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United States of America v. The Hoover Company.

1959 Trade Cases ¶69,553. U.S. District Court, S.D. New York. Civil Action No. 131-68. Filed December 14, 1959. Case No. 1373 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Resale Price Fixing—Consent Decree—Practices Enjoined—Price Fixing—Price Lists.—A manufacturer of electric vacuum cleaners was prohibited by a consent decree from entering into any agreement to fix prices for the sale of its products to any third person. The manufacturer was also prohibited from disseminating lists of suggested prices for the sale of its products by retailers.

Resale Price Fixing—Consent Decree—Practices Enjoined—Boycotts—Coercion—Refusal to Deal.—A manufacturer of electric vacuum cleaners was prohibited by a consent decree from entering into any agreement to prevent retailers from selling to whomever the retailer pleases. The manufacturer was also prohibited from boycotting or refusing to deal with any of its authorized retailers.

Resale Price Fixing—Consent Decree—Permissive Provisions—Fair Trade Agreements.—A manufacturer of electric vacuum cleaners was permitted to enforce its lawful fair trade agreements, after one year, in New York and New Jersey, and, immediately, in other states.

For the plaintiff: Robert A. Bicks, W. D. Kilgore, Jr., Baddia J. Rashid, Richard B. O'Donnell, Augustus A. Marchetti, and Paul D. Sapienza, Department of Justice.

For the defendant: Cravath, Swaine & Moore, by Albert R. Connolly.

SIDNEY SUGARMAN, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on March 17, 1958, and defendant, The Hoover Company, having appeared herein, and the plaintiff and the defendant by their respective attorneys having severally consented to the entry of this Final Judgment without trial and adjudication of any issue of fact or law herein, and without admission by defendant in respect to any such issue;

Now, Therefore, before any testimony has been taken herein, and without the 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 herein and the parties hereto. The complaint states a claim for relief against the defendant, The Hoover 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) "New York Metropolitan Area" means the area comprising the City of New York, the New York counties of Westchester, Suffolk and Nassau, and the New Jersey counties of Hudson, Bergen, Essex, Union, Passaic and Middlesex;
- (b) "Person" means an individual, partnership, firm, association or corporation, or any other legal entity;
- (c) "Hoover" means defendant, The Hoover Company, which, together with its subsidiaries and with its officers, directors, employees and agents when acting in such capacities, shall be considered to be one person;
- (d) "Hoover cleaners" means electric vacuum cleaners manufactured and sold by Hoover other than cleaners of the type heretofore manufactured and sold by Hoover only to wholesale distributors;
- (e) "Fair trade agreement" means any resale price maintenance contract, or supplement thereto, pursuant to which the resale price of Hoover cleaners is lawfully fixed, established or maintained under the fair trade laws of any state, territory or possession and the act of Congress of August 17, 1937, commonly called the Miller-Tydings Act, or the act of Congress of July 14, 1952, commonly called the McGuire Act, or any legislation having a similar purpose that may hereafter be enacted.

III.

[*Applicability*]

The provisions of this Final Judgment shall apply to Hoover, its subsidiaries, successors and assigns, and to each of its officers, directors, agents and employees, and to all other persons in active concert and participation with Hoover who shall have received actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment are not applicable to activities of Hoover or its successors or assigns conducted outside the United States and not affecting the domestic commerce of the United States.

IV.

[*Price Fixing and Price Lists*]

Hoover is enjoined and restrained from:

- (a) Entering into, adhering to, or maintaining any contract, agreement, understanding or combination with any other person to fix, stabilize or maintain prices for the sale of Hoover cleaners to any third person; provided, however, that nothing contained in this Section IV shall be deemed to prohibit or restrict Hoover from entering into, adhering to or enforcing fair trade agreements:
- (1) From the date of entry of this Final Judgment with respect to sales of Hoover cleaners outside of the States of New York and New Jersey; or
- (2) After the expiration of one year from the date of entry of this Final Judgment with respect to any sales.
- (b) Disseminating or circulating in any manner for a period of two years from the date of entry of this Final Judgment to any retail dealer in the New York Metropolitan Area (or to any retail store in the New York Metropolitan Area owned or operated by a retail dealer outside of the New York Metropolitan Area) price lists containing suggested prices for the sale of Hoover cleaners by retail dealers.

V.

[*Refusal to Deal—Coercion*]

Hoover is enjoined and restrained from entering into, adhering to or maintaining, with any other person, any contract, agreement, understanding, plan or program to prevent any retail-dealer from selling or shipping Hoover cleaners, to whom or wherever the retail dealers desires to sell.

VI.

[*Boycotts—Refusal to Deal*]

Hoover is enjoined and restrained, for a period of five years from the date of entry of this Final Judgment, from (a) boycotting or otherwise refusing to deal with, or from threatening to boycott or otherwise to refuse to deal with any retail dealer in the New York Metropolitan Area regularly designated by defendant to act as such dealer for the sale of Hoover cleaners who adequately represents defendant in the sale of Hoover cleaners and who complies with defendant's reasonable standards for such retail dealers not inconsistent with any of the terms of this Final Judgment; and (b) impeding or restricting, or from attempting to impede or restrict, directly or indirectly, the free choice of any such retail dealer in selecting the latter's customers for Hoover cleaners.

VII.

[*Notice of Judgment*]

Hoover is ordered and directed, within sixty (60) days from the date of entry of this Final Judgment, to mail a copy thereof to each of its franchised retail dealers in the New York Metropolitan Area and to each other person who was a franchised retail dealer in the New York Metropolitan Area on February 1, 1955, at the most recent address of such other person appearing on Hoover's records, and within thirty (30) days after such mailing, to file with this Court, with a copy to the plaintiff herein, a report of compliance with this Section VII.

VIII.

[*Enforcement 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 Hoover at its principal office, be permitted, subject to any legally recognized privilege, (a) reasonable access, during office hours, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Hoover, relating to any of the matters contained in this Final Judgment and (b) subject to the reasonable convenience of Hoover, and without restraint or interference from it, to interview regarding any such matters officers and employees of Hoover, who may have counsel present.

Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division; Hoover 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 the 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 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, the enforcement of compliance therewith and the punishment of violations thereof.