

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Whitehead Brothers Company, A. J. Miller and A.Y. Gregory., U.S. District Court, S.D. New York, 1940-1943 Trade Cases ¶56,182, (Jan. 7, 1942)**

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United States of America v. Whitehead Brothers Company, A. J. Miller and A.Y. Gregory.  
1940-1943 Trade Cases ¶56,182. U.S. District Court, S.D. New York. January 7, 1942.

**Upon consent of all parties, a decree is entered-in proceedings under the Sherman Anti-Trust Act enjoining the defendants from certain activities in restraint of interstate trade and commerce in a patented product composed in part of bentonite or other clay-like material. Among the activities enjoined are restricting the licensing of foundries or other persons desiring to use the product when they agree to pay the standard royalty and are not in default; restricting the use of the product in any manner other than by a standard license; discrimination in granting of licenses or royalty rates; issuing or benefiting from licenses granting rights other than are granted by the standard license; charging royalties in excess of those charged on April 7, 1941, or in excess of the standard royalty; granting licenses to producers as producers and not as operators of foundries; bringing infringement suits against producers selling bentonite for use in foundries not operated by themselves; granting unauthorized licenses through an agent; and auditing the books of licensees or agents except by an independent accountant.**

Thurman Arnold, Assistant Attorney General, Samuel S. Isseks and Stanley E. Disney, Special Assistants to the Attorney General, and Monroe Karasik, Special Attorney. all of Washington, D. C., for the plaintiff.

Oseas & Pepper, New York City, N. Y., for defendants.

Before Coxe, District Judge.

**Final Judgment**

The complainant, United States of America, having filed its complaint herein on January 7, 1942; all the defendants having appeared and filed their answer to such complaint denying the substantive allegations thereof; all parties hereto by their respective attorneys herein having severally consented to the entry of this final decree herein without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of 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 all parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

[ *Jurisdiction*]

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

[ *Terms Defined*]

2. As used herein:

(a) The term "Hanley patent" shall mean United States Patent No. 1,657,573.

(b) The term "Patented composition" shall include any combination of sand or other mineral matter with bentonite or other clay-like material, where the manufacture, use or sale of such combination would read upon any of the claims of the Hanley patent.

(c) The term "License" shall apply only to licenses issued under the Hanley patent; it shall not include the authority to grant licenses as set forth hereinafter in paragraph

3 (i), but shall include licenses granted under such authority.

(d) The term "Standard royalty payment" shall mean the royalty under the Hanley patent, which royalty shall be the same for all licensees under that patent.

(e) The term "Standard license" shall mean a license conforming to all the requirements of this judgment, and such standard license shall be identical in substance for all licensees.

[ *Activities Enjoined* ]

3. Each of the defendants, their successors, directors, officers, agents, and employees, and all persons acting under, through, or for them or any of them, be, and they are hereby enjoined and restrained from doing or attempting to do, or inducing others to do the following acts, or practices or any of them:

[ *Restricting Licenses* ]

(a) Restricting or hindering the licensing of any foundry or other person using or intending to use the patented composition, desiring and applying for a license and agreeing to pay the standard royalty and not in default under royalty contracts under the Hanley patent:

[ *Otherwise Restricting Use of Product* ]

(b) Restricting or hindering in any way or manner the use of the patented composition, territorially or otherwise, or as to price, other than by the standard license, no matter through what agency the license be obtained:

[ *Discrimination* ]

(c) Discriminating in any manner with respect to licenses made available to foundries or other persons eligible for licenses under the provisions of, sub-paragraph 3(a), *supra*, or charging a lower royalty rate to, or in any way, directly, or indirectly, discriminating in favor of, or against any licensed foundry or other licensed person with respect to such license.

[ *Granting Rights Other Than in Standard License* ]

(d) Issuing, or benefiting from licenses which shall grant rights other than those granted by the standard license:

[ *Charging Excessive Royalty* ]

(e) Charging as the standard royalty payment an amount which shall be in excess of the royalty charged for the use of the Hanley patent on April 7, 1941, plus a charge sufficient only to pay for the expenses of the administration of a trustee appointed pursuant to the provisions of paragraph 5 of this judgment provided such trustee be in fact appointed:

[ *Charging Other Fees* ]

(f) Charging any licensee any fee, in connection with the license, other than the standard royalty payment:

[ *Licensing of Producers* ]

(g) Granting licenses to producers of bentonite as producers of bentonite and not as operators Of foundries:

[ *Infringement Suits Against Producers* ]

(h) Suing any producer of bentonite for contributory infringement, or otherwise enforcing claims against any producer of bentonite based on a charge of contributory infringement, where the contributory infringement charged consists only of the sale of bentonite by any producer thereof for use in a foundry not operated by the particular producer:

[ *Licensing by Agent*]

(i) Adopting any method by which any agent is authorized to grant licenses to foundries unless (1) said licenses are identical in substance to the licenses given direct to foundries, in accordance with the provisions of this paragraph 3, and (2) in addition, in the event that any producer of bentonite is authorized to grant licenses, the privilege of granting such licenses is given without charge to every producer of bentonite who makes application therefor and is not in default under his agency contract.

[ *Auditing Books of Licensees*]

(j) Auditing, the books of any licensee or of any agent appointed pursuant to paragraph 3(i) hereof except by an independent and outside accountant who will report no information other than the amount of royalties due and payable under the Hanley patent.

[ *Copies of Licenses to Be Filed*]

4. A copy of each and every form of license issued in accordance with the terms of this decree shall be filed with the Anti-trust Division of the Department of Justice, Washington, D. C., within ten (10) days of the issuance thereof. The failure of the Attorney General of the United States or the Assistant Attorney General in charge of the Anti-trust Division to take any action following the receipt of any such copy shall not be construed as an approval of the contents of such license, and shall not in any way be construed as a bar to, or defense against, any action or proceeding, civil or criminal, brought by the United States.

[ *Appointment of Trustee*]

5. Upon request of the Attorney General at any time before the expiration of the Hanley patent, or at the option of Whitehead Brothers Company, the defendants shall cause the Hanley patent to be transferred to a trustee to be appointed by this court from a panel of three names submitted to this court by the Attorney General of the United States or the Assistant Attorney General of the United States in charge of the Anti-trust Division; said trustee shall issue licenses in accordance with the provisions of paragraph 3 and shall not do any act forbidden by said paragraph, and shall exercise all the rights and powers of an owner of said patent except the right to sell, encumber or otherwise dispose of said patent; upon the death, resignation, removal or refusal to act of said trustee this court shall appoint a successor trustee.

6. The trustee shall give bond in such amount as the Court shall fix. He shall serve upon the Department of Justice and Whitehead Brothers Company and file an annual accounting, his application for allowances, a budget of estimated expenses for the coming year and a statement of the amount of the proposed standard royalty payment for the coming year. Unless the Court, for cause shown, shall direct otherwise, the amount so stated shall be the standard royalty charge for the following year. Upon the expiration of the Hanley patent the trustee shall file his final account and application for allowances, and after payment or providing for payment of all outstanding obligations, as the Court shall direct, shall, pay any balance remaining to Whitehead Brothers Company. The trustee shall continue to hold the Hanley Patent until its expiration or until the trusteeship is vacated by order of the Court on motion by any of the parties to this decree.

[ *Activities Permitted to Secure Compliance*]

7. For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General and on reasonable notice to the defendants made to the principal office of the defendants, be permitted (1) access, during the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendants, relating to any matters contained in this decree; (2) subject to the reasonable convenience of the defendants and without

restraint or interference from them, to interview officers or employees of the defendants, who may have counsel present, regarding any such matters, and (3) the defendants, on such request, shall submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this decree; *provided however*, that information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings for the purpose of securing compliance with this decree in which the United States is a party or as otherwise required by law.

[ *Retention of Jurisdiction*]

8. Jurisdiction of this cause is hereby retained for the purpose of enabling any of the parties to this decree, or the trustee, whose appointment is authorized by paragraph 5, *supra*, to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the construction of or the carrying out of this decree, for the modification thereof, for the enforcement of compliance therewith, or for the punishment of violations thereof.