

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Clark-Schwebel Fiber Glass Corp., U.S. District Court, S.D. New York, 1967 Trade Cases ¶72,014, (Mar. 20, 1967)

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United States v. Clark-Schwebel Fiber Glass Corp.

1967 Trade Cases ¶72,014. U.S. District Court, S.D. New York. Civil Action No. 64 Civ. 3544 (Consolidated into 64 Civ. 3090). Entered March 20, 1967. Case No. 1830 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Glass Fiber Industrial Fabrics—Consent Decree.—A manufacturer of glass fiber was prohibited by a consent decree from agreeing upon or maintaining a plan to fix prices or limit territories for the sale of its products, forcing distributors to adhere to particular resale prices or other terms, and preventing distributors from purchasing from sources of their choice.

For the plaintiff: Donald F. Turner, Assistant Attorney General, and Gordon B. Spivack, Charles D. Mahaffie, Jr., William D. Kilgore, Jr., Samuel B. Prezis, William F. Costigan, and John P. Radnay, Attorneys, Department of Justice.

For the defendant: Haliburton Fales 2d of White & Case.

Final Judgment

RYAN, District Judge: Plaintiff, United States of America, having filed its complaint herein on November 23, 1964, defendant Clark-Schwebel Fiber Glass Corporation having appeared and having filed its answer denying the substantive allegations of said complaint, and the plaintiff and defendant, 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 this Final Judgment constituting any evidence or admission by any party 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 plaintiff and defendant, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states a claim against the defendant upon which relief may be granted, 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) "Glass fiber industrial fabrics" means fabrics woven from glass fiber yarns and sold for industrial application or use, and includes woven roving and tape, but does not include decorative fabrics and insect screening.

(B) "Person" means any individual, partnership, firm, association, corporation or other business or legal entity other than a subsidiary of defendant.

(C) "Distributors" means any person engaged, in whole or in part, in the business of purchasing glass fiber industrial fabrics for resale.

III

[*Applicability*]

The provisions of this Final Judgment applicable to the defendant shall also apply to each of its officers, directors, agents and employees, its subsidiaries, successors and assigns and to all other persons in active concert or participation with defendant who shall have received actual notice of this Final Judgment by personal service or otherwise; provided, however, that such provisions shall not be applicable to activities conducted outside the United States and not in unreasonable restraint of the domestic or foreign commerce of the United States; and provided further that defendant in the course of making sales for export may comply with the laws of the foreign countries involved.

IV

[*Prices and Territories*]

(A) Defendant is enjoined and restrained from entering into, adhering to, maintaining or enforcing any contract, agreement, understanding, plan or program with any distributor, directly or indirectly to fix, determine, or stabilize the price or prices, terms or conditions at or upon which glass fiber industrial fabrics shall be sold to any third person.

(B) The defendant is enjoined and restrained from entering into, adhering to or maintaining any contract, agreement, understanding, plan or program with any distributor, to restrict or limit the territories or fields within which or the persons to whom glass fiber industrial fabrics may be sold.

V

[*Distributors*]

Defendant is enjoined and restrained from directly or indirectly:

(A) Prohibiting any distributor or other person from purchasing glass fiber industrial fabrics from whomever said distributor or other person may desire.

(B) Cancelling or threatening to cancel a distributorship contract because of the price or prices, terms or conditions at or upon which such distributor has sold, or offered to sell glass fiber industrial fabrics purchased from defendant.

(C) Furnishing to any distributor any resale price list for the sale of glass fiber industrial fabrics.

VI

[*Miller-Tydings and McGuire Act Rights*]

Nothing contained in this Final Judgment shall be deemed to prevent defendant from exercising such rights as it may have under the Act of Congress of August 17, 1937, commonly known as the Miller-Tydings Act and the Act of Congress of July 14, 1952, commonly known as the McGuire Act. For a period of one year from the date of entry of this Final Judgment, this paragraph VI shall not apply to glass fiber industrial fabrics of the types and character sold by defendant on the date of entry of this Final Judgment.

VII

[*Revision and Notification*]

Defendant is ordered and directed:

- (A)(i) Within thirty (30) days after the date of entry of this Final Judgment to revise its catalogs, price lists, and other promotional materials so as to omit therefrom, subject to paragraph VI hereof, any prescribed prices, terms, and conditions for the resale of glass fiber industrial fabrics.
- (ii) Within forty-five (45) days after the date of entry of this Final Judgment to file with this Court and serve upon the plaintiff an affidavit as to the fact and manner of compliance with subparagraph (A) (i) of this paragraph.
- (B)(i) Forthwith to serve a copy of this Final Judgment upon (a) each member of its Board of Directors, and (b) each of its executive and principal officers having responsibility for the sale of glass fiber industrial fabrics;
- (ii) Within thirty (30) days after the date of entry of this Final Judgment, to file with this Court, and serve upon the plaintiff, an affidavit as to the fact and manner of its compliance with the foregoing subparagraph (B)(i), including the names, titles and addresses of the persons so served.
- (C) Forthwith, and in any event not later than thirty (30) days after the entry of this Final Judgment, to mail a copy of this Final Judgment to each distributor to whom defendant, on the date of this Final Judgment and for a period of five (5) years prior thereto, is selling or has sold, glass fiber industrial fabrics; and thereafter, for a period of five (5) years from the date of entry of this Final Judgment, to any new distributor of defendant.
- (D)(i) Forthwith, and in any event, not later than thirty (30) days after the date of the entry of this Final Judgment to notify, in writing, each of its present distributors and (ii) for a period of five (5) years from the date of entry of this Final Judgment, upon the appointment of any new distributor at the time of appointment, that such distributors are free to sell to any agency or instrumentality of the United States Government, wherever located, glass fiber industrial fabrics at any price or prices and upon any terms or conditions which such distributor may individually determine.
- (E) Not later than thirty (30) days after the date of entry of this Final Judgment to file with this Court and serve upon the plaintiff an affidavit setting forth the fact and manner of its compliance with subsections (D), and (D)(i)(II) of this Section VII.
- (F) For a period of five (5) years after the date of entry of this Final Judgment, to furnish a copy of this Final Judgment to any person upon request and without charge.

VIII

[*Association Activities*]

Defendant is enjoined and restrained from belonging to or participating in any of the activities of any trade association or other organization, with knowledge that the activities or objectives of such trade association or other organization would violate any of the terms of this Final Judgment, if such trade association or other organization were a consenting defendant to this Final Judgment.

IX

[*Retention of Records*]

Defendant is ordered and directed, for a period of five (5) years from the date of entry of this Final Judgment or until such earlier time as all cases consolidated into 64 Civ. No. 3090 are disposed of, to retain and preserve its records and documents relating to the subject matter of the aforesaid consolidated cases. Upon approval of the Court, defendant may alter, remove, or destroy, any of such records and documents.

X

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

(A) Access, during the office hours of defendant, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant regarding any subject matter contained in this Final Judgment; and

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

Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division for the purposes of securing compliance with this Final Judgment and for no other purposes, defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment. No information obtained by the means provided in this Paragraph X 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 United States) 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*.

XI

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling either of the parties to this Final Judgment to apply to the Court at any time (i) for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment (ii) for the modification of any of the provisions thereof, and (iii) for the enforcement of compliance therewith and the punishment of violations thereof.