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

Civil Action No. 10-393.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

BAUSCH & LOMB OPTICAL COMPANY, M. HERBERT EISENHART, BEN A. RAMAKER, JOSEPH F. TAYLOR, SOFT-LITE LENS COMPANY, INC., NATHANIEL SINGER, R. G. LANDIS and MORRIS SINGER, DEFENDANTS.

ORDER AND JUDGMENT ON MANDATE

Pursuant to the Mandate of the Supreme Court of the United States issued May 22, 1944 to the Clerk of the District Court of the United States for the Southern District of New York in *The United States of America, Appellant,* vs. *Bausch & Lomb Optical Company et al.,* No. 62, and *Soft-Lite Lens Company, Inc. et al., Appellants,* vs. *The United States of America,* No. 64, October Term, 1943, on appeals from said District Court, and the opinion of the Supreme Court on said appeals delivered April 10, 1944,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Final Judgment filed herein February 1, 1943 be and hereby is modified by striking out the last sentence of paragraph 9 thereof, and by eliminating therefrom paragraph 14 which is no longer appropriate, *so that said Final Judgment shall read as follows*:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That the Court has jurisdiction of the subject matter hereof and all of the parties hereto under the Act of Congress dated July 2nd, 1890, entitled, "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies", and the acts amendatory thereof and supplemental thereto, commonly known as the Sherman Act.

2. That the defendants Soft-Lite Lens Company, Inc., Nathaniel Singer and R. G. Landis, hereinafter called "said defendants", in connection with the sale and distribution of Soft-Lite lenses have contracted, combined and conspired with each other and with optical wholesalers and retailers, in violation of Section 1 and Section 3 of an Act of Congress dated July 2nd, 1890, entitled, "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies", as amended:

(a) by entering into so-called "license" agreements with optical retailers which fix the prices at which said retailers shall sell Soft-Lite lenses; (b) by entering into so-called "license" agreements with optical retailers which provide that said retailers will sell such lenses only to the public; (c) by entering into agreements with wholesale customers which provide that the said wholesalers will sell Soft-Lite lenses and blanks only to retailers who are designated as "licensees" by the defendant Soft-Lite Lens Company, Inc.; (d) by entering into agreements with wholesale customers which fix the prices at which said wholesalers shall sell Soft-Lite lenses and blanks; (e) by entering into "Fair Trade" resale price maintenance contracts with said wholesalers as an integral part of the illegal distribution system of Soft-Lite blanks and lenses; and (f) by enforcing the agreements set forth in subdivisions (a) through (e) of this paragraph.

3. That each so-called "license" agreement, and the provisions thereof, now in effect between the defendant Soft-Lite Lens Company, Inc. and optical retailers are illegal, null and void and that the defendant Soft-Lite Lens Company, Inc. shall forthwith cancel said "license" agreements by mailing to each such retailer and to each of the Soft-Lite wholesaler customers, within fifteen (15) days from the effective date of this Judgment, a copy of this Judgment, together with the following notice:

> Pursuant to the annexed Judgment, all existing Soft-Lite licenses and Fair Trade resale price maintenance contracts are hereby canceled.

4. That each agreement, and the provisions thereof, now in effect between the defendant Soft-Lite Lens Company, Inc. and its wholesale customers, which provide that the said wholesalers will sell Soft-Lite lenses and blanks only to retailers who are designated as "licensees" by the defendant Soft-Lite Lens Company, Inc., or which fix the prices at which said wholesalers shall sell Soft-

Lite lenses, are illegal, null and void and that the defendant Soft-Lite Lens Company, Inc. shall forthwith cancel said agreements by mailing to each such wholesaler within fifteen (15) days from the effective date of this Judgment a copy of this Judgment and a notice that said agreements are canceled. The mailing of copies of the Judgment and the notices required by paragraph (3) shall be deemed compliance with the notice requirements of paragraph (4).

5. Each "Fair Trade" resale price maintenance contract under the trade-marks of the Soft-Lite Lens Company, Inc. now in effect between the said defendant and its wholesale customers which fixes or purports to fix the minimum or stipulated resale price for Soft-Lite lenses, is illegal, null and void, and that the defendant Soft-Lite Lens Company, Inc. shall forthwith cancel said contracts and give notice within fifteen (15) days from the effective date of this Judgment to its wholesale customers and to each of the retailers with whom it has entered into so-called "license" agreements that said contracts have been canceled and are not in effect. The mailing of copies of the Judgment and the notices required by paragraph (3) shall be deemed compliance with the notice requirements of paragraph (5).

6. That the defendant Soft-Lite Lens Company, Inc., its directors, officers, agents, representatives and employees, successors, subsidiaries and any person acting or claiming to act through or for it, and the defendants Nathaniel Singer and R. G. Landis be and they hereby are perpetually enjoined and restrained:

(a) From enforcing or attempting to enforce any so-called "license" agreement or any other existing agreement between the defendant Soft-Lite Lens Company, Inc. and any retailer which fixes the prices at which said retailer shall sell Soft-Lite lenses.

(b) From hereafter making, enforcing, attempting to make, or attempting to enforce, any contract or agreement with any retailer which fixes the prices or otherwise relates to sales by a retailer of an unpatented article of manufacturer not purchased by said retailer from any of said defendants.

(c) From enforcing or attempting to enforce any existing contract or agreement between Soft-Lite Lens Company, Inc. and any wholesaler which provides that the said wholesaler will sell Soft-Lite lenses or blanks only to designated retailers.

(d) From hereafter making, enforcing, attempting to make, or attempting to enforce, any contract or agreement with any wholesaler which provides that the said wholesaler will sell an unpatented article of manufacture only to designated persons, firms, or corporations.

(e) From enforcing or attempting to enforce any existing agreement or contract, including "Fair Trade" Resale Price Maintenance contracts, between the defendant Soft-Lite Lens Company, Inc. and any wholesaler which fixes the prices at which said wholesaler shall sell or resell Soft-Lite lenses or blanks.

(f) From hereafter making, enforcing, attempting to make, or attempting to enforce, any contract or agreement with any wholesaler which fixes the prescription prices at which the said wholesaler shall sell lenses.

(g) From hereafter using serial numbers or letters on "protection certificates" or other devices which permit the tracing of sales or resales of lenses or blanks after the first sale.

(h) From entering into any understanding or agreement similar in effect or purpose to any understanding or agreement adjudged to be unlawful in paragraph (2) hereof except in so far as "Fair Trade" resale price maintenance contracts are not prohibited by paragraph (7) hereof.

7. That the defendant Soft-Lite Lens Company, Inc., its directors, officers, agents, representatives and employees, successors, subsidiaries and any person acting or claiming to act through or for it and the defendants Nathaniel Singer and R. G. Landis be and they hereby are enjoined and restrained from executing any "Fair Trade" resale price maintenance contracts under the trade-marks of the Soft-Lite Lens Company, Inc., until six months after the notices described in paragraph (3) hereof shall have been mailed.

8. That the defendant Soft-Lite Lens Company, Inc., its directors, officers, agents, representatives and employees, successors, subsidiaries and any person acting or claiming to act through or for it and the defendants Nathaniel Singer and R. G. Landis be and they hereby are enjoined and restrained from systematically suggesting to any person, firm or corporation, wholesale, prescription, or consumer prices on Soft-Lite lenses or blanks until six months after the notices described in paragraph (3) shall have been mailed.

9. That for the purpose of securing compliance with this Judgment, authorized representatives of the Department of Justice, upon the written request of the Attorney General or an Assistant Attorney General, shall be permitted access, within the office hours of the said defendants, and upon reasonable notice, to books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or the control of the said defendants, or any of them, relating to any of the matters contained in this Judgment, such access to be subject to any legally recognized privilege. Any authorized representative of the Department of Justice, subject to the reasonable convenience of the said defendants, shall be permitted to interview officers or employees of said defendants without interference, restraint, or limitation by said defendants; provided, however, that any such officer or employee may have counsel present at such interview.

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

11. That, except in so far as the Bill of Complaint herein is dismissed pursuant to paragraph (12) hereof, jurisdiction of this case is retained for the purpose of enabling the plaintiff or any of the said defendants to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Judgment, for the modification or termination of any of the provisions thereof, for the enforcement and compliance therewith, and for the punishment of violations thereof.

12. That the Bill of Complaint is hereby dismissed on the merits against defendants Morris Singer, Bausch & Lomb Optical Company, M. Herbert Eisenhart, Ben A. Ramaker and Joseph F. Taylor, and no jurisdiction is retained over these defendants.

13. That the plaintiff recover from the defendants Nathaniel Singer, R. G. Landis and Soft-Lite Lens Company, Inc., its costs herein as taxed, in the sum of $1,014.95 and that execution issue therefor.

Dated: June 1, 1944

VINCENT L. LEIBELL
*United States District Judge*
GEORGE J. H. FOLLMER
*Clerk*