

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Safety First Products Corp., U.S. District Court, S.D. New York, 1972 Trade Cases ¶74,223, (Nov. 30, 1972)

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United States v. Safety First Products Corp.

1972 Trade Cases ¶74,223. U.S. District Court, S.D. New York. Civil No. 72-Civ-2233. Entered November 30, 1972. Case No. 2245, Antitrust Division, Department of Justice.

Sherman Act

Customers and Territories—Restrictions—Fire Protection Equipment and Systems— Training of Qualified Persons—Consent Decree.—A producer of fire protection equipment and systems was barred by a consent decree from restricting the territories in which, and the customers and Qualified Persons to whom, distributors may sell.

Customer Restrictions—Fire Protection Systems—Qualified Persons—Access to Training—Other Requirements—Consent Decree.—A consent decree forbidding a manufacturer of fire protection systems from restricting customers did not require the firm to allow sales to other than “qualified” persons. The decree, therefore, required the firm to grant any written application from any responsible person for attendance at any regularly scheduled training course in installing and servicing the systems, provided that such person pays a reasonable nondiscriminatory fee for any such training course and that, if the number of such applicants becomes burdensome, the defendant may apply to the court for a reasonable restriction on the numbers to be trained. “Qualified Person” was defined to mean a person with training, proper products liability insurance, and, if previously qualified,, a satisfactory record of compliance with the firm's manuals, specifications and governmental laws, codes and regulations pertaining to the installation or servicing of the systems.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles D. Mahaffie, Jr., Bernard M. Hollander, Norman H. Seidler, and Noel E. Story, Dept. of Justice. **For defendant:** Stephen B. Ives, Jr., Thomas C. Matthews, Jr., and William R. Weissman of Wald, Harkrader & Ross, Washington, D. C, and Daniel J. Coughlin, New York, N-. Y.

Final Judgment

GAGLIARDI, J.: Plaintiff, United States of America, having filed its complaint herein on May 23, 1972, Defendant having appeared by its counsel, 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 this Final Judgment constituting evidence or an admission by either 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 the consent of the parties hereto, 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 claims upon which relief may be granted against defendants under Sections 1 and 3 of the Act of Congress of July 2, 1890, as amended, entitled “An Act to protect trade and commerce against unlawful restraints and monopolies”, (15 U. S. C. Sections 1 and 3), commonly known as the Sherman Act.

II

[*Definitions*]

As used in this Final Judgment:

- (A) “Defendant” means Safety First Products Corp., a corporation organized and existing under the laws of the State of Delaware.
- (B) “Safety First Equipment” means any or all fire extinguishing equipment, excluding Safety First Systems, manufactured and sold by Defendant to any Person in the United States or Canada for the purpose of containing or extinguishing fires, and any or all parts of such fire extinguishing equipment.
- (C) “Safety First Systems” means any or all fire extinguishing systems for automatic operation and hand hose line systems, manufactured and sold by Defendant to any Person in the United States or Canada for the purpose of containing or extinguishing fires, and any or all parts of such fire extinguishing systems.
- (D) “Person” means any individual, partnership, firm, association, corporation or other business or legal entity.
- (E) “Distributor” means any Person engaged, in whole or in part, in the purchase from Defendant of Safety First Systems or Safety First Equipment and in the resale or installation thereof.
- (F) “Customer” means any Person who is an ultimate user of Safety First Equipment or Safety First Systems.
- (G) “Qualified Person” means a Person who is engaged in or who proposes to engage in the business of installing or servicing Safety First Systems and who
 - (1) Has successfully completed a Safety First training course in installing and servicing Safety First Systems and has maintained such training on a current basis;
 - (2) Has currently in force products liability insurance, in reasonable, non-discriminatory amounts, covering his work in such installation and/or servicing; and
 - (3) With respect to a Person or Distributor previously qualified, maintains a satisfactory record of compliance with Safety First manuals, specifications of independent testing laboratories, and all governmental laws, codes and regulations, which pertain to the installation or servicing of Safety First Systems.

III

[*Applicability*]

The provisions of this Final Judgment applicable to the Defendant shall also apply to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all Persons in active concert or participation with the Defendant who receive actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment, the Defendant and its parent and their subsidiaries and their officers, directors and employees, when acting in such capacity, shall be deemed to be one person.

IV

[*Marketing Restrictions—Equipment*]

The Defendant is enjoined and restrained from, directly or indirectly:

- (A) Entering into, adhering to, continuing, maintaining, renewing, enforcing or claiming any rights under any contract, agreement, understanding, plan or program with any Distributor to limit, allocate, restrict, divide or assign the Customers to whom, or territories *in which* any Distributor may sell, or advertise Safety First Equipment;
- (B) Imposing or attempting to impose, by any means, any limitations or restriction respecting the Customers to whom or territories in which any Distributor may sell or advertise Safety First Equipment;
- (C) Taking or threatening to take any disciplinary action against any Distributor because of the territory in which or the Customers to whom such Distributor has sold or intends to sell Safety First Equipment;

(D) Entering into any contract, agreement or understanding with any Distributor or other Person to submit non-competitive or collusive bids or quotations in the sale of Safety First Equipment.

V

[*Marketing Restrictions—Systems*]

The Defendant is enjoined and restrained from, directly or indirectly:

(A) Entering into, adhering to, continuing, maintaining, renewing, enforcing or claiming any rights under any contract, agreement, understanding, plan or program with any Distributor to limit, allocate, restrict, divide or assign the Customers or Qualified Persons to whom, or territories in which any Distributor or other Qualified Person may sell, install, service or advertise Safety First Systems.

(B) Imposing or attempting to impose, by any means, any limitations or restriction respecting the Customers or Qualified Persons to whom or territories in which any Distributor or other Qualified Person may sell, install, service or advertise Safety First Systems.

(C) Taking or threatening to take any disciplinary action against any Distributor because of the territory in which or the Customers or Qualified Persons to whom such Distributor has sold or intends to sell Safety First Systems.

(D) Entering into any contract, agreement or understanding with any Distributor or other Person to submit non-competitive or collusive bids or quotations in the sale, installation or servicing of Safety First Systems.

(E) Influencing or attempting in any way to influence any state insurance rating and inspection bureau to disapprove Safety First Systems sold, installed or serviced by any Distributor or other Qualified Person except that defendant may, upon request from any such Bureau and upon notice to the Qualified Person involved, inform such Bureau of defects in particular Safety First Systems.

VI

[*Distributors; Training*]

(A) Within 30 days from the date of entry of this Final Judgment, Defendant shall furnish to each state insurance rating and inspection bureau in the United States and Canada a list of the names and addresses of each Distributor and of each other Qualified Person in the United States and Canada. Defendant shall hereafter furnish to each such bureau such changes in such lists as shall be necessary to keep them current.

(B) Defendant is ordered and directed to grant any written application from any responsible Person for attendance at any regularly scheduled training course in installing and servicing Safety First Systems, *provided*, that such Person pays a reasonable non-discriminatory fee for any such training course, and *provided further*, that, if the number of such applicants shall be burdensome, the Defendant may apply to this Court for a reasonable restriction on the numbers to be trained hereunder.

VII

[*Cancellation; Notification*]

(A) Within 30 days from the. date of entry of this Final Judgment, Defendant shall take all necessary action to effect the cancellation of each provision of every contract between and among the Defendant and its Distributors which is contrary to or inconsistent with any provisions of this Final Judgment.

(B) Within 30 days from the date of entry of this Final Judgment, Defendant shall send to each of its Distributors a copy of this Final Judgment, and shall at the same time advise each such Distributor in writing that it is free to sell and service Safety First Equipment to such Persons and in such areas it may freely choose, and further that it is free to sell and service Safety First Systems to such Customers and Qualified Persons and in such areas as it may freely choose.

(C) Within 60 days from the date of the entry of this Final Judgment, Defendant shall file with the Plaintiff a statement as to the fact and manner of compliance with Subsections (A) and (B) of this Section VII.

VIII

[*Reports*]

Defendant is ordered to file with the plaintiff, on the anniversary date of the entry of this Final Judgment for a period of ten years, a report setting forth the steps it has taken during the prior year to advise its appropriate officers, directors and employees of its and their obligations under this Final Judgment.

IX

[*Inspection and Compliance*]

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, upon 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 Defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or control of Defendant relating to any of the matters contained in this Final Judgment; and

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

Defendant, upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit written reports relating to any of the matters contained in this Final Judgment.

No information obtained by the means provided 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 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.

X

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