

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. R. Hoe & Co., Inc., U.S. District Court, S.D. New York, 1955 Trade Cases ¶68,215, (Dec. 6, 1955)

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United States v. R. Hoe & Co., Inc.

1955 Trade Cases ¶68,215. U.S. District Court, S.D. New York. Civil Action No. 66289. Dated December 6, 1955. Case No. 1082 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Agreements with Foreign Companies—Sales Representatives—Trade-Marks—Printing Presses and Machinery.—A manufacturer of printing presses, printing machinery, and plate-making machinery was prohibited by a consent decree from entering into any understanding with specified foreign companies to (1) allocate territories for the manufacture or sale of such products; (2) fix prices or conditions for the sale of such products; (3) sell to, or purchase from, the foreign companies such products at prices lower than the final sales prices of such products to the ultimate users of the products; (4) offer or pay to, or receive or accept from, the foreign companies any payment in connection with the sale of such products to any third person; or (5) hinder, restrict, limit, or prevent (a) any person from manufacturing or selling such products, (b) any manufacturer or seller of such products from using such manufacturers' or sellers' firm name in which a specified name may appear as an integral part of such firm name, unless the products fail clearly to disclose the name of the manufacturer and place of manufacture, or (c) any person from importing into, or exporting from, the United States any of the products.

Also, the manufacturer was prohibited from referring any order or inquiry to any other manufacturer; appointing any of the foreign companies as agent, or sales representative, or distributor of any such products; acting for or representing any of the foreign companies as agent, sales representative, or distributor of any such products; or designating any agent, sales representative, or distributor who is also acting as agent, sales representative, or distributor for any of the foreign companies.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Licensing, of Patents.—A manufacturer of printing presses, printing machinery, and plate-making machinery was prohibited by a consent decree from transferring or licensing to, or exchanging with, specified foreign companies any patent, know-how, or trade-mark; however, the manufacturer could give nonexclusive licenses to any of the foreign companies under patents or patent applications owned by it at the date of the decree and embodying inventions of any of the foreign companies, and the manufacturer could receive from any of the foreign companies nonexclusive licenses under patents or patent applications owned at the date of the decree by any of the foreign companies and embodying inventions of the manufacturer.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Sale of Products in Foreign Markets.—A manufacturer of printing presses, printing machinery, and plate-making machinery was ordered by a consent decree to use reasonable efforts to promote and develop the sale of such products in foreign markets by offering to sell and selling such products upon request and upon reasonable and nondiscriminatory terms and conditions to any foreign purchaser or to persons desiring to purchase such products within the United States for export. Also, the manufacturer was ordered to insert advertisements in trade journals in Great Britain, France, Italy, India, and Australia advising prospective purchasers of the manufacture and availability for sale of such products and to give written notice to all persons who, since the date of the filing of the complaint to the date of the entry of the decree, have made written inquiry to the manufacturer regarding the purchase or distribution of such products for export, informing them of the manufacture and availability for sale of such products and inviting inquiry as to their requirements and soliciting their patronage.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Designation of Trade-Marks To Be Used in Exporting.—A manufacturer of printing presses, printing machinery, and plate-

making machinery was ordered by a consent decree to designate one or more additional trade-marks for use in the export of its products which should be separate and distinct from, and which should neither be similar to nor likely to be confused with any trade-mark, trade name, or firm name owned or controlled by specific foreign companies, and, if necessary for the export of such products, to register or secure the right to use such trade-mark or trade-marks in foreign countries and to use such trade-mark or trade-marks on such products and to take such steps as may be reasonable or necessary to assure the removal of legal obstacles to the sale and distribution of such products in foreign countries free from trade-mark or other rights of the foreign companies.

Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions—Trade-Marks.—A consent decree entered against a manufacturer of printing presses, printing machinery, and plate-making machinery provided that nothing contained in a specified provision of the decree should be construed to prohibit the exercise, by the manufacturer, of any rights at common law, in equity, or by statute that it might have in and to a specified name or certain trade-marks. The decree further provided that nothing contained in a provision of the decree prohibiting the enforcement of certain agreements between the manufacturer and foreign companies should be construed to affect such rights as the foreign companies might have acquired under such agreements in and to a specified name or certain trade-marks or to affect such rights at common law, in equity, or by statute as the manufacturer might have in and to the specified name or certain trade-marks.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; Victor H. Kramer, Special Assistant to the Attorney General; W. D. Kilgore, Jr., Harry N. Burgess, Max Freeman, and John Ford Baecher, Attorneys.

For the defendant: Sullivan & Cromwell by John F. Dooling, Jr.

Final Judgment

ARCHIE O. DAWSON, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on May 11, 1951; defendant R. Hoe & Co., Inc., having appeared and filed its answer to the complaint denying the substantive allegations thereof; and the plaintiff and the defendant, 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 admission by either of them in 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

[*Sherman Act*]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a cause of action against the defendant R. Hoe & Co., Inc., 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) "Printing presses" means any machinery for making printed impressions on paper or other material from an inked surface, and any parts thereof;

(B) "Printing machinery" means any machinery or apparatus used or usable in conjunction or connection with a printing press, or any parts thereof;

(C) "Plate-making machinery" means machinery used in the manufacture of flat, smooth pieces of material on, or from which, anything* is to be engraved or printed, and any parts thereof;

- (D) "Said products" means and includes printing presses, printing machinery and plate-making machinery;
- (E) "Patents" means each and all patents related to the said products, and all applications therefor, including all reissues, divisions, continuations, or extensions thereof, and patents issued upon such applications;
- (F) "Know-how" means any form of technical information or assistance relating to the manufacture or placing into operation of the said products;
- (G) "Trade-mark" means any trade-mark applicable to any of the said products, and all applications therefor, including all renewals, republications, or amendments thereof, and any trade-mark registered upon such applications;
- (H) "Defendant" means the defendant R. Hoe & Co., Inc., a corporation organized and existing under the laws of New York;
- (I) "Crabtree" means R. W. Crabtree & Sons, Ltd., a corporation organized and existing under the laws of the United Kingdom;
- (J) "British Hoe" means R. Hoe & Company, Ltd., a corporation organized and existing under the laws of the United Kingdom;
- (K) "Hoe-Crabtree" means R. Hoe & Crabtree, Limited, a corporation organized and existing under the laws of the United Kingdom;
- (L) "Person" means an individual, partnership, firm, association or corporation, or any other business or legal entity;
- (M) "Manufacturer" means any person engaged in the manufacture of the said products.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment shall apply to the defendant and to each of its subsidiaries, successors, assigns, officers, directors, servants, employees and agents, 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.

IV

[*Enforcement of Agreements Prohibited*]

Defendant is enjoined and restrained from enforcing, in whole or in part, any of the provisions of or any obligations under the agreement dated July 15, 1938 (other than the service and guarantee obligations of paragraphs 3 and 4 thereof) between R. W. Crabtree and Sons, Ltd. and R. Hoe and Co., Ltd.; the Deed of Covenant dated September 9, 1938 between R. H. C. Ltd. (formerly R. Hoe & Co., Ltd.), R. Hoe & Co., Inc., R. W. Crabtree and Sons, Limited and R. Hoe and Company, Limited; the agreement dated October 6, 1938 between R. Hoe & Co., Inc., and R. Hoe and Company, Limited; the agreement dated April 17, 1945 between R. Hoe & Co., Inc., R. W. Crabtree and Sons, Ltd., and R. Hoe & Company, Limited; and the agreement dated February 17, 1950 between R. Hoe & Co., Inc., R. W. Crabtree and Sons, Limited and R. Hoe & Company, Limited; including all amendments, renewals and extensions thereof and all agreements supplemental thereto; provided, however, that nothing contained in this Section IV shall be construed to affect, in any manner, such rights as Crabtree, British Hoe, and Hoe-Crabtree, or any of them, may have acquired under any of such agreements, in and to the name "Hoe" or any Hoe trade-mark, or to affect such rights at common law, in equity, or by statute as defendant may have in and to the name "Hoe" or any Hoe trade-mark.

V

[*Prohibited Agreements*]

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

1. Allocate or divide territories for the manufacture, sale or distribution of any of the said products;
2. Fix, maintain, or adhere to prices or other terms and conditions for the sale of any of the said products to third persons;
3. Sell or offer to sell to, or purchase or offer to purchase from, Crabtree, British Hoe or Hoe-Crabtree any of the said products at a price lower than the final sales price of such product to the ultimate user thereof;
4. Offer or pay to, or receive or accept from, Crabtree, British Hoe or Hoe-Crabtree any payment in connection with the sale or distribution of any of the said products to any third person;
5. Hinder, restrict, limit or prevent any person from manufacturing, selling or distributing any of the said products in any territory or market, or leave any person free from competition in any territory or market in the manufacture, sale or distribution of the said products;
6. Hinder, restrict, limit or prevent any manufacturer, seller or distributor of any of the said products from using, in connection with said products, such manufacturers, sellers or distributors' firm name in which the word "Hoe" may appear as an integral part of such firm name, unless such products fail clearly to disclose the name of the manufacturer and place of manufacture thereof;
7. Hinder, restrict, limit or prevent any person from importing into, or exporting from, the United States any of the said products.

(B) Nothing contained in subsection (A) of this Section shall be construed to prohibit the exercise, by the defendant, of any rights at common law, in equity, or by statute that it may have in and to the name "Hoe" or any Hoe trade-mark.

VI

[Sales Representatives]

Defendant is enjoined and restrained from:

- (A) Referring any order or inquiry for any of the said products to any other manufacturer;
- (B) 1. Appointing, designating or employing or continuing the appointment, designation or employment of Crabtree, British Hoe or Hoe-Crabtree as agent, sales representative or distributor of any of the said products;
2. Acting for, or representing Crabtree, British Hoe or Hoe-Crabtree as agent, sales representative or distributor of any of the said products;
- (C) Designating, appointing or using, or continuing the designation, appointment or use of, any agent, sales representative or distributor who is also acting as agent, sales representative or distributor of Crabtree, British Hoe or Hoe-Crabtree.

VII

[Promotion of Sales in Foreign Markets]

Defendant is ordered and directed to use reasonable efforts to promote and develop the sale of the said products in foreign markets by offering to sell and selling the said products upon request and upon reasonable and nondiscriminating terms and conditions, to any foreign purchaser or to persons desiring to purchase the said products within the United States for export.

VIII

[Trade-Marks]

(A) Defendant is ordered and directed to designate one or more additional trade-mark? for use in the export of the said products which shall be separate and distinct from, and which shall neither be similar to nor likely to be confused with any trade-mark, trade name or firm name owned or controlled by Crabtree, British Hoe or Hoe-Crabtree, and, if necessary for the export of such products, to register or secure the right to use such trade-mark or trade-marks in foreign countries and to use such trademark or trade-marks on the said products and to take such steps as may be reasonable or necessary to assure the removal of legal obstacles to the sale and distribution of such products in foreign countries free from trade-mark or other rights of Crabtree, British Hoe or Hoe-Crabtree;

(B) Defendant is enjoined and restrained from transferring or licensing to, or exchanging with, Crabtree, British Hoe or Hoe-Crabtree, any patent, know-how or trade-mark, provided that defendant may give nonexclusive licenses to Crabtree or British Hoe or Hoe-Crabtree under patents or patent applications owned by defendant at the date of this decree and embodying inventions of Crabtree or British Hoe or Hoe-Crabtree, and defendant may receive from Crabtree or British Hoe or Hoe-Crabtree non-exclusive licenses under patents or patent applications owned at the date of this decree by Crabtree or British Hoe or Hoe-Crabtree, or any of them, embodying inventions of defendant.

IX

[Notices]

Defendant is ordered and directed:

(A) Beginning three months from the date of entry of this Final Judgment and for a period of six months thereafter to insert advertisements at reasonable intervals in trade journals of appropriate circulation in Great Britain, France, Italy, India and Australia advising prospective purchasers of the manufacture and availability for sale of the said products in the manner contemplated in paragraph VII above;

(B) To give written notice to all persons who, since May 11, 1951, to the date of the entry of this Final Judgment, have made written inquiry to defendant regarding the purchase or distribution of the said products for export, informing them of the manufacture and availability for sale of the said products and inviting inquiry as to their requirements and soliciting their patronage;

(C) Within ninety days from the date of entry of this Final Judgment to send a copy thereof to Crabtree, British Hoe and Hoe-Crabtree.

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 the defendant made to its principal office, be permitted, subject to any legally recognized privilege:

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

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

(C) Upon written request the 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 X 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.

XI

[*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.