

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

AUDIOFIDELITY, INC. and
SIDNEY FREY, Individually
and doing business as
DAUNTLESS INTERNATIONAL,

Defendants..

CIVIL ACTION NO. 150-21

FILED: JUNE 30, 1960

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on August 26, 1959; the defendants having filed their respective answers to such complaint denying the substantive allegations thereof, and the parties hereto by their respective attorneys having 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 hereto with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony 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

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim 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.

II

As used in this Final Judgment:

(A) "Person" means any individual, partnership, firm, corporation, association or other business or legal entity;

(B) "Defendants" means the defendants Audiofidelity, Inc., and Sidney Frey, individually and doing business as Dauntless International, and each of them;

(C) "Audio" means the defendant Audiofidelity, Inc.;

(D) "Audio products" means any high fidelity or stereophonic record or tape produced by defendant Audio;

(E) "Distributor" means any person who purchases Audio products from any defendant for resale primarily to dealers;

(F) "Dealer" means any person who purchases Audio products for resale primarily to consumers.

III

The provisions of this Final Judgment applicable to any defendant shall also apply to each of its subsidiaries, successors, assigns, officers, directors, agents and employees and to all persons in active concert or participation with any defendant who receive actual notice of this Final Judgment by personal service or otherwise; provided, however, that the provisions of this Final Judgment shall not apply to transactions solely between a defendant and a company which wholly owns such defendant or is wholly owned by such defendant, or between a defendant and any other company when both are wholly owned and operated by the same person or persons, and, further, ownership of eighty (80%) per cent of the outstanding common stock shall be deemed equivalent to being wholly owned. The provisions of this Final Judgment shall not apply to sales of Audio products by the defendants to persons outside of the United States.

IV

(A) Defendants are each ordered and directed within thirty (30) days after the date of the entry of this Final Judgment to cancel each provision of any contract to which it may be a party which is inconsistent

with any provision of this Final Judgment;

(B) Defendant Audio is ordered and directed with thirty (30) days after the date of the entry of this Final Judgment to serve a copy of this Final Judgment, by registered mail, upon each distributor;

(C) Defendant Audio is ordered and directed to file with this Court, and serve upon the plaintiff, within forty-five (45) days after the date of entry of this Final Judgment an affidavit as to the fact and manner of its compliance with subsections (A) and (B) of this Section IV, including the name and address of each distributor to whom the Final Judgment was mailed and each person who may be a party to any such contract referred to in said subsection (A).

V

Defendants are jointly and severally enjoined from:

(A) Entering into, adhering to, maintaining, enforcing or claiming any rights under any combination, contract, agreement, understanding, plan or program with any distributor or dealer (1) to fix or specify the prices, terms or conditions at which any Audio products are sold to any third person; (2) to limit or restrict the territory within which or the persons to whom any distributor or dealer may sell Audio products; and (3) to limit or prevent any person from advertising or selling any Audio products at prices other than those suggested by defendant;

(B) Requiring or compelling any distributor or dealer to adhere to any fixed, suggested or specified price at which any Audio products are sold to third persons;

(C) Requiring or compelling any distributor or dealer to refrain from selling Audio products outside of any particular geographical area.

Subject to the provisions of this Section, each defendant may exercise its right to choose and select its distributors and dealers and customers.

VI

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

(A) Access, during the office hours of the defendant, to those parts of the books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant which relate 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.

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, any 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 VI 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 in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VII

After the expiration of three (3) years from the date of the entry of this Final Judgment, nothing contained in this Final Judgment shall prevent any defendant from exercising such lawful rights as it may have under the Miller-Tydings Act, as amended.

VIII

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, for the termination or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Dated: June 30, 1960

/s/ LLOYD F. MacMAHON
United States District Judge

We hereby consent to the making and entry of this Final Judgment.

For the Plaintiff:

/s/ Robert A. Bicks
ROBERT A. BICKS
Acting Assistant Attorney General

/s/ Harry N. Burgess
HARRY N. BURGESS

/s/ William D. Kilgore, Jr.
WILLIAM D. KILGORE, JR.

/s/ John D. Swartz
JOHN D. SWARTZ

/s/ Richard B. O'Donnell
RICHARD B. O'DONNELL

/s/ Morton Steinberg
MORTON STEINBERG

/s/ George H. Schueller
GEORGE H. SCHUELLER

/s/ Louis Perlmutter
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For the Defendants:

LaPorte & Meyers

by /s/ ERNEST S. MEYERS
A partner