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United States v. Scott & Williams, Inc.

1954 Trade Cases ¶67,748. U.S. District Court, S.D. New York. Civil Action No. 54-358. Dated April 30, 1954. Case No. 1004 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decree—Allocation of Markets—Sales or Purchases at Discriminatory Prices —Circulation of False Reports—Acceptance of Commissions—Agency Relationships.—A manufacturer of seamless hosiery machinery consented to the entry of a decree which enjoined it from (1) referring orders or inquiries from prospective purchasers to any other manufacturer, except when the defendant is unable to supply the machinery, (2) selling or purchasing machinery from a British competitor at discriminatory prices, (3) circulating knowingly false reports as to the worthiness of, and infringing of patents by, second-hand machinery, (4) paying or receiving rebates, penalties, or other payments from a British competitor in connection with the sale of machinery to any other person, (5) employing a British competitor as an agent, and (6) acting as an agent for a British competitor. However, specific sales may be made, royalties may be collected which are due under patent licenses, and compensation may be paid for actual technical information furnished.

Consent Decree—Allocation of Territories—Importation and Exportation—Limiting of Production—Excluding Competition—Price Fixing.—A consent decree was entered enjoining a manufacturer of seamless hosiery machinery from entering into, performing, or adhering to any agreement with any other manufacturer which has the purpose or effect of (1) allocating markets or customers for the manufacture or sale of seamless hosiery machinery, (2) limiting or preventing the importation or exportation of such machinery, (3) protecting territories for any manufacturer, (4) restraining any manufacturer from producing or selling such machinery, or leaving any manufacturer free from competition, (5) limiting the production or sale of machinery through quotas or otherwise, (6) excluding or restricting any manufacturer from any territory, and (7) fixing prices or terms of sale to third persons. The decree permitted, standing alone, licenses or conveyances of patent rights, trade-mark rights or technical information to or from the defendant whether on an exclusive basis or otherwise.

Consent Decree—Price Discrimination—Maintenance Service—Tying Contracts.—A manufacturer of seamless hosiery machinery consented to the entry of a decree enjoining it from (1) selling or leasing any seamless hosiery machinery at discriminatory prices to destroy competition, (2) discriminating in any manner against any owner or user of seamless hosiery machinery in the furnishing or making available of repair or maintenance services, or in the entering into or performance of repair or maintenance contracts, except that the defendant is permitted to select the customers with which it elects to do business, (3) requiring as a condition of any sale or lease of a machine embodying an invention under any patent, or designed for the practice of such invention, owned by the defendant, that the vendee or lessee will acquire or utilize any other machinery produced by the defendant.

Consent Decree—Webb-Pomerene Act.—A consent decree did not prohibit the defendant manufacturer of seamless hosiery machinery from availing itself of the benefits of the Webb-Pomerene Act.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General, Richard B. O'Donnell, W. D. Kilgore, Jr., Max Freeman, John D. Swartz, and John V. Leddy.

For the defendant: Sullivan & Cromwell, by Inzer B. Wyatt.

For prior opinions of the U. S. District Court, District of New York, see [1950-1951 Trade Cases ¶ 62,559, 62,625](#).

Final Judgment

RICHARD WEINFELD, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on December 28, 1949; defendant Ralph E. Thompson having died and the complaint against him having been dismissed by a separate order of this Court; defendant Scott & Williams, Incorporated, having appeared and filed its answer to such complaint, denying the substantive allegations thereof; and plaintiff and defendant Scott & Williams, Incorporated, by their attorneys herein, having severally consented to the entry of this Final Judgment 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 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 herein and of the parties hereto. The complaint states a cause of action against defendant Scott & Williams, Incorporated, 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," as amended.

II

[*Definitions*]

As used in this Final Judgment:

- (A) "defendant" means the defendant Scott & Williams, Incorporated, a corporation organized and existing under the laws of the Commonwealth of Massachusetts;
- (B) "Blackburn" means George Blackburn, Ltd., a corporation organized and existing under the laws of the United Kingdom;
- (C) "Bentley" means Bentley Engineering Company, Ltd., a corporation organized and existing under the laws of the United Kingdom;
- (D) "seamless hosiery" means men's, women's and children's hosiery, the characteristic feature of which is that it is knitted in tubular form, requiring no seam;
- (E) "seamless hosiery machinery" means machinery for knitting seamless hosiery, including parts, attachments and improvements therefor;
- (F) "patents" means each and all patents related to seamless hosiery machinery, and all applications therefor, including all reissues, divisions, continuations, or extensions thereof, and patents issued upon such applications;
- (G) "person" means an individual, partnership, firm, association or corporation, or any other business or legal entity;
- (H) "manufacturer" means any foreign manufacturer of seamless hosiery machinery and includes subsidiaries, agents, sales representatives and distributors of such manufacturer.

III

[*Applicability*]

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

For the purpose of this Final Judgment:

- (A) The defendant and a subsidiary thereof shall be considered to be one person (and a subsidiary shall be deemed to be only a corporation more than 50% of whose outstanding voting stock is owned by the defendant);
- (B) (1) The defendant and any person who at any time is a bona fide agent of the defendant, when becoming or acting as such an agent, shall be considered to be one person and (2) any person for whom the defendant is at any time a bona fide agent and the defendant, when becoming or acting as such an agent, shall be considered to be one person.

IV

[*Agreements Terminated*]

(A) Subject to the last sentence of this subsection (A), each of the following agreements which has not heretofore expired or been terminated or cancelled, including all amendments, renewals and extensions thereof and all agreements or understanding amendatory or supplemental thereto, is hereby terminated and cancelled, and defendant is enjoined and restrained from the further performance or enforcement of the provisions of any of said agreements or understandings:

- (1) Between defendant and Blackburn, dated February 27, 1914;
- (2) Between defendant and Blackburn, dated February 6, 1926;
- (3) Between defendant and Blackburn, dated April 26, 1928;
- (4) Between defendant and Blackburn, dated June 3, 1930;
- (5) Between defendant and Bentley, dated August 26, 1935;
- (6) Between defendant and Blackburn, dated May 9, 1944;
- (7) Between defendant, Bentley and Blackburn, dated June 30, 1947.

Nothing in this Final Judgment shall be deemed to affect the validity and continuing effectiveness of the rights granted the defendant and Bentley in paragraph numbered 9 of the agreement between the defendant and Bentley, dated August 26, 1935, which agreement is referred to in clause (5) above.

(B) Defendant is hereby enjoined and restrained from entering into, adhering to, maintaining or furthering directly or indirectly or claiming any rights under any contract, agreement, understanding, plan or program which has as its purpose or effect the continuing or renewing of any of the provisions of the contracts terminated or cancelled by subsection (A) of this Section IV which is in conflict with any provision of this Final Judgment hereinafter set forth.

V

[*Practices Prohibited*]

Defendant is enjoined and restrained from:

- (A) Referring any order or inquiry from a prospective purchaser of seamless hosiery machinery to any manufacturer; this, however, shall not be deemed to prevent defendant, if currently it is not producing and does not have in stock, or is currently unable in the normal course of business to supply, such seamless hosiery machinery, from informing such prospective purchaser of any person who might be able to supply it;
- (B) Selling or offering for sale to, or purchasing or offering to purchase from, Bentley and Blackburn seamless hosiery machinery at discriminatory prices;
- (C) Circulating knowingly false reports that second-hand seamless hosiery machinery is worthless or infringes patents;
- (D) Offering or paying to, or receiving or accepting from, Bentley and Blackburn any commission, rebates, penalty or other payment in connection with the sale or distribution of seamless hosiery machinery to any other person;

(E) Appointing, designating or employing, or continuing the appointment, designation or employment of, Bentley and Blackburn as an agent, sales representative or distributor for defendant, or in any way selling or distributing seamless hosiery machinery through Bentley and Blackburn;

(F) Acting for or representing as agent, sales representative or distributor for Bentley and Blackburn;

Provided, however, that the provisions of this Section V shall not be deemed to prohibit arrangements and compensation for specific sales of, or specific service as to, seamless hosiery machinery, or to prohibit the collection or payment of royalties due under patent licenses, or compensation for actual technical information furnished or to be furnished

VI

(A) Defendant is enjoined and restrained from entering into, performing, adhering to, maintaining or furthering directly or indirectly or claiming any rights under, any contract, agreement, understanding, plan or program with any manufacturer which has the purpose or effect of:

(1) Allocating or dividing territories, fields, markets or customers for the production, sale or distribution of seamless hosiery machinery;

(2) Limiting, restraining or preventing importation into, or exportation from, the United States of seamless hosiery machinery;

(3) Reserving or protecting for any manufacturer any market or territory; for the production, sale or distribution of seamless hosiery machinery;

(4) Restraining any manufacturer from producing, selling or distributing seamless hosiery machinery, or leaving any manufacturer free from competition, in or for any territory, field or market in the production, sale or distribution of seamless hosiery machinery;

(5) Restraining or limiting the production, sale or distribution of seamless hosiery machinery, through quotas or otherwise;

(6) Excluding any manufacturer from any territory, field or market for seamless hosiery machinery, or interfering with or restricting any manufacturer in competing in any territory, field or market for seamless hosiery machinery;

(7) Fixing, maintaining, or adhering to prices, discounts or other terms and conditions of sale for seamless hosiery machinery to third persons.

(B) Nothing in the foregoing provisions of this Section VI shall be construed to prohibit, standing alone, licenses or conveyances of patent rights, trade-mark rights or technical information to or from the defendant whether on an exclusive basis or otherwise, or to prohibit defendant from seeking changes in tariff laws or rates or governmental restrictions on imports.

VII

[*Government Suits Not Barred*]

The provisions of this Final Judgment shall not, in any manner, operate as a bar or estoppel against any suit or proceeding which the United States may institute at any time after the date of the entry of this Final Judgment based in whole or in part upon any acquisition by the defendant of any of the capital stock, physical assets, business or good will of any person engaged in the manufacture, sale or distribution of seamless hosiery machinery and regardless of whether any such acquisition occurred prior, to or after the date of the entry of this Final Judgment. In any such suit or proceeding instituted by the United States, the United States shall not, by virtue of any of the provisions of this Final Judgment, be required to show or establish any change in material circumstances occurring subsequent to the date of the entry of this Final Judgment, nor in any manner, be barred or estopped, by virtue of any of the provisions of this Final Judgment, from introducing any testimony or evidence relating to any acquisition by the defendant, either prior to or after the date of the entry of this Final

Judgment, of any of the capital stock, physical assets, business or good will of any person engaged in the manufacture, sale or distribution of seamless hosiery machinery.

VIII

[*Discrimination and Tying Contracts Prohibited*]

Defendant is enjoined and restrained from:

(A) Selling or leasing, attempting to sell or lease, any seamless hosiery machinery at discriminatory prices for the purpose of destroying competition with the defendant or eliminating any competitor of the defendant;

(B) Discriminating or threatening to discriminate, in any manner, against any owner or user of seamless hosiery machinery produced by defendant, in the availability or furnishing of repair or maintenance services, or in the entering into or performance of repair or maintenance contracts; provided, however, that nothing in this Section VIII shall be deemed to prohibit the defendant from selecting, without more, the customers with which it elects to do business;

(C) Requiring as a condition of any sale or lease of any seamless hosiery machine embodying an invention under any patent, or design for the practice of such invention, owned by defendant, or under which it holds rights, that the vendee or lessee shall acquire or utilize any other seamless hosiery machinery, part or attachment, patented or unpatented, produced by the defendant.

IX

[*Webb-Pomerene Act*]

Nothing in this Final Judgment shall prohibit defendant from availing itself of the benefits of the Act of Congress of April 10, 1918, commonly known as the Webb-Pomerene Act, as heretofore or hereafter amended.

X

[*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 defendant made to the principal office of defendant, be permitted, subject to any legally recognized privilege when determined by this Court, (1) 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 matters contained in this Final Judgment and (2) subject to the reasonable convenience of defendant and without restraint or interference from defendant, to interview officers or employees of defendant, 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 Anti-trust Division, defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be reasonably necessary to the enforcement of this Final Judgment. Information obtained by the means permitted in this Section X 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 Final Judgment in which the United States is a party or as otherwise required by law.

XI

[*Retention of Jurisdiction*]

Jurisdiction of this cause is retained by this Court for the purpose of enabling either 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.