defendant union the privilege of selecting for employment union men who are at the time unemployed.

M. Neil Andrews and Frederic J. Casey, Special Assistants to the Attorney General; George Mashank, Acting United States Attorney for the Western District of Pennsylvania; Counsel for the Plaintiff.

David B. Pitler, Counsel for all the Defendants.

Before N. McVicar, District Judge.

Decree

This cause coming on to be heard on this 18th day of March 1940, the plaintiff being represented by George Mashank, Acting United States Attorney for the Western District of Pennsylvania, and M. Neil Andrews and Frederic J. Casey, Special Assistants to the Attorney General, and the defendants being represented by their counsel, said defendants having appeared voluntarily and generally and having waived service of process;

It appears to the Court that the defendants have consented in writing to the making and entering of this decree;

It further appears to the Court that this decree will provide suitable relief concerning the matters alleged in the complaint, and that by reason of the aforesaid consent of the parties it is unnecessary to proceed with the trial of the cause, or to take testimony therein, or that any adjudication be made of the facts. Now, therefore, without taking any testimony or evidence and in accordance with consent of counsel, it is hereby

ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That the Court has jurisdiction of the subject matter 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 acts amendatory thereof and supplemental thereto.

2. That the defendants and each of them and each and all of their respective officers, directors, agents, servants, and employees, and all persons acting or claiming to act on behalf of the defendants, or any of them, are hereby perpetually enjoined and restrained from unlawfully engaging in, carrying out, maintaining or extending, any combination or conspiracy to restrain interstate trade or commerce in plaster, gypsum, lath, plywood, beaverboard, wallboard, big panel plasterboard and related materials by any unlawful means and (without limiting the generality of the foregoing) by doing, performing, agreeing upon, entering upon, or carrying out any of the following acts or things:

(a) Creating, operating, or participating in the operation of any association of plastering and lathing contractors maintaining a bid depository or any similar plan or device designed to maintain or to fix the price of plaster and lath installation or to limit competition in bidding on plaster and lath installations, or having the effect of limiting the awarding authority in the free choice of plastering or lathing contractors.

(b) Enforcing or attempting to enforce compliance with rules and regulations of the defendant association by strikes or threats of strikes.

(c) Enforcing or attempting to enforce any rule, regulation, by-law, agreement or understanding which results in the use of uniform cost estimates or contract prices on any particular plastering or lathing job or project.

(d) Agreeing to limit or limiting the employment of the members of defendant unions to contractors, builders, or other persons who are members of any association of plastering or lathing contractors, or otherwise discriminating against any contractor, builder, or other person who is not a member of such an association, and

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who in all other respects is ready, willing, and able to comply with the terms of all lawful agreements between the defendant labor unions and members of such association and who has not previously violated his agreement with the defendant unions or been suspended or expelled from such defendant unions for violation of any of the lawful rules and regulations of such unions.

(e) Refusing to enter into labor contracts with or to supply union labor to any contractor because such contractor does not conduct both plastering and lathing contracting business but specializes in one or the other.

(f) Restraining, burdening, interfering with or hindering the sale and installation of lath and plaster substitutes, such as plywood, beaverboard, wallboard, and big panel plasterboard, by any unlawful manner or means whatsoever or enforcing any rules, regulations or by-laws of any union or association that have such effect.

(g) Denying to any contractor who has entered into an agreement with the defendant unions the privilege of selecting for employment union workmen in good standing who are at the time unemployed.

3. That all constitutions, by-laws, resolutions, and agreements of the Employing Plasterers' Association of Allegheny County and Journeymen Plasterers' Local Union No. 31, Operative Plasterers' and Cement Finishers' International Association of Allegheny County, Pa., and Local Union No. 33 of the Wood, Wire, and Metal Lathers International Union of Pittsburgh, Pa., and vicinity, insofar as they authorize, provide for, or relate to a bid depository, or authorize, provide for, or relate to any limitations of employment of members of the aforesaid unions to members of the aforesaid association, or insofar as they authorize, provide for, or relate to any of the other matters enjoined in this decree, are hereby declared illegal, void and of no force and affect.

4. That the terms of this decree shall be binding upon and shall extend to each and every one of the successors in interest of any and all of the defendants herein, and to any and all corporations, partnerships, firms and individuals who may acquire the ownership or control, directly or indirectly, of the property, business and assets of the defendants or any of them, whether by purchase, merger, consolidation, reorganization, or otherwise.

5. That for the purpose of securing compliance with this decree, authorized representatives of the Department of Justice shall, upon the request of the Attorney General or an Assistant Attorney General, be permitted access, within the office hours of the defendants, to books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or the control of the defendants, or any of them, relating to any of the matters contained in this decree; that any authorized representative of the Department of Justice shall, subject to the reasonable convenience of the defendants, be permitted to interview officers or employees of defendants, without interference, restraint, or limitation by defendants; that defendants, upon the written request of the Attorney General, shall submit such reports with respect to any of the matters contained in this decree as may from time to time be necessary for the proper enforcement of this decree.

6. That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance therewith, and for the further purpose of making such other and further orders and judgments or taking such other action as may from time to time be necessary.

7. Provided, however, that nothing herein contained shall, with respect to any act not enjoined by this decree, prohibit, prevent, or curtail the rights of the defendant unions or either of them from picketing or threatening to picket, circularizing or disseminating accurate information or carrying on any other lawful activities against anyone, or with reference to any product when the defendant unions or their members have a strike, grievance, or controversy, nor shall it prevent said defendant unions from giving lawful support to the lawful activities of other labor unions or from lawfully seeking to attain and carry out the legitimate and proper purpose and functions of a labor union.

8. That plaintiff recover its costs.

United States v. Blaw-Knox Co.

Civil Action No.: 9683

Year Judgment Entered: 1954



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Blaw-Knox Co., U.S. District Court, W.D. Pennsylvania, 1954 Trade Cases ¶67,750, (May 10, 1954)

[Click to open document in a browser](#)

United States v. Blaw-Knox Co.

1954 Trade Cases ¶67,750. U.S. District Court, W.D. Pennsylvania. Civil Action No. 9683. Dated May 10, 1954. Case No. 1104 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decree—Practices Enjoined—Allocation of Territories—Restriction of Imports.—A manufacturer of cast metal rolls was enjoined by a consent decree from entering into arrangements with any foreign manufacturer which would result in the following: (1) allocating territories; (2) restricting imports or exports; (3) restraining competition, or leaving any person free from competition in the manufacture and sale of such rolls; (4) referring orders for cast metal rolls to any manufacturer or distributor thereof; (5) subletting or subcontracting the manufacture of cast metal rolls; (6) exchanging information with any person respecting the price or conditions of any proposed transaction relating to such rolls; (7) requiring or prohibiting the use of any trade-mark by either the defendant or any foreign manufacturer where either might otherwise legally use such trade-mark; (8) restricting the issuance of any license under any patent relating to cast metal rolls in such a manner as to prevent defendant from carrying out this decree; and (9) prohibiting the defendant from furnishing secret processes relating to cast metal rolls to any person unless such person is a foreign manufacturer and the defendant permits such person to use the secret processes in the United States and its territories and to sell the rolls manufactured by their use in such places. The defendant was also enjoined from referring orders for cast metal rolls to any foreign manufacturer, from using a sales agent in common with any foreign manufacturer except for a specific sale of cast metal rolls.

Consent Decree—Permissive Provisions.—In an action against a manufacturer of cast metal rolls, a consent decree provided that nothing contained therein shall prohibit the defendant from contracting with any foreign manufacturer to communicate to the latter secret processes upon the condition that: (1) The secret processes may be used only for a designated purpose; (2) the defendant will not communicate such secret processes to any other manufacturer within a designated foreign area; and (3) cast metal rolls manufactured in accordance with such processes shall not be sold except for use in a designated foreign area. However, such contracts were ordered to provide that the foreign manufacturer shall be free to use the processes and to sell the rolls made by their use in the United States, and, upon the request of a foreign manufacturer, the defendant was to grant a non-exclusive license to vend such cast metal rolls under any applicable patent which the defendant may own or control.

Consent Decree—Applicability of Provisions.—A consent decree provided that the provisions of the decree applicable to the named defendant, a manufacturer of cast metal rollers, shall apply to said defendant, its officers, directors, agents, employees, servants, managers, representatives, subsidiaries, successors and assigns, and to all other persons acting under, through or for such defendant, but shall not apply to transactions solely between the defendant and a subsidiary thereof of which the defendant owns more than 50 per cent of the voting stock and which the defendant manages and over which it has effective working control.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; William D. Kilgore, Jr.; Marcus A. Hollabaugh; William L. Maher; Donald G. Balthis; Max Freeman; Larry L. Williams; and John W. McIlvaine, United States Attorney for the Western District of Pennsylvania.

For the defendant: Thorp, Reed & Armstrong, C. A. Thorp, Jr., William C. O'Neil.

Final Judgment

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WALTER S. GOURLEY, District Judge [*In full text*]: Plaintiff, United States of America, having filed its Complaint herein on June 27, 1951; defendant, Blaw-Knox Company, having appeared and filed its Answer to the Complaint, denying the substantive allegations thereof; plaintiff and defendant Blaw-Knox Company, by their attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issues of fact or law herein, and without admission by either of the parties in respect to any such issues; and the Court having considered the matter and being duly advised;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issues of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

The Court has jurisdiction of the subject matter hereof and of the parties hereto. The Complaint states a cause of action against the defendant Blaw-Knox Company under Section 1 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) "Person" means any individual, corporation, partnership, association, joint stock company or any other business or legal entity;

(B) "Blaw-Knox" means defendant Blaw-Knox Company, a corporation organized and existing under the laws of the State of Delaware, the successor, by statutory merger consummated December 31, 1952, to all the assets and liabilities of Blaw-Knox Company, a New Jersey corporation;

(C) "Armstrong-Whitworth" means Armstrong Whitworth (Metal Industries) Ltd., formerly named Sir W. G. Armstrong Whitworth & Company (Iron Founders) Limited, a company organized and existing under the laws of England, with registered offices at Western Road, Jarrow, County Durham, England;

(D) "Jarrow" means Jarrow Metal Industries, Limited, a company organized and existing under the laws of England, with registered offices at Western Road, Jarrow, County Durham, England;

(E) "Cast metal rolls" means ferrous products cast in cylindrical form, which generally have a working surface in the central section thereof, and bearing portions on each end, which are used as a component part of a rolling mill for rolling ferrous and non-ferrous metals;

(F) "Foreign manufacturer" means any person engaged outside of the United States, its territories, or possessions in the manufacture of cast metal rolls.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to defendant Blaw-Knox shall apply to said defendant, its officers, directors, agents, employees, servants, managers, representatives, subsidiaries, successors and assigns, and to all other persons acting under, through or for such defendant, but shall not apply to transactions solely between Blaw-Knox and a subsidiary or subsidiaries thereof of which defendant Blaw-Knox owns directly or indirectly more than 50% of the voting stock and which defendant Blaw-Knox manages and over which it has effective working control.

IV

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[Agreements Terminated]

(A) Defendant Blaw-Knox is ordered and directed to terminate and cancel, within 90 days from the date of entry of this Final Judgment, each of the following agreements which shall not theretofore have been terminated or cancelled:

(1) Agreement dated July 11, 1935 between Blaw-Knox and Armstrong-Whitworth, including the agreement dated February 14, 1933 attached thereto as a part thereof;

(2) All parole agreements amending or modifying the aforesaid written agreements, and particularly a certain parole agreement thereto evidenced in two certain letters to J. Theodore Goddard from Armstrong-Whitworth dated respectively August 31, 1936 and December 14, 1936;

(3) Agreement and single page supplement thereto, each dated May 17, 1938, between Blaw-Knox, Armstrong-Whitworth, and Jarrow; and single page supplement thereto of the same date signed by John Jarvis, now deceased;

Provided, however, that defendant Blaw-Knox may receive payment for, or give credit for, any amounts which shall have accrued for payment or for credit at any time under any of the said agreements on account of sales thereunder of cast metal rolls prior to the date of the termination required by this subsection (A).

(B) Defendant Blaw-Knox is enjoined and restrained from entering into, adopting, performing, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under any contract, agreement, understanding, plan or program which has as its purpose or effect the continuing or renewing of any provision of any of the agreements listed in subsection (A) of this Section which is inconsistent with any provision of this Final Judgment.

V

[Foreign Agreements Prohibited]

(A) Defendant Blaw-Knox is enjoined and restrained from entering into, adhering to or claiming any rights under any contract, agreement or understanding with any foreign manufacturer which has the purpose or effect of:

(1) Allocating, dividing, reserving or protecting territories or markets for the manufacture, sale or distribution of cast metal rolls;

(2) Limiting, restraining or preventing importation into or exportation from the United States, its territories and possessions, of cast metal rolls;

(3) Eliminating, limiting, restraining or preventing competition, or leaving any person free from competition, in the manufacture, sale or distribution of cast metal rolls;

(4) Referring or causing to be referred any order or inquiry for cast metal rolls to any manufacturer or any distributor of cast metal rolls;

(5) Subletting or subcontracting generally the manufacture of cast metal rolls;

(6) Exchanging with any person information respecting the price, terms of conditions of any proposed transaction with any prospective customer relating to cast metal rolls;

(7) Requiring or compelling defendant Blaw-Knox or, any foreign manufacturer to use any trade name or trademark or restraining: defendant Blaw-Knox or any foreign manufacturer from the use of any trade name or trademark to :the use of which either might otherwise be legally entitled in the manufacture, sale or distribution of cast metal rolls;

(8) Limiting, restraining or preventing the issuance of any license under any patent relating to the manufacture, use or sale of cast metal rolls in such a manner as to prevent defendant Blaw-Knox from carrying out the provisions of subsection (B) of Section VII of this Final Judgment;

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- (9) Prohibiting defendant Blaw-Knox from furnishing secret and or specialized processes relating to cast metal rolls to any person, except as otherwise permitted by subsection (A) of Section VII of this Final Judgment;
- (B) Defendant Blaw-Knox is enjoined and restrained from conditioning any contract, agreement or understanding with any foreign manufacturer upon, or from requiring in connection therewith, any of the acts or restraints set forth in subsection (A) of this Section V.

VI

[Other Practices Enjoined]

Defendant Blaw-Knox is enjoined and restrained from:

- (A) Referring any orders for cast metal rolls to any foreign manufacturer; this, however, shall not be deemed to prevent Blaw-Knox from informing a prospective purchaser, from whom it has received an order or inquiry for cast metal rolls which Blaw-Knox is unable to supply, that a particular foreign manufacturer might be able to supply such cast metal rolls.
- (B) Requiring, appointing, designating, employing, using or continuing the requirement, appointment, designation, employment or use of:
- (1) A sales or distribution agent or representative common to both defendant Blaw-Knox and any foreign manufacturer for the sale or distribution of cast metal rolls, except for a specific sale;
- (2) Defendant Blaw-Knox as the agent, sales representative or distributor for a foreign manufacturer of cast metal rolls, except for a specific sale;
- (3) Any foreign manufacturer as the agent, sales' representative or distributor of defendant Blaw-Knox for the manufacture, sale or distribution of cast metal rolls, except for a specific sale.
- (C) Disclosing or communicating to any foreign manufacturer other wise than by general; price lists or in connection with a bona fide order or proposed order of manufacture, purchase or sale, between defendant Blaw-Knox and such foreign manufacturer, any information as to prices, terms of conditions of any proposed transaction with any prospective customer relating to cast metal rolls.
- (D) Reserving or protecting for any foreign manufacturer any market or territory for the manufacture, distribution or sale of cast metal rolls.

VII

[Permissive Provisions]

- (A) Nothing in this Final Judgment shall prohibit defendant Blaw-Knox from entering into, performing or requiring the performance of any contract with any foreign manufacturer whereby defendant Blaw-Knox communicates to such foreign manufacturer secret; and/or specialized processes upon the condition or under terms the; purpose or effect of which is that:
- (1) The secret and/or specialized processes may be used only for a designated purpose;
- (2) Defendant Blaw-Knox will not communicate such secret and/or specialized processes to any other manufacturer within a designated foreign area;
- (3) Cast metal rolls manufactured by such foreign manufacturer in accordance with such secret and/or specialized processes shall not be sold except for use in a designated foreign area.
- (B) In the event that defendant Blaw-Knox does so make a contract to communicate and does communicate its secret and/or specialized processes for the manufacture of cast metal rolls to any foreign manufacturer, said defendant Blaw-Knox is ordered and directed: (1) to include in such contract a provision that the foreign manufacturer shall be free to use such secret and/or specialized processes in the United States, its territories and possessions, and to sell cast metal rolls manufactured by the use of such secret and/or specialized processes in the interstate and foreign commerce of the United States, its territories and possessions, and

(2) to grant to such foreign manufacturer, upon the latter's request, a non-exclusive license or licenses upon reasonable and non-discriminatory terms to vend such cast metal rolls under any patent or patents which said defendant may own or control and which are applicable to or necessary for the manufacture, use, sale or distribution of such cast metal rolls.

VIII

[Publication]

Defendant Blaw-Knox is ordered and directed to send, within ninety days from the date of entry of this Final Judgment, a copy thereof to each person who is a party to an agreement, the termination and cancellation of which is ordered in Section IV of this Final Judgment.

IX

[Inspection and Compliance]

For the purpose of securing compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant Blaw-Knox made to its principal office, be permitted (1) access, during the office hours of defendant Blaw-Knox, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendant Blaw-Knox relating to any matters contained in this Final Judgment; and (2) subject to the reasonable convenience of defendant Blaw-Knox and without restraint or interference from said defendant, to interview officers or employees of defendant, Blaw-Knox, who may have counsel present, regarding any such matter. Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, defendant Blaw-Knox shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment. Information obtained by the means permitted in this Section IX 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 for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

X

[Retention of Jurisdiction]

Jurisdiction is retained by this Court 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 amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof. It is expressly provided, in addition to the foregoing, that the plaintiff may, upon reasonable notice, at any time after two years from the date of entry of this Final Judgment, apply to this Court for the elimination or modification of subsection (A) of Section VII hereof.

United States v. Roll Mfrs. Inst., et al.

Civil Action No.: 9657

Year Judgment Entered: 1955



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Roll Manufacturers Institute, The Aetna-Standard Engineering Company, Birdsboro Steel Foundry and Machine Company, Blaw-Knox Company, Continental Foundry & Machine Company, Hyde Park Foundry and Machine Company, Mackintosh-Hemphill Company, Mesta Machine Company, The National Roll and Foundry Company, The Ohio Steel Foundry Company, The Youngstown Foundry and Machine Company, and United Engineering and Foundry Company., U.S. District Court, W.D. Pennsylvania, 1955 Trade Cases ¶68,110, (Aug. 4, 1955)

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United States v. Roll Manufacturers Institute, The Aetna-Standard Engineering Company, Birdsboro Steel Foundry and Machine Company, Blaw-Knox Company, Continental Foundry & Machine Company, Hyde Park Foundry and Machine Company, Mackintosh-Hemphill Company, Mesta Machine Company, The National Roll and Foundry Company, The Ohio Steel Foundry Company, The Youngstown Foundry and Machine Company, and United Engineering and Foundry Company.

1955 Trade Cases ¶68,110. U.S. District Court, W.D. Pennsylvania. Civil Action No. 9657. Dated August 4, 1955. Case No. 1092 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing.—Manufacturers of cast iron and cast steel rolls and their trade association were enjoined by a consent decree from entering into any understanding to determine, fix, or adopt (1) prices, freight allowances, or other terms and conditions of sale, (2) charges to be made for roll machining operations, or (3) prices to be paid by any roll manufacturer in purchasing roll scrap.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Control of Production—Standardization.—Manufacturers of cast iron and cast steel rolls and their trade association were enjoined by a consent decree from entering into any understanding to limit the manufacture of such rolls to any specified standards, grades, or qualities. The association was enjoined from adopting, promulgating, or approving any standard for such rolls which may have the effect of preventing the manufacture or sale of rolls not conforming to such standard.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Delivered Price and Basing Point Systems.—Manufacturers of cast iron and cast steel rolls and their trade association were prohibited by a consent decree from entering into any understanding to determine, adopt, or use any delivered price system or any basing point system. Each manufacturer was prohibited from publishing, quoting, or charging prices for such rolls on any basis other than (1) F. O. B. at the actual place of manufacture or origin of shipment, or (2) on a delivered price or other basis which at destination at no time shall be higher than the above F. O. B. price plus actual transportation and other delivery charges. The decree further provided that every purchaser shall have the option to purchase on the basis of F. O. B. at the actual place of manufacture or origin of shipment.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Dissemination of Information.—An association of manufacturers of cast iron and cast steel rolls was prohibited by a consent decree from collecting, disseminating, communicating, or disclosing statistics, data, or other information relating to costs, prices, freight allowances, or terms or conditions of sale in connection with the manufacture, sale, or distribution of cast iron or cast steel rolls.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Membership in Trade Associations.—Manufacturers of cast iron and cast steel rolls were prohibited by a consent decree from

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organizing, becoming members of, or participating in the activities of, any trade association, the activities of which violate or are inconsistent with any of the provisions of the decree.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General, W. D. Kilgore, Jr., Baddia J. Rashid, John W. McIlvaine, William L. Maher, Max Freeman, and Donald Balthis.

For the defendants: Alter, Wright & Barron, by Ralph D. McKee, for Roll Manufacturers Institute. Harrington, Huxley & Smith, by T. Lamar Jackson, for The Aetna-Standard Engineering Co. Montgomery, McCracken, Walker & Rhoads, by Joseph W. Swain, Jr., for Birdsboro Steel Foundry and Machine Co. Thorp, Reed & Armstrong, by William C. O'Neil, for Blaw-Knox Co. Winston, Strawn, Black & Towner, by Thomas A. Reynolds, for Continental Foundry & Machine Co. R. J. Cleary for Hyde Park Foundry and Machine Co. Blaxter, O'Neill & Houston, by Wells Fay, for Mackintosh-Hemphill Co. Thorp, Reed & Armstrong, by William C. O'Neil, for The National Roll and Foundry Co. Leslie Reid for The Ohio Steel Foundry Co. Manchester, Bennett, Powers & Ullman, by John H. Ranz, for The Youngstown Foundry and Machine Co. Smith, Buchanan, Ingersoll, Rodewald & Eckert by John G. Buchanan; and Patterson, Crawford, Arensberg & Dunn, by James S. Crawford, for United Engineering and Foundry Co.

Final Judgment

JOHN L. MILLER, District Judge [*In full text*] : Plaintiff, United States of America, having filed its complaint herein on June 20, 1951, and the consenting defendants hereto having appeared and filed their answers to the complaint denying the substantive allegations thereof; and plaintiff and said consenting defendants hereto, by their attorneys herein, having severally consented to the entry of this Final Judgment without trial or adjudication of any issues of fact or law herein, and without admission by any party signatory hereto in respect to any such issues; and this Court having considered the matter and being duly advised;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issues of fact or law herein, and upon consent of the parties signatory hereto, it is hereby

Ordered, adjudged and decreed as follows:

I.

[*Sherman Act*]

This Court has jurisdiction of the subject matter herein and of the parties signatory hereto and the complaint states a claim against the defendants and each of them under Section 1 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) "Consenting defendants" [*] means each and all of the defendants signatory hereto, including Roll Manufacturers Institute, The Aetna-Standard Engineering Company, Birdsboro Steel Foundry and Machine Company, Blaw-Knox Company, Continental Foundry & Machine Company, Hyde Park Foundry and Machine Company, Mackintosh-Hemphill Company, The National Roll and Foundry Company, The Ohio Steel Foundry Company, The Youngstown Foundry and Machine Company, and United Engineering and Foundry Company;

(B) "Defendant association" means the defendant Roll Manufacturers Institute;

(C) "Defendant manufacturers" means all the consenting defendants and each of them, except the defendant association;

(D) "Cast iron and cast steel rolls" means ferrous products cast in cylindrical form for use as reducing work rolls, or backing rolls for such work rolls, which have a working surface in the central section and bearing portions on

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each end and which are designed for use in a roll stand as component parts of rolling mills for rolling ferrous and non-ferrous metals.

III.

[Applicability of Judgment]

The provisions of this Final Judgment applicable to any consenting defendant shall apply to such defendant, its officers, directors, agents, employees, successors or assigns, and any wholly-owned or controlled subsidiary thereof, and to all other persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

[Pricing Practices—Manufacturing Limitations]

The consenting defendants are jointly and severally enjoined and restrained from, directly or indirectly, entering into or adhering to any contract, agreement or understanding with each other or with any other manufacturer of cast iron or cast steel rolls:

(A) To determine, fix, maintain, adopt, use or adhere to

(1) prices, freight allowances or other terms and conditions for the sale of cast iron or cast steel rolls to third persons;

(2) charges to be made for roll machining operations for third persons;

(3) prices to be paid by any roll manufacturer in purchasing roll scrap from third persons;

(4) any delivered or other price system, or any basing point system, for selling or quoting cast iron or cast steel rolls to third persons;

(B) To limit, or attempt to limit, the manufacture of cast iron or cast steel rolls to any specified standards, grades or qualities.

V.

[Price Quotations]

Each defendant manufacturer is enjoined and restrained from publishing, printing, quoting or charging prices for cast iron or cast steel rolls on any basis other than (1) F. O. B. at the actual place of manufacture or origin of shipment, or (2) on a delivered price or other basis which at destination at no time shall be higher than the above F. O. B. price plus actual transportation and other delivery charges;

Provided, however, that every purchaser shall have the option to purchase on the basis of F. O. B. at the actual place of manufacture or origin of shipment.

VI.

[Disseminating Information—Adopting Standards]

(A) The defendant association is enjoined and restrained from:

(1) Collecting, distributing, disseminating, communicating or disclosing statistics, data or other information relating to costs, prices, freight allowances, terms or conditions of sale in connection with the manufacture, sale or distribution of cast iron or cast steel rolls; and

(2) Adopting, promulgating or approving any standard for cast iron or cast steel rolls which may have the purpose or effect of preventing the manufacture or sale of rolls not conforming to such standard.

(B) Each defendant manufacturer is enjoined and restrained from entering into, adhering to or claiming any rights under any contract, agreement or understanding with any other defendant or any other manufacturer of cast iron

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or cast steel rolls to collect, distribute, disseminate, communicate or disclose statistics, data or other information relating to costs, prices, freight allowances, terms or conditions of sale in connection with the manufacture, sale or distribution of cast iron or cast steel rolls to third persons; provided, however, that this subsection (B) shall not prevent any defendant manufacturer from disclosing to, or receiving from, any other manufacturer of cast iron or cast steel rolls, in connection with bona fide labor union negotiations, wage fates and other terms of employment.

VII.

[*Trade Associations*]

The defendant manufacturers are jointly and severally enjoined and restrained from organizing, becoming members of, or participating directly or indirectly in the activities of, any trade association or other organization the activities of which violate or are inconsistent with any provision of this Final Judgment.

VIII.

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any consenting defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of such defendant and without restraint or interference from such defendant, to interview officers or employees of such defendant, who may have counsel present, regarding any such matter;

(C) Upon written request such defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted 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 the Department of Justice except in the course of legal proceedings in 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 by this Court 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 amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Footnotes

- * A Court order entered with the Final Judgment provided:

"A Final Judgment having been entered in this proceeding by consent of all of the defendants except Mesta Machine Company and a Stipulation having been filed providing that the consent to the entry of such Final Judgment by Roll Manufacturers Institute shall not constitute a consent to the entry of such

Final Judgment by Mesta Machine Company and shall not constitute a judgment against Mesta Machine Company;

"It is hereby ordered that the consent of Roll Manufacturers Institute to the entry of a Final Judgment herein does not constitute a consent by Mesta Machine Company as a member of said Institute and that said Final Judgment consented to by said Institute does not constitute a judgment against the defendant Mesta Machine Company."

"It is hereby ordered that the consent of Roll Manufacturers Institute to the entry of a Final Judgment herein does not constitute a consent by Mesta Machine Company as a member of said Institute and that said Final Judgment consented to by said Institute does not constitute a judgment against the defendant Mesta Machine Company."

United States v. Robertshaw-Fulton Controls Co., et al.

Civil Action No.: 14745

Year Judgment Entered: 1957



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Robertshaw-Fulton Controls Company and Wilcolator Co., U.S. District Court, W.D. Pennsylvania, 1957 Trade Cases ¶68,592, (Jan. 8, 1957)

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United States v. Robertshaw-Fulton Controls Company and Wilcolator Co.

1957 Trade Cases ¶68,592. U.S. District Court, W.D. Pennsylvania. Civil Action No. 14745. Dated January 8, 1957. Case No. 1286 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Price Fixing.—Manufacturers of temperature controls for gas cooking ranges were prohibited by a consent decree from entering into any understanding with any other manufacturer of temperature controls (1) to fix or maintain prices or other terms or conditions for the sale of temperature controls to third persons, (2) to advise or suggest prices or other terms or conditions for the sale of temperature controls to third persons, or (3) to sell or offer to sell temperature controls only at prices quoted in published price lists or announcements.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Exchange of Information or Price Lists.—Manufacturers of temperature controls for gas cooking ranges were prohibited by a consent decree from entering into any understanding with any other manufacturer of temperature controls to exchange or communicate any information concerning (1) costs relating to the manufacture of temperature controls, or (2) prices or other terms or conditions relating to the sale or distribution of temperature controls, except in connection with a bona fide negotiation or quotation concerning the purchase or sale of temperature controls.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Allocation of Customers.—Manufacturers of temperature controls for gas cooking ranges were prohibited by a consent decree from entering into any understanding with any other manufacturer of temperature controls to allocate customers for the sale of temperature controls.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Acquisitions.—A manufacturer of temperature controls for gas cooking ranges was prohibited by a consent decree (1) for a period of five years, from acquiring ownership or control of the business, physical assets, or good will, or any capital stock or securities, of any person engaged in the manufacture of temperature controls, and (2) thereafter, for an additional ten years, from acquiring such ownership or control except after an affirmative showing to the satisfaction of the court that such ownership or control would not substantially lessen competition or tend to create a monopoly in the manufacture, distribution, or sale of temperature controls. However, the manufacturer was not prohibited from acquiring all or part of the securities or assets of any of its subsidiaries, or from forming subsidiaries and transferring to such subsidiaries its assets or assets of its subsidiaries.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Patent Licensing Agreements—Agreement Not To License Patents.—Manufacturers of temperature controls for gas cooking ranges, which were ordered by a consent decree to license their patents, were each prohibited from entering into any agreement with any person from whom it acquires, on a nonexclusive basis, any license, grant of immunity, or similar right under any existing patent, or under any patent issued or applied for within the five years after the entry of the decree, that such person will not grant similar rights to other applicants.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Patents—Institution of Patent Infringement Suits.—Manufacturers of temperature controls for gas cooking ranges, which were ordered by a consent decree to license their patents, were each prohibited from instituting or threatening to institute any suit or proceeding against any person for acts of infringement of patents alleged to have occurred prior to the entry of the decree.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Licensing of Patents.—Two manufacturers of temperature controls for gas cooking ranges were each ordered to grant a

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nonexclusive license to manufacture, use, and sell temperature controls under any or all of the patents owned or controlled by the manufacturer at the time of the entry of the decree, or which are owned by the manufacturer within five years from the date of entry. The defendants could charge a reasonable nondiscriminatory royalty.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; William D. Kilgore, Jr., Baddia J. Rashid, William L. Maher, Donald G. Balthis, John E. Sarbaugh, and Walter L. Devany, III, Attorneys, Department of Justice.

For the defendants: Reed, Smith, Shaw & McClay by H. E. Hackney, Paul J. Win-schel, and J. Tomlinson Fort, Jr., for Robertshaw-Fulton Controls Company. Breed, Abbott & Morgan, by William C. Breed, for Wilcolator Co.

Final Judgment

JOHN L. MILLER, District Judge [*In full text except for Appendix A*]: Plaintiff, United States of America, having filed its Complaint herein on June 21, 1956, and defendants Robertshaw-Fulton Controls Company (hereinafter sometimes referred to as "RFCCo."), and Wilcolator Co. (hereinafter sometimes referred to as "Wilcolator"), having appeared and filed their answer to the Complaint denying violations of law and the substantive allegations thereof, and plaintiff and defendants by their attorneys having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without the Final Judgment constituting any evidence or admission by any party in respect of any such issues;

Now, therefore, before the taking of testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of all the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

[Sherman Act]

The Court has jurisdiction of the subject matter hereof and of each party hereto. The complaint states a claim upon which relief may be granted against RFCCo. and Wilcolator under Sections 1 and 2 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) "Temperature Controls" means oven thermostatic regulator units for regulating the temperature in the oven of a gas range, and parts of such units when manufactured for and used therein;

(B) "Person" means any individual, partnership, corporation (including any defendant), association, firm, trustee or other business or legal entity;

(C) "Patents" means United States Letters Patent and all reissues and extensions thereof, relating to the manufacture, use or sale of temperature controls.

III

[Applicability of Judgment]

The provisions of this Final Judgment shall apply to the defendants RFCCo. and Wilcolator, their officers, directors, agents, employees, successors and assigns, and to all other persons in active concert or participation with a defendant who receives actual notice of this Final Judgment by personal service or otherwise; provided that the said provisions shall not apply to the foreign activities and operations of the defendants unless such activities and operations unreasonably restrain domestic trade and commerce of the United States.

IV

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[Termination of Agreements]

(A) Defendants RFCCo. and Wilcolator are each ordered and directed to terminate and cancel, within sixty (60) days from the date of entry of this Final Judgment, each of the following agreements which shall not theretofore have been terminated or cancelled:

- (1) Agreement dated February 28, 1949, between RFCCo. and Wilcolator;
- (2) Agreement dated April 1, 1949, between Wilcolator and Penn Controls, Inc.;
- (3) Agreement dated February 13, 1936 between Wilcolator and Magic Chef, Inc.

(B) Defendants RFCCo. and Wilcolator are each enjoined and restrained from entering into, adopting, performing, adhering to, maintaining, or furthering, directly or indirectly, or claiming any rights under any contract, agreement, understanding, plan or program in relation to temperature controls which (1) is inconsistent with any provision of this Final Judgment, or (2) has as its purpose or effect the continuing or renewing of any provision of any of the agreements listed in subsection (A) of this Section IV which is inconsistent with any provision of this Final Judgment;

(C) Defendants RFCCo. and Wilcolator are each ordered and directed to file with the Court within three (3) months following the date of entry of this Final Judgment, an affidavit that the aforesaid written agreements have been terminated and that they are not parties to any agreement or arrangement, plan or program, which is inconsistent with any provision of this Final Judgment.

V

[Licensing of Patents]

(A) Defendant RFCCo. is ordered and directed, and, except as to RFCCo., defendant Wilcolator is ordered and directed, in so far as each has or may acquire the power to do so, to grant to any applicant making written application therefor a nonexclusive license to manufacture, use, and sell temperature controls under any, some, or all of the patents owned or controlled by such defendant at the time of entry of this Final Judgment (including those listed on Appendix A [not reproduced] hereto) or which are applied for or issued to or owned by such defendant within five (5) years from such date of entry. Defendants are each enjoined and restrained from making any sale or other disposition of any of the aforesaid patents which deprives such defendant of the power or authority to grant such licenses, unless such defendant sells, transfers, or assigns such patents and requires as a condition of such sale, transfer, or assignment that the purchaser, transferee, or assignee shall observe the requirements of Section V of this Final Judgment with respect to the patents so acquired and the purchaser, transferee, or assignee shall file with this Court, prior to the consummation of said transaction, an undertaking to be bound by the provisions of said section with respect to the patents acquired;

(B) Each defendant is enjoined and restrained from acquiring, on an exclusive basis, any license, sublicense, grant of immunity, or similar right under any existing patent or any patent issued or applied for within the five years after the entry of this Final Judgment, unless such license, sublicense, grant of immunity, or similar right grants to the defendant a full and unrestricted power to sublicense, pursuant to the provisions of this Section V. Each defendant is enjoined and restrained from entering into any agreement or understanding, either direct or implied, with any person from whom it acquires, on a nonexclusive basis, any license, sublicense, grant of immunity, or similar right under any existing patent or under any patent issued or applied for within the five years after the entry of this Final Judgment, that such person will not grant similar or at least as favorable rights to other applicants therefor;

(C) Each defendant is enjoined and restrained from including any restriction or condition whatsoever in any license or sublicense, as the case may be, granted by it pursuant to the provisions of subsection (A) of this Section V, except that:

- (1) The license may be nontransferable;
- (2) A reasonable nondiscriminatory royalty may be charged;

(3) Reasonable provision may be made for periodic inspection of the books and records of the licensee by an independent auditor or any person acceptable to the licensee who shall report to the licensor only the amount of the royalty due and payable;

(4) Reasonable provision may be made for cancellation of the license upon failure of the licensee to pay the royalties or to permit the inspection of its books and records as hereinabove provided;

(5) The license shall provide that the licensee may cancel the license by giving thirty (30) days' notice in writing to the licensor; and

(6) The license must refer to and identify this Final Judgment;

(D) Upon receipt of a written request for a license or a sublicense, as the case may be, under the provisions of this Section V, each such defendant shall advise the applicant in writing of the royalty which it deems reasonable for the patent or patents to which the request pertains. If the parties are unable to agree upon a reasonable royalty within sixty (60) days from the date such request for the license was received by such defendant, the applicant or such defendant may forthwith apply to this Court for the determination of reasonable royalties, and the defendant shall, upon receipt of notice of the filing, or upon the filing of such application, promptly give notice thereof to the Attorney General. In any such proceeding, the burden of proof shall be on the defendant to establish the reasonableness of the royalty requested, and the reasonable royalty rates, if any, determined by this Court shall apply to the applicant and all other licensees under the same patent or patents. Pending the completion of negotiations or any such proceedings, the applicant shall have the right to make, use, and vend temperature controls under the patent or patents to which its application pertains without payment of royalty or other compensation as above provided, but subject to the provisions of subsection (E) of this Section V;

(E) Where the applicant has the right to make, use, and vend temperature controls under any patents pursuant to subsection (D) of this Section V, said applicant or the defendant may apply to this Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty. If this Court fixes such interim royalty rate, the defendant shall then issue, and the applicant shall accept, a license or, as the case may be, a sublicense, providing for the periodic payment of royalties at such interim rate from the date of the filing of such application by the applicant. If the applicant fails to accept such a license or fails to pay the interim royalty in accordance therewith, such action shall be ground for the dismissal of his application and his rights under subsection (D) shall terminate. Where an interim license or sublicense has been issued pursuant to this subsection, reasonable royalty rates, if any, as finally determined by this Court shall be retroactive for the applicant and other licensees under the same patents to the date the applicant files his application with this Court;

(F) Each defendant is enjoined and restrained from instituting or threatening to institute, or maintaining or continuing any action, suit, or proceedings against any person for acts of infringement of patents alleged to have occurred prior to the entry of this Final Judgment; and

(G) Nothing herein shall prevent any applicant for a license or sublicense from attacking in the aforesaid proceedings or in any other proceeding or controversy, the validity or scope of any of the patents nor shall this Final Judgment be construed as importing any validity or value to any of the said patents.

VI

[Price Fixing and Allocation of Customers]

Defendants RFCCo. and Wilcolator are jointly and severally enjoined and restrained from combining or conspiring or from entering into, adhering to, performing, maintaining, furthering, directly or indirectly, or claiming any rights under any contract, agreement, understanding, plan or program, with any other manufacturer of temperature controls to:

(A) Fix, maintain, determine, control, stabilize or adhere to prices, discounts, allowances or other terms or conditions for the sale of temperature controls to third persons;

- (B) Urge, advise or suggest prices, discounts, allowances or other terms or conditions for the sale of temperature controls to third persons;
- (C) Circulate, exchange, disclose or communicate any information concerning costs relating to the manufacture of temperature controls, or, prices, discounts, allowances or other terms or conditions relating to the sale or distribution of temperature controls, except in connection with a bona fide negotiation, inquiry, or quotation concerning the purchase or sale of temperature controls;
- (D) Sell or offer to sell temperature controls only at prices quoted in published price lists or announcements; and
- (E) Allocate customers for the sale of temperature controls.

VII

[*Acquisitions*]

(A) Defendant RFCCo. is enjoined and restrained:

- (1) For a period of five years from the date of entry of this Final Judgment, from acquiring, directly or indirectly, by purchase, merger, consolidation or otherwise, ownership or control of the business, physical assets or good will, or any part thereof, or any capital stock or securities of any person engaged in the manufacture of temperature controls in the United States, its territories or possessions; and
- (2) Thereafter, for an additional ten years, from directly or indirectly acquiring such ownership or control except after an affirmative showing to the satisfaction of this Court, upon 30 days' notice to plaintiff, that such ownership or control would not substantially lessen competition or tend to create a monopoly in the manufacture, distribution or sale of temperature controls.

(B) Nothing in this Section VII, however, shall be construed to prohibit

- (1) Acquisition by RFCCo. of all or part of the securities or assets of any of its subsidiaries;
- (2) Formation of subsidiaries by RFCCo. and the transfer thereto of assets of RFCCo. or of its subsidiaries.

VIII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted (1) access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matter contained in this Final Judgment, and (2) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding any such matter. Upon such request the defendants shall submit such reports in writing to the Department of Justice with respect to any of the matters contained in this Final Judgment as from time to time may be necessary to 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 of this cause 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 termination of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

United States v. Rockwood Sprinkler Co., et al.

Civil Action No.: 16199

Year Judgment Entered: 1958



WK_Trade Regulation Reporter - Trade Cases 1932 - 1992 United States v Rockwood Sprinkler Company Grinnell Corporation Automatic Sprinkler Corporation.pdf

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Rockwood Sprinkler Company, Grinnell Corporation, Automatic Sprinkler Corporation of America and Blaw-Knox Company., U.S. District Court, W.D. Pennsylvania, 1958 Trade Cases ¶69,033, (May 9, 1958)

United States v. Rockwood Sprinkler Company, Grinnell Corporation, Automatic Sprinkler Corporation of America and Blaw-Knox Company.

1958 Trade Cases ¶69,033. U.S. District Court, W.D. Pennsylvania. Civil Action No. 16199. Dated May 9, 1958. Case No. 1359 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Allocation of Customers.—Four companies engaged in the sale and installation of special hazard sprinkler systems were prohibited by a consent decree from entering into any agreement with any industry person to allocate customers or to refrain from the solicitation of prospective customers.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing —Bidding Practices—Information Exchange.—Four companies engaged in the sale and installation of special hazard sprinkler systems were prohibited by a consent decree from entering into any agreement with any industry person to (1) fix prices or bids for the sale or installation, to or for third persons, of special hazard systems or equipment, (2) exchange any list of or information relating to special hazard prospects, or (3) refrain from submitting a bid for the sale or installation of any special hazard system or equipment or to submit a bid higher than or identical with a bid submitted by any other industry person for the sale or installation of special hazard systems or equipment. Also, each of the companies were prohibited from transmitting to any other industry person any prices to be charged, to third persons, for the sale or installation of special hazard systems or equipment prior to the time that such prices are announced to the trade generally, and from sending to any other industry person any list or names of special hazard prospects.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Trade Association Membership.—Four companies engaged in the sale and installation of special hazard sprinkler systems were prohibited by a consent decree from belonging to, or contributing anything of value to or participating in the activities of, any trade association or other central agency of or for industry persons knowing that the activities or purposes of such association or agency are contrary to, or inconsistent with, any provisions of the decree.

Department of Justice Enforcement and Procedure—Consent Decree—Specific Relief—Bidding Procedure.—Four companies engaged in the sale and distribution of special hazard sprinkler systems were each required by a consent decree to include as a part of any bid for the sale or installation of any special hazard system in any building (1) submitted to any United States agency, or (2) submitted in response to any invitation to bid where it appears from the face of the invitation that the United States has a financial interest in such building, or, (3) submitted in response to any invitation to bid where such company has reasonable grounds to believe that the United States has such a financial interest, an affidavit of the person responsible for the submission of the bid certifying that such bid is submitted without collusion with any other industry person. Also, the decree provides that in the event that one defendant enters into any bona fide subcontract or submits a bona fide joint bid with any other defendant for the sale or installation of any special hazard system, as permitted in a proviso to the decree, then such defendants were directed, at the time of entering into such subcontract or of submitting such joint bid, to submit to the Attorney General a full report of such subcontract or joint bid together with the reasons therefor.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; and Earl A. Jinkinson, William D. Kilgore, Jr., Bertram M. Long, Harry N. Burgess, Charles F. B. McAleer, Ralph M. McCareins, and Ned Robertson, Attorneys, Department of Justice; and Hubert I. Teitelbaum, United States Attorney.

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For the defendants: Goodwin, Procter & Hoar, and Reed, Smith, Shaw & McClay, by Frank B. Wallis and Paul J. Winschel, for Rockwood Sprinkler Co.; Baker, Botts, Andrews & Shepherd, and Dickie, McCamey, Chilcote & Robinson, by Denman Moody, C. Brien Dillon, and Sanford M. Chilcote, for Grinnell Corp.; Trenkamp & Coakley, by Joseph C. Coakley and John E. Laughlin, Jr., for Automatic Sprinkler Corp. of America; and Thorp, Reed & Armstrong, by William C. O'Neil and T. Herbert Hamilton, for Blaw-Knox Co.

Final Judgment

JOHN W. McILVAINE, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on September 10, 1957, and defendants, Rockwood Sprinkler Company, Grinnell Corporation, Automatic Sprinkler Corporation of America and Blaw-Knox Company (hereinafter sometimes referred to as "Defendants"), having appeared herein, and plaintiff and defendants by their respective attorneys having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment's constituting any evidence or admission by any party in respect to any such issue;

Now Therefore before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of all the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

[*Sherman Act*]

This Court has jurisdiction of the subject matter hereof and of each party hereto. The complaint states a claim for relief against the defendants under Section 1 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) "Sprinkler system" shall mean any fabrication of pipes, valves, controls, and releases designed as a means of protection against damage by fire, and which operates by automatically releasing water, foam, fog, carbon dioxide or other substance from a piping system over the area sought to be protected;

(B) "Special hazard system" shall mean any sprinkler system especially designed or engineered to meet the requirements of some unusual fire hazard or condition and which may employ fire extinguishing or control media, techniques or devices not customarily used in an ordinary or basic sprinkler system. Without limiting the generality of the foregoing, the term "special hazard system" is intended to mean and refer to that type of system, the sale or installation of which has heretofore customarily been handled by the special hazard department of each of the defendants;

(C) "Special hazard prospect" shall mean any person interested in the purchase or installation of any special hazard system or equipment at a specific location;

(D) "Equipment" means any part, apparatus or accessory used in or with a special hazard system;

(E) "Person" shall mean any individual, partnership, corporation, association, firm or other legal entity;

(F) "Industry person" shall mean any person who sells or installs sprinkler systems or special hazard systems.

III

[*Applicability of Decree*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its officers, directors, agents, employees, successors and assigns, and to all other persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise. For the purposes of this Final Judgment a defendant and its wholly-owned subsidiary shall be deemed to be one person

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IV

[*Bidding Practices— Information Exchange*]

Defendants are jointly and severally enjoined and restrained from, directly or indirectly, entering into, adhering to, maintaining, enforcing or claiming any rights under any contract, agreement, understanding, plan or program with any industry person to:

- (A) Allocate special hazard prospects;
- (B) Fix, determine, maintain, adopt or increase prices or bids for the sale or installation, to or for third persons, of special hazard systems or equipment;
- (C) Keep, maintain or exchange any list of or information relating to special hazard prospects;
- (D) Refrain from the solicitation of any special hazard prospect;
- (E) Refrain from submitting a bid for the sale or installation of any special hazard system or equipment or to submit a bid higher than or identical with a bid submitted by any other industry person for the sale or installation of special hazard systems or equipment.

V

[*Trade Association Membership*]

Each of the defendants is enjoined and restrained from:

- (A) Transmitting or otherwise making available to any other industry person any prices to be charged, to third persons, for the sale or installation of special hazard systems or equipment prior to the time that such prices are announced to the trade generally;
- (B) Sending to any other industry person any list or names of special hazard prospects;
- (C) Belonging to, contributing anything of value to or participating in the activities of, any trade association or other central agency of or for industry persons knowing that the activities or purposes of such association or agency are contrary to, or inconsistent with, any of the provisions of this Final Judgment.

Provided that nothing in this Final Judgment shall prevent any defendant from entering into a bona fide subcontract or submitting a bona fide joint bid with another industry person.

VI

[*Specific Relief*]

Each of the defendants is ordered and directed to include as a part of any bid for the sale or installation of any special hazard system in any building, facility, or project (1) submitted to any agency of the United States of America, or, (2) submitted in response to any invitation to bid where it appears from the face of the invitation to bid that the United States has a financial interest in such building, facility or project, or, (3) submitted in response to any invitation to bid where such defendant has reasonable grounds to believe that the United States has such a financial interest, an affidavit of the person responsible for the submission of the bid certifying that such bid is submitted without collusion with any other industry person.

VII

[*Reports to Attorney General*]

In the event that one defendant enters into any subcontract or submits a joint bid with any other defendant for the sale or installation of any special hazard system as permitted in the proviso to Section V of this Final Judgment, then such defendants are ordered and directed, at the time of entering into such subcontract or of submitting such joint bid, to submit to the Attorney General a full report of such subcontract or joint bid together with the reasons therefor.

VIII

[*Notice of Judgment*]

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Each of the defendants is ordered and directed:

(A) Within sixty (60) days from the effective date of this Final Judgment to furnish a true and complete copy of this Final Judgment to each of its corporate officers and directors and to each of its department heads and principal sales personnel concerned with the sale or installation of special hazard systems or equipment;

(B) Within ninety (90) days from the date of entry of this Final Judgment to file with the Clerk of this Court, with a copy to the Attorney General, an affidavit setting forth the fact and manner of compliance with subsection (A) of this Section VIII which affidavit shall include the names and titles of each person to whom a copy of this Final Judgment was furnished.

IX

[Inspection and Compliance]

For the purpose of securing compliance with this Final Judgment and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal offices, be permitted:

(1) access during the office hours of such defendant to, and the right to copy and reproduce, all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matter contained in this Final Judgment; and

(2) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding any such matter.

Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division said defendants shall submit such reports in writing to the Department of Justice with respect to any of the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means provided in this Section IX 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.

X

[Jurisdiction Retained]

Jurisdiction of this cause 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 termination of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

United States v. Erie County Malt Beverage Distributions Ass'n, et al.

Civil Action No.: 436

Year Judgment Entered: 1958



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Erie County Malt Beverage Distributors Association; Erie County I. D. Malt Beverage Association, also known as Erie County Importing Malt Beverage Distributors Association; Erie Beer Company; Kahkwa Beer Company; Carney & Sperry Beer Distributors; East Side Beer Company; George B. Barber; Raymond J. Felbinger; Louis Sawicki; Ralph A. Deck; Edward S. Schaaf; George J. Leach; Russell O. Suleski; and Robert E. Carney., U.S. District Court, W.D. Pennsylvania, 1958 Trade Cases ¶69,055, (May 28, 1958)

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United States v. Erie County Malt Beverage Distributors Association; Erie County I. D. Malt Beverage Association, also known as Erie County Importing Malt Beverage Distributors Association; Erie Beer Company; Kahkwa Beer Company; Carney & Sperry Beer Distributors; East Side Beer Company; George B. Barber; Raymond J. Felbinger; Louis Sawicki; Ralph A. Deck; Edward S. Schaaf; George J. Leach; Russell O. Suleski; and Robert E. Carney.

1958 Trade Cases ¶69,055. U.S. District Court, W.D. Pennsylvania. Civil Action No. 436 Erie. Filed May 28, 1958. Case No. 1295 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing— Beer.—Beer distributors, trade associations, and individuals were prohibited by a consent decree from entering into any agreement to control or fix prices, discounts, mark-ups, margins of profit, or any other condition at which beer may be sold.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing— Coercion and Intimidation.—Beer distributors, trade associations, and individuals were prohibited by a consent decree from entering into an agreement to induce, compel, or coerce (1) any person to adhere to prices, discounts, mark-ups, margins of profit, delivery charges, or other conditions for the sale of beer, (2) any person to adhere to hours or holidays which are observed in the sale of beer, or (3) any brewer or importing distributor to establish or enforce minimum or suggested resale prices, discounts, mark-ups, or margins of profit at which beer may be sold to third persons.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Discrimination.—Beer distributors, trade associations, and individuals were prohibited by a consent decree from entering into any agreement to give preference to certain brewers or importing distributors of beer on the condition that the brewer or importing distributor establish and enforce minimum or suggested retail prices, discounts, mark-ups, or margins of profit.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Coercion and Intimidation— Boycott Discrimination.—Beer distributors, trade associations, and individuals were prohibited by a consent decree from entering into an agreement to boycott, discriminate against, or coerce or induce any brewer or importing distributor to boycott or discriminate against any person or group or class of persons who produce, sell, or distribute beer. They were also prohibited from refusing to sell beer at nondiscriminatory prices.

Resale Price Fixing—Consent Decree—Practices Enjoined—Distribution of Resale Price Lists.— Beer distributors, trade associations, and individuals were prohibited by a consent decree from distributing or disseminating any price list to any person engaged in the sale or distribution of beer which purports to indicate any prevailing, standard, or established resale price of beer.

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Combinations and Conspiracies—Consent Decree—Practices Enjoined—Trade Association

Membership.—Beer distributors, trade associations, and individuals were prohibited by a consent decree from belonging to, organizing, becoming a member of, or participating in the activities of any trade association, the purpose or functions of which relate to the distribution or sale of beer contrary to any provision of the decree.

Department of Justice Enforcement and Procedure—Enforcement of Consent Decrees —Trade

Associations—Consent of Member to Decree as Condition of Membership— Decree as Part of

Association By-Laws.—A consent decree entered against beer distributors and trade associations required each association to adopt by-laws embodying the prohibitions of the decree, to require all members to be bound by the by-laws incorporating the provisions of the decree, and to expel from membership any member who shall violate such by-laws.

Department of Justice Enforcement and Procedure—Consent Decree—Permissive Provisions—

Proposing Legislation.—A consent decree entered against beer distributors and their trade associations provided that nothing in the decree should be deemed to prohibit the defendants from proposing or supporting legislation relating to the purchase, sale, or distribution of beer or from individually taking action as might be required by local, state, or federal legislation or regulation.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; and W. D. Kilgore Jr., Worth Rowley, William L. Maher, Donald G. Balthis, John E. Sarbaugh, and James P. Tofani, Attorneys, Department of Justice.

For the defendants: Frank B. Quinn, Joseph Barber, and Thomas Barber.

Final Judgment

HERBERT P. SORC, District Judge [*In full text*] : Plaintiff, United States of America, having filed its complaint herein on June 29, 1956; each of the defendants having appeared and filed their answers to said complaint denying the substantive allegations thereof and 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 trial or adjudication of any issue of fact or of law herein, and without admission by any party in respect to any such issue; and the Court having considered the matter and being duly advised;

Now, therefore, before any testimony or evidence has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

Ordered, adjudged, and decreed as follows:

I

[*Sherman Act*]

The Court has jurisdiction of the subject matter hereof and all the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under Section 1 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) "Person" means an individual, partnership, firm, corporation, association, trust or any other business or legal entity;

(B) "Malt beverage" means any beer, lager beer, ale, porter, or similar fermented malt beverage containing one-half of one per centum or more of alcohol by volume, by whatever name such beverage may be called;

(C) "Brewer" means any person who is engaged in the business of brewing and selling malt beverages;

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(D) "Importing distributor" means any person engaged in the business of purchasing malt beverages from brewers and other sources located outside the Commonwealth of Pennsylvania as well as from brewers and other importing distributors located within the Commonwealth of Pennsylvania and of reselling such beverages in case lots to other importing distributors, distributors, retail outlets and home consumers; and

(E) "Distributor" means any person engaged in the business of purchasing malt beverages from importing distributors and brewers located within the Commonwealth of Pennsylvania and of reselling such beverages in case lots to retail outlets and home consumers in Erie County, Pennsylvania.

III

[Applicability of Judgment]

The provisions of this Final Judgment applicable to any defendant shall apply to each such defendant and to his or its officers, agents, servants, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with any defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV,

[Concerted Practices Prohibited]

The defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, plan or program among themselves or with any other person, to:

A) Control, fix, adopt, stabilize or maintain prices, discounts, markups, margins of profits, delivery charges, or other terms or conditions at which malt beverages are sold or offered for sale to third persons;

(B) Induce, compel or coerce, or attempt to induce, compel or coerce any person to adhere to, police or enforce adherence to prices, discounts, markups, margins of profit, delivery charges, or other terms or conditions at which malt beverages will be sold to any person, or to any group or class of persons;

(C) Induce, compel or coerce, or attempt to induce, compel or coerce, any person or group or class of persons to adhere to, police or enforce adherence to hours or holidays which are observed or to be observed in the sale or distribution of malt beverages;

(D) Induce, compel or coerce, or attempt to induce, compel or coerce any brewer or importing distributor to establish, adopt, issue or enforce minimum or suggested re sale prices, discounts, markups or margins of profit at which malt beverages are sold or offered for sale to third persons;

(E) "Push" or give preference to malt beverages on the condition or understanding that the brewer or importing distributor thereof establish, adopt, issue or enforce, or agree to establish, adopt, issue or enforce minimum or suggested retail prices, discounts, markups or margins of profit thereon; and

(F) (1) Boycott or otherwise refuse, or threaten to boycott or otherwise refuse, to deal with;

(2) induce, compel or coerce, or at tempt to induce, compel or coerce, any brewer or importing distributor to boycott or otherwise refuse to deal with;

(3) discriminate against or threaten to discriminate against; or

(4) induce, compel or coerce, or attempt to induce, compel or coerce, any brewer or importing distributor to discriminate against any person or group or class of persons in connection with the production, sale or distribution of malt beverages.

V

[Individual Practices Prohibited]

Each defendant is enjoined and restrained from directly or indirectly:

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- (A) Refusing to sell malt beverages on nondiscriminatory prices, terms and conditions to any distributor or importing distributor provided such sale is not prohibited by local, State or Federal law;
- (B) Distributing or disseminating in any manner any price list or price bulletin to any person engaged in the sale or distribution of malt beverages which purports to indicate any prevailing, standard or established resale price of malt beverages;
- (C) Inducing, compelling or coercing, or attempting to induce, compel or coerce any brewer, importing distributor or distributor to refrain from purchasing, selling or otherwise discriminating in the purchase or sale of malt beverages from or to any person or to any group or class of persons; and
- (D) Belonging to, organizing, becoming a member of, or participating in the activities of any trade association or other organization, the purpose or functions of which relate to the distribution or sale of malt beverages contrary to any provision of this Final Judgment.

VI

[Specific Relief]

Each defendant association is ordered and directed:

- (A) Within thirty (30) days after the entry hereof, to serve by mail upon each of its present and former members a con formed copy of this Final Judgment;
- (B) To institute forthwith and to complete within three months from the date of entry of this Final Judgment such proceedings as may be appropriate and necessary to adopt by-laws incorporating therein Sections IV, V and VII of this Judgment and require as a condition of membership or retention of membership that all present and future members be bound thereby in the same way that the defendants herein are now bound;
- (C) To furnish to each of its present and future members a copy of its by-laws adopted in accordance with subsection (B) of this Section VI;
- (D) To expel promptly from membership any present or future member who shall violate any of the provisions of its by-laws incorporating Sections IV, V and VII of this Final Judgment when the said associa tion shall have knowledge of such violation; and
- (E) Within four months after the date of the entry of this Final Judgment to file an affidavit with this Court and send a copy thereof to the plaintiff herein, setting forth the steps taken to comply with this Section VI.

VII

[Permissive Provision]

Nothing in this Final Judgment shall be deemed to prohibit defendants from proposing or supporting legislation or the adoption of local, State or Federal regulations relating to the purchase, sale or distribution of malt beverages or from individually taking action required by local, State or Federal legislation or regulation.

VIII

[Inspection and Compliance]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, be permitted,

- (A) Access, during the office hours of said defendant, 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 defendant and without restraint or interference from it, to interview officers and employees of such defendant who may have counsel present, regarding such matters.

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, said defendant shall submit such reports in writing to the Department of Justice as may from time to time be necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section VIII shall be divulged by 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 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 by this Court for the purpose of enabling any of the parties to this Final 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 Final Judgment, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

United States v. Am. Radiator & Standard Sanitary Corp.

Civil Action No.: 14469

Year Judgment Entered: 1960



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Radiator & Standard Sanitary Corp., U.S. District Court, W.D. Pennsylvania, 1960 Trade Cases ¶69,810, (Sept. 20, 1960)

[Click to open document in a browser](#)

United States v. American Radiator & Standard Sanitary Corp.

1960 Trade Cases ¶69,810. U.S. District Court, W.D. Pennsylvania. Civil No. 14469. Dated September 20, 1960. Case No. 1275 in the Antitrust Division of the Department of Justice.

Clayton Antitrust Act

Acquisitions—Horizontal—Plumbing Fixtures—Consent Decree.—A manufacturer of plumbing fixtures was, for a period of five years, prohibited by a consent decree from acquiring, directly or indirectly, any interest in any business or plant or any shares or stock of any corporation engaged in the United States in the manufacture, distribution or sale of plumbing fixtures, plumbing fittings, or steel kitchen cabinets. The manufacturer was not restrained from acquiring in good faith the stock or assets of a distributor if such distributor had been unable to pay its indebtedness in the ordinary course of business and faced imminent bankruptcy or would not be able to continue in business.

Divestiture—Assets and Improvements—Sales Efforts and Conditions—Consent Decree.—A manufacturer of plumbing fixtures was ordered to divest itself of an acquired company manufacturing similar products, together with assets or improvements added since the horizontal acquisition of the manufacturer. The manufacturer was ordered to make an effort in good faith to divest itself and, if the property could not be sold, the court would determine whether the final judgment could be modified. In addition the defendant was ordered to sell plants which were part of the acquired company but not now used in the business.

For the plaintiff: Robert A. Bicks, Assistant Attorney General; William D. Kilgore, Jr.; Hubert I. Teitelbaum, United States Attorney; George D. Reycraft and John M. Toohey, Attorneys, Department of Justice.

For the defendant: Kirkpatrick, Pomeroy, Lockhart & Johnson, by Robert L. Kirkpatrick; Sullivan & Cromwell, by Inzer B. Wyatt.

Final Judgment

WILLSON, Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on March 30, 1956, and defendant having appeared and filed its answer to such complaint, denying the substantive allegations thereof; and

Plaintiff and defendant having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without any admission by plaintiff or defendant in respect to any such issue,

Now, therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties thereto, it is hereby

Ordered, adjudged and decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and of the parties hereto pursuant to Section 15 of the Act of Congress of October 15, 1914, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, and the complaint states a claim upon which relief may be granted under Section 7 of said Act.

II

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[*Definitions*]

As used in this Final Judgment:

- (a) "American-Standard" shall mean defendant American Radiator & Standard Sanitary Corporation, a corporation organized and existing under the laws of the State of Delaware;
- (b) "Youngstown" shall mean the Youngstown Kitchens Division of American-Standard consisting of (1) the contract stamping business carried on at Salem, Ohio, and the real property, manufacturing equipment, and inventory being used in said business at the time of entry of this Final Judgment and (2) the kitchens business carried on at Warren, Ohio, and the name "Youngstown Kitchens" and the real property, manufacturing equipment, and inventory being used in said business at the time of entry of this Final Judgment;
- (c) "Mullins" shall mean Mullins Manufacturing Corporation which was a New York corporation and was merged with defendant;
- (d) "In-Sink-Erator" shall mean In-Sink-Erator Mfg. Co., a corporation organized and existing under the laws of the State of Wisconsin;
- (e) "Plumbing fixtures" shall mean enamelled steel or cast iron fixtures, to-wit: bathtubs, sinks, lavatories, laundry trays and sink and laundry tray combinations;
- (f) "Plumbing fittings" shall mean adjuncts to plumbing fixtures as defined herein subject to selection by the purchaser and generally installed with the fixture, consisting of bath and shower fittings (such as tub fillers, faucets, drains and overflows), lavatory fittings (such as faucets, pop-ups and other drains and combination centerset fittings), and sink fittings (such as faucets and strainers);
- (g) "Person" shall mean any individual, partnership, corporation, association or other legal entity.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to defendant and to its officers, directors, agents, servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with defendant who receive actual notice of this Final Judgment by personal service or otherwise.

None of the provisions of this Final Judgment shall apply to any person who acquires Youngstown in whole or in part from defendant whether the acquisition is pursuant to this Final Judgment or otherwise, if the acquisition is by a person approved by this Court after hearing.

IV

[*Acquisition of Interests*]

Defendant is enjoined and restrained, for a period of five years from the date of entry of this Final Judgment, from acquiring, directly or indirectly, any shares of stock of any corporation, or any interest in any business or plant, engaged in the United States in the manufacture, distribution or sale of plumbing fixtures, plumbing fittings or steel kitchen cabinets. Defendant is not restrained by this Final Judgment from acquiring in good faith the stock or assets of a distributor if such distributor has been unable to pay its indebtedness to defendant in the ordinary course of business and faces imminent bankruptcy or will not be able to continue in business. If at any time defendant desires to make any acquisition prior to five years from the date of entry of this Final Judgment which would or might be otherwise prohibited by this Final Judgment, it may submit disclosure of the facts with respect to such proposed acquisition and the reasons therefor to the plaintiff. If the plaintiff shall not object to the proposed acquisition within thirty days after receipt of such notice, such acquisition shall be deemed not to be a violation of this Final Judgment. In the event the plaintiff shall object defendant may apply to this Court for permission to make such acquisition, which may be granted upon a showing by the defendant to the satisfaction of this Court that the acquisition would not substantially lessen competition or tend to create a monopoly in respect of plumbing fixtures, plumbing fittings or steel kitchen cabinets.

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[Divestiture]

A. Defendant shall, subject to the terms of this Final Judgment, divest itself of Youngstown, including all assets or improvements which may have been added by defendant since its acquisition of Youngstown and which are being used in the business of Youngstown at the time of entry of this Final Judgment. Defendant may retain the dies (which were not owned by Mullins at January 30, 1956) now being used for the stamping at Salem of steel bathtubs for sale by defendant and defendant may retain any finished tubs or stampings made from said dies. The contract stamping business at Salem and the kitchens business at Warren may be sold separately, at different times and to different persons.

B. Any proposal by plaintiff or defendant for the sale by defendant of Youngstown, in whole or in part, shall be subject to the approval of this Court, after hearing both plaintiff and defendant in regard thereto. Any such proposal of sale shall have the objective of maintaining Youngstown, in the form or forms in which it is divested, as an operating factor in competition.

C. Defendant is ordered and directed from the time of entry of this Final Judgment to make a bona fide effort to divest itself of Youngstown by sale, to make known the availability of Youngstown for sale by ordinary and usual means for the sale of a business as a going concern, and to promote the expeditious sale of Youngstown. Defendant shall furnish to bona fide prospective purchasers of Youngstown such information regarding Youngstown and permit them to have such access to, and to make such inspection of, Youngstown's properties as are reasonably necessary.

Defendant shall render monthly reports to the Assistant Attorney General in charge of the Antitrust Division, concerning its efforts to divest itself of Youngstown.

The sale shall be at a price and upon terms which are acceptable to this Court.

Plaintiff or defendant may apply to this Court for approval of any offer by any person to purchase Youngstown or the contract stamping part thereof or the kitchens business part thereof. Any such offer to purchase shall be approved by this Court, after hearing plaintiff and defendant in regard thereto, unless the Court shall find that the effect of such offer, if accepted, may be substantially to lessen competition or tend to create a monopoly in respect of plumbing fixtures, plumbing fittings, or steel kitchen cabinets, or unless the Court shall find that the offer is unreasonable or inadequate.

D. Defendant is ordered and directed, until the time of divestiture of Youngstown as above provided or until the further order of this Court, to maintain in substantially their physical condition at the time of entry of this Final Judgment the properties and assets at Salem, Ohio, being used for the stamping and enamelling of metal and the properties and assets at Warren, Ohio, being used for the manufacture and sale of kitchen sinks, kitchen cabinets and kitchen equipment, and to continue the operation of said properties and assets at Salem and Warren, Ohio, as operating factors in competition. Nothing herein contained is intended to restrict or interfere with the operation by defendant of said properties and assets at all times under management decisions made in good faith in an effort to improve operating results.

E. If defendant has not divested itself of Youngstown by June 1, 1961 (this being at least one year and a half after the date established to the satisfaction of this Court as the commencement of bona fide efforts by defendant to sell Youngstown), then upon application to this Court by defendant, and a showing by defendant to the satisfaction of this Court of its bona fide efforts to sell Youngstown, and that there is no reasonable expectation that Youngstown can be sold within a reasonable additional period of time, or upon application by plaintiff, the Court shall determine whether any provision of this Final Judgment should be modified or vacated and may modify or vacate any provision hereof.

VI

[Additional Divestiture]

A. Defendant shall, subject to the terms of this Final Judgment, divest itself of the so-called "Liberty Plant" in Warren, Ohio, and the so-called "Plant No. 3" in Salem, Ohio. These plants were owned by Mullins and since the merger of Mullins and defendant have been owned by defendant but are not now being used in the business of Youngstown Kitchens Division or otherwise in the business of defendant. The Liberty Plant and Plant No. 3 may be sold separately, at different times and to different persons.

B. Defendant is ordered and directed from the time of entry of this Final Judgment to make a bona fide effort to divest itself of the Liberty Plant and Plant No. 3 by sale, to make known their availability for sale and to promote their expeditious sale. Defendant shall furnish to bona fide prospective purchasers of the Liberty Plant or of Plant No. 3 such information and permit them to have such access to, and to make such inspection of, the Liberty Plant or of Plant No. 3 or both as are reasonably necessary. Defendant is not required to sell the Liberty Plant and Plant No. 3 except at a price and upon terms which are reasonable under all the circumstances.

C None of the provisions of this Final Judgment shall apply to any person who acquires the Liberty Plant or Plant No. 3 from defendant.

D. If defendant has not divested itself of the Liberty Plant and of Plant No. 3 by June 1, 1961, then upon application to this Court by defendant, and a showing by defendant to the satisfaction of this Court of its bona fide efforts to sell the Liberty Plant and Plant No. 3, and that there is no reasonable expectation that the Liberty Plant or Plant No. 3 can be sold with a reasonable additional period of time, or upon application of plaintiff, the Court shall determine whether any provision of this Final Judgment should be modified or vacated and may modify or vacate any provision hereof.

VII

Defendant is ordered and directed to divest itself of any shares of stock, or any other interest, owned by defendant in In-Sink-Erator.

VIII

[Enforcement and Compliance]

For the purpose of securing compliance with this Final Judgment, and for no other purpose, and subject to any legally recognized privilege, 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 defendant, at its principal office, be permitted:

(a) access, during the office hours of defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of defendant relating to any of the matters contained in this Final Judgment; and

(b) subject to the reasonable convenience of defendant and without restraint or interference from it, to interview the officers and employees of defendant, who may have counsel present, regarding any such matters.

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 the Executive Branch of plaintiff 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 either party 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 or for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

United States v. Holiday on Ice Shows, Inc., et al.

Civil Action No.: 62-215

Year Judgment Entered: 1963



WK Trade Regulation Reporter - Trade Cases 1932 - 1992 United States v Holiday on Ice Shows Inc International Ice Attractions Inc North American Ice .pdf

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Holiday on Ice Shows, Inc., International Ice Attractions, Inc., North American Ice Attractions, Inc., and Ice Capades, Inc., U.S. District Court, W.D. Pennsylvania, 1963 Trade Cases ¶70,613, (Jan. 29, 1963)

United States v. Holiday on Ice Shows, Inc., International Ice Attractions, Inc., North American Ice Attractions, Inc., and Ice Capades, Inc.

1963 Trade Cases ¶70,613. U.S. District Court, W.D. Pennsylvania. Civil Action No. 62-215. Entered January 29, 1963. Case No. 1655 in the Antitrust Division of the Department of Justice.

Sherman Act

Combination-Allocating Territories—Ice Shows—Consent Judgment.—Three ice show producers were each prohibited by a consent judgment from allocating territories where ice shows will be played, pooling or sharing profits or revenues from ice shows, and were directed to divest all their right, title and interest in a fourth ice show company.

For the plaintiff: Lee Loevinger, W. D. Kilgore, Jr., Larry L. Williams, Samuel Z. Gordon and Jerome A. Rabow.

For the defendants: Benedict Deinard, for International Ice Attractions, Inc.; John G. Buchanan, Jr., for International Ice Attractions, Inc., Ralph D. McKee, for North American Ice Attractions, Inc., and John G. Buchanan, Jr., for Ice Capades, Inc.

Final Judgment

MILLER, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on March 27, 1962, the defendants having appeared and filed their answers thereto, and the parties hereto by their respective attorneys having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without any admission by any party as to any such issue;

Now, therefore, it is.

Ordered, adjudged and decreed as follows:

I

[Sherman Act]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim for relief against the defendants under Section 1 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

[Definition]

As used herein "person" shall mean any individual, firm, partnership, corporation, association or other business or legal entity.

III

[Applicability]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its subsidiaries, successors and assigns, and to its officers, directors, agents and employees, and to all other persons in active

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concert or participation with any such defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[Practices Prohibited]

The contract of July 1, 1957 entered into by the defendants, including the amendments and agreements ancillary thereto, is ordered cancelled and terminated as of June 30, 1963 and the defendants are enjoined and restrained from thereafter claiming any rights there under or under any other contract having the purpose or effect forbidden by Section V hereof, except for the payment and distribution among defendants of rentals, fees and dividends on account of operations prior to such termination date.

V

[Allocating Territories, Sharing Profits]

Defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or furthering, or claiming any rights under, any other contract, combination, conspiracy, agreement or understanding having the purpose or effect of:

(A) Allocating, dividing or assigning cities or territories where the ice shows of Holiday on Ice Shows, Inc., or any wholly owned subsidiary thereof or any affiliate thereof with substantially common ownership, on the one hand, and of Ice Capades, Inc. and International Ice Attractions, Inc., or either of them, on the other hand, shall be played, or where the ice shows of a defendant and those of any other producer of a national touring ice show within the United States of America, its territories and possessions, who is not a defendant, shall be played;

(B) Pooling or sharing of profits or revenues from the ice shows of Holiday on Ice Shows, Inc., or any wholly owned subsidiary thereof or any affiliate thereof with substantially common ownership, on the one hand, and of Ice Capades, Inc. and International Ice Attractions, Inc., or either of them, on the other hand, or from the ice shows of a defendant and those of any other producer of a national touring ice show within the United States of America, its territories and possessions, who is not a defendant.

VI

[Divestiture]

On or before September 1, 1963, defendants Holiday on Ice Shows, Inc., International Ice Attractions, Inc., and Ice Capades, Inc., or either Holiday on Ice Shows, Inc., on the one hand, or both International Ice Attractions, Inc. and Ice Capades, Inc., on the other hand, shall divest all their right, title and interest in defendant North American Ice Attractions, Inc. and shall not thereafter reacquire any right, title or interest in said defendant, or in lieu of such divestment, defendants shall cause North American Ice Attractions, Inc. to be dissolved.

VII

[Review]

For the purpose of determining and securing compliance with this Final Judgment and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

(A) Reasonable access, during office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment;

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(B) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding any such matters.

Upon such written request, any defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII

[*Jurisdiction Retained*]

Jurisdiction is retained by this Court 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 amendment, modification or termination of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

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United States v. Ingersoll-Rand Co., et al.

Civil Action No.: 63-124

Year Judgment Entered: 1964



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	Civil Action
	)	No. 63-124
v.	)	
	)	
INGERSOLL-RAND COMPANY,	)	Entered: May 5 1964
GOODMAN MANUFACTURING COMPANY,	)	
LEE-NORSE COMPANY, and GALIS	)	
ELECTRIC AND MACHINE COMPANY,	)	
	)	
Defendants.	)	

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on February 14, 1963, seeking to enjoin the acquisition by defendant Ingersoll-Rand Company of the stock or assets of Goodman Manufacturing Company, Lee-Norse Company, and Galis Electric and Machine Company; the Court on the same day having granted an ex parte Order temporarily restraining consummation of the proposed acquisition, which on March 6, 1963 was supplemented by the Court's Order for Preliminary Injunction granted after hearing and consideration of evidence of both a documentary and testimonial nature; defendants on March 8, 1963, having filed a petition for Modification of the Preliminary Injunction which was denied by the Court on March 14, 1963, after hearing all the parties; and the Court having entered on April 11, 1963, its Findings of Fact, Conclusions of Law, and Opinion in support of its Order of March 6, 1963.

The Court of Appeals for the Third Circuit having affirmed such Order on June 5, 1963; and it further appearing

from the stipulation among the parties by which they consented to entry of this Final Judgment that there are presently no contested issues of law or fact as to the illegality of the "Acquisition" alleged in paragraph 22 of the complaint to violate Section 7 of the Clayton Act.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter herein and of the parties. The complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Act of Congress of October 15, 1914, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, and it is hereby declared that the "Acquisition", as defined herein, by the defendant Ingersoll-Rand would, if consummated, violate said Act.

II

As used in this Final Judgment:

- (A) "Ingersoll-Rand" shall mean Ingersoll-Rand Company;
- (B) "Person" shall mean any individual, partnership, firm, corporation, association, trustee, or any other business or legal entity;
- (C) "Equipment" shall mean any underground coal mining machinery and equipment;
- (D) "Acquisition" shall mean the proposed acquisition by Ingersoll-Rand of certain of the capital stock or assets of defendants Goodman Manufacturing Company, Galis Electric and Machine Company, and Lee-Norse Company.

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III

The provisions of this Final Judgment applicable to any defendant shall apply also to each of its directors, officers, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Defendant Ingersoll-Rand is permanently enjoined and restrained from consummating or attempting to consummate:

(a) the "Acquisition,"

(b) any other acquisition of stock or assets of any corporation engaged in the manufacture or sale of equipment in the United States which may have an effect similar to the effect of the "Acquisition."

V

Defendant Ingersoll-Rand is enjoined and restrained from:

(A) Acquiring, within ten (10) years from the date of entry of this Final Judgment, directly or indirectly, by purchase, merger, consolidation or otherwise, and from holding or exercising ownership or control of, the business, physical assets (except equipment purchased in the ordinary course of business), or goodwill, or any part thereof used in the manufacture or sale of equipment in the United States, or any capital stock or securities of any person engaged in the manufacture or sale of equipment in the United States, except upon a determination by this Court that such acquisition does not violate the provisions of Section IV thereof. Ten (10) days' written notice of any application by defendant Ingersoll-Rand for such a determination shall be given to all parties

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hereto. The provisions of this Section V(A) shall not apply to the acquisition by defendant Ingersoll-Rand of defendant Lee-Norse Company as a single, separate acquisition;

(B) For ten (10) years from the date of entry of this Final Judgment, contacting or approaching any designer, engineer, supervisory personnel, or sales engineer employed by any other person then engaged in the United States in the manufacture of equipment for the purpose of hiring or employing or offering or attempting to hire or employ any such person without first receiving a letter requesting employment from such person or with the consent of his employer.

VI

Defendant Ingersoll-Rand shall promptly return to defendant Goodman Manufacturing Company all documents which were furnished to defendant Ingersoll-Rand subsequent to commencement of negotiations between the parties which led to the Agreement dated January 16, 1963, and prior to the date hereof, and shall include all copies and abstracts of such documents prepared by defendant Ingersoll-Rand.

VII

This Final Judgment and the terms and conditions contained herein shall supersede the aforesaid Order for Preliminary Injunction entered by this Court on March 6, 1963.

VIII

(A) For the purpose of determining and securing compliance with this Final Judgment and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge

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of the Antitrust Division, and on reasonable notice to Ingersoll-Rand made to its principal office, be permitted:

(1) Access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the controls of such defendant relating to any of the matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it to interview officers or employees of such defendant, who may have counsel present, regarding any such matters.

(B) Defendant Ingersoll-Rand, on the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing, under oath if requested, with respect to any matters contained in this Final Judgment as may from time to time be necessary for the purpose of the enforcement of this Final Judgment.

(C) No information obtained by means provided in this Section VIII shall be divulged by any representatives of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

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IX

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 or for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

/s/ Louis Rosenberg
UNITED STATES DISTRICT JUDGE

Dated: May 5, 1964

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff	)	Civil Action No. 63-124
	)	
v.	)	
	)	Filed: April 3, 1964
INGERSOLL-RAND COMPANY,	)	
GOODMAN MANUFACTURING COMPANY,	)	
LEE-NORSE COMPANY, and GALIS	)	
ELECTRIC AND MACHINE COMPANY,	)	
	)	
Defendants.	)	

STIPULATION

Now comes each of the parties to this proceeding and, by its respective attorneys, stipulates as follows:

1. On the basis of the facts now in plaintiff's possession and subject to the provisions set forth in this Stipulation and in the attached proposed Final Judgment, plaintiff does not intend to oppose the plan of Ingersoll-Rand Company ("Ingersoll-Rand") to acquire the assets of Lee-Norse Company ("Lee-Norse") as set forth in paragraph 3 herein.

2. Defendant Ingersoll-Rand avers that it has permanently abandoned the proposed package of three acquisitions challenged in the Complaint filed herein on February 14, 1963.

3. Ingersoll-Rand avers that it intends to acquire the assets of defendant Lee-Norse as an independent transaction separate from the acquisition plan charged in the Complaint.

4. Defendant Goodman Manufacturing Company ("Goodman") avers that it has acquiesced in, and accepted, the permanent abandonment by Ingersoll-Rand of its plan to acquire the stock or assets of Goodman.

5. Defendant Galis Electric and Machine Company ("Galis") avers that it has acquiesced in, and accepted, the permanent abandonment by Ingersoll-Rand of its plan to acquire the stock or assets of Galis.

6. Defendant Lee-Norse avers that it has acquiesced in, and accepted the permanent abandonment by Ingersoll-Rand of its plan to acquire the stock or assets of Lee-Norse as part of the package attacked by the Complaint.

7. Ingersoll-Rand avers that it has no plans to acquire the stock or assets of any person, firm, or corporation engaged in the manufacture or sale of underground coal mining machinery and equipment in the United States, other than the aforesaid plan to acquire the assets of Lee-Norse.

8. Plaintiff and defendants Ingersoll-Rand, Lee-Norse, Goodman and Galis stipulate to the entry of the attached proposed Final Judgment.

9. The said parties consent that the Final Judgment hereto attached and filed herewith may be entered by the Court at any time after the expiration of thirty (30) days following the date of filing of this stipulation without any further notice to any party or other proceedings, either upon the motion of any party or upon the Court's own motion, provided that plaintiff has not withdrawn its consent as provided herein;

10. The plaintiff may withdraw its consent hereto at any time within said period of thirty (30) days by serving notice thereof upon the other parties hereto and filing said notice with the Court;

11. In the event plaintiff withdraws its consent hereto, this Stipulation shall be of no effect whatever in this or any

other proceeding and the making of this Stipulation shall not in any manner prejudice any consenting party in any subsequent proceedings.

Dated: April 3, 1944

For the Plaintiff:

/s/ William H. Orrick, Jr.
WILLIAM H. ORRICK, JR.
Assistant Attorney General

/s/ William D. Kilgore, Jr.
WILLIAM D. KILGORE, JR.

/s/ Donald F. Melchior
DONALD F. MELCHIOR

/s/ John M. O'Donnell
JOHN M. O'DONNELL

For the Defendants:

/s/ John H. Schafer
JOHN H. SCHAFER
Covington & Burling

/s/ Michael J. Freed
MICHAEL J. FREED

Attorneys, Department of Justice

/s/ Robert L. Kirkpatrick
ROBERT L. KIRKPATRICK
Kirkpatrick, Pomeroy, Lockhart &
Johnson

/s/ Gustave Diamond
GUSTAVE DIAMOND
U. S. Attorney

/s/ Charles H. Haden
CHARLES H. HADEN
Haden & Haden

/s/ Sebastian C. Pugliese, Jr.
SEBASTIAN C. PUGLIESE, JR.
Assistant U. S. Attorney

/s/ Joseph D. Block
JOSEPH D. BLOCK
Aaron, Aaron, Schimberg & Hess

United States v. Pennzoil Co., et al.

Civil Action No.: 60-838

Year Judgment Entered: 1966



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Pennzoil Co. and Kendall Refining Co., U.S. District Court, W.D. Pennsylvania, 1966 Trade Cases ¶71,675, (Apr. 4, 1966)

[Click to open document in a browser](#)

United States v. Pennzoil Co. and Kendall Refining Co.

1966 Trade Cases ¶71,675. U.S. District Court, W.D. Pennsylvania. Civil Action No. 60-838. Entered April 4, 1966. Case No. 1867 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquisitions—Competitors—Consent Judgment.—Two producers-refiners of Pennsylvania Grade crude oil were permanently enjoined from merging under the terms of a consent judgment, which was agreed to following the issuance of a preliminary injunction barring their proposed merger. The judgment included a finding that the proposed merger, if consummated, would have violated the Clayton Act.

For the plaintiff: U. S. Attorney, Pittsburgh, Pa.

For the defendants: C. Brien Dillon, Houston, Tex.; William C. O'Neil of Thorp, Reed & Armstrong, Pittsburgh, Pa.; Victor H. Kramer, Washington, D. C.; and Royston, Robb, Leonard, Edgcombe & Miller, Pittsburgh, Pa.

Final Judgment

ROSENBERG, District Judge: Plaintiff, United States of America, having filed its complaint herein on August 4, 1965 seeking to enjoin the acquisition by defendant Pennzoil Company of the assets of Kendall Refining Company; the parties on the same day having entered into a stipulation whereby the defendants agreed not to consummate the acquisition until after a ruling on plaintiffs motion for preliminary injunction; the Court on December 30, 1965 having entered an order for preliminary injunction granted after hearing and consideration of both written and oral evidence, and the Court having on the same day entered its Findings of Fact, Conclusions of Law, and Opinion [[1966 TRADE CASES ¶ 71,659](#)] in support of its Order for preliminary injunction,

It is hereby ordered, adjudged and decreed as follows:

I

[Clayton Act]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Act of Congress of October 15, 1914, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, and it is hereby declared that the acquisition of Kendall Refining Company by the defendant Pennzoil Company would, if consummated, violate said Act.

II

[Applicability]

The provisions of this Final Judgment applicable to any defendant shall also apply to each of its directors, officers, agents, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

III

[Acquisitions Prohibited]

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(A) Defendant Pennzoil Company is permanently enjoined and restrained from, directly or indirectly, acquiring or attempting to acquire any of the capital stock, assets, or any financial interest in, Kendall Refining Company or any successor thereto, except for the purchase of assets customarily sold by Kendall Refining Company in the normal and regular operation of its business and which do not, in any manner, give Pennzoil any control over, or participation in, the general business affairs or policies of Kendall Refining Company.

(B) Defendant Kendall Refining Company is permanently enjoined and restrained from, directly or indirectly, selling any of its capital stock or assets to defendant Pennzoil Company or any successor thereto, or knowingly permitting defendant Pennzoil to acquire any financial interest in defendant Kendall Refining Company except for the sale of assets customarily sold by defendant Kendall Refining Company in the normal and regular operation of its business and which do not, in any manner, give defendant Pennzoil any control over, or participation in, the general business affairs or policies of Kendall Refining Company.

IV

[Preliminary Injunction]

This Final Judgment and the terms and conditions contained herein shall supersede the aforesaid Order for Preliminary Injunction entered by this Court on December 30, 1965.

V

[Inspection and Compliance]

(A) For the purpose of determining and securing compliance with this Final Judgment and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant to its principal office, be permitted:

- (1) Access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant relating to any of the matters contained in this Final Judgment; and
- (2) Subject to the reasonable convenience of such defendant and without restraint or interference from it to interview officers or employees of such defendant, who may have counsel present, regarding any such matters.

(B) Defendant Pennzoil Company and Kendall Refining Company, on the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing, under oath if requested, with respect to any matters contained in this Final Judgment as may from time to time be necessary for the purpose of the enforcement of this Final Judgment.

(C) No information obtained by means provided in this Section V shall be divulged by any representatives of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff except in the course of legal proceedings to which the plaintiff is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

[Jurisdiction Retained]

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

United States v. Pittsburgh Brewing Co., et al.

Civil Action No.: 65-1406

Year Judgment Entered: 1966



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Pittsburgh Brewing Co. and Milton G. Hulme., U.S. District Court, W.D. Pennsylvania, 1966 Trade Cases ¶71,751, (May 31, 1966)

[Click to open document in a browser](#)

United States v. Pittsburgh Brewing Co. and Milton G. Hulme.

1966 Trade Cases ¶71,751. U.S. District Court, W.D. Pennsylvania. Civil No. 65-1406. Entered May 31, 1966. Case No. 1881 in the Antitrust Division of the Department of Justice.

Clayton and Sherman Acts

Acquiring Competitors—Acquisitions Prohibited—Beer Industry—Consent Judgment.—A brewing company was prohibited by a consent judgment, reciting that the company and its board chairman had sold stock they held in a brewer, from acquiring any stock or assets in that brewer and, for a period of five years, from acquiring any stock or assets of any other company engaged in brewing beer in various counties in Maryland, New York, Ohio, Pennsylvania, or West Virginia, unless the brewer gave 60-days' prior written notice to the government. The board chairman, so long as he was an officer, director, or employee of the brewing company, was prohibited from acquiring any stock or assets of that brewer, except for investment purposes. The exception would not apply unless he gave the government specified information within 30 days after such an acquisition.

For the plaintiff: Donald F. Turner, Assistant Attorney General; William D. Kilgore, Jr., and Gordon B. Spivack, Donald G. Balthis, John J. Hughes, Carl J. Melone, and Richard M. Walker, Attorneys, Department of Justice, and Gustave Diamond, U. S. Attorney.

For the defendants: T. W. Pomeroy, Jr. and W. Walter Braham, Jr.

Final Judgment

WILLSON, District Judge: And Now, this 31st day of May, 1966, this case coming before the Court pursuant to a stipulation between the parties dated April 25, 1966, and filed herein on April 27, 1966, and it appearing to the Court from the record herein and the representations of counsel for defendants, as follows, to wit:

1. that the plaintiff, United States of America, filed its Complaint herein on December 28, 1965, together with its Motion for a Temporary Restraining Order; that after argument before this Court on said date a Stipulation of Counsel was entered into and approved, and the motion for a temporary restraining order was withdrawn by the plaintiff; and that thereafter, on February 9, 1966, the defendants filed their Answer denying the substantive allegations of the Complaint and averring in addition that the said allegations were moot;
2. that the offer referred to in paragraph 14 of the Complaint, whereunder defendant Pittsburgh Brewing Company ("Pittsburgh Brewing") would purchase shares of stock of Duquesne Brewing Company of Pittsburgh ("Duquesne") on certain terms and conditions, terminated on December 29, 1965 and was not extended, and that shares of stock of Duquesne tendered in response to said offer were declined and the stock certificates returned to their owners on or about December 31, 1965;
3. that the defendants on or about February 2, 1966 did sell all shares of stock of Duquesne owned by either of them either directly or indirectly and that neither retains any ownership interest whatever in Duquesne;
4. that the plaintiff has not withdrawn its consent to the Stipulation dated April 25, 1966, which remains in force and effect; and
5. that the parties have consented to the entry of this Final Judgment pursuant to the Stipulation of April 25, 1966, without trial or adjudication of any issue of fact or law herein.

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Now Therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or admission of any party with respect to any such issue, and upon the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Clayton and Sherman Acts*]

This Court has jurisdiction of the subject matter hereof and of all parties hereto. The Complaint states claims for relief against each defendant under [Section 2 of the Sherman Act](#) (15 U. S. C. §2) and under [Section 7 of the Clayton Act](#) (15 U. S. C. § 18).

II

[*Applicability*]

The provisions of this Final Judgment applicable to defendant, Pittsburgh Brewing, shall apply to such defendant, its officers, directors, agents, servants, employees, nominees, and any subsidiaries, successors and assignees in interest of defendant, Pittsburgh Brewing, and to those persons who may hereafter be in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment applicable to defendant, Hulme, shall apply to such defendant, his agents, servants, employees, successors and assignees in interest, and to those persons who may hereafter be in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise.

III

[*Acquisitions*]

Defendant, Pittsburgh Brewing, is hereby enjoined and restrained from:

- A. Merging or consolidating with, or acquiring, directly or indirectly, the whole or any part of the stock or other share capital of, or the whole or any part of the assets or the physical property or properties of, or bonds, notes, or other legal evidence of indebtedness of Duquesne;
- B. Exercising or attempting to exercise any control over the conduct, policies, or operations of Duquesne; and
- C. For a period of five (5) years after the date of entry of this Final Judgment, merging or consolidating with, or acquiring, directly or indirectly, the whole or any part of the stock or other share capital of, or the whole or any part of the assets or the physical property or properties of any company which is engaged in the brewing of beer in any part of the geographical area encompassed by the counties listed in Appendix A attached hereto, unless Pittsburgh Brewing gives sixty (60) days' prior written notice of all relevant facts regarding any such transaction to the plaintiff.

IV

[*Individual's Activities*]

Defendant, Hulme, for so long as he is an officer, director or employee of Pittsburgh Brewing is hereby enjoined and restrained from acquiring, directly or indirectly, the whole or any part of the stock or other share capital of, or the whole or any part of the assets or the physical property or properties of, or bonds, notes, or other legal evidence of indebtedness of Duquesne, except where such acquisition is made solely for investment purposes; provided, however, that such exception shall be deemed not to apply unless defendant, Hulme, within thirty (30) days after any such acquisition, notifies plaintiff of such acquisition, including specifically in such notification where such acquisition is of stock or other share capital, the number of shares acquired and the total number of shares Hulme then owns, the date of such acquisition, the name and address of the purchasers having legal or

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equitable title, the amount paid for such shares, the market value of such shares if quoted and the purpose of such acquisition.

V

[Inspection and Compliance]

For the purpose of determining and securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or Assistant Attorney General in Charge of the Antitrust Division and upon reasonable notice to Pittsburgh Brewing be permitted:

A. Access, during the normal office hours of Pittsburgh Brewing to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Pittsburgh Brewing relating to any matters contained in this Final Judgment; and

B. Subject to the reasonable convenience of Pittsburgh Brewing and without restraint or interference from it to interview the officers and employees of Pittsburgh Brewing, who may have counsel present, regarding any such matters.

Upon written request of the Attorney General or the Assistant Attorney General in Charge of the Antitrust Division, each defendant shall submit such reports in writing, under oath if requested, with respect to 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 V shall be divulged by any representative of the Department of justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceeding to which the United States is a party, for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VI

[Jurisdiction Retained]

Jurisdiction is retained by this Court 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 or directions as may be necessary or appropriate for the construction of or carrying out of this Final Judgment or for the amendment or modification of any of the provisions thereof, and for enforcement of compliance therewith and punishment of violations thereof.

Appendix A

1. Counties in the Commonwealth of Pennsylvania

Allegheny	Blair	Clarion
Armstrong	Cambria	Forest
Westmoreland	Indiana	Venango
Washington	Lawrence	Mercer
Beaver	Butler	McKean
Greene	Clearfield	Warren
Fayette	Cameron	Crawford
Somerset	Elk	Erie
Bedford	Jefferson	

2. Counties in the State of Ohio

Jefferson	Guernsey	Carroll
Belmont	Harrison	Columbiana
Monroe	Washington	Stark
Noble	Tuscarawas	Mahoning
Summit	Ashtabula	Lake
Portage	Geauga	Cuyahoga
Trumbull		

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3. Counties in the State of West Virginia

Hancock	Monongalia	Doddridge
Brooke	Preston	Tyler
Ohio	Marion	Ritchie
Marshall	Taylor	Pleasants
Wetzel	Harrison	Wood

4. Counties in the State of Maryland

Allegany	Garrett
----------	---------

5. Counties in the State of New York

Erie	Chautauqua	Allegany
Wyoming	Cattaraugus	

United States v. Monsanto Co., et al.

Civil Action No.: 64-342

Year Judgment Entered: 1967



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Monsanto Co., Farbenfabriken Bayer A. G., and Mobay Chemical Co., U.S. District Court, W.D. Pennsylvania, 1967 Trade Cases ¶72,001, (Mar. 20, 1967)

[Click to open document in a browser](#)

United States v. Monsanto Co., Farbenfabriken Bayer A. G., and Mobay Chemical Co.

1967 Trade Cases ¶72,001. U.S. District Court, W.D. Pennsylvania. Civil No. 64-342. Entered March 20, 1967. Case No. 1797 in the Antitrust Division of the Department of Justice.

Clayton and Sherman Acts

Joint Ventures—Chemicals—Sale to Co-venturer—Consent Decree.—A chemical firm which entered into a joint venture with another chemical company for the production of flexible urethane foam was required under the terms of a consent judgment to sell its share of the newly created firm to its co-venturer. The decree bars the seller from having officers in common and agreeing not to compete with the sold firm, and places restrictions upon the purchaser's ability to transfer the purchased firm or its business. The decree prohibits the seller for ten years from acquiring any facilities being used in the production of the foam or a component of the foam (except incidental to permissible acquisitions).

For the plaintiff: Donald F. Turner, Assistant Attorney General; Lewis Rubin, W. D. Kilgore, Raymond M. Carlson, Joseph H. Widmar, Kathleen Devine, and William J. Levy, Attorneys, Department of Justice.

For the defendants: Edward K. Trent, of Reed, Smith, Shaw & McClay; Sherman & Sterling, by Charles C. Parlin, Jr., for Monsanto Co. and Mobay Chemical Co. Lloyd R. Mellot, Allen F. Maulsby, and Lloyd N. Cutler for Farbenfabriken Bayer A. G.

Final Judgment

MILLER, District Judge: Plaintiff, United States of America, having filed its complaint herein on April 13, 1964, and its amended complaint on February 13, 1967, and each of the defendants, Monsanto Company, Farbenfabriken Bayer A. G. and Mobay Chemical Company, having appeared and filed answers denying the substantive allegations of such complaint and amended complaint, and plaintiff and defendants, by their respective attorneys, having severally consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence or an admission by any party hereto with respect to any such issue, and the Court having considered the matter and being duly advised.

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The amended complaint herein states a claim for relief against defendants under Section 1 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, commonly known as the Sherman Act, and under Section 7 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended, commonly known as the Clayton Act.

II

[Definitions]

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As used in this Final Judgment and for such purposes only:

- (a) "Monsanto" shall mean defendant Monsanto Company, a corporation organized and existing under the laws of the State of Delaware, with its principal office at St. Louis, Missouri, its subsidiaries and affiliates;
- (b) "Farbenfabriken Bayer A. G." shall mean defendant Farbenfabriken Bayer A. G., a corporation organized and existing under the laws of the Federal Republic of Germany, with its principal office at Leverkusen, Germany, its subsidiaries and affiliates;
- (c) "Mobay" shall mean defendant Mobay Chemical Company, a corporation organized and existing under the laws of the State of Delaware, with its principal office at Pittsburgh, Pennsylvania, its subsidiaries and affiliates; and
- (d) "Subsidiary" shall mean a company of which the parent owns more than 50% of the outstanding capital stock; "affiliate" shall mean a company of which the parent owns 50% or less of the outstanding capital stock.

III

[Sale of Firm]

On or before March 31, 1967, Monsanto shall sell to Farbenfabriken Bayer A. G., and Farbenfabriken Bayer A. G. shall purchase from Monsanto, all Monsanto's interest in Mobay.

IV

[Common Officials]

Effective within three months after the sale pursuant to Section III hereof, Monsanto shall not have or allow to serve as an officer or director of Monsanto any individual whom it knows to be an officer, director or managing agent of Mobay, and Mobay shall not have or allow to serve as an officer, director or managing agent of Mobay any individual whom it knows to be an officer or director of Monsanto or, effective within eighteen months after such sale, any individual whom it knows to be an employee of Monsanto.

V

[Prohibition Against Transfer]

For a period of ten years from the date of this Final Judgment, Farbenfabriken Bayer A. G. and Mobay shall be prohibited from selling or transferring any of the shares of Mobay or any substantial part of the isocyanate business of Mobay with out having given thirty days' prior written notice to plaintiff and, if the purchaser or transferee is a manufacturer or seller, directly or indirectly, of chemicals or allied products, or of urethane foam or of a product utilizing such foam, without approval by plaintiff or, failing such approval, by the Court on a showing that such sale or transfer would not violate [Section 7 of the Clayton Act](#); provided, however, that this Section V shall not be construed to prohibit any transactions between or among Farbenfabriken Bayer A. G. and/or Mobay.

VI

[Acquisition Bar]

For a period of ten years from the date of this Final Judgment, Monsanto shall be prohibited from acquiring directly or in directly all or any part of any facilities being used in the production in the United States of TDI (80-20) or in the production in the United States of flexible urethane foam made from TDI (80-20) or any capital stock of any corporation engaged in the business of manufacturing in the United States TDI (80-20) or in the production in the United States of flexible urethane foam made from TDI (80-20) (except that Monsanto may acquire such facilities or stock incidental to an acquisition made for other purposes upon filing with the Court an undertaking to dispose promptly of such facilities or business) unless such acquisition is approved by plaintiff or, failing such approval, by the Court on a showing that such acquisition would not substantially lessen competition or tend to create a monopoly in TDI (80-20) or any product made therefrom; provided, however, that Monsanto

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shall not be prohibited either from purchasing in the normal course of business any chemicals, commodities, machinery, equipment or other products usable in the manufacture of TDI (80-20) or from acquiring in good faith the stock or assets of any corporation in the exercise of any security or debt or liability enforcement process, whether provided by law or bona fide agreement, so long as Monsanto shall dispose of such stock or assets within a reasonable period of time.

VII

[*Competition*]

Monsanto shall be free to enter into competition with Mobay or Farbenfabriken Bayer A. G. in any line of commerce, and any agreement or understanding, express or implied, between Mobay or Farbenfabriken Bayer A. G. and Monsanto, if any there be, restraining Monsanto from competing with Mobay or Farbenfabriken Bayer A. G., is hereby prohibited.

VIII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment and for no other purpose:

(a) duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody or control of such defendant related to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of such defendant, but without restraint or interference from it, to interview officers, directors, agents or employees of such defendant, who may have counsel present, regarding any such matters;

(b) upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, any defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be requested;

provided, however, that 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 the Executive Branch of plaintiff, except in the course of legal proceedings in which the Department of Justice 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 by this Court 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 effectuation of this Final Judgment, for the modification or termination of any of the provisions hereof, for the enforcement of compliance herewith and for the punishment of violations hereof!

United States v. Am. Standard, Inc., et al.

Civil Action No.: 66-1184

Year Judgment Entered: 1971



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Standard, Inc., Kohler Co., Crane Co., Wallace-Murray Corp., Universal-Rundle Corp., Rheem Manufacturing Co., Borg-Warner Corp., Briggs Manufacturing Co., and Plumbing Fixture Manufacturers Assn., U.S. District Court, W.D. Pennsylvania, 1971 Trade Cases ¶73,549, (May 18, 1971)

[Click to open document in a browser](#)

United States v. American Standard, Inc., Kohler Co., Crane Co., Wallace-Murray Corp., Universal-Rundle Corp., Rheem Manufacturing Co., Borg-Warner Corp., Briggs Manufacturing Co., and Plumbing Fixture Manufacturers Assn.

1971 Trade Cases ¶73,549. U.S. District Court, W.D. Pennsylvania Civil No. 66-1184. Entered May 18, 1971. Case No. 1921, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing—Plumbing Fixtures—Consent Decree.—Eight manufacturers of plumbing fixtures were prohibited by a consent decree from agreeing on prices, terms or conditions for the sale of plumbing fixtures, from agreeing to exchange information concerning bids, prices, terms, or conditions for the sale of plumbing fixtures, and from agreeing to limit, restrict, discontinue or otherwise refrain from manufacturing any plumbing fixtures. In addition, the manufacturers must not communicate any past, present, or future plumbing fixture pricing information to any competitors and may not belong for a period of ten years to any trade association comprised exclusively of plumbing fixture manufacturers. Each manufacturer within one year must independently issue new prices, terms and conditions for the sale of plumbing fixtures. A defendant trade association must be dissolved.

Price Fixing—Plumbing Fixtures—Record of Meetings.—Eight manufacturers of plumbing fixtures were required by a consent decree for ten years to maintain a record of all meetings, formal or informal, attended by any of its officers, directors or employees having managerial or supervisory authority in connection with the sale or pricing of any plumbing fixtures and similar representatives of any other manufacturer whenever there is any discussion concerning (1) prices, bids, discounts or terms or conditions of sale of any plumbing fixture to any third person, or (2) the limitation, restriction or discontinuance of manufacturing any plumbing fixtures. Records must include the date and place of the meeting, the names of all persons in attendance, and a list of the topics or subjects discussed.

For plaintiff: Richard W. McLaren, Asst. Atty. Gen., Baddia J. Rashid, Harry N. Burgess, Charles D. Mahame, Jr., John C. Fricano, Charles F. B. McAleer, and Rodney O. Thorso, Dept. of Justice.

For defendants: William E. Willis, of Sullivan & Cromwell, New York, N. Y., for American Standard, Inc.; Norman Pacun, Gen. Counsel, New York, N. Y., for Crane Co.; Fred A. Freund, of Kaye, Scholer, Fierway, Hays & Handler, New York, N. Y., for Wallace-Murray Corp.; Frank C. McAleer, of Arnstein, Gluck, Weitzenfeld & Minow, Chicago, 111., for Universal-Rundle Corp.; Ralph L. McAfee, of Cravath, Swaine & Moore, New York, N. Y., for Rheem Mfg. Co.; George A. Raftery, of O'Brien Driscoll, Raftery, Rosenbloom & Grainger, New York, N. Y., for Briggs Mfg. Co.; Patrick T. Ryan, of Drinker Biddle & Reath, Philadelphia, Pa., for Plumbing Fixture Mfrs. Assn.; Gilbert J. Helwig, of Reed, Smith, Shaw & McClay, Pittsburgh, Pa., for Kohler Co.; and Charles W. Houchins, for Borg-Warner Corp.

Final Judgment

ROSENBERG, D. J.: Plaintiff, United States of America, having filed its Complaint herein on October 6, 1966, and the Court having entered an order with the consent of the parties by their respective attorneys amending the

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complaint on May 17, 1971, and the parties by their respective attorneys having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or admission by any party with respect to any such issue:

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 the parties hereto, it is hereby

Ordered, Adjudged and Decreed as Follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants under Section 1 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*]

(A) "Person" shall mean any individual, partnership, firm, association, corporation or other business or legal entity;

(B) "Plumbing fixtures" shall mean any enameled cast iron and vitreous china plumbing fixtures, including but not limited to bathtubs, lavatories, sinks, water closets and urinals;

(C) "Manufacturer" shall mean any person engaged in the manufacture of any plumbing fixture;

(D) "Subsidiary" shall mean a corporation controlled by a defendant, or one in which 50% or more of the outstanding common stock entitled to vote is owned or controlled by the defendant.

III

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall apply also to its subsidiaries, successors and assigns and to their respective officers, directors, agents and employees, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise; provided, however, that this Final Judgment shall not apply to transactions or activity, (i) solely between a defendant and its directors, officers, employees, parent company, subsidiaries, or any of them, when acting in such capacity; or (ii) outside the United States except sales by a defendant to or for the use of the plaintiff or any agency thereof unless such transaction or activity is required by the laws of the jurisdiction in which the sale takes place.

IV

[*Prices, Terms of Sale*]

Each of the defendants is enjoined and restrained from directly or indirectly entering into, adhering to, maintaining or engaging in any agreement, understanding, plan, program or concert of action with any other manufacturer to:

(A) Fix, stabilize, maintain or adopt prices, discounts, or terms or conditions for the sale of any plumbing fixtures to any third person;

(B) Exchange information concerning bids, prices, discounts or terms or conditions at or upon which any plumbing fixtures have been sold or are to be offered or sold to any third person;

(C) Limit, restrict, discontinue or otherwise refrain from manufacturing any plumbing fixtures.

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V

[Information Exchange, Trade Association Activities]

Each of the defendants is enjoined and restrained from directly or indirectly:

(A) Communicating to any other manufacturer any information concerning past, present or future prices, discounts or terms or conditions for the sale of any plumbing fixture for any project or job except in connection with bona fide negotiations for the purchase or sale of plumbing fixtures between the parties to such communications; and

(B) Continuing to be a member of, contributing anything of value to, or participating in any of the activities of any trade association or other organization with knowledge that any of the activities of such association or other organization would be inconsistent with any of the provisions of this Final Judgment if the association or other organization were a defendant herein.

VI

[Record of Meetings]

(A) Each defendant shall maintain for a period of ten (10) years from the entry of this Final Judgment a record of all meetings, formal or informal, attended by any of its officers, directors or employees having managerial or supervisory authority in connection with the sale or pricing of any plumbing fixtures, and similar representatives of any other manufacturer whenever at such formal or informal meeting there is any discussion concerning (i) prices, bids, discounts or terms or conditions of sale of any plumbing fixture to any third person; or (ii) any discussion concerning the limitation, restriction or discontinuance of manufacturing any plumbing fixtures; said record shall include the date of and place of the meeting, the names of all persons in attendance, and a list of the topics or subjects which were discussed at each such meeting.

(B) The defendant association is hereby ordered dissolved.

(C) Each defendant is enjoined for a period of ten (10) years from the date of entry of this Final Judgment, from belonging to or organizing any association composed exclusively of manufacturers.

(D) Each defendant is ordered and directed each year on the anniversary date of the Final Judgment for the next ten (10) years to file a report with the plaintiff setting forth in reasonable detail the steps which it has taken during the prior year to advise the defendant's appropriate officers, employees and agents of its and their obligations under the provisions of this Final Judgment.

VII

[Independent Pricing]

Each of the defendants is ordered and directed, not later than one year following the effective date of this Final Judgment, individually and independently:

(A) To review and determine the prices, discounts, or terms and conditions of sale for plumbing fixtures contained in such defendant's published price announcements and price books;

(B) To announce such prices determined under (A) above; provided, however, that the price review and determination referred to in (A) above shall not be required with respect to any plumbing fixture as to which such defendant, within one (1) year following the effective date of this Final Judgment files with this Court, with a copy sent to the Assistant Attorney General in charge of the Antitrust Division, an affidavit stating that such defendant, prior to the effective date of this Final Judgment and subsequent to October 6, 1966, reviewed, determined and announced the prices, discounts, or terms and conditions of such plumbing fixture in accordance with the requirements of this section and provided, further, that nothing contained in this subsection shall prevent any such defendant from deviating from, modifying or otherwise changing the prices announced or affirmed in accordance with this section.

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VIII

[*Affidavits of Officers*]

Each defendant shall for a period of five (5) years from the effective date of this Final Judgment, within ninety (90) days of each publication of that defendant's price books, or price sheets, which change, amend or add to the prices, discounts, or terms and conditions of sale for plumbing fixtures contained therein, execute an affidavit by one of its officers or other employees with authority to initiate such action that said changes, amendments or additions were individually and independently arrived at by that defendant and were not the result of any agreement or understanding with any other manufacturer; and further, that each defendant retain in its files the aforesaid affidavits for five (5) years after the date of execution of such affidavit.

IX

[*Compliance and Inspection*]

For the purpose of determining or securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding any such matters.

Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, each defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be requested. No information obtained by means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States except in the course of legal proceedings for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

X

[*Jurisdiction Retained*]

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

United States v. Pittsburgh Area Pontiac Dealers, Inc.

Civil Action No.: 77-1125

Year Judgment Entered: 1978



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Pittsburgh Area Pontiac Dealers, Inc., U.S. District Court, W.D. Pennsylvania, 1978-2 Trade Cases ¶62,233, (Jul. 24, 1978)

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United States v. Pittsburgh Area Pontiac Dealers, Inc.

1978-2 Trade Cases ¶62,233. U.S. District Court, W.D. Pennsylvania, Civil Action No. 77-1125, Entered July 24, 1978, (Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 10641).

Case No. 2609, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Price Advertising: Automobile Dealers: Permissible Price Advertising: Consent Decree.—

An automobile dealers association was barred by a consent decree from fixing prices of automobiles and from participating, for a period of ten years, in any price advertising or survey related to prices charged for the sale of automobiles. However, the association was permitted to advertise the manufacturer's suggested retail price of automobiles so long as it was clearly identified as such in each advertisement and to advertise an average price based upon past transactions or current prices, provided that the average price was determined by an independent surveyor, in a confidential manner; that it was clearly identified as an average price; and that the dealers surveyed were not aware of the use to be made of the solicited price information.

For plaintiff: Hugh P. Morrison, Jr., Deputy Asst. Atty. Gen., William E. Swope, John W. Clark, James R. Weiss, and Robert W. Widler, Attys., Dept. of Justice. **For defendant:** John R. Luke, Pittsburgh, Pa.

Final Judgment

Wilson, D. J.: Plaintiff, United States of America, having filed its complaint herein on September 28, 1977 and defendant, Pittsburgh Area Pontiac Dealers, Inc., having appeared by its counsel, and both parties by their respective attorneys having consented to the making and entry of this Final Judgment without admission by any party in respect to any issue;

Now, Therefore, before any testimony has been taken herein, without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed, as follows:

I

[Jurisdiction]

This Court has jurisdiction over the subject matter of this action and the parties hereto. The complaint states claims upon which relief may be granted against the defendant under [Section 1 of the Sherman Act](#) (15 U. S. C. §1).

II

[Definitions]

As used in this Final Judgment:

(A) "Person" shall mean any individual, partnership, firm, association, corporation or other business or legal entity;

(B) "Defendant" means the defendant Pittsburgh Area Pontiac Dealers, Inc.

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III

[Applicability]

The provisions of this Final Judgment shall apply to the defendant and to each of its officers, directors, agents, employees, successors and assigns, and to all other persons, in active concert or participation with any of the above and who have received actual notice of this Final Judgment by personal service or otherwise.

IV

[Price Fixing]

The defendant is hereby enjoined from adopting, following or participating in any plan, practice, program or device which has among its purposes or effects fixing, maintaining or stabilizing prices at which Pontiac automobiles will be sold.

V

[Price Advertising; Surveys]

For a period of ten (10) years following the date of entry of this Final Judgment, the defendant is enjoined and restrained from, directly or indirectly:

- (A) Entering into any agreement or understanding with any other person, or adopting, participating in or adhering to any plan, practice or program, the purpose or effect of which is to advertise the sale price of a Pontiac automobile or fix the advertised price of a Pontiac automobile; or
- (B) Conducting, publishing, distributing, participating in or adhering to any survey which in any manner relates to current prices charged or proposed or future prices to be charged for the sale of Pontiac automobiles.

VI

[Permitted Advertising]

Nothing in Section V of this Final Judgment shall be construed to prevent the defendant from:

- (A) Participating in a plan, practice, program or device to advertise the manufacturer's suggested retail price so long as it is clearly identified as such in each advertisement; or
- (B) Participating in a plan, practice, program or device to advertise an average price based upon (1) actual past transactions compiled from the records of each of the dealers surveyed, or (2) prices at which automobiles are currently being offered for sale; Provided (a) that the average price is determined by a market survey conducted by an independent person, and that all information compiled in determining the average price is retained as confidential by the surveyor, and (b) that in each such advertisement the advertised price is clearly identified as an average price, from which individual dealers may vary, which was arrived at by an independent market survey. Provided Further that, where alternative (2) of this section is used, a reasonable effort shall be made to assure that the dealers surveyed are not aware of the purpose or use to be made of the solicited price information at the time of such solicitation.

VII

[Notice]

Defendant is ordered and directed:

- (A) Within thirty (30) days from the entry of this Final Judgment, to send a copy of this Final Judgment to each of its members;

(B) For a period of ten (10) years from the date of entry of this Final Judgment, to serve a copy of this Final Judgment upon all of its new members at such time as they become members;

(C) To file with this Court and serve upon the plaintiff within sixty (60) days after the date of entry of this Final Judgment an affidavit as to the fact and manner of compliance with subsection (A) of this Section VII.

VIII

[*Inspections*]

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted:

(1) Access during office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees and agents of the defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents 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 the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents which is of a type described in Rule 26(c) (7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

IX

[*Retention of Jurisdiction*]

Jurisdiction is retained by this Court 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 of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

X

[*Public Interest*]

Entry of this Final Judgment is in the public interest.

END

OF APPENDIX A