

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Necchi Sewing Machine Sales Corp.; Elna Sewing Machine Co., Inc.; Leon Jolson and Benjamin Krisiloff., U.S. District Court, S.D. New York, 1958 Trade Cases ¶68,957, (Feb. 14, 1958)

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United States v. Necchi Sewing Machine Sales Corp.; Elna Sewing Machine Co., Inc.; Leon Jolson and Benjamin Krisiloff.

1958 Trade Cases ¶68,957. U.S. District Court, S.D. New York. Civil Action No. 122-69. Filed February 14, 1958. Case No. 1348 in the Antitrust Division of the Department of Justice.

Sherman and Clayton Antitrust Acts

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing.—Two corporations engaged in the sale and distribution of imported sewing machines and two of their officers were prohibited by a consent decree from entering into any agreement with any distributor or dealer to fix or adhere to any fixed prices at which sewing machines are sold to third persons, and circulating to any distributor or dealer, for a specified period, suggested prices for the sale of sewing machines by distributors or dealers. However, the defendants were permitted to list approximate prices for the sewing machines in consumer advertising.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Allocation of Markets and Customers.—Two corporations engaged in the sale and distribution of imported sewing machines and two of their officers were prohibited by a consent decree from entering into any agreement restricting certain franchised distributors or dealers to whom or the territory within which any distributor or dealer could sell sewing machines; and from restricting the consumers to whom or the territory within which any dealer could sell sewing machines.

Combinations and Conspiracies—Exclusive Dealing—Consent Decree—Practices Enjoined—Agreements Not to Deal in Competitors' Products.—Two corporations engaged in the sale and distribution of imported sewing machines and two of their officers were prohibited by a consent decree from conditioning the continuation of any person as a distributor or dealer upon the requirement that the distributor or dealer shall not deal in family sewing machines of any competitor of the defendants; and from compelling any distributor or dealer to refrain from dealing in family sewing machines of any competitor of the defendants.

Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions.—

A consent decree entered against two corporations engaged in the sale and distribution of imported sewing machines and two of their officers provided that the defendants could exercise their respective rights to choose and select distributors and dealers and to designate geographical areas in which such distributors and dealers should respectively be primarily responsible for wholesaling and retailing sewing machines, and to terminate the franchises of distributors and dealers who did not adequately represent the defendants and promote the sale of sewing machines in areas so designated as their primary responsibility.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief —Revision of Distribution Agreements.—Two corporations engaged in the sale and distribution of imported sewing machines and two of their officers were ordered to revise their distributor and dealer contracts and manuals to conform to the provisions of a consent decree entered against them.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; and John D. Swartz, W. D. Kilgore, Jr., Lawrence Gochberg, Baddia J. Rashid, Max Freeman, Richard B. O'Donnell, and Samuel V. Greenberg.

For the defendants: Lester Lewis Jay.

Final Judgment

ARCHIE O. DAWSON, District Judge [*In full text*] : The plaintiff United States of America having filed its Complaint herein on June 28, 1957, the defendants having appeared and the parties hereto by their respective 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 this Final Judgment constituting evidence or an admission by any party hereto with respect to any such issue;

Now, therefore, before the taking of any testimony or evidence, and without trial or adjudication of any issue of fact or law herein, and upon the consent of all the parties hereto, it is hereby ordered, adjudged and decreed as follows:

I

[*Sherman and Clayton Acts*]

This Court has jurisdiction of the subject matter hereof and of all the parties hereto. The complaint states claims upon which relief may be granted against the defendants 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, and Section 3 of the Act of Congress of October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", commonly known as the Clayton Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

- (A) "Necchi" shall mean the defendant Necchi Sewing Machines Sales Corp., with its principal place of business at 164 West 25th Street, New York, New York;
- (B) "Elna" shall mean defendant Elna Sewing Machine Co., Inc., with its principal place of business at 164 West 25th Street, New York, New York;
- (C) "Person" shall mean an individual, partnership, firm, corporation, association or other business or legal entity;
- (D) "Distributor" shall mean any person (other than the defendants, their subsidiaries and any other person controlled by them or any of them) engaged in the purchase of sewing machines for resale primarily to dealers;
- (E) "Dealer" shall mean any person (other than the defendants, their subsidiaries and any other person controlled by them or any of them) engaged in the purchase of sewing machines from distributors for resale primarily to consumers;
- (F) "Sewing machines" shall mean those machines, manufactured, distributed or sold by Necchi or Elna, which are commonly described as family or household sewing machines, designed primarily for use by persons doing sewing at home and not by manufacturers.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any defendant shall apply, except as otherwise provided herein, to such defendant and to each of its subsidiaries, successors, assigns, officers, directors, servants, employees and agents, and to all persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Price Fixing Practices*]

Defendants are jointly and severally enjoined and restrained from:

- (A) Entering into, adhering to or furthering any combination, contract, agreement or understanding with any distributor or dealer to fix or specify prices at which sewing machines are sold to third persons;

(B) Requiring or compelling any distributor or dealer to adhere to any fixed, suggested or specified prices at which sewing machines are sold to third persons;

(C) Disseminating or circulating to any distributor or dealer, for a period of two years from the date of the entry of this Final Judgment, approximate or suggested prices for the sale of sewing machines by distributors or dealers, provided, however, that this subsection (C) shall not be deemed to prevent consumer advertising by defendants, listing approximate prices for the sewing machines advertised.

V

[*Exclusive Dealing*]

(A) Defendants are jointly and severally enjoined and restrained from conditioning the appointment, designation or continuation of any person as a distributor or dealer upon the requirement that the distributor or dealer shall not deal in or sell family sewing machines of any competitor of defendants Necchi or Elna;

(B) Defendants are jointly and severally enjoined and restrained from coercing or compelling any distributor or dealer to refrain from dealing in or selling family sewing machines of any competitor of defendants Necchi or Elna.

VI

[*Allocation of Territory*]

Defendants are jointly and severally enjoined and restrained from entering into, adhering to or enforcing any contract, agreement or understanding with any distributor or dealer:

(A) Limiting or restricting the franchised Necchi distributors or dealers to whom or the territory within which any distributor or dealer may sell sewing machines;

(B) Limiting or restricting the consumers to whom or the territory within which any dealer may sell sewing machines; provided, however, that such distributors and dealers shall provide for servicing, repair of, and instruction in the use of sewing machines as uniformly required by defendants of distributors and dealers, respectively.

VII

[*Permissive Provisions*]

Subject to the provisions of Sections IV, V and VI of this Final Judgment, defendants may exercise their respective rights to choose and select distributors and dealers and to designate geographical areas in which such distributors and dealers shall respectively be primarily responsible for wholesaling or retailing sewing machines, and to terminate the franchises of distributors and dealers who do not adequately represent the defendants and promote the sale of sewing machines in areas so designated as their primary responsibility.

VIII

[*Copy of Final Judgment*]

Necchi and Elna are ordered and directed to revise their distributor and dealer contracts and manuals to conform to the provisions of this Final Judgment and shall, within four months after the date of entry of this Final Judgment, deliver true copies thereof to the Assistant Attorney General in charge of the Antitrust Division and shall deliver a true copy of such revised distributor's manual to each of their franchised distributors and a true copy of their revised dealer's manual to each of their franchised dealers, in either case together with a letter or notice specifically indicating the revisions therein made in compliance with the provisions of this Final Judgment and stating that the revisions were made pursuant to this Final Judgment.

IX

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment and for no other purpose, 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 defendants made to their principal office, be permitted, subject to any legally recognized privilege:

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

(B) Subject to the reasonable convenience of the defendants and without restraint or interference from the defendants, to interview officers or employees of the defendants, 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 Antitrust Division, the defendants 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 IX 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.

X

[*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.