APPENDIX A:

FINAL JUDMGENTS

(Ordered by Year Judgment Entered)

UNITED STATES V. THE MASTER HORSESHOER'S NATIONAL PROTECTIVE ASS'N OF AMERICA, ET AL.

Equity No. 5565

Years Judgment Entered: 1913–16

UNITED STATES v. MASTER HORSESHOERS' NATIONAL PROTECTIVE ASS'N.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION.

In Equity No. 5565.

THE UNITED STATES OF AMERICA, PETITIONER,

VS.

THE MASTER HORSESHOER'S NATIONAL PROTECTIVE ASSOCIATION OF AMERICA AND OTHERS, DEFENDANTS.

DECREE.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

That the defendant, the Walpole Rubber Company, and the defendant, William Killion & Sons, be and are hereby perpetually enjoined from doing any act in pursuance of or for the purpose of carrying out such combination and conspiracy as is set forth in the bill of complaint, and that they be and are hereby required to desist and withdraw from all connection with such conspiracy, and to cancel and abate all the agreements and contracts set forth and referred to in said bill of complaint, to which either or both of them are parties, and entered into in pursuance of said combination and conspiracy, that they each be perpetually enjoined and restrained from agreeing together or with any other or with all of the respondents in said cause, expressly or impliedly, directly or in-

directly, concerning the price at which rubber hoof pads shall be sold, and from agreeing together or with any other or with all of the respondents in said cause, expressly or impliedly, directly or indirectly, to prevent any individual, copartnership or corporation from buying or selling hoof pads freely in the open market, or to impose any burden or condition upon the purchase, sale or transportation of the same among the several States or between the United States and any foreign country; and that they be perpetually enjoined and restrained from agreeing with each other or with any or with all of the other respondents in said cause, expressly or impliedly, directly or indirectly, to discriminate and from urging or inducing others to discriminate against any manufacturer of, jobber, wholesale dealer or retail dealer in hoof pads because of such manufacturer, jobber, wholesale or retail customers of a certain class or to customers standing in a certain relation to the trade in said articles, or because of such manufacturer, jobber, wholesale or retail dealer having failed to discriminate in favor of any class of customers or in favor of customers standing in a special relation to the trade in said articles; that upon the entry of this decree said cause shall be finally terminated as to said Walpole Rubber Company and said William Killion & Sons and that no costs of any kind shall be taxed against either of said defendants in said cause.

It is further ordered, adjudged and decreed that the entry of this decree and this decree and any of the provisions hereof shall be without prejudice to the rights and interests of the said Walpole Rubber Company and the said William Killion & Sons and to the rights and interests of any and all of the officers and directors of both of said corporations, who were officers and directors during the period embraced by the allegations in said bill of complaint, in any proceeding, civil or criminal, which may hereafter be brought, except its recitals shall be conclusive as to the matters recited in all proceedings brought to enforce an observance of this decree or any part thereof.

Entered as a decree of court, this third day of March, A. D. 1913.

(Signed) C. W. SESSIONS,
District Judge (sitting by designation).

DISTRICT COURT OF THE UNITED STATES EASTERN DISTRICT OF MICHIGAN.

In Equity No. 5565.

THE UNITED STATES OF AMERICA

vs.

THE MASTER HORSESHOER'S NATIONAL PROTECTIVE ASSOCIATION OF AMERICA ET AL.

DECREE.

And now, to-wit, March 16, 1914, this cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:—that the defendant, United States Horse Shoe Company, be and is hereby perpetually enjoined from doing any act in pursuance of or for the purpose of carrying out such combination and conspiracy as is set forth in the Bill of Complaint and that they be and are hereby required to desist and withdraw from all connection with such conspiracy and to cancel and abate all the agreements and contracts set forth and referred to in said Bill of Complaint to which they are parties and entered into in pursuance of said combination and conspiracy.

That they be perpetually enjoined and restrained from agreeing together or with any other or with all of the respondents in said case expressly or impliedly, directly or indirectly, concerning the prices, at which drilled horse shoes shall be sold and from agreeing together or with any other or with all of the respondents in said case, expressly, or impliedly, directly or indirectly, to prevent any individual, corporation or copartnership from buy-

ing or selling drilled horse shoes freely in the open market, or to impose any burden, or condition upon the purchase, sale or transportation of the same among the several states, or between the United States and any foreign country and that they be perpetually enjoined and restrained from agreeing with each other or with any or all of the other respondents in said cause expressly or impliedly, directly or indirectly to discriminate, and from urging and inducing others to discriminate against any manufacturer, jobber, wholesale dealer or retail dealer in drilled horse shoes because of such manufacturer, jobber, wholesale or retail dealer having refused to confine his sales of drilled horse shoes to customers of a certain class or to customers standing in a certain relation to the trade in said articles or because of such manufacturer, jobber, wholesale, or retail dealer having failed to discriminate in favor of any class of customers or in favor of customers standing in a special relation to the trade in such articles.

That upon the entry of this decree said cause shall be finally terminated as to said United States Horse Shoe Company and that no costs of any kind shall be taxed against said defendant in said case.

It is further ordered, adjudged and decreed that the entry of this decree and this decree and any of its provisions hereof shall be without prejudice to the rights and interests of the United States Horse Shoe Company and to the rights and interests of any and all of the officers and directors of said corporation who were officers and directors during the period embraced by the allegations in said Bill of Complaint in any proceeding, civil or criminal, which may hereafter be brought, except its recitals shall be conclusive as to the matters recited in all proceedings brought to enforce an observance of this decree or any part thereof.

ARTHUR J. TUTTLE,
District Judge.

(Filed March 16, 1914. Elmer W. Voorheis, Clerk.)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION.

In Equity No. 5565.

THE UNITED STATES OF AMERICA, PETITIONER,

VS.

THE MASTER HORSESHOER'S NATIONAL PROTECTIVE ASSOCIATION OF AMERICA AND OTHERS, DEFENDANTS.

DECREE.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

That the defendant, The Firestone Tire & Rubber Company be and is hereby perpetually enjoined from doing any act in pursuance of or for the purpose or carrying out such combination and conspiracy as is set forth in the bill of complaint, and that it be and is hereby required to desist and withdraw from all connection with such conspiracy, and to cancel and abate all the agreements and contracts set forth and referred to in said bill of complaint, to which it is a party, and entered into in pursuance of said combination and conspiracy; that it be perpetually enjoined and restrained from agreeing together or with any other or with all of the respondents in said cause, expressly or impliedly, directly or indirectly, concerning the price at which rubber hoof pads shall be sold, and from agreeing with any other or with all of the respondents in said cause, expressly or impliedly, directly or indirectly, to prevent any individual, copartnership or corporation from buying or selling hoof pads freely in the open market, or to impose any burden or condition upon the purchase, sale or transportation of the same among the several states or between the United States and any foreign country; and that it be perpetually enjoined and restrained from agreeing with any or with all of the other respondents in said cause, expressly or impliedly, directly or indirectly,

to discriminate and from urging or inducing others to discriminate against any manufacturer of, jobber dealer or retail dealer in hoof pads because of such manufacturer, jobber, wholesale or retail dealer having refused to confine his sales of hoof pads to customers of a certain class or to customers standing in a certain relation to the trade in said articles, or because of such manufacturer, jobber, wholesale or retail dealer having failed to discriminate in favor of any class of customers or in favor of customers standing in a special relation to the trade in said articles; that upon the entry of this decree said cause shall be finally terminated as to said The Firestone Tire & Rubber Company, and that no costs of any kind be taxed against said defendant in said cause.

It is further ordered, adjudged and decreed that the entry of this decree and this decree and any of the provisions hereof shall be without prejudice to the rights and interests of the said The Firestone Tire & Rubber Company, and to the rights and interests of any and all of the officers and directors of said corporation, who were officers and directors during the period embraced by the allegations in said bill of complaint, in any proceeding, civil or criminal, which may hereafter be brought, except its recitals shall be conclusive as to the matters recited in all proceedings brought to enforce an observance of this decree or any part thereof.

Entered as a decree of Court, this twenty-first day of March, A. D. 1914.

ARTHUR J. TUTTLE,
District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION.

In Equity No. 5565.

THE UNITED STATES OF AMERICA, PETITIONER,

VS.

THE MASTER HORSESHOER'S NATIONAL PROTECTIVE ASSOCIATION OF AMERICA AND OTHERS, DEFENDANTS.

DECREE.

This cause came on to be heard at this term and was argued by counsel, and thereupon upon consideration thereof, it was ordered, adjudged and decreed as follows:

That the defendant, Air-O-Pad Company, be and is hereby perpetually enjoined from doing any act in pursuance of or for the purpose of carrying out such combination and conspiracy as is set forth in the bill of complaint, and that it be and is hereby required to desist and withdraw from all connection with such conspiracy, and to cancel and abate all the agreements and contracts set forth and referred to in said bill of complaint, to which it is a party, and entered into in pursuance of said combination and conspiracy; that it be perpetually enjoined and restrained from agreeing together or with any other or with all of the respondents in said cause, expressly or implicitly, directly or indirectly, concerning the price at which rubber hoof pads shall be sold, and from agreeing with any other or with all of the respondents in said cause, expressly or impliedly, directly or indirectly, to prevent any individual, copartnership or corporation from buying or selling rubber hoof pads freely in the open market, or to impose any burden or condition upon the purchase, sale or transportation of the same among the several states or between the United States and any foreign country; and that it be perpetually enjoined and restrained from agreeing with any or with all of the other respondents in said cause, expressly or impliedly, directly or indirectly, to discriminate and from urging or inducing others to discriminate against any manufacturer of, jobber dealer or retail dealer in rubber hoof pads because of such manufacturer, jobber, wholesale or retail dealer having refused to confine his sales of rubber hoof pads to customers of a certain class or to customers

standing in a certain relation to the trade in said articles, or because of such manufacturer, jobber, wholesale or retail dealer having failed to discriminate in favor of any class of customers or in favor of customers standing in a special relation to the trade in said articles that upon the entry of this decree said cause shall be finally terminated as to said Air-O-Pad Company, and that no costs of any kind be taxed against said defendant in said cause.

It is furthered ordered, adjudged and decreed that the entry of this decree and this decree and any of the provisions hereof shall be without prejudice to the rights and interests of the said Air-O-Pad Company, and to the rights and interests of any and all of the officers and directors of the said corporation, who were officers and directors during the period embraced by the allegations in said bill of complaint, in any proceeding, civil or criminal, which may hereafter be brought, except its recitals shall be conclusive as to the matters recited in all proceedings brought to enforce an observance of this decree or any part thereof.

Entered as a decree of Court, this 27th day of April, A. D. 1914.

ARTHUR J. TUTTLE,
District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION.

In Equity No. 5565.

THE UNITED STATES OF AMERICA, PETITIONER,

VS.

THE MASTER HORSESHOER'S NATIONAL PROTECTIVE ASSOCIATION OF AMERICA ET AL., DEFENDANTS.

FINAL DECREE

This cause came on to be heard at this term, and was argued by counsel, and thereupon and upon considera-

tion thereof, and by agreement of the parties hereto, counsel for defendants being present in open court and consenting thereto, it was ORDERED, ADJUDGED and DECREED as follows, viz:

(1) That the defendants, The Master Horseshoers' National Protective Association of America, a New York corporation, The Master Horseshoers' National Protective Association of America, a Michigan corporation, William E. Murphy, Harry T. Baldwin, Charles C. Craft, Charles A. Kelso, Charles J. McGinness and Jermiah C. Buckley at the time of the filing of the petition herein, and prior thereto, had been and were engaged in a combination and conspiracy to restrain trade and commerce among the several states and territories of the United States in drilled Horseshoes, adjustable calks, and rubber hoof pads in violation of the Act of Congress of July 2nd, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

(2) That defendants above named, and each of them, and their officers, directors, agents, servants and employees, and all persons acting under, through, by or in behalf of them, or claiming so to act, be perpetually enjoined, restrained and prohibited, as follows:

(a) From directly or indirectly engaging in or carrying into effect the said combination or conspiracy hereby adjudged to be illegal, and from engaging in or entering into any like combination or conspiracy, the effect of which would be to restrain trade or commerce in drilled horseshoes, adjustable calks or rubber hoof pads among the several states and territories of the United States, or in the District of Columbia, or with foreign nations; and from entering into any express or implied agreement or arrangement together or with one another, like that hereby adjudged to be illegal, the effect of which would be to prevent the free and unrestrained flow of interstate or foreign trade or commerce in drilled horseshoes, adjustable calks or rubber hoof pads from the manufacturer to the consumer.

(b) From combining, conspiring, confederating or agreeing with each other or with others, expressly or

impliedly, directly or indirectly, with respect to maintaining a limited price or any price at which drilled horseshoes, adjustable calks or rubber hoof pads shall be sold, and from agreeing or contracting together or with one another, expressly or impliedly, directly or indirectly, as to the persons, firms or corporations from whom such commodities shall be purchased or sold, or from agreeing or contracting together, expressly or impliedly, directly or indirectly, with a view to preventing others from buying or selling freely in the open market, or with a view to imposing any burden or condition upon the purchase, sale or transportation of drilled horseshoes, adjustable calks, or rubber hoof pads among the several states or between the United States and any foreign country.

(3) That defendants above named, and each of them, and their officers, directors, agents, servants and employees, and all other persons acting under, through, by or in behalf of them, or either of them, or claiming so to act, be perpetually enjoined, restrained and prohibited from combining, conspiring, confederating, or agreeing with each other, or with others, expressly or impliedly, directly or indirectly—

(a) To boycott or threaten with loss of custom or patronage any manufacturer engaged in interstate or foreign trade or commerce in drilled horseshoes, adjustable calks, or rubber hoof pads, for having sold or being about to sell such drilled horseshoes, adjustable calks or rubber hoof pads to hardware jobbers or to retail hardware dealers who would in turn sell such commodities to horse owners, or for having sold or being about to sell such commodities direct to horse owners.

(b) To intimidate or coerce manufacturers of drilled horseshoes, adjustable calks, or rubber hoof pads, into selling only to such persons, firms, corporations or other organizations, as are recognized or approved by the Master Horseshoers' National Protective Association of America, a New York Corporation, or by the Master Horseshoers National Protective Association of America, a Michigan corporation.

(c) To do or refrain from doing anything the purpose or effect of which is to hinder or effect by the intimidation, coercion, or withdrawal or threatened withdrawal of patronage or custom, any firm, person, corporation, or other organization from buying or selling drilled horseshoes, adjustable calks, or rubber hoof pads wherever, whenever, and from whomsoever and at whatsoever price may be agreed upon between the seller and the purchaser.

(4) That the defendants above-named, and each of them, and their officers, directors, agents, servants and employees, and all other persons acting under, through, by or in behalf of them, or claiming so to act, be perpetually enjoined, restrained and prohibited from publishing or distributing, or causing to be published or distributed, or aiding or assisting in the publication or distribution, of—

(a) The names of any manufacturers, or list or lists of manufacturers, as persons who confine their sales of drilled horseshoes, adjustable calks or rubber hoof pads to such jobbers or wholesale dealers in such commodities as in turn confine their sales of such commodities to horseshoers or to retail dealers who sell to horseshoers only and not to horse owners.

(b) The names of any wholesalers or jobbers, or any list or lists of wholesalers or jobbers as persons whose avowed policy it is to purchase drilled horseshoes, adjustable calks or rubber hoof pads only from those manufacturers who sell, distribute or market their product through the medium of wholesalers and jobbers only, or who distribute or market their products the medium of such wholesalers or jobbers who in turn sell such commodities to horseshoers only and not to horse owners.

(c) The names of any manufacturers of drilled horseshoes, adjustable calks or rubber hoof pads as persons whose avowed policy it is to sell, distribute or market their product under such selling plans only as meet with the approval of the Master Horseshoers' National Protective Association of America, a New York corporation, or the Master Horseshoers' National Protective Association of America, a Michigan corporation, or the Horse-

shoers' Journal.

(d) The names of any manufacturers of drilled horseshoes, adjustable calks or rubber hoof pads as persons who sell, distribute or market their products under selling plans that are not satisfactory to or approved by the Master Horseshoers' National Protective Association of America, a New York corporation, or the Master Horseshoers' National Protective Association of America, a Michigan corporation, or the Horseshoers' Journal.

(e) The names of any wholesalers or jobbers as persons who sell, distribute or market drilled horseshoes, adjustable calks or rubber hoof pads under selling plans satisfactory to or approved by the Master Horseshoers' National Protective Association of America, a New York corporation, or the Master Horseshoers' National Protective Association of America, a Michigan corporation, or the Horseshoers' Journal.

(f) The names of any wholesalers or jobbers as persons who sell, distribute or market drilled horseshoes, adjustable calks or rubber hoof pads under selling plans not satisfactory to or approved by the Master Horseshoers' National Protective Association of America, a New York corporation, or the Master Horseshoers' National Protective Association of America, a Michigan corporation, or the Horseshoers' Journal.

(5) That defendants above-named, and each of them, their officers, directors, servants, and employees, and all other persons acting under through, by or in behalf of them, or claiming so to act, be perpetually enjoined, restrained, and prohibited—

(a) From combining, conspiring, confederating, or agreeing with each other, or with others expressly or impliedly, directly or indirectly, to communicate with any manufacturer, jobber, or dealer for the purpose of inducing such manufacturer, jobber, or dealer not to sell drilled horseshoes, adjustable calks, or rubber hoof pads to horse owners, or only to sell to such retail dealers as will sell said commodities only to horseshoers and not to horse owners.

(b) From combining, conspiring, confederating, or agreeing with each other, or with others, directly or indirectly to discriminate or urge others to discriminate against any manufacturer of, or jobber, wholesale or retail dealer in drilled horseshoes, adjustable calks or rubber hoof pads, because of such manufacturer, jobber, wholesaler or retailer having refused to confine his sales of said articles to customers of a certain class, or to customers standing in a certain relation to the trade in such articles, or because of such manufacturer, jobber, wholesaler or retailer having failed to discriminate in favor of any class of customers, or in favor of customers standing in a special relation to the trade in such articles.

(6) It is further ordered, adjudged and decreed—

(a) That the defendants, the Master Horseshoers' National Protective Association of America, a New York corporation, its officers and members, the Master Horseshoers' National Protective Association of America, a Michigan corporation, its officers and members, and the Horseshoers' Journal and its officers, are not restrained from maintaining said organizations for purposes not inconsistent with this decree and not in violation of law.

(b) That the petitioner have and recover its costs from the defendants included in this decree.

(Signed) ARTHUR J. TUTTLE,
District Judge.

Dated, Detroit, Michigan, this twenty-sixth day of January, A. D. 1916.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION.

In Equity No. 5565.

THE UNITED STATES OF AMERICA, PETITIONER,

VS.

THE MASTER HORSESHOER'S NATIONAL PROTECTIVE ASSOCIATION OF AMERICA, ET AL, DEFENDANTS.

FINAL DECREE.

This cause came on to be heard at this term, and was argued by counsel, and thereupon and upon consideration thereof, and by agreement of the parties hereto, counsel for defendants being present in open court and consenting thereto, it was ORDERED, ADJUDGED and DECREED as follows, viz:

(1) That the defendants, the Williams Drop Forging Company, the Rowe Calk Company, Diamond Calk & Horse Shoe Company, the Giant Grip Horse Shoe Company, Revere Rubber Company, Octigan Drop Forge Company, Dryden Hoof Pad Company, Hoopston Horse Nail Company, Michael Hallanan, Charles P. Dryden, Carl A. Judson, Edward Fitzgerald and W. W. Todd, at the time of the filing of the petition herein, and prior thereto, had been and were engaged in a combination and conspiracy to restrain trade and commerce among the several states and territories of the United States in drilled horseshoes, adjustable calks, and rubber hoof pads in violation of the Act of Congress of July 2nd, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies."

(2) That defendants above named, and each of them and their officers, directors, agents, servants and employees, and all persons acting under, through, by or in behalf of them, or claiming so to act, be perpetually enjoined, restrained and prohibited, as follows:

(a) From directly or indirectly engaging in or carrying into effect the said combination or conspiracy hereby adjudged to be illegal, and from engaging in or entering into any like combination or conspiracy, the effect of which would be to restrain trade or commerce in drilled horseshoes, adjustable calks or rubber hoof pads among the several states and territories of the United States, or

in the District of Columbia, or with foreign nations; and from entering into any express or implied agreement or arrangement together or with one another, like that hereby adjudged to be illegal, the effect of which would be to prevent the free and unrestrained flow of interstate or foreign trade or commerce in drilled horseshoes, adjustable calks or rubber hoof pads from the manufacturer to the consumer.

(b) From combining, conspiring, confederating or agreeing with each other or with others, expressly or impliedly, directly or indirectly, with respect to maintaining a limited price or any price at which drilled horseshoes, adjustable calks or rubber hoof pads shall be sold, and from agreeing or contracting together or with one another, expressly or impliedly, directly, or indirectly, as to the persons, firms, or corporations from whom such commodities shall be purchased or sold, or from agreeing or contracting together, expressly or impliedly, directly or indirectly, with a view to preventing others from buying or selling freely in the open market, or with a view to imposing any burden or condition upon the purchase, sale or transportation of drilled horseshoes, adjustable calks, or rubber hoof pads among the several states or between the United States and any foreign country.

(3) That defendants above-named, and each of them, and their officers, directors, agents, servants and employees and all other persons acting under, through, by or in behalf of them, or either of them, or claiming so to act, be perpetually enjoined, restrained and prohibited from combining, conspiring, confederating, or agreeing with each other, or with others expressly or impliedly, directly or indirectly—

(a) To boycott or threaten with loss of custom or patronage any manufacturer engaged in interstate or foreign trade or commerce in drilled horseshoes, adjustable calks, or rubber hoof pads, for having sold or being about to sell such drilled horseshoes, adjustable calks or rubber hoof pads to hardware jobbers or to retail hardware dealers who would in turn sell such commodities to

horse owners, or for having sold or being about to sell such commodities direct to horse owners.

(b) To intimidate or coerce manufacturers of drilled horseshoes, adjustable calks, or rubber hoof pads, into selling only to such persons, firms, corporations or other organizations as are recognized or approved by the Master Horseshoers' National Protective Association of America, a New York corporation, or by the Master Horeshoers' National Protective Association of America, a Michigan corporation.

(c) To do or refrain from doing anything the purpose or effect of which is to hinder or effect by intimidation, coercion, or withdrawal or threatened withdrawal of patronage or custom, any firm, person, corporation, or other organization from buying or selling drilled horseshoes, adjustable calks or rubber hoof pads wherever, whenever, and from whomsoever and at whatsoever price may be agreed upon between the seller and the purchaser.

(4) That defendants above-named, and each of them, their officers, directors, servants, and employees, and all other persons acting under, through, by or in behalf of them, or claiming so to act, be perpetually enjoined, restrained and prohibited—

(a) From combining, conspiring, confederating, or agreeing with each other, or with others, expressly or impliedly, directly or indirectly to communicate with any manufacturer, jobber, or dealer for the purpose of inducing such manufacturer, jobber, or dealer not to sell drilled horseshoes, adjustable calks, or rubber hoof pads to horse owners, or only to sell to such retail dealers as will sell said commodities only to horseshoers and not to horse owners.

(b) From combining, conspiring, confederating, or agreeing with each other, or with others, directly or indirectly to discriminate or urge others to discriminate against any manufacturer of, or jobber, wholesale or retail dealer in drilled horseshoes, adjustable calks, or rubber hoof pads, because of such manufacturer, jobber, wholesaler or retailer having refused to confine his sales of said articles to customers of a certain class, or to customers standing in a certain relation to the trade in such articles, or because of such manufacturer, jobber, wholesaler or retailer having failed to discriminate in favor of any class of customers, or in favor of customers standing in a special relation to the trade in such articles.

(5) That the petitioner have and recover its costs from the defendants included in this decree.

(Signed) ARTHUR J. TUTTLE,
District Judge.

Dated, Detroit, Michigan, this 26th day of January, 1916.

UNITED STATES V. KRENTLER-ARNOLD HINGE LAST CO.

Equity No. 2

Year Judgments Entered: 1913

UNITED STATES v. KRENTLER-ARNOLD HINGE LAST CO.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

Equity No. 2.

THE UNITED STATES OF AMERICA,

vs.

KRENTLER-ARNOLD HINGE LAST COMPANY AND OTHERS.

FINAL DECREE

This cause coming on to be heard on this 7th day of February, 1913, before the Honorable Arthur J. Tuttle, district judge, and the petitioner having appeared by its district attorney, Clyde I. Webster, and by Malcolm A. Coles, its Special Assistant to the Attorney General, and having moved the court for an injunction in accordance with the prayer of its petition, and it appearing to the court that the allegations under the provisions of the act of July 2, 1890, known as the antitrust act, that it has jurisdiction of the subject matter, and that the defendants have each either been regularly served or accepted service of process, and have appeared in open court by Clement R. Stickney, their counsel, and said defendants now by leave of the court having withdrawn their answers herein and stated in open court through their counsel that it is not their desire or intention, nor the desire or intention of any or either of them to violate the provisions of the act above referred to, but stated that it is their desire and intention and the desire and intention of each of them to comply with each and all the provisions of the statutes of the United States referring to agreements, combinations, or conspiracies in restraint of trade, and that their previous action in the premises was in the full belief that it was not in violation of law, and that it is the desire and intention of them and each of them not to operate under or make or carry on any such contracts or practices as are condemned by said act of Congress as now construed by the court, and now consenting to the entering and rendition of this decree, now, therefore, it is accordingly by the court adjudged, ordered, and decreed as follows:

First. That so much of the 2nd section of that certain license agreement made by and between the Krentler-Arnold Hinge Last Company and each of its dated licensees, a copy whereof is set forth in the petition in this cause, as reads:

Second. The party of the second part, in lieu of, and as the equivalent of, a specific royalty or license fee, hereby agrees to buy of the party of the first part all

the hinges and special parts used in the manufacture of said lasts and to use no other hinges and special parts therefor, and agrees to fit all hinged lasts manufactured by it with said hinges and special parts bought of the party of the first part, and not to manufacture any other hinged lasts; *and agrees to maintain the prices of all lasts sold by the licensee, strictly in accordance with the schedule or list of prices hereto attached, and forming a part of this license, the same schedule to be furnished to all licensees.* The party of the first part consents, and is hereby mutually agreed, that the licensees under this form of license shall choose (by majority ballot of all licensees present in person or by proxy, upon duly mailed ten days' notice, each licensee having one vote) an adjuster, who shall determine any and all special or general changes in said schedule or list of prices, but said changes shall first be approved by the licensor, and the referee chosen by the licensees shall at all times be acceptable to the licensor.

constitutes an agreement in restraint of interstate trade and commerce in violation of section 1 of the act of July 2, 1890, known as the antitrust act, in that it provides that the licensees of said Krentler-Arnold Hinge Last Company shall maintain the prices of *all* lasts sold by them in accordance with the schedule of prices furnished by the licensor, and in that it attempts to regulate or fix the prices of unpatented lasts and parts and to maintain the prices of said unpatented lasts and parts in connection with and in relation to the prices fixed and maintained for patented lasts and parts manufactured and sold by said licensees; and said defendants and each of them are hereby jointly and severally restrained, enjoined, and forbidden from further observing or attempting to carry out in any respect said provisions of said agreement, and from hereafter agreeing or conspiring together in any way, either verbally or in writing to fix and maintain, or from maintaining or observing an agreed price upon unpatented lasts, parts, or fittings.

Second. That sections 6 and 7 of the license agreement aforesaid made by and between the Krentler-Arnold Hinge Last Company and each and all of its licensees, the language of which sections is as follows:

Sixth. The party of the second part hereby covenants and agrees, as further consideration for this license, that it will in no way violate or contest the validity of the patents contained in the first-mentioned "schedule of patents," or of either of them, or any part thereof, at any time during the life of said patents *or any of them*, or question in any way the title of the party of the first part in and to said patents; and hereby expressly admits the validity and the sufficiency of the said letters patent, and each of them. This license does not operate to revoke in any way the sixth paragraph (corresponding to this paragraph) of the preceding license agreement between the parties hereto.

Seventh. This license is personal to the party of the second part and to its employees, and in its said factory at Beverly, Mass., and not otherwise, and is nonassignable by said licensee; but in case the party of the first part should sell or transfer the business, or any part thereof, the party of the first part may assign this license or such part thereof; and it is revocable by the party of the first part upon sixty days' written notice, without, however, relinquishment of any indebtedness of the licensee or claims of the licensor, or of any of the continuing covenants of the preceding paragraph; *otherwise it shall remain in force to the end of the term of the latest patent aforesaid.*

constitute agreements in restraint of interstate trade and commerce in violation of section 1 of the act of July 2, 1890, known as the antitrust act, in that they attempt to make the terms of said license agreement applicable to lasts or attachments thereto after the letters patent under which they are manufactured have expired; and the said defendants and each of them are hereby jointly and severally perpetually enjoined, restrained, and forbidden from carrying out or being bound by so much of said license agreement contained in said sections 6 and 7 thereof as attempts to extend the license agreements to lasts or attachments after the expiration of the patents under which

they are manufactured, and said defendants and each of them are further hereby jointly and severally perpetually enjoined, restrained, and forbidden from hereafter agreeing or conspiring together to fix or maintain, and from maintaining or observing, an agreed price upon lasts or attachments thereto covered by any patent after such patent shall expire.

Third. That the organization and association of the licensees of the Krentler-Arnold Hinge Last Company, known as the Cary Club, described in the petition in this cause, was and is now a combination and conspiracy in direct restraint of interstate trade and commerce, in violation of the provisions of the said act of July 2, 1890, and the defendant licensees, and each of them, who now are members of said Cary Club, are hereby perpetually, jointly and severally, enjoined, restrained, and forbidden from further maintaining said organization and from participating therein, and from hereafter creating, maintaining, or participating, in any manner whatsoever, in any organization of like character.

Fourth. It is further hereby adjudged, ordered, and decreed that the court retains jurisdiction of this cause for the purpose of enforcing the decree herein and also for the purpose of modifying any of its injunctive provisions upon the joint application of the Attorney General and the defendants.

Fifth. It is further adjudged, ordered, and decreed that the defendants be, and they hereby are, given a period of thirty days from and after the date of entry of this decree for compliance with the terms thereof.

Sixth. It is further hereby adjudged, ordered, and decreed that the defendants pay the costs of suit to be taxed.

ARTHUR J. TUTTLE,
United States District Judge.

UNITED STATES V. KELLOGG TOASTED CORN FLAKE CO., ET AL.

Equity No. 5570

Year Judgments Entered: 1915 (and modified in 1939)

UNITED STATES v. KELLOGG TOASTED CORN FLAKE CO.

In Equity No. 5570.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

UNITED STATES OF AMERICA, PETITIONER,

VS.

KELLOGG TOASTED CORN FLAKE COMPANY, WILL K. KELLOGG, WILFRED C. KELLOGG, AND ANDREW ROSS, DEFENDANTS.

ORDER

This cause came on to be heard at this term and was argued by counsel, and thereupon and upon consideration thereof, and by agreement of the parties thereto, it was *ordered, adjudged, and decreed* as follows, viz:

(1) That the plan of selling toasted corn flakes used and enforced by defendant Kellogg Toasted Corn Flake Company, its officers and agents, at the time of the filing of the petition herein and prior thereto, was in violation of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies."

(2) That said defendant, Kellogg Toasted Corn Flake Company, its officers, agents, servants, and employees, and all persons acting under, through, or by it or in its behalf or claiming so to act, and said individual defendants Will K. Kellogg and Andrew Ross, and all persons

acting under, through, by, or in behalf of them or either of them or claiming so to act, be, and they hereby are, from and after the fifteenth day of October, 1915, perpetually enjoined, restrained, and prohibited, as follows:

(*a*) From requiring jobbers to enter into any agreement or understanding to resell toasted corn flakes purchased from defendants, at a price fixed by defendants; and from suggesting to said jobbers, in writing or otherwise, that if they fail or refuse to observe said fixed price they will be cut off from a further supply of said product.

(*b*) From exacting in any manner from retailers of toasted corn flakes any agreement or understanding that they shall sell the same at a price fixed by defendants; and from suggesting to said retailers, in writing or otherwise, that if they fail to refuse to observe said fixed price they will be cut off from further supply of said product.

(*c*) From packing or selling said toasted corn flakes in cartons or boxes having thereon the following notice, to wit:

> This package and its contents are sold conditionally by us with the distinct understanding, which understanding is a condition of the sale, that the package and contents shall not be retailed, nor advertised, nor offered for sale at less than ten cents per package. Retailing the package at less than ten cents per package is a violation of the conditions of sale, and is an infringement on our patent rights, and renders the vendor liable to prosecution as an infringer.
>
> KELLOGG TOASTED CORN FLAKE COMPANY,
> *Battle Creek, Michigan.*

or any notice of similar character.

(3) That petitioner have and recover its costs from said defendants.

J. W. WARRINGTON,
Circuit Judge.
LOYAL E. KNAPPEN,
Circuit Judge.
ARTHUR J. TUTTLE,
District Judge.

Filed September 20, 1915.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

In Equity, No. 5570.

UNITED STATES OF AMERICA, PETITIONER,

vs.

KELLOGG TOASTED CORN FLAKE COMPANY, WILL K. KELLOGG, WILFRED C. KELLOGG, AND ANDREW ROSS, DEFENDANTS.

ORDER

This cause came on to be heard at this term, and was argued by Counsel, and thereupon and upon consideration thereof, and by agreement of KELLOGG COMPANY (successor to KELLOGG TOASTED CORN FLAKE COMPANY, a Michigan Corporation, on behalf of itself and its officers (including Will K. Kellogg,) agents, servants, and employees, and all persons acting under, through or by it or them, or in its or their behalf, or claiming so to act)-and the United States, it was ORDERED, ADJUDGED AND DECREED as follows:

That the final consent decree entered in this cause on September 20th, 1915, be and hereby is amended by the addition of the following three paragraphs, to be designated as parts "(a)", "(b)", and "(c)" of a new paragraph "4":

4. (a) Nothing contained in this decree shall be deemed or construed to prevent the defendant, its successors, members, officers, agents, servants, employees, or persons acting under, through, by or on behalf of it, from entering into contracts or agreements prescribing minimum prices for the resale of toasted corn flakes which bear, or the label or container of which bears, the trade-mark, brand, or name of the producer or distributor of such commodity and which are in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful

as applied to intra-state transactions, under any statute, law or public policy now or hereafter in effect in any State, Territory, or the District of Columbia, in which such resale is to be made, or to which the commodity is to be transported for resale. so long as such statute, law or public policy remains in force and effect;

(b) PROVIDED, however, that the foregoing paragraph shall not be deemed to modify any provision of said final decree relating to any contract or agreement providing for the establishment or maintenance of minimum resale prices on toasted corn flakes between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between jobbers, or between retail dealers, or between persons, firms or corporations in competition with each other;

(c) And PROVIDED further, that the said foregoing paragraph shall not be construed to authorize the exaction of such contracts or agreements as are therein described, by means of suggestions in writing or otherwise that the defendant will cease to supply its toasted corn flakes if such contracts or agreements are not entered into, or by any form of threat or coercion.

ARTHUR F. LEDERLE,
Judge.

Dated March 23, 1939.

UNITED STATES V. HARTWICK, ET AL.

Equity No. 4121

Year Judgment Entered: 1917

UNITED STATES v. HARTWICK ET AL.

IN THE DISTRICT COURT OF THE UNITED STATES,
EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

In Equity No. 4121.

UNITED STATES OF AMERICA, PETITIONER,
vs.
EDWARD E. HARTWICK AND OTHERS, DEFENDANTS.

FINAL DECREE.

This cause came on to be heard before Arthur J. Tuttle, United States district Judge, United States of America appearing by G. Carroll Todd, assistant to the Attorney General; Blackburn Esterline, special assistant to the Attorney General; and John E. Kinnane, United States attorney; and defendants appearing by C. D. Joslyn; Lancaster, Simpson & Purdy, and L. C. Boyle, their

solicitors; and the petitioner having moved the court for a decree in accordance with the prayer of the petition, and the defendants consenting thereto, it was, upon consideration thereof, ordered, adjudged, and decreed as follows, viz:

I. Defendants Edward E. Hartwick, citizen and resident of Detroit, Michigan, individually and as president and director of Michigan Retail Lumber Dealers' Association, a voluntary unincorporated association; Arthur L. Holmes, citizen and resident of Detroit, Michigan, individually, as vice president, and as one of the directors of that association and as a member of Lumber Secretaries' Bureau of Information and as publisher of "The Scout"; George P. Sweet, citizen and resident of Grand Rapids, Michigan, individually and as secretary and treasurer and as director of that association and as a member of Lumber Secretaries' Bureau of Information; John J. Comerford, citizen and resident of Detroit, Michigan: A. J. Kraft, citizen and resident of Battle Creek, Michigan; H. W. Rikerd, citizen and resident of Lansing, Michigan; John Wood, citizen and resident of Grand Rapids, Michigan; Frank D. Jenks, citizen and resident of Port Huron, Michigan; C. A. Pollock, citizen and resident of Coldwater, Michigan; The Scout Publishing Company, a corporation organized under the laws of Michigan, with its principal office and place of business at Detroit; and Lumber Secretaries' Bureau of Information, a corporation organized under the laws of the State of Illinois, with its principal office and place of business at Chicago, were, at the time of the filing of the petition, engaged in a combination and conspiracy to restrict and restrain interstate trade and commerce in lumber and lumber products, in violation of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies." (26 Stat. 209.)

II. Prior to and at the time of filing the petition the lumber trade was, and it now is, divided into the following classes:

1. Manufacturers, who operate at various points in the United States, and who receive logs from the forests and saw them into various sizes and lengths of timber and lumber required by the trade for building and manufacturing purposes and ship such products from the points of manufacture by railroad or steamship lines through and into the various States to the markets where such lumber products are required, including the State of Michigan. The various growths of the different varieties of timber are so distributed that no single State contains all of the varieties demanded and required by the trade. The products of pine timber, known as "yellow pine," are principally from manufacturers located in the States where the timber is grown, i. e., Louisiana, Texas, Arkansas, Alabama, Mississippi, and other States; of oak from Missouri, Arkansas, Tennessee, and other States; of maple from Michigan, Wisconsin, and other States; of spruce from Maine, West Virginia, and other States; of fir and redwood from Washington, Oregon, and California; of cypress from Louisiana, Mississippi, and Florida; of northern pine from Minnesota, Wisconsin, and Michigan; of hemlock from Wisconsin, Michigan, Minnesota, New York, and other States; of sugar pine from California; of ash from practically all of the Middle Western States; other hardwoods and the products of other special varieties are from various localities and parts of the United States.

Wholesalers, who deal in lumber and lumber products and who are usually located at or near large markets or centers of trade. In some instances the wholesaler maintains a yard for receiving and storing the lumber purchased by him from the manufacturer; in other instances he does not, but handles the manufactured product through orders from customers transmitted by wholesaler to manufacturer.

3. Retailers, who are located in cities and towns, and who receive and store lumber and lumber products purchased either from manufacturer, wholesalers, or jobber and sell for building or manufacturing purposes in the city, town, or vicinity where the yard is located.

4. Mail-order houses, which are large stores located in large cities in nearly all of the States and which sell lumber and lumber products as well as other merchandise direct to the consumer, having purchased the same from the manufacturer, wholesaler, or jobber without the intervention of the retailer.

5. Cooperative associations, who buy for the benefit of their own members only (regarded by some as retailers, by others as consumers, and by still others as separate and distinct classes).

6. Consumers, who are divided into various classes, generally as follows:

(a) The contracting or constructing builder.

(b) The converter or manufacturer.

(c) The United States Government and sometimes municipalities and railroads.

(d) The small consumer of lumber for small building, construction, and repair work.

III. Michigan Retail Lumber Dealers' Association is a voluntary membership association having as members divers and sundry retail lumber dealers to the number of about three hundred (300) located in the various cities and towns of Michigan. The purpose of the individual members in forming the association was to combine to destroy existing competition between manufacturers, wholesalers, jobbers, and retailers of lumber and lumber products in the sale thereof to the consumer and to restrict and stifle competition between manufacturers, wholesalers, and jobbers, on the one hand, and retail dealers on the other, for the trade of the consumers within the State of Michigan and elsewhere, to accomplish which they inaugurated the following activities:

(a) They elected a president, vice president, secretary, treasurer, and board of directors and adopted a constitution, by-laws, and regulations.

(b) They arbitrarily classified retail lumber dealers to include only such persons, firms, or corporations as should

be regularly engaged in the lumber trade, carrying at all times an assortment of lumber or lumber products, sash, doors, etc., commensurate with the demands of the dealer's community (the equivalent of 75,000 feet of lumber in small cities and country towns being generally considered a minimum stock for a retail yard), and who is in the business for the purpose of selling lumber at retail, and who keeps an office open during regular business hours with a competent person in charge to attend to the wants of customers at all times.

(c) They agreed that when any member should consider he had cause for complaint against any manufacturer, wholesaler, or jobber, by reason of the latter having sold or shipped lumber to any customer of such member or to any other person or persons within the State in competition with the members of the association, and such customer or other person should fail to come within the arbitrary classification of retail dealers, such member should file the complaint with the secretary of the association, and rules and regulations were agreed upon and adopted by the members to govern and control them in making such complaints.

(d) They agreed that upon receipt by the secretary of such complaint he would at once notify the party or parties against whom it was made that the same had been filed and that the association had a claim against him for an amount not to exceed 10 per cent of the value of the sale; payment thereof should be demanded and if paid the amount should be forwarded by the secretary to the party complaining.

(e) They agreed that if the secretary was unable to collect the penalty, he should immediately notify the members of the name of the offender, and any member or members continuing thereafter to deal with him should be penalized by expulsion from membership in the association.

(f) They agreed that regardless of whether they came within the agreed arbitrary classification, any of them who made a practice of quoting prices in, or selling in, or shipping into the State of Michigan (to other than regular dealers) lumber or lumber products to any person or persons who may not have or maintain a regular retail yard, should be designated as "poachers" and so listed by name in a certain notification sheet or "black list," and that such notification sheet or "black list" should be prepared by the secretary and by him circulated among the members.

(g) They agreed that all members so designated and listed as "poachers" shall be considered as consumers at points other than where they might own regular retail lumber yards, and that any manufacturer, wholesaler, or jobber who might make sales or shipments into the State of Michigan to any such "poacher" after he shall have been so designated, shall be considered as having sold or shipped to a consumer and subjected to the same penalties as provided for such sales or shipments to consumers.

(h) They agreed that they would maintain and circulate among their members a list of "honorary members," to consist of manufacturers, wholesalers and jobbers in various States who would and did conform to the regulations of the association and who would not and did not sell or ship lumber or lumber products to persons other than those within the classification of retail dealers as adopted by the association.

(i) They agreed and pledged themselves to each other that they would buy lumber and lumber products only of those wholesalers, manufacturers, and jobbers whose names appeared upon the membership of said association or that of some kindred organization of retail lumber dealers who was in sympathy with the purposes of the association.

(j) They agreed that they would, and many members did from time to time, make complaints to the secretary of shipments and sales of lumber and lumber products by manufacturers, wholesalers, and jobbers to purchasers who failed to come within the classification of retail lumber dealers as agreed upon by them; and that the secretary should, and he did from time to time, upon

receipt of complaints make demands upon manufacturers, wholesalers, and jobbers for the payment of the penalty which in many instances was collected and paid.

(k) They agreed that if in other instances manufacturers, wholesalers, and jobbers refused and neglected to pay the penalty that the secretary of the association should, and he did from time to time, issue a notification sheet or "black list" containing the names of the manufacturers, wholesalers, jobbers, and "poachers" who refused or failed to recognize the rules and regulations, and many of whom had made sales and shipments in interstate trade and commerce from States other than the State of Michigan to persons within that State; and the secretary did circulate or cause to be circulated among the members the notification sheet or "black list" and the "honorary membership" list.

(l) They agreed, by their two representatives, one being defendant, Arthur L. Holmes, secretary, with the representatives in attendance at the American Lumber Trades Congress at Chicago, June 8, 1909, which was composed of delegates representing State, interstate, or provincial associations in the lumber trade, to adopt a "code of ethics." These two representatives took an active and prominent part in all the proceedings and deliberations of the congress, and defendant Holmes was one of the committee that revised the "code of ethics" and assisted in preparing and presenting it to the congress and advising the adoption thereof. That "code of ethics" was intended to govern the sale of lumber and lumber products in all branches of the lumber trade, except from the retailer to the consumer. *Inter alia,* it provided that the widest possible trade publicity should be given to make known "irresponsible, unethical, and unscrupulous wholesalers and dealers," and that "it should be the duty of the wholesalers and manufacturers to take active interest in the marketing of their products through regular channels only," thereby agreeing that the members of Michigan Retail Lumber Dealers' Association should have no competition in the State of Michigan in sales to consumers from manufacturers, wholesalers, jobbers, or retail dealers outside of the State of Michigan.

IV. National Lumber Credit Manufacturers' Corporation, of St. Louis, Missouri, a corporation of Virginia, is owner and publisher of the "Blue Book." Lumbermen's Credit Association, a corporation of Illinois, is owner and publisher of the "Red Book." The Blue Book and the Red Book establish the credit rating, business standing, and classification of lumber dealers for all the purposes of the lumber trade. In July, 1910, on motion of defendant Holmes, the members of Michigan Retail Lumber Dealers' Association adopted in its entirety the "code of ethics" as prepared and adopted by the American Lumber Trades Congress at Chicago, June 8, 1909, wherein it is also provided that unless the buyer of lumber is rated and in good standing as shown by the Blue Book and the Red Book no order should be binding on the seller unless such credit and good standing shall have been satisfactorily proven to the seller, and that investigation should be completed within a reasonable time, so that the rating, business standing, and classification of the buyer of lumber and lumber products was confined to the Blue Book and the Red Book. Ratings being confined to the Blue Book and the Red Book, sales were made only to those whose names appeared in either or both. If a buyer who was in fact a consumer, or mail-order house, or cooperative association, or other person or corporation not considered a retail dealer by the members, appeared in either of said books as a retailer, the secretary of the association insisted to the publisher that such buyer's name should be stricken from the book, or designated as a consumer. Notwithstanding the buyers were financially responsible, but because they were not regular retail lumber dealers as defined by the members of the association, the secretary repeatedly insisted that names appearing in said books should be stricken therefrom, and the publishers responded accordingly.

V. Lumber Secretaries' Bureau of Information embraced a membership of secretaries of the various retail

lumber dealers' associations (among them Michigan Retail Lumber Dealers' Association), who represented the associations. Defendants Holmes and Sweet represented Michigan Retail Lumber Dealers' Association in Lumber Secretaries' Bureau of Information and that association, its officers, and directors contributed to the support and operations of the bureau by payment of dues, contributions of money, and other assistance. The activities of the bureau consisted of —

1. The publication of a bulletin or report containing information therefore gathered and assembled with reference to manufacturers and wholesale dealers who were supplying the so-called "poachers" who were selling direct to consumers and shipping to customers at points where the said "poachers" had no yards, and who were considered as peddlers; and the manufacturers and wholesalers who ship direct to consumers. The method of compilation and use of the bulletin or report was as follows: A retail lumber dealer, learning of a sale by a wholesaler to a consumer, made complaint in writing to the secretary of the association to which the retailer belonged. The secretary thereupon investigated, ascertained the facts in regard to the complaint, and submitted his report to the board of directors of Lumber Secretaries' Bureau of Information. The latter determined whether the matter should be reported in the next issue of the bulletin and instructed the secretary accordingly. The bulletin when issued was distributed among all the members of the several associations.

2. To cooperate with other retail lumber dealers' associations corresponding to Michigan Retail Lumber Dealers' Association and who were members of Lumber Secretaries' Bureau of Information.

3. To approve and recommend to the several retail lumber dealers' associations the plan and use of "customers' lists."

4. To furnish, by its officers and agents, to The Scout Publishing Company and Arthur L. Holmes, editor thereof, and to George P. Sweet, secretary of Michigan Retail Lumber Dealers' Association, names of wholesalers, manufacturers, and jobbers located outside of the State of Michigan who were selling lumber and lumber products in competition with retail dealers in the State of Michigan, and The Scout Publishing Company published the same in "The Scout," a trade paper to which the members of Michigan Retail Lumber Dealers' Association were subscribers, thereby giving notice to its subscribers that the wholesaler, manufacturer, or jobber named was violating the ethics of the trade, and the retail dealers in the State of Michigan could and did refuse to buy lumber and lumber products from said manufacturers, wholesalers, and jobbers and have the same shipped into the State of Michigan from points outside thereof.

VI. Michigan Retail Lumber Dealers' Association, prior to July 1, 1910, owned and edited "The Scout," a paper and periodical which was used by the association for the purpose of collecting and circulating to the retail lumber dealers throughout the United States information regarding manufacturers, wholesalers, jobbers, and "poachers" who entered into competition with retail lumber dealers in selling lumber and lumber products to consumers, mail-order houses, farmers' cooperative associations, and others not classified by the association as regular dealers. "The Scout" also collected from the respective secretaries of the various lumber dealers' associations and from Lumber Secretaries' Bureau of Information and from officers and members of Michigan Retail Lumber Dealers' Association, and by other means, the names of those manufacturers, wholesalers, jobbers, and "poachers" who were selling and shipping to consumers, mail-order houses, and farmers' cooperative associations in the State of Michigan and other States, and publish them in "The Scout," and sent them to members of the various retail lumber dealers' associations and other dealers in lumber and lumber products in the several States. "The Scout" also from time to time published editorials advocating the principle of retail lumber dealers trading only with manufacturers,

wholesalers, and jobbers who observed the ethics of the trade and refrained from selling lumber and lumber products to consumers, mail-order houses and farmers' cooperative associations and yards, "poachers," and other persons not classified as retail lumber dealers. "The Scout" serving the purpose of a "black list" for Michigan Retail Lumber Dealers' Association and Lumber Secretaries' Bureau of Information.

VIII. The Scout Publishing Company was incorporated about July 1, 1910, and elected a president, vice president, secretary, treasurer, and board of directors. It purchased and took over from Michigan Retail Lumber Dealers' Association "The Scout," and after that time The Scout Publishing Company edited, published, and circulated "The Scout" among retail lumber dealers in the same manner and for the same objects and purposes as outlined in the preceding paragraph numbered VI. In order to make secure and effective the purposes which "The Scout" was designed to subserve the capital stock of The Scout Publishing Company was taken and owned in large quantities by lumbermen and the various secretaries and members of Lumber Secretaries' Bureau of Information. Defendant Holmes, as vice President of the association and former secretary thereof, has been, since the incorporation of The Scout Publishing Company, editor of "The Scout," and has provided the material used in the publication of the respective issues thereof. To that end he has been active in correspondence with lumber dealers and associations.

VIII. The objects of said combination and conspiracy, which objects are hereby adjudged to be illegal and in violation of the act of Congress aforesaid, were and are—

1. To eliminate or unreasonably restrict competition for the trade of—

(a) Contractors and builders.

(b) Mail-order houses.

(c) Cooperative yards.

(d) The ultimate consumer, except certain consumers, i. e., United States Government, railroads, elevators, and bridges.

2. To force the ultimate consumer to buy at retail prices from regularly established and recognzied retail lumber merchants operating in the vicinity where such lumber is to be used.

3. To prevent any wholesale dealer or manufacturer from quoting prices or selling and shipping to consumers.

IX. Defendants, and each of them, and their officers, agents, servants, employees, and all persons acting under, through, by, or in behalf of them, or either of them, or claiming so to act, be, and they are hereby, perpetually enjoined, restrained, and prohibited, directly or indirectly, from engaging in or carrying into effect the said combination and conspiracy hereby adjudged illegal, and from engaging in or entering into any like combination or conspiracy the effect of which would be to restrain trade or commerce in lumber or lumber products among the several States; and from making any express or implied agreement or arrangement together, or one with another, like that hereby adjudged illegal, the effect of which would be to prevent the free and unrestricted flow of interstate commerce in lumber and lumber products from the manufacturer or wholesale dealer to the consumer.

X. Defendants, and each of them, and their directors, officers, agents, servants, and employees, and all persons acting under, through, by, or in behalf of them, or either of them, or claiming so to act, be, and they are hereby, perpetually enjoined, restrained, and prohibited from combining, conspiring, or confederating with each other, or with others, expressly or impliedly, directly or indirectly.

1. To hinder or prevent manufacturers of or wholesale dealers in lumber and lumber products from selling or shipping the same in interstate commerce to any person, firm, or corporation, or other organization not a retail dealer in lumber and lumber products, or not classified or recognized as such retail dealer by the Michigan Retail

Lumber Dealers' Association, or the officers or members thereof, or not listed as such retail dealer in the so-called Blue Book and Red Book, published by National Lumber Credit Manufacturers' Corporation and Lumbermen's Credit Association, respectively.

2. To hinder or prevent manufacturers of or wholesale dealers in lumber and lumber products from selling or shipping the same in interstate commerce to mail-order houses, cooperative associations, consumers, or any other person, firm, or corporation desiring to purchase.

3. To hinder or prevent any person, firm, corporation, or other organization from buying lumber or lumber products from manufacturers and wholesale dealers.

4. To hinder or prevent any person, firm, corporation, or other organization from buying or selling lumber and lumber products from or to whomsoever he, they, or it may desire.

5. To purchase lumber and lumber products from, or to favor with their custom and patronage, only those manufacturers and wholesale dealers who agree or who have agreed, directly or indirectly, or whose avowed policy it is, to sell, distribute, or market their products through the medium of retail dealers only and not also through mail-order houses, cooperative associations, consumers, or other persons, firms, or corporations.

XI. Defendants, and each of them, their agents, servants, and employees, and all other persons acting under, through, by, or in behalf of them, or either of them, or claiming so to act, be perpetually enjoined, restrained, and prohibited from combining, conspiring, confederating, or agreeing with each other, or with others, expressly or impliedly, directly or indirectly—

1. To boycott, blacklist, or threaten with loss of custom or patronage any manufacturer or wholesale dealer engaged in interstate commerce of lumber and lumber products, for having sold, or being about to sell, lumber or lumber products to mail-order houses, cooperative associations, consumers, or to any other person, firm, or corporation engaged in the business of retail dealing in lumber and lumber products, or to any other person, firm, or corporation.

2. To intimidate or coerce manufacturers or wholesale dealers in lumber or lumber products into selling only to such persons, firms, corporations, or other organizations as are classified or recognized by Michigan Retail Lumber Dealers' Association, or the Blue Book, or the Red Book as legitimate retail dealers.

3. To do, or to refrain from doing, anything the purpose or effect of which is to hinder or prevent, by boycott, blacklist, threat, intimidation, coercion, or withdrawal or threatened withdrawal of patronage or custom, any person, firm, corporation, or other organization from buying or selling lumber or lumber products wherever, whenever, from whomsoever, and at whatsoever prices may be agreed upon by the seller and purchaser.

XII. Defendants, and each of them, and their directors, officers, agents, servants, and employees, and all other persons acting under, through, by, or in behalf of them, or either or any of them, or claiming so to act, be, and they are hereby, perpetually enjoined, restrained, and prohibited, from publishing or distributing, or causing to be published or distributed, or aiding in the publication or distribution of:

1.The names of any manufacturers or wholesale dealers, or any list or lists of any manufacturers or wholesale dealers, who agree or have agreed, expressly or impliedly, directly or indirectly, or whose avowed policy it is to confine sales of lumber and lumber products to persons, firms, corporations, or other organizations engaged in the business of retail dealing in lumber and lumber products; or who are listed, or may be listed, in said Blue Book and said Red Book, or any book, pamphlet, publication, or periodical, or list of like character, as manufacturers or wholesale dealers who agree or have agreed, expressly or impliedly, directly or indirectly, or whose avowed policy it is not to sell lumber and lumber products to persons,

firms, corporations, or other organizations, who are not engaged in the business of retail dealing in lumber and lumber products.

2. The names of any retail dealers, or any list or lists of retail dealers, who agree or have agreed, expressly or impliedly, directly or indirectly, or whose avowed policy it is to purchase lumber or lumber products from, or favor with their patronage and custom only those manufacturers or wholesale dealers who agree or have agreed, expressly or impliedly, directly or indirectly, or whose avowed policy it is, to sell, distribute, or market their products through the medium of the retail dealers only, or who agree or have agreed, expressly or impliedly, directly or indirectly, or whose avowed policy it is not to sell, distribute, or market their products directly to mail-order houses, cooperative associations, consumers, or any other persons whomsoever.

3. The names of any manufacturers of or wholesale dealers in lumber and lumber products who have been or are selling or shipping lumber or lumber products to any person, firm, corporation, or other organization not classified or recognized by Michigan Retail Lumber Dealers' Association, or its officers or members, as legitimate retail dealers, or who are not listed in the Blue Book or the Red Book as retail dealers, or the names of any manufacturers or wholesale dealers from whom any such person, firm, corporation, or other organization has been, is, or is supposed to be purchasing or receiving lumber or lumber products.

XIII. Defendants, and each of them, and their directors, officers, agents, servants, and employees, and all other persons acting under, through, by, or in behalf of them or either of them, or claiming so to act be, and they are hereby, perpetually enjoined, restrained, and prohibited from combining, conspiring, confederating, or agreeing with each other, or with others, expressly or impliedly, directly or indirectly—

To communicate, directly or indirectly, with any manufacturer, producer, or dealer for the purpose fo inducing such manufacturer, producer, or dealer not to sell lumber or lumber products to any person, firm, corporation, association, or other organization not classified or recognized as a manufacturer or wholesale dealer by Michigan Retail Lumber Dealers' Association, National Credit Manufacturers' Corporation, or Lumbermen's Credit Association, or in the Blue Book or the Red Book, or by any other body or person, or in any other publication.

XIV. The petitioned shall have and recover from the defendants its costs.

XV. Michigan Retail Lumber Dealers' Association, its officers and members, are not restrained from maintaining that organization for social or other purposes not inconsistent with this decree and not in violation of law.

Detroit, December 4, 1917.

ARTHUR J. TUTTLE,
United States District Judge.

UNITED STATES V. DETROIT TILE CONTRACTORS' ASS'N, ET AL.

Civil No. 1962

Year Judgment Entered: 1940 (and modified in 1941)

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Detroit Tile Contractors' Association; Greater Detroit Tile Contractors' Association; Walter T. Ozias; Richard Bruny; Andrew S. Jackson; Charles E. Scott; Louis Vitali; Anthony Vivonetto; Louis Palombit; Humbert Mularoni; John Croci; Bricklayers, Masons and Plasterers' International Local Union, No. 32; Local No. 40 of the International Association of Marble, Stone and Slate Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers and Terrazzo Workers Helpers; Patrick J. Ruddy; Thomas Cowperthwaite; John E. Hughes; Daniel A. Martin; Louis Medici; Otto Williams; James Hagan; E. Stanton Piper; Randall Martin; James Randolph., U.S. District Court, E.D. Michigan, 1940-1943 Trade Cases ¶56,053, (Jul. 9, 1940)

United States of America v. Detroit Tile Contractors' Association; Greater Detroit Tile Contractors' Association; Walter T. Ozias; Richard Bruny; Andrew S. Jackson; Charles E. Scott; Louis Vitali; Anthony Vivonetto; Louis Palombit; Humbert Mularoni; John Croci; Bricklayers, Masons and Plasterers' International Local Union, No. 32; Local No. 40 of the International Association of Marble, Stone and Slate Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers and Terrazzo Workers Helpers; Patrick J. Ruddy; Thomas Cowperthwaite; John E. Hughes; Daniel A. Martin; Louis Medici; Otto Williams; James Hagan; E. Stanton Piper; Randall Martin; James Randolph.

1940-1943 Trade Cases ¶56,053. U.S. District Court, E.D. Michigan, Southern Division, July 9, 1940.

Proceedings under the Sherman Anti-Trust Act are terminated by entry of a consent decree enjoining defendant associations and defendant tile contractors from agreeing or conspiring among themselves or with any labor organization or tile manufacturer to refuse to do business with any manufacturer, jobber or other person; to prevent nonmembers of the association from securing union labor or to require such persons to agree to onerous conditions; to create or participate in the operation of any bid depository or cost formula designed to fix prices in the tile industry; to prevent defendant unions or officers thereof from negotiating labor agreements with tile contractors who are not members of the association; to fine or penalize any member of the association for selling tile unset to non-members provided, however, defendants may advertise and promote the use of skilled tile setters; to refuse to install tile of any manufacturer because he has sold to non-members of the association or to report to the association any manufacturer for the purpose of accomplishing any objective enjoined by this decree.

Defendant unions and officers thereof are prohibited from conspiring with the association or defendant contractors or with anyone else to restrain the sale of tile; to circulate lists of member contractors for the purpose of influencing manufacturers and jobbers to do business only with those listed; to intimidate, withhold labor from, impose onerous conditions upon, blacklist, fine or penalize non-members of the association or any person or firm who is willing or able to execute an agreement to comply with the international union's requirements for wages, hours, etc., in all respects except as to those prohibited by this decree.

Defendant unions are enjoined from conspiring to deny to any contractor who has contracted with the international union or subordinate of defendant union the privilege of selecting for employment union workmen in good standing, or to prevent such contractor from doing business with subcontractors who are non-members; to deny members the right to transfer from one subordinate union to another or to

limit the amount of work a tile layer may perform provided, however, no member may be required to bargain to do a certain amount of work or to do a certain piece of work in a designated time.

Thurman Arnold, Assistant Attorney General, John C. Lehr, U. S. Attorney for Eastern District of Michigan, Southern Division, John W. Babcock, acting Assistant U. S. attorney, Allen A. Dobey, Special Assistant to the Attorney General, Irving I. Axelrad, Special Attorney, attorneys for the United States.

Morris, Kixmiller & Baar, by George M. Morris; William E. Leahy, attorneys for the Defendants.

Before O'Brien, Judge.

Final Decree

1. This cause came on to be heard on this 9th day of July, 1940, the complainant being represented by John C. Lehr, United States Attorney, Thurman Arnold, Assistant Attorney General, and Allen A. Dobey, Special Assistant to the Attorney General, and the defendants being represented by their counsel, said defendants having appeared voluntarily and generally and waived service of process.

[*Consent to Entry*]

2. It appears to the Court that the defendants have consented in writing to the making and entering of this decree, without any findings of fact, upon condition that neither such consent nor this decree shall be considered an admission or adjudication that said defendants have violated any law.

[*Prior Decrees*]

3. It further appears to the Court that the Tile Contractors Association of America, Inc. and its Secretary H. Richardson Cole, have heretofore consented to the entry of a decree against them on June 10, 1940, in the District Court of the United States for the Northern District of Illinois. Eastern Division, in the case entitled *United States of America v. The Tile Contractors Association of America, Inc. et al.,* Civil Action No. 1761; and that the Wheeling Tile Co., Mosaic Tile Co., National Tile Co., Robertson Art Tile Co., Standard Tile Co., James B. Youngson, A. T. Falconer, C. G. Steinbicker, Daniel P. Forst, Harry W. Rhead, Owen Watkins, Frank Burt, Emile Francois, Duncan Millett, Ira C. Preston and John Morton, have also consented to the entry of the decree against themselves on June 17, 1940 in the District Court of the United States for the Northern District of Illinois, Eastern Division, in the case entitled *United States of America v. Mosaic Tile Company, et al.,* Civil Action No. 1788; that said decrees heretofore entered grant all the relief sought against the defendants named in this action; that no further injunction against the aforesaid association, individuals, or corporations is necessary and therefore in the best interests of the orderly administration of justice, this injunction will not extend to the aforesaid association, individuals or corporations.

[*Decree Renders Trial Unnecessary*]

4. It further appears to the Court that this decree will provide suitable relief concerning the matters alleged in the Complaint and by reason of the aforesaid consent of the parties it is unnecessary to proceed with the trial of the cause, or to take testimony therein, or that any adjudication be made on the facts. Now, therefore, upon motion of the complainant, and in accordance with said consent it is hereby

Ordered, Adjudged and Decreed

[*Jurisdiction*]

5. That the Court has jurisdiction of the subject matter set forth in the complaint and of all parties hereto with full power and authority to enter this decree, that the complaint states a cause of action against the defendants under the Act of Congress of July 2, 1890, entitled: “An Act to protect trade and commerce against unlawful restraints and monopolies”, and the acts amendatory thereof and supplemental thereto, and that the defendants and each of them and each and all of their respective officers, directors, agents, servants, and employees, and all persons acting or claiming to act on behalf of the defendants or any of them are hereby perpetually enjoined and restrained from maintaining, or extending, directly or indirectly, any combination or conspiracy to restrain

interstate trade or commerce as alleged in the complaint by doing, performing, agreeing upon, entering upon, or carrying out any of the acts or things hereinafter prohibited.

[*Practices 'of Association and Tile Contractors Enjoined*]

6. That the defendant associations and defendant tile contractors be and they are hereby perpetually enjoined and restrained from agreeing, combining, and conspiring among themselves or any of them or with any labor union or office, agent, or employee thereof or with any of them, or with a manufacturer of tile or officer, agent representative, or employee thereof or with any of them:

(a) To refuse to do business with, or to threaten to refuse to do business with, any manufacturer, jobber, other local distributor, general contractor, or any other person;

(b) To prevent any person firm, or corporation who Is not a member either of the Tile Contractors Association of America, Inc., (hereinafter sometimes call the Tile Association) or of any local association (hereinafter sometimes called subordinate tile association) of tile contractors affiliated with and subordinate to said Tile Association from securing union labor, or to require him to agree to higher wages, shorter hours, or better working conditions than are required of tile contractors who are members of such association;

(c)To create, operate, or participate in the operation of any bid depository;

(d) To create, operate, or participate in the operation of any device similar to a bid depository, any central estimating bureau, any cost formula system or any other method, which device, estimating bureau, cost formula system, or other method is designed to maintain or to fix the price of tile and the installation or of any other building material or building material installation or to limit competition in bidding on tile or tile installation or on any other building material or building material installation or which has the effect of limiting the awarding authority in its free choice of the successful tile contractor on a given project;

(e) To prevent any person, partnership, or corporation from employing union labor;

(f) To prevent the defendant Unions, or any officer or agent of said defendant unions, including defendant unions' officers, from negotiating a labor agreement directly with a tile contractor who is not a member of the Tile Association or of the defendant tile associations, provided, however, that nothing in this decree shall prohibit the Tile Association or any subordinate tile association from insisting upon providing in Its labor agreement with any union that the union shall grant to the members of such association terms as favorable to the members of such association as are granted by such union to any non-member of such association;

(g) To fine or otherwise penalize any member of said Tile Association or subordinate tile association for selling tile unset to any person, partnership, or corporation not a member of said Tile Association or subordinate tile association;

(h) To prevent any person, partnership, or corporation from selling tile unset; provided, however, that nothing herein shall be deemed to prevent the advancement or promotion by publicity or advertisement of the use of skilled the setters for the installation of tiles;

(i) To refuse to install or threaten to refuse to install the material of any manufacturer because he sells or has sold tile to any particular person, partnership, or corporation;

(j) To report to or otherwise notify directly or indirectly for the purpose of accomplishing any objective, end, or act enjoined or prohibited by this decree, any member, officer, or agent of Local No. 32 of the Bricklayers, Mason and Plasterers' International Union, or any person acting for or on behalf of it, or any member, officer or agent of Local No. 40 or any person acting for or on behalf of it, that:

1. A particular manufacturer, jobber, local distributor, general contractor, tile contractor, or any other person is doing or has done business with any individual, partnership, association or corporation not a member of said Tile Association or subordinate tile associations;

2. Any individual, partnership, association, or corporation not a member of said Tile Association or subordinate tile associations has contracted for or is engaged in the installation of tile generally or on a particular job;

(k) To aid or assist Local No. 3 *2* of the Bricklayers, Masons and Plasterers' International Union of America (Hereinafter sometimes called the International Union), or Local No. 40 of the International Association of Marble, Stone and Slate Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers and Terrazzo. Workers Helpers, their officers or agents, or any of them in the imposition of fines or penalties against any person partnership, or corporation not a member of said Tile Association or subordinate tile association;

(l) To restrict the sale of title to any person, partnership, or corporation whatsoever.

[*Practices of Defendant Unions Enjoined*]

7. That the defendant unions, their officers, agents, and employees; be and they are hereby perpetually enjoined, restrained, and prohibited from agreeing, combining, and conspiring with the Tile association or any subordinate tile association, their officers or agents, including defendant contractors and defendant associations, or with any of them, or with any manufacturer, jobber, or local distributor or the officers, representatives, or agents thereof, or any of them;

(a) To restrain, restrict, or prevent the sale of tile to any person, partnership, or corporation;

(b) To circulate or distribute to manufacturers, manufacturers' representatives, jobbers, or distributors of tile a list or lists containing the names of contractors under agreement with said International Union or unions (hereinafter sometimes called subordinate unions) affiliated with and subordinate to said International Un-fon, for the purpose of influencing such manufacturers, manufacturers representatives, jobbers, or distributors to do business only with contractors whose names are included on said list or lists;

(c)To withhold or threaten to withhold labor from any person partnership, or corporation;

(d) To intimidate or threaten any general contractor or awarding authority from dealing with any person, partnership, or corporation;

(e) To blacklist any person, partnership, or corporation;

(f) To require conditions and terms of any person, partnership, or corporation, which conditions and terms are not required of other contractors In the same branch of the building industry in the same locality;

(g) To impose fines or otherwise assess penalties against any person, partnership, or corporation, other than a member of the Tile Association or of a subordinate Tile association,

8. That the defendant unions, their officers, agents, or employees, shall not

(a) withhold or threaten to withhold labor from, or

(b) intimidate any general contractor or awarding authority from dealing with, or

(c) blacklist, or

(d) require conditions and terms not required of other contractors in the same branch of the building industry in the same locality save as otherwise in-the decree permitted in the case of, or

(e) Impose fines or otherwise assess penalties against, any Individual, partnership, or corporation who is willing and able to execute a written agreement to comply, and to comply, in respects other than those hereinafter specified in paragraphs (a) to (k), inclusive, with the International Union's and the defendant Unions' requirements for wages, hours, and working conditions (including requirements with respect to the closed shop) required by said unions of all contractors doing similar work in the same locality:

(a) Because the wages, hours, and working conditions (including requirements with respect to the closed shop) required of such person, partnership, or corporation in the locality where such person, partnership, or corporation wishes to hire union labor are less favorable to the union members than the union requirements in some other locality where such person, partnership, or corporation also does

business, *provided,* the unions may require contractors to pay for the transportation, room, and board of employees ordered from one locality to another by contractors and to pay to such employees the wages, and to adhere to the conditions, obtaining in the locality from which the employees are ordered;

(b) Because the manufacturer of the building materials to be installed by members of the said unions for said person, partnership, or corporation either sells directly to jobbers, general contractors, or builders, or to subcontractors who carry on more than one kind of contracting business, or sells to other persons, firms, or corporations not members of the Tile Association or any subordinate tile association;

(c) Because the material to be installed by members of the said unions for such complying contractor was manufactured by employees whose wages, hours, and working conditions were less favorable to the employees than the wages, hours, and working conditions of the employees of other manufacturers of the same or of a substitute building material, or because said material was manufactured by another union; *provided, however,* that nothing in this decree shall prevent the members of the said unions from refusing, either alone or in concert, to install any building material that is prison made or that is made by a manufacturer who maintains an open shop or a company union or with whom the International Union or a subordinate union is having at the time a labor dispute with respect to wages, hours, or working conditions, or whom any such union is attempting to organize;

(d) Because such contractor has broken a rule or regulation of the Tile Association or of any subordinate Tile association, *provided, however,* that nothing in this decree shall prohibit or prevent the unions and the tile associations from disciplining any member of said associations for a breach by such member of the provisions relating to wages, hours, working conditions, or the closed shop of the labor agreement between said associations or either of them and the International Union or a subordinate union; and *provided further,* that nothing in this decree shall prohibit or prevent the unions from disciplining any contractor for a breach by such contractor of the provisions relating to wages, and hours, working conditions, or closed shop of the labor agreement under which he operates;

(e) Because such complying contractor is not a member either of the Tile Association, of a subordinate tile association, or of any other association of contractors;

(f) Because such complying contractor carries no stock of tile or of any other building material or carries an insufficient quantity of tile or of other building material, or because he does business from his residence, or because he maintains no show room; or because he carries on more than one kind of contracting business; or because he is a general contractor;

(g) Because such person, partnership, or corporation has refused to make payments to any officer, agent, member, or employee of the International Union, or subordinate or defendant unions other than payments due under the contract made or to be made between said parties;

(h) Because such person, partnership, or corporation has refused to deposit with the International Union or a subordinate or defendant union, or any officer or agent thereof, an unreasonable wage bond. For the purposes of this Decree, it is agreed that a reasonable wage bond shall be one conditioned upon the employer's meeting his payroll obligation on the particular job;

(i) Because said person, partnership, or corporation, after having made a bona fide request for the privilege of hiring men from the local unions, and having been refused, has used the tools or has hired persons not in good standing with the International Union;

(j) Because such persons, partnership, or corporation sells, has sold, or contemplates selling tile unset to any individual, partnership, or corporation;

(k) Because such person, partnership, or corporation had in the past, worked with the tools, provided that henceforth, only one contractor member of any firm shall work with the tools.

[*Other Practices of Defendant Unions Enjoined*]

9. That the defendant unions be and they are hereby perpetually enjoined and restrained from agreeing, combining, and conspiring with each other or with any other person, firm, corporation, or association, or any officer or employee thereof, or any of them;

(a) To deny to any contractor who has entered into, and who is fully performing, an agreement with the International Union or with a subordinate or defendant union, the privilege of selection for employment of any union workman in good standing who is at the time unemployed and who is willing to work for such contractor, *provided, however,* that nothing in this decree shall prevent the International Union or a subordinate or defendant union from insisting upon, or any union and any tile association from mutually agreeing to, a "spread-the-work" plan and applying the same without discrimination among tile association members and tile contractors who are not members of the Tile Association; or

(b) To threaten to impose upon any general contractor who is and has been fully performing a written agreement with the International Union or any subordinate or defendant union, restrictions or requirements not imposed upon his competitors because he does business with a subcontractor who is not a member either of the Tile. Association or a subordinate tile association or of any other association of subcontractors ; provided, however, that nothing in this decree shall prevent such unions or any of them, either alone or in concert, from imposing such conditions as they or it may wish upon the supplying of union labor to a general contractor who does business with a subcontractor who does not have, or who has failed fully to comply with, a labor agreement with such unions or any of them;

(c) To deny to any bona fide member in good standing of the International Union or of any subordinate union the right to transfer bona fide his membership from one subordinate union to another, or to work in the jurisdiction of another subordinate union, in accordance with the provisions of Article XV of the Constitution of the International Union, (Revised and Adopted September, 1938);

(d) To violate any provisions contained in the Constitution of the International Union;

(e) To limit the amount of work a tile layer may perform, or to limit the use of machinery or tools, or to determine the number of tile layers to be employed on any specific job, *provided, however,* that no member of a subordinate union shall be required to bargain or contract to lay or to lay a designated number of feet of tile or do a certain piece of work in a designated time.

[*Constitutions, By-Laws, Etc., Declared Void*]

10. That all constitutions, by-laws, resolutions, and agreements of the defendant tile contractors associations, the defendant unions and the arbitration board, the membership of which consists of representatives of the defendant tile contractors associations and the defendant unions insofar as said constitutions, by-laws, resolutions, and agreements authorize, provide, or permit any activity prohibited by this decree, are hereby declared unlawful and of no force and effect.

[*Binding Effect of Decree*]

11. That the terms of this decree shall be binding upon, and shall extend to each and everyone of the successors in interest of any and all of the defendants herein, and to any and all corporations, partnerships, associations, and individuals who may acquire the ownership, control, directly or indirectly, of the property, business and assets of the defendants or any of them, whether by purchase, merger, consolidation, reorganization, or otherwise.

[*Access to Records*]

12. That for the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General or an Assistant Attorney General and on reasonable notice to the defendants made to the principal office of the defendants, be permitted (a) reasonable access, during the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendants, relating to any *of* the matters contained in this decree, (b) subject to the reasonable convenience

of the defendants and without restraint or interference from them, to interview officers or employees of the defendants, who may have counsel present, regarding any such matters; and the defendants, on such request, shall submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this decree; *provided, however,* that information obtained by the means permitted in this paragraph shall not 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 or as otherwise required by law.

[*Activities Not Enjoined*]

13. That it is *provided, however,* that nothing herein contained shall, with respect to any act not enjoined by this decree, prohibit, prevent, or curtail the rights of the defendant unions from picketing or threatening to picket, circularizing or disseminating accurate information or carrying on any other lawful activities against anyone, or with reference to any product when the defendant unions or their members have a strike, grievance, or controversy, or from lawfully seeking to attain and carry out the legitimate and proper purpose and functions of a labor union.

[*Jurisdiction Retained*]

14. That jurisdiction of this cause is retained for the purpose of-enabling any of the parties to this decree to make application to the Court at any time for such further orders and directions as may be necessary or appropriate in relation to the construction of or carrying out of this decree, for the modification hereof upon any ground (including any modification upon application of-the defendants or any of them required in order to conform this decree to any Act of Congress enacted after the date of entry of this decree), for the enforcement of compliance herewith and the punishment of violations hereof.

Jurisdiction of this cause is retained for the purpose of granting or denying such applications as justice may require and the right of the defendants to make such applications and to obtain such relief is expressly granted.

[*Effective Date*]

15. That this decree shall become effective upon date of entry hereof.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

September Term 1941.

Civil No. 1962.

UNITED STATES OF AMERICA

VS.

DETROIT TILE CONTRACTORS' ASSOCIATION; GREATER DETROIT TILE CONTRACTORS' ASSOCIATION; WALTER T. OZIAS; RICHARD BRUNY; ANDREW S. JACKSON; CHARLES E. SCOTT; LOUIS VITALI; ANTHONY VIVONETTO; LOUIS PALOMBIT; HUMBERT MULARONI; JOHN CROCI; BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL LOCAL UNION NO. 32; LOCAL NO. 40 OF THE INTERNATIONAL ASSOCIATION OF MARBLE, STONE, AND SLATE POLISHERS, RUBBERS AND SAWYERS, TILE AND MARBLE SETTERS HELPERS AND TERRAZZO WORKERS HELPERS; PATRICK J. RUDDY; THOMAS COWPERTHWAITE; JOHN E. HUGHES; DANIEL A. MARTIN; LOUIS MEDICI, OTTO WILLIAMS; JAMES HAGAN; E. STANTON PIPER; RANDALL MARTIN; JAMES RANDOLPH.

DECREE MODIFYING FINAL DECREE

1. This cause came on to be heard this 3rd day of October, 1941, the plaintiff being represented by Thurman Arnold, Assistant Attorney General, and John C. Lehr, United States Attorney for the Eastern District of Michigan, and the defendants being represented by their counsel.

2. Bricklayers, Masons and Plasterers' International Local Union No. 32, Local No. 40 of the International Association of Marble, Stone, and Slate Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers and

Terrazzo Workers Helpers, Patrick J. Ruddy, Thomas Cowperthwaite, John E. Hughes, Louis Medici, Otto Williams, James Hagan, defendants in the above-entitled cause, having filed herein on October 3, 1941, an application for a modification of the final decree entered herein, with the consent of all parties, on July 9, 1940, and the proposed modification not being opposed, after notice given, by any of the other defendants or by the United States of America and having been found by the Court to provide suitable relief concerning the matters alleged in the complaint and application herein, it is

ORDERED, ADJUDGED, AND DECREED as follows, as to all of the parties to this cause and upon their consents hereto, as signified in writing at the foot of this decree:

3. That the aforesaid consent decree of July 9, 1940 be and the same is hereby modified by the cancellation of sub-paragraph (k) of paragraph 8, and the substitution therefor of the following sub-paragraph:

(k) Because such person, partnership, or corporation had, in the past, worked with the tools: *provided, however,* that nothing in this decree shall prevent the International Union or a subordinate union, their officers, agents, or employees, from requiring such person, partnership, or corporation to cease working with the tools after the expiration of six months from the date said International Union or subordinate union, their officers, agents, or employees, serves written notice of such requirement upon such person, partnership, or corporation, except that contractors may work with the tools on small repair jobs in private homes.

4. That the cancellation and substitution herein decreed shall become effective upon the date of entry of this decree.

Dated: October 3, 1941.

ERNEST A. O'BRIEN,
United States District Judge.

UNITED STATES V. BROOKER ENGINEERING CO., ET AL.

Civil Action No. 3146

Year Judgment Entered: 1942

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Brooker Engineering Company. Fife-Pearce Electric Company, W. D. Gale, Inc., Gray Electric Company, Inc., Hatzel & Buehler Inc., Kuehne Electric Company, Inc., Long Electric Company, Inc., McCleary-Harmon Company, The Pierce Company, Inc., Southeastern Electric. Company, Inc., Turner Engineering Company, The Detroit Electrical Contractors Association, Local Number 58, International Brotherhood of Electrical Workers, Murry L. Ansel, Marinus C. Brand, Lester F: Brooker, E. D. Brown, Frank Caccia, Lloyd J. Coons, Harry B. Fife, W: D. Gale, F. M. Georgi, Frank M. Hydon, John H. Kuehne, B. M. Long, F. J. O'toole, Marshal G. Pearce, Charles D. Pierce, C. O. Reckard and Waldso Turner., U.S. District Court, E.D. Michigan, 1940-1943 Trade Cases ¶56,183, (Jan. 7, 1942)

United States of America v. Brooker Engineering Company. Fife-Pearce Electric Company, W. D. Gale, Inc., Gray Electric Company, Inc., Hatzel & Buehler Inc., Kuehne Electric Company, Inc., Long Electric Company, Inc., McCleary-Harmon Company, The Pierce Company, Inc., Southeastern Electric. Company, Inc., Turner Engineering Company, The Detroit Electrical Contractors Association, Local Number 58, International Brotherhood of Electrical Workers, Murry L. Ansel, Marinus C. Brand, Lester F: Brooker, E. D. Brown, Frank Caccia, Lloyd J. Coons, Harry B. Fife, W: D. Gale, F. M. Georgi, Frank M. Hydon, John H. Kuehne, B. M. Long, F. J. O'toole, Marshal G. Pearce, Charles D. Pierce, C. O. Reckard and Waldso Turner.

1940-1943 Trade Cases ¶56,183. U.S. District Court, E.D. Michigan, Southern Division. Civil Action No. 3146. January 7, 1942.

Upon consent of all parties a decree is entered in proceedings under the Sherman Anti-Trust Act, restraining the defendants from combining and conspiring to restrain interstate trade and commerce in electrical contracting work. Among the activities enjoined are collusive bidding, allocation of contracts by collusive selection of the low bidder, persuading prospective customers not to award contracts to contractors outside the Detroit area, refusing or threatening to refuse union labor to outside contractors, slowing down work by express orders, and giving or receiving consideration to violate the law.

John C. Lehr, U. S. District Attorney, Detroit, Mich.; Thurman Arnold, Assistant Attorney General, and Allen A. Dobey Special Assistant Attorney General, Washington, D.C., for the Plaintiff.

Richard J. Sullivan, Edward N. Barnard, and Frank W. Donovan, Detroit, Mich., and Brud, Abbot & Morgan, New York City, for the Defendants.

Before O'Brien, District Judge.

Final Decree

The complainant, United States of America, having filed its complaint herein on January 7th, 1942; all the defendants having appeared and severally filed their answers to such complaint denying the substantive allegations thereof; all parties hereto by their respective attorneys herein having severally consented to the entry of this final decree herein without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of, 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 all parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

[*Jurisdiction*]

(1) That the Court has jurisdiction of the subject matter and of all parties hereto; that the complaint states a cause of action against the defendants under the Act of Congress of July 2, 1890, entitled, "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," and the acts amendatory thereof and supplemental thereto.

[*Injunction*]

(2) That the defendants and each of them and each and all of their respective officers, directors, agents, servants, and employees, and all persons acting or claiming to act on behalf of the defendants or any of them are hereby perpetually enjoined and restrained from forming, participating in, maintaining, or extending, directly or indirectly, any combination or conspiracy to restrain interstate trade or commerce as alleged in the complaint by doing, performing, agreeing upon, entering upon, or carrying out any of the acts or things hereinafter prohibited.

[*Activities Enjoined*]

(3) That the defendant, Detroit Electrical Contractors Association and each and all of its officers, agents, servants and employees and the defendant electrical contractors and each and all of their respective officers, directors, agents, servants, and employees, and all persons acting or claiming to act on behalf of the defendants or any of them be and they hereby are perpetually enjoined and restrained from agreeing, combining, or conspiring among themselves or any of them or with any electrical contractor or with the defendant Local Number 58, International Brotherhood of Electrical Workers, or with any other labor union or with any officer, agent or employee of said labor union or of any other labor union:

[*Collusive Bidding*]

(a) To establish collusive or non-competitive bids or estimates for contracts for the installation, alteration or repair of electrical systems;

[*Allocation of Contracts*]

(b) To allocate among themselves contracts for the installation, alteration or repair of electrical systems:

[*Restraint of Work*]

(c) To restrain electrical contractors from engaging in the installation, alteration or repair of electrical systems;

[*Division of Profits*]

(d) To divide the profits resulting from the installation, alteration, or repair of electrical systems among electrical contractors not actually engaged in jointly installing, altering or repairing said electrical systems;

[*Prevention of Bidding*]

(e) To pay any electrical contractor, to refrain from bidding or to give any consideration of any character for such purpose;

[*Discrimination*]

(f) To refuse to do business with, or to threaten to refuse to do business with, any manufacturer, Jobber or any distributor or any other person, or to discriminate as to terms on which business will be transacted with such manufacturer, jobber, distributor, or person;

[*Prevention of Labor Agreement*]

(g) To prevent the defendant Local Number 58, International Brotherhood of Electrical Workers, or any officer, agent, or employee thereof including defendant Union officers, from negotiating a labor agreement directly with any electrical contractor;

[*Refusal to Install Equipment*]

(h) To refuse to install or threaten to refuse to install the electrical equipment of any manufacturer, distributor, or Jobber because he sells or has sold electrical equipment to any particular person, firm or corporation;

[*Refusal To Buy*]

(i) To refuse to buy from any manufacturer, distributor, or jobber of electrical equipment because he sells or has sold electrical equipment to any particular person, firm, or corporation;

[*Bidding with Standard Cost Formulae*]

(j) To refrain from submitting bids or estimates or undertaking contracts for the installation or alteration or repair of electrical systems except at prices that include all or stipulated items of cost for materials and labor plus a stipulated overhead or except in accordance with a standard cost formula or standard percentage for overhead provision;

[*Refraining from Submitting Bids*]

(k) To refrain from submitting bids or estimates or undertaking contracts for the installation or alteration of electrical systems;

[*Refraining from Accepting Price Concessions*]

(1) To refrain from soliciting or accepting legal price concessions on purchases of electrical equipment;

[*Examination of Estimates*]

(m) To permit estimates or job costs of individual defendant electrical contractors to be examined by any representative or representatives of the defendant Detroit Electrical Contractors Association; or by any person or persons whatsoever outside of the individual defendant electrical contractor's own organization except in the course of the negotiation of a labor agreement;

[*Slowing Down Work*]

(n) To persuade or coerce, or to cause to be persuaded or coerced, directly or indirectly, the members of' Local Number 58 when working for any electrical contractor to slow down the rate of speed at which such members of Local Number 58 normally work;

[*Gifts to Union*]

(o) To give the defendant Local Number 58, any of its officers, agents, employees, or members, any sum of money or any property whatsoever, tangible or intangible, other than wages for electrical work actually performed; or such contributions, otherwise lawful, for legitimate purposes which do not have the purpose or effect of violating the provisions of this paragraph 3;

[*Threats Against Competitive Bidders*]

(p) To threaten persons, firms, or corporations engaged in the installation, alteration or repair of electrical systems, who submit competitive bids or estimates, or who refuse to withdraw competitive bids or estimates already submitted on prospective contracts for the installation, alteration, or repair of electrical systems, or persuading persons, firms, or corporations engaged in the installation, alteration, or repair of electrical systems to refrain from submitting competitive bids or estimates, or to persuade persons, firms, or corporations engaged in the installation, alteration, or repair of electrical systems to withdraw competitive bids or estimates already submitted on prospective contracts, for the installation, alteration or repair of electrical systems;

[*Influencing Union*]

(q) To influence Local Number 58, any of its officers, agents, employees, or members, to discourage or to prevent persons, firms, or corporations from engaging in the installation, alteration, or repair of electrical systems;

[*Supplying Information*]

(r) To supply Local Number 58, any of its officers, agents, employees, or members with information as to the activities or policies of any person, firm, or corporation when such information is designed to encourage Local Number 58, any of its officers, agents, employees, or members to discriminate against such person, firm, or corporation because of such activities or policies.

[*Other Activities Enjoined*]

(4) That the defendant Detroit Electrical Contractors Association, its officers, agents, servants, and employees, and all persons acting or claiming to act on its behalf, and the defendant Electrical Contractors, their respective officers, agents, servants, employees, and all persons acting or claiming to act on their behalf are hereby perpetually enjoined and restrained from:

[*Restraining Work*]

(a) Restraining electrical contractors from engaging in the installation, alteration, or repair of electrical systems;

[*Payments to Refrain from Bidding*]

(b) Paying any electrical contractor to refrain from bidding or giving any consideration of any character for such purpose;

[*Discriminatory Refusal to Deal*]

(c) Refusing to do business with any manufacturer, jobber, or distributor, or any other person, or to discriminate as to terms on which business will be transacted with such manufacturer, jobber, or distributor or other person, where the purpose and the effect of such refusal is to cause such manufacturer, jobber, or distributor, or other person not to do business with any other electrical contractor;

[*Refusal to Install Equipment*]

(d) Refusing to install or threatening to refuse to install electrical equipment of any manufacturer, distributor, or jobber because he sells or has sold electrical equipment to any particular person, firm or corporation;

[*Refusal to Buy*]

(e) Refusing to buy from any manufacturer, distributor, or jobber of electrical equipment because he sells or has sold electrical equipment to any particular person, firm, or corporation;

[*Threats Against Competitive Bidders*]

(f) Threatening persons, firms, or corporations engaged in the installation, alteration or repair of electrical systems, who submit competitive bids or estimates, or who refuse to withdraw competitive bids or estimates already submitted on prospective contracts for the installation, alteration, or repair of electrical systems, or persuading persons, firms, or corporations engaged in the installation, alteration, or repair of electrical systems to refrain from submitting competitive bids or estimates, or persuading persons, firms, or corporations engaged in the installation, alteration, or repair of electrical systems to withdraw competitive bids or estimates already submitted on prospective contracts, for the installation, alteration or repair of electrical systems;

[*Influencing Union*]

(g) Influencing Local Number 58, any of its officers, agents, employees, or members to discourage or to prevent persons, firms or corporations from engaging in the installation, alteration, or repair of electrical systems.

[*Union Enjoined*]

(5) That the defendant Local Number 58, International Brotherhood of Electrical Workers, its officers, agents, or employees, including the defendant union officers, and all persons acting or claiming to act on its behalf be and they hereby are perpetually enjoined and restrained and prohibited from agreeing, combining or conspiring with the defendant Detroit Electrical, Contractors Association or the defendant electrical contractors, their officers, agents, or employees, or any of them, or with any electrical contractor whatsoever or its officers, agents or employees:

[*Allocation of Contracts*]

(a) To allocate among electrical contractors contracts for the installation, alteration, or repair of electrical systems;

[*Restraining Work*]

(b) To restrain electrical contractors from engaging in the installation, alteration, or repair of electrical systems;

[*Restraint Against Award of Contracts*]

(c) To persuade, coerce or restrain any person, partnership or corporation from awarding contracts for the installation, alteration or repair of electrical systems to any person, firm, or corporation;

[*Slowing Down Work*]

(d) To persuade or coerce the members of said Local Number 58 when working for any electrical contractor to slow down the rate of speed at which such members of Local Number 58 normally work;

[*Threats against Competitive Bidders*]

(e) To threaten persons, firms, or corporations engaged in the installation; alteration or repair of electrical systems, who submit competitive bids or estimates, or who refuse to withdraw competitive bids or estimates, already submitted on prospective contracts for the installation, alteration, or repair of electrical systems, or persuading persons, firms, or corporations engaged in the installation, alteration, or repair of electrical systems to refrain from submitting competitive bids or estimates, or persuading persons, firms or corporations engaged in the installation, alteration, or repair of electrical systems to withdraw competitive bids or estimates already submitted on prospective contracts, for the installation, alteration or repair of electrical systems:

[*Wrongful Use of Union Influence*]

(f) To use the influence of the defendant union to discourage or prevent persons, firms or corporations from engaging in the installation, alteration or repair of electrical systems;

[*Receiving Gifts*]

(g) To demand or receive from any person, firm, or corporation engaged as an employer in the installation, alteration or repair of electrical systems any sum of money or any property whatsoever, tangible or intangible, other than wages for electrical work actually performed; or such contributions, otherwise lawful, for legitimate purposes which do not have the purpose or effect of violating the provisions of this paragraph 5.

[*Discrimination*]

(h) To prevent any person, firm, or corporation engaged in the Installation, alteration, or repair of electrical systems from securing union labor from Local Number 58, or to require said person, firm, or corporation to agree to higher wages, shorter hours, or better working conditions than are required of the defendant electrical contractors;

[*Labor Agreements*]

(i) To refrain from the negotiation of a labor agreement directly with any electrical contractor;

[*Refusal to Install Equipment*]

(j) To refuse to install or threaten to refuse to install the electrical equipment of any manufacturer, distributor, or jobber because he sells or has sold electrical equipment to any particular person, firm, or corporation;

[*Coercion against Competitive Bidding*]

(k) To coerce or to persuade persons, firms, or corporations engaged in the installation, alteration, or repair of electrical systems to refrain from submitting bids except at prices that include all or stipulated items of cost for materials and labor plus a stipulated overhead or except in accordance with a standard cost formula or standard percentage for overhead provision;

(l) To coerce or to persuade persons, firms, or corporations engaged in the installation, alteration, or repair of electrical systems to refrain from submitting bids or estimates that have not previously been examined by a representative or representatives of the defendant Detroit Electrical Contractors Association or by any person or persons whatsoever outside of the individual electrical contractor's own organization.

[*Collusive Bidding*]

(6) That the defendant Local Number 58, International Brotherhood of Electrical Workers, its officers, agents or employees, including the defendant union officers, and all persons acting or claiming to act on its behalf be and they hereby are perpetually enjoyed and restrained and prohibited from agreeing, combining or conspiring with the defendant Electrical Contractors Association or the defendant Electrical Contractors, their officers, agents or employees, or any of them, or with any electrical contractor whatsoever, or its officers, agents or employees, or with any other labor union, its officers, agents or employees, to establish collusive or non-competitive bids or estimates for contracts for the installation, alteration or repair of electrical systems.

[*Fixing Prices*]

(7) That the defendants and each of them and each and all of their respective officers, directors, agents, servants, and employees, and all persons acting or claiming to act on behalf of the defendants or any of them are hereby perpetually enjoined and restrained from meeting together or otherwise communicating: with one another for the purpose of discussing the fixing of prices (not including wages), the allocation of electrical contracts, the establishment of quotas, or for the purpose of consummating any of the acts enjoined by this decree.

[*Effect on Successors*]

(8) That the terms, of this decree shall be binding upon, and shall extend to, each and every one of the successors in interest of any and all of the defendants herein, and to any and all corporations, partnerships, associations or individuals who may acquire the ownership, or control, directly or indirectly, of the property, business or assets of the defendants or any of them whether, by purchase, merger, consolidation, reorganization or otherwise.

[*Examination of Records*]

(9) That for the purpose of securing “compliance with this decree and for no other purpose, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General, or the Assistant Attorney General in charge of the Anti-trust Division, and on reasonable notice to the defendants made to the principal office of the defendants; be permitted (a) access during the office hours of the defendants to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendants, relating to any the matters contained in this decree, (b) subject to the reasonable convenience of the defendants and without restraint or interference from them subject to any legally recognized privilege, to interview officers of employees of the defendants, who may have counsel present, regarding any such matters and the defendants, on such request, submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this decree; provided, however, that information obtained by the means permitted in this paragraph shall not be divulged

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 shall be a party and which shall have for their purpose the enforcement of this decree or as otherwise required by law.

[*Retention of Jurisdiction*]

(10) That jurisdiction of this cause is retained for the purpose of enabling any of parties to this decree to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this decree, for the modification or termination of any of the provisions thereof for the enforcement of compliance therewith and for the punishment of violations thereof.

That this decree shall become effective upon date of entry hereof.

UNITED STATES V. WHOLESALE WASTE PAPER CO., ET AL.

Civil Action No. 3234

Year Judgment Entered: 1942

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Wholesale Waste Paper Company, et al., U.S. District Court, E.D. Michigan, 1940-1943 Trade Cases ¶56,212, (Feb. 20, 1942)

United States of America v. Wholesale Waste Paper Company, et al.

1940-1943 Trade Cases ¶56,212. U.S. District Court, E.D. Michigan, Southern Division. Civil Action No. 3234. February 20, 1942.

In a proceeding under the Sherman Anti-Trust Act, a consent decree was entered under which various wholesalers and a labor union were restrained from combining and conspiring to restrain trade in waste paper. Among the activities prohibited were price fixing and allocating contracts; buying and selling through a common agent restricting sales, purchases and shipments; fixing terms and conditions of purchases; preventing the procurement of union labor; precluding labor agreements; discriminating as to the terms and conditions on which business could be transacted; spying on waste paper dealers to find out business affiliations; circulating lists of union employers; blacklisting mills and wholesalers, withholding union labor; and intimidating and coercing producers and wholesalers from dealing with any person, partnership or corporation.

Thurman Arnold, Assistant Attorney General, John C. Lehr, U. S. Attorney, Detroit, Mich., Daniel Britt, Special Assistant to the Attorney General, Lyle L. Jones, Jr., and Richard B. O'Donnel, Special Attorneys, for plaintiff.

George S. Fitzgerald and David A. Wolff, both of Detroit, Mich., for defendants.

Before O'Brien, District Judge.

Final Decree

The complainant, United States of America, having filed its complaint on Feb. 19, 1942, all the defendants having appeared and severally filed their answers to such complaint denying the substantive allegations thereof; all parties hereto by their respective attorneys herein having severally consented to the entry of this final decree herein without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of 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 all parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED, as follows :

[*Jurisdiction*]

1. That the Court has jurisdiction of the subject matter and of all parties hereto, and that the complaint states a cause of action against the defendants under the Act of Congress of July 2, 1890, entitled “An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies” and acts amendatory thereof and supplemental thereto.

[*Activities of Wholesalers Enjoined*]

2. That each of the defendant wholesalers, their directors, officers, employees and agents, and all persons acting under, through, or for them, or any of them, be and they hereby are perpetually enjoined and restrained from agreeing, combining, or conspiring among themselves or with others, including any mill, wholesalers, dealer, peddler, labor union and officer or agent thereof:

[*Fixing Prices*]

(a) To establish, fix, or maintain prices for waste paper or for any other commodity;

[*Allocating Contracts*]

(b) To allocate among themselves or any one, contracts for the purchase or sale of waste paper or orders, sales, customers, or trade areas;

[*Restraining Bales and Purchases*]

(c) To restrain mills, wholesalers, dealers, peddlers, or any one from buying or selling waste paper;

[*Purchasing and Selling Through Common Agent*]

(d) To use or establish any organization as a common agent for any two or more wholesalers for the purpose of buying or selling waste paper;

[*Discrimination*]

(e) To refuse to do business with or threaten to refuse to do business with any mill wholesaler, dealer, or peddler or to otherwise discriminate against or to threaten to discriminate against any mill, wholesaler, dealer or peddler;

[*Coercion*]

(f) To restrain, restrict, or prevent, or to threaten to restrain, restrict, or prevent the purchase or sale of waste paper by, from, or to any mill or wholesaler, or otherwise to coerce any mill or wholesaler ;

[*Restraining Procurement of Union Labor*]

(g) To prevent any person, partnership, or corporation from securing union labor, or to discriminate against any person, partnership or corporation in any of the terms of employment of labor, or to prescribe the terms upon which any competitor, mill, dealer or peddler may secure union labor.

[*Preventing Labor Agreements*]

(h) To prevent any labor union from negotiating a labor agreement directly with any one;

[*Espionage*]

(i) To follow the equipment of any person, partnership, or corporation for the purpose of ascertaining with whom such person, partnership, or Corporation is doing business, or to use any other methods designed to police or coerce such person, partnership, or corporation:

[*Fixing Terms and Conditions of Purchase*]

(j) To fix the terms or conditions of purchase or sale of waste paper.

[*Other Activities of Wholesalers Prohibited*]

3. That defendant wholesalers, their directors, officers, employees and agents, and each of them, be and they hereby are, perpetually enjoined and restrained from:

[*Restraining Purchases, Sales and Shipments*]

(a) Restraining, restricting, or preventing, or threatening to restrain, restrict, or prevent the purchase, sale, or shipment of waste paper by from, or to any mill or wholesaler, or otherwise coercing any mill or wholesaler;

[*Preventing Labor Agreements*]

(b) Preventing or attempting to prevent any labor union from negotiating a labor agreement with any one;

[*Restraining Procurement of Union Labor*]

(c) Preventing any person, partnership, or corporation from securing union labor;

[*Discriminating as to Business Transactions*]

(d) Refusing to do business with any mill, dealer, peddler or other person or discriminating as to terms on which business will be transacted with such mill, dealer, peddler or other person where the purpose

or effect of such refusal or discrimination is to cause such mill, dealer, peddler or other person not to do business with any other wholesaler or wholesalers.

[*Espionage*]

(e) Following the equipment of any person, partnership, or corporation for the purpose of ascertaining with whom such person, partnership, or corporation is doing business, or using any other methods designed to police or coerce such person, partnership, or corporation.

[*Activities of Labor Union Enjoined*]

4. That the defendant union, its officers, agents, and (employees, including the defendant union officers, and each of them, be and they hereby are, perpetually enjoined and restrained from agreeing, combining, or conspiring with any mill, wholesaler, dealer, or peddler;

[*Distributing Union Lists*]

(a) To circulate or distribute to mills, wholesalers dealers, or peddlers, a list or lists containing names of mills or wholesalers under agreement with said union for the purpose of influencing such mills, wholesalers, dealers, or peddlers to do business only with mills or wholesalers whose names are included on such list or lists, or to give preference to such mills or wholesalers;

[*Withholding Union Labor*]

(b) To withhold or threaten to withhold labor from any person, partnership, or corporation;

[*Intimidation*]

(c) To intimidate or threaten to intimidate any mill or wholesaler from dealing with any person, partnership, or corporation;

[*Blacklisting*]

(d) To blacklist any mill or wholesaler;

[*Prescribing Terms and Conditions*]

(e) To require conditions and terms of any other wholesaler, mill, dealer, or peddler;

[*Restricting Sales Purchases and Shipments*]

(f) To restrict, restrain, or prevent the sale, purchase, or shipment of waste paper, by, from, or to any person, partnership, or corporation;

[*Espionage*]

(g) To follow the equipment of any person, partnership, or corporation for the purpose of ascertaining with whom such person, partnership, or corporation is doing business.

[*Other Union Activities Prohibited*]

5. That the defendant union, its officers, agents, and employees, including defendant union officers, be, and they hereby are, perpetually enjoined and restrained from:

[*Restricting Trade in Waste Paper*]

(a) Formulating, participating in, furthering, or maintaining any plan, program, or scheme for the purpose of restricting trade and commerce in waste paper, or any portion thereof, to any predetermined mill, wholesaler, dealer or peddler, or to any predetermined group of mills, wholesalers, dealers or peddlers, or for the purpose of creating or maintaining any monopoly of such trade and commerce, or any portion thereof, by any predetermined mill, wholesaler, dealer or peddler or any predetermined group of mills, wholesalers, dealers, or peddlers;

(b) Restricting, interfering with, or preventing directly or indirectly, the commerce of any person, partnership, or corporation, which is willing and able to execute a written agreement with defendant union and to comply with defendant union's requirements;

(c) Imposing discriminatory terms or refusing to offer terms, for the purpose of restricting, interfering with, or preventing the operation of any person, partnership, or corporation;

[*Price Fixing and Allocating Trade*]

(d) Establishing, fixing, or maintaining prices for waste paper, or allocating trade and commerce in waste paper, or orders, sales customers or trade areas for waste paper.

[*Dissolution of Company Ordered*]

6. That the defendant wholesalers, their directors, officers, employees and agents, and each of them, and all persons acting under, through, or for them, or any of them, be, and they hereby are ordered to divest themselves of all right, title, and interest in Wholesale Waste Paper Company and forthwith to take such steps as may be necessary to dissolve said Wholesale Waste Paper Company.

[*Parties Bound by Decree*]

7. That the terms of this decree shall be binding upon, and shall extend to each and every one of the successors in interest of any and all of the defendants herein, and to any and all corporations, partnerships, associations, and individuals who may acquire the ownership or control, directly or indirectly, of the property, business, and assets of the defendants, or any of them, or of the Union, whether by purchase, merger, consolidation, reorganization, or otherwise.

[*Examination of Records to Secure Compliance*]

8. For the purpose of securing compliance with this decree, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General and on reasonable notice to the defendants be permitted (1) access, during the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendants, relating to any matters contained in this decree, (2) without restraint or interference from the defendants, to interview officers or employees of the defendants, who may have counsel present, regarding any such matters, and (3) the defendants, on such request, shall submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this decree; *provided, however,* that information obtained by the means permitted in this paragraph shall not 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 for the purpose of securing compliance with this decree in which the United States is a party or as otherwise required by law.

[*Retention of Jurisdiction*]

9. Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this decree, for the modification or termination of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

[*Effective Date of Decree*]

10. That this decree shall become effective upon date of entry hereof.

UNITED STATES V. PARKER RUST-PROOF CO., ET AL.

Civil Action No. 3653

Year Judgment Entered: 1945

U. S. vs. PARKER RUST-PROOF CO., ET AL.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil Action No. 3653.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

PARKER RUST-PROOF COMPANY, WILLARD M. CORNELIUS, MARLIN C. BAKER, GLEN E. LUKE, ROBERT W. ENGLEHART, RUST PROOFING AND METAL FINISHING CORPORATION, PYRENE MANUFACTURING CO., PARKER WOLVERINE CO., WESTERN RUST PROOF COMPANY AND PARKER RUST-PROOF COMPANY OF CLEVELAND,
DEFENDANTS.

JUDGMENT.

At a session of said court held in the Federal Building, Detroit, this 28th day of May, 1945.

Present: HONORABLE ARTHUR F. LEDERLE,
District Judge

This cause having come on for hearing before this Court, and the Court having made and filed its findings of fact and conclusions of law herein on the 12th day of May, 1945, and in accordance therewith,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That the agreement dated October 11, 1940, between defendant Parker Rust-Proof Company and American Chemical Paint Company, under the terms of which the American Chemical Paint Company gave Parker Rust-Proof Company an exclusive license on its patents and patent applications relating to chemical rustproofing and priming materials and the application of such materials to metal surfaces, together with any improvements invented or discovered in connection with the processes covered by the patents during the period of the agreement, had the effect of substantially lessening competition in the chemical rust-proofing and priming industry, and is hereby adjudged to be unlawful and a violation of Sections 1 and 2 of the Sherman Act.

2. That defendant Parker Rust-Proof Company, its directors, officers, agents or employees, their successors, transferees, or assigns, and all persons acting for it, are hereby perpetually enjoined and restrained from instituting or threatening to institute suits for patent infringement or suits to collect royalties which are based upon any of the United States letters patent numbered 1,805,982; 1,895,320; 1,980,518; 2,005,780; 2,114,151; 2,121,574; 2,132,438; 2,132,439; 2,132,883; 2,164,042; 2,186,177; 2,245,609; 2,298,312; 2,316,810; 2,316,811; 2,326,309; referred to in the agreement between Parker Rust-Proof Company and American Chemical Paint Company dated Ootober 11, 1940, including renewals, extensions or reissues thereof.

3. That for the purpose of securing compliance with this judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General, or an Assistant Attorney General, be permitted access, during the office hours of Parker Rust-

Proof Company, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in its possession or under its control, relating to any matters contained in this judgment, and to interview its officers or employees regarding any such matters: *Provided, however*, that information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice except in the course of legal proceedings for the purpose of securing compliance with this judgment in which the United States is a party or as otherwise required by law.

4. That jurisdiction of this cause is retained for the purpose of enabling any of the parties to this judgment to apply to the Court at any time for such further orders and judgments as may be necessary or appropriate for the construction or carrying out of this judgment, for modification or termination of any of the provisions thereof, or the enforcement of compliance therewith and for the punishment of violations thereof.

5. The compliant in said cause is dismissed with respect to all defendants in said cause other than said defendant, Parker Rust-Proof Company, and also with respect to said defendant, Parker Rust-Proof Company except with respect to the matters adjudged and decreed herein. No costs to be allowed to any party.

ARTHUR F. LEDERLE
District Judge

Filed May 29, 1945.

UNITED STATES V. TIMKEN-DETROIT AXLE CO.

Civil Action No. 5642

Year Judgment Entered: 1947

U. S. vs. TIMKEN-DETROIT AXLE COMPANY

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil Action No 5642.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

TIMKEN-DETROIT AXLE COMPANY, DEFENDANT.

FINAL JUDGMENT

The complainant, the United States of America, having filed its complaint herein on March 25, 1946 the defendant having appeared and filed its answer to such complaint, denying the substantive allegations thereof, the parties hereto by their respective attorneys herein 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 any party 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 the consent of all the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED

I

That this Court has jurisdiction of the subject matter herein and of the parties hereto; that the complaint states a cause of action against the defendants under the act of Congress of July 2, 1890, c. 647, 26 Stat. 209, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" and acts amendatory thereof and supplemental thereto.

II

As used in this judgment, the following terms have the meanings assigned respectively to them below:

(a) "Multiwheel unit" signifies an assembly of or any portion of an assembly of two tandem sets of transversely aligned wheels closely associated with other mechanisms to support a portion of the vehicle frame or load and thus form a part of a multiwheel road vehicle.

(b) "Patent" or "patent application" shall include continuations, renewals, reissues or divisions of any such patent or patent application.

III

The defendant, and each of its officers, directors, agents, employees, attorneys, successors, subsidiaries and assigns, and each person acting or claiming to act under, through or for them or any of them, is enjoined and restrained from:

(a) Instituting or threatening to institute, or maintaining any suit, counterclaim or proceeding, judicial or administrative, for infringement or to realize or collect charges, damages, compensation or royalties alleged to have accrued prior to the date of the entry of this judgment under or on account of either (1) any of the United States Letters Patent listed in, or issued on any application listed in, Schedule A, attached hereto and made a part hereof, or under or on account of (2) any foreign patent corresponding to any United States Letters Patent or application listed in Schedule A, where such suit, counterclaim or proceeding under the foreign patent is based on the use or sale in, or the importation into, a foreign country of a product made in the United States.

(b) Conditioning or requiring any other person to condition, directly or indirectly, any license or immunity express or implied to practice any invention relating to multiwheel units or parts used therein claimed in any United States patent by the tying of any license or immunity under such patent to the purchase or securing of any service or part, product, or article from or through the defendant or from or through any particular or designated source.

(c) Discriminating or requiring any other person to discriminate, directly or indirectly, in the granting of any license or immunity express or implied to practice any invention claimed in any United States patent relating to multiwheel units or parts used therein upon the basis of whether any service or part, product or article is purchased or secured from or through the defendant or from or through any particular or designated source.

(d) Adhering to, carrying out, maintaining, enforcing, furthering, performing or renewing, directly or indirectly, the agreements listed in Schedule B, or any agreement which conditions any license or immunity under the patents, and patents issued on applications for patents, listed in Schedule A, upon the purchase or securing of parts, products, articles or services from the defendant or from or through any particular or designated source.

IV

The defendant, and each of its officers, directors, agents, employees, attorneys, successors, subsidiaries and as-

signs, and any person acting or claiming to act under, through or for them or any of them, insofar and to the extent that they or any of them now have or may acquire the right or power to do so, shall grant to any applicant making written request therefor a non-exclusive license, sub-license, or immunity, to manufacture, use and sell under any one or more of the United States Letters Patent and the patents issued under applications for United States Letters Patent, the patent numbers and application numbers of which are listed in Schedule A attached hereto and made a part hereof without any condition or restriction whatsoever, except that a reasonable non-discriminatory royalty may be charged and collected, and where such royalty is charged provision may be made for a verified statement of the basis for the royalty due and payable and the amount of royalty due and payable, and for the inspection of the books and records of the licensee by an independent auditor who may report to the defendant licensor the basis for the royalty due and payable and the amount of royalty due and no other information. The defendant shall include in each such license, sub-license or immunity, a non-exclusive grant of immunity from suit under any foreign patents or patents issued on foreign applications for patents, corresponding to the United States Letters Patent or applications for patents listed in Schedule A to import into and sell or use and to have imported, sold or used in any country products made in the United States.

V

For the purpose of securing compliance with this judgment authorized representatives of the Department of Justice shall, on written request of the Attorney General, or an Assistant Attorney General, be permitted, subject to any legally recognized privilege, (1) upon reasonable notice to the defendant, access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any matters contained in this judgment, and (2) without restraint or interference from the defendant, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters, and upon such request said defendant shall submit such reports with respect to the disposition and licensing of patents relating to multiwheel units or parts used therein as may from time to time be appropriate for the purpose of enforcement of this judgment; provided, however, that information obtained by the means permitted in this paragraph shall not be divulged by any representatives 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 for the purpose of securing compliance with this judgment in which the United States is a party or as otherwise required by law.

VI

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this decree, for the modification or termination of any of the provisions thereof or the enforcement of compliance therewith and for the punishment of violations thereof.

/s/ ERNEST A. O'BRIEN
United States District Judge

Dated: August 14, 1947.

SCHEDULE A

PATENT NO.	*DATE*	*PATENT NO.*	*DATE*
Des.59,342	Oct. 11, 1921	1,660,188	Feb. 21, 1928
59,728	Nov. 22, 1921	1,660,189	Feb. 21, 1928
59,729	Nov. 22, 1921	1,670,119	May 15, 1928
60,400	Feb. 14, 1922	1,692,891	Nov. 27, 1928
1,522,783	Jan. 13, 1925	1,703,536	Feb. 26, 1929
1,592,970	July 20, 1926	1,705,137	Mar. 12, 1929
1,644,023	Oct. 4, 1927	1,712,057	May 7, 1929

Patent No.	*Date*	*Patent No.*	*Date*
1,728,869	Sept. 17, 1929	1,866,637	July 12, 1932
1,736,826	Nov. 26, 1929	1,871,432	Aug. 9, 1932
1,738,212	Dec. 3, 1929	1,899,240	Feb. 28, 1933
1,739,355	Dec. 10, 1929	1,907,179	May 2, 1933
1,739,450	Dec. 10, 1929	1,912,308	May 20, 1933
1,744,320	Jan. 21, 1930	1,912,498	June 6, 1933
1,744,401	Jan. 21, 1930	1,913,799	June 13, 1933
1,745,431	Feb. 4, 1930	1,924,646	Aug. 29, 1933
1,745,432	Feb. 4, 1930	1,924,984	Aug. 29, 1933
1,745,433	Feb. 4, 1930	1,926,273	Sept. 12, 1933
1,747,580	Feb. 18, 1930	1,926,274	Sept. 12, 1933
1,747,902	Feb. 18, 1930	1,928,860	Oct. 3, 1933
1,750,899	Mar. 18, 1930	1,930,207	Oct. 10, 1933
1,763,767	June 17, 1930	1,930,208	Oct. 10, 1933
1,773,782	Aug. 26, 1930	1,935,667	Nov. 7, 1933
Re. 17,889	Dec. 2, 1930	1,933,674	Nov. 7, 1933
1,815,416	July 21, 1931	1,933,675	Nov. 7, 1933
1,816,981	Aug. 4, 1931	1,935,746	Nov. 21, 1933
1,818,902	Aug. 11, 1931	1,936,834	Nov. 28, 1933
1,825,194	Sept. 29, 1931	1,940,914	Dec. 26, 1933
1,845,674	Feb. 16, 1932	1,947,337	Feb. 13, 1934
1,847,348	Mar. 1, 1932	1,947,358	Feb. 13, 1934
1,851,198	Mar. 29, 1932	1,949,830	Mar. 6, 1934
1,857,248	May 10, 1932	1,975,202	Oct. 2, 1934
1,857,249	May 10, 1932	1,981,449	Nov. 20, 1934
1,860,470	May 31, 1932	1,981,593	Nov. 20, 1934
1,860,471	May 31, 1932	1,992,365	Feb. 26, 1935
1,863,974	June 21, 1932	2,006,800	July 2, 1935

Inventor	*Patent Issued*	*Patent No.*
Buckendale	Oct. 14, 1930	1,778,242
Buckendale and Pierce	Dec. 9, 1930	1,784,268
Alden	Feb. 24, 1931	1,794,099
Alden	June 30, 1931	1,811,837
Rockwell	Mar. 22, 1932	1,850,942
Porter	Apr. 26, 1932	1,855,868
Porter	Jan. 3, 1933	1,893,150
Kneese	May 2, 1933	1,906,613
Morgan	May 2, 1933	1,906,708
Alden	Nov. 21, 1933	1,935,602
Buckendale	Feb. 6, 1934	1,946,060
Hastings and Knowles	Oct. 2, 1934	1,975,208
Buckendale and Alden	Feb. 5, 1935	1,990,016
Alden	Apr. 2, 1935	1,996,138
Alden	Apr. 23, 1935	1,999,071
Alden and Buckendale	June 4, 1935	2,003,412
Keese	Mar. 10, 1936	2,033,246
Keese	Feb. 23, 1937	2,071,537
Alden	Apr. 27, 1937	2,078,521
Alden	Oct. 19, 1937	2,096,530
Buckendale	Aug. 8, 1939	2,168,970
Buckendale	Jan. 26, 1943	2,309,162
Keese	Mar. 23, 1943	2,314,833
Buckendale	June 13, 1944	2,351,091
Morgan	Sept. 17, 1946	2,407,675

Inventor	*Applications Filed*	*Serial No.*
Buckendale	Mar. 13, 1943	479,086
Buckendale	Apr. 7, 1944	530,023
Alden	Sept. 17, 1945	616,703

1,565,526	12–15–25	Templin	Running Gear for Motor Vehicles
1,565,527	12–15–25	Templin	Torque Neutralizing Mechanism
1,651,742	12– 6–27	Templin	Running Gear for Motor Vehicles
1,665,865	4–10–28	Templin	Motor Vehicle Driving Mechanism
1,691,742	11–13–28	Templin	Running Gear for Motor Vehicles
1,695,259	12–11–28	Templin	Running Gear for Motor Vehicles
1,779,393	10–21–30	Evans	Truck for Motor Vehicles
1,846,284	2–23–32	Templin	Running Gear for Motor Vehicles

and all continuations, renewals, reissues, or divisions of any of the foregoing patents or patent applications.

SCHEDULE B

SUB-LICENSEE	*ORIGINAL*	*AMENDED*	*LETTER AGREEMENT*
Sub-Licensee	*Original*	*Amended*	*Letter Agreement*
a. Langlois Brothers	12– 6–33	1–24–36	
b. Six Wheels, Inc.	1–20–34	12– 4–34	
c. F.A.B. Mfg. Co.	6– 6–34	1–24–36 2–15–37 5–26–37	9–11–45
d. Edwards Iron	6– 7–36	1–24–36	11–29–45
e. Guilder Engineering Co. (Now Hendrick)	1–11–38	1–24–36	
f. Nelson–LeMoon (Now Federal LeMoon)	5–27–35	1–24–36	
g. Available Truck Co.	2– 3–36		8–31–45
h. Liggett Spring and Axle	7–15–36		
i. Hendrickson	4–15–38		
j. Fruehauf Trailer Co.	6– 1–38		8–22–45
k. Thornton Tandem Co.	9– 1–38		

UNITED STATES V. UNIVERSAL BUTTON FASTENING AND BUTTON CO.

Civil Action No. 5860

Year Judgment Entered: 1948

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Universal Button Fastening and Button Company., U.S. District Court, E.D. Michigan, 1948-1949 Trade Cases ¶62,255, 440 F. Supp. 1175, (May 7, 1948)

United States v. Universal Button Fastening and Button Company.

1948-1949 Trade Cases ¶62,255. U.S. District Court, E.D. Michigan, Southern Division. Civil Action No. 5860. May 7, 1948. 440 FSupp 1175

Sherman, Clayton Antitrust Acts

Consent Judgment—Practices Enjoined—Licensing Required.—A consent judgment entered in an action charging a manufacturer of button fastening machinery with violations of the antitrust laws enjoins defendant from leasing or selling fastening machinery or from fixing a price charged therefor, on the condition that the lessee or purchaser thereof shall not purchase, deal in, or use the fasteners of competitors of defendant; conditioning the availability of fastening machinery, parts, or repairs therefor upon the securement of fasteners from defendant or any other designated source; engaging in agreements or arrangements having the purpose or effect of continuing, reviving, or renewing violations alleged in the complaint; conditioning any license or immunity to practice any invention related to fastening machinery claimed in any United States patent by the tying of any such license or immunity to the securement of fasteners or similar products from defendant or any other designated source; and instituting or threatening to institute litigation for infringement. Defendant is directed to grant non-exclusive licenses at a uniform, reasonable royalty, under any and all existing patents, to all applicants therefor.

For plaintiff: John F. Sonnett, Assistant Attorney General; Sigmund Timberg, Manuel M. Gorman, Grant W. Kelleher, Richard B, O'Donnell, Special Assistants to the Attorney General, all of Washington, D. C; and Thomas P. Thornton, United States Attorney, Detroit, Mich.

For defendant: Angell, Turner, Dyer & Meek, Detroit, Mich.

Final Judgment

KOSCINSKI, J.: The plaintiff, United States of America, having filed its complaint in this action on July 29, 1946; defendant, Universal Button Fastening and Button Company, having appeared and filed its answer to said complaint denying the substantive allegations thereof; and the plaintiff and said defendant by their respective attorneys having consented to the entry of this final judgment herein:

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and without any admission by any party with respect to any such issue, and upon the consent of the parties hereto, the Court being advised and having considered the matter 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 to this judgment; the complaint states a cause of action against defendant, Universal Button Fastening and Button Company, under the Act of Congress of July 2, 1890, as amended, entitled “An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies”, said Act being commonly known as the “Sherman Antitrust Act”, and under the Act of Congress of October 15, 1914, as amended entitled “An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies, and For Other Purposes”, amendatory thereof and supplementary thereto, said Act being commonly known as the “Clayton Act”.

II

[*Terms Defined*]

When used in this final judgment, the following terms have the meanings assigned respectively to them below:

(a) "Fasteners" means tack-attached or staple-attached buttons, rivets, burrs, and snap fasteners for the fastening of clothing.

(b) "Fastening machinery" means machinery and accessories for attaching fasteners to clothing.

(c) "Existing patents" means all presently issued United States letters patent owned or controlled by defendant, Universal Button Fastening and Button Company, or under which it has power to issue licenses or sublicenses, relating to fastening machinery, consisting of the following numbered United States patents:

1,678,616	1,798,969
1,798,970	2,048,930
2,196,159	2,161,404
2,292,223	2,362,630

and renewals, reissues, divisions and extensions of any such patent.

III

[*Applicability*]

The provisions of this judgment applicable to defendant Universal Button Fastening and Button Company shall apply to each of its subsidiaries, successors, and assigns, and to each of its officers, directors, agents, nominees, employees, and to any other person acting under, through or for such defendant.

IV

[*Practices Enjoined*]

Defendant Universal Button Fastening and Button Company be and hereby is enjoined and restrained from:

A. Leasing or making any sale or contract, or adhering to any contract for the sale or lease of fastening machinery, whether patented or unpatented, for use or resale within the United States, or any territory thereof, or the District of Columbia, or any insular possession or other place under the jurisdiction of the United States, or from fixing a price charged therefor or discount from or rebate upon such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not purchase, use or deal in the fasteners of a competitor or competitors of defendant, Universal Button Fastening and Button Company.

B. Conditioning the availability of fastening machinery or parts or repairs thereof upon the securement of fasteners from the defendant Universal Button Fastening and Button Company or any other designated source.

C. Removing fastening machinery from the premises of any lessee because such lessee purchases, uses, or deals in fasteners manufactured or sold by any person other than defendant.

D. Engaging in, or participating in, contracts, agreements, understandings or arrangements having the purpose or effect of continuing, reviving, or renewing any of the violations of the antitrust laws alleged in paragraphs 6 to 8 inclusive, in the complaint herein.

E. Conditioning any license or immunity, expressed or implied, to practice any invention related to fastening machinery claimed in any United States patent by the tying of any license or immunity for such invention to the purchase or, securement of fasteners or any similar product or article from the defendant Universal Button Fastening and Button Company or any other designated source.

F. Instituting or threatening to institute or maintaining any suit, counterclaim or proceeding, judicial or administrative, for infringement or to collect charges, damages, compensation or royalties, alleged to have accrued prior to the date of this judgment under any existing patent.

V

[*Licensing Required*]

Defendant Universal Button Fastening and Button Company be and hereby is directed to grant to any applicant making a written request therefor a non-exclusive, non-assignable and unrestricted license, save for and at a uniform reasonable royalty, under any or all existing patents as listed in Section II (c). Any applicant for such license who fails to agree with defendant Universal Button Fastening and Button Company upon a reasonable royalty may apply to this court upon thirty days notice to defendant Universal Button Fastening and Button Company and to the Attorney General at Washington, D. C. to determine the reasonable royalty for such license.

IV

[*Other Statutes*]

Nothing in this judgment shall prevent defendant Universal Button Fastening and Button Company from availing itself of the benefits of (a) the Act of Congress of April 10, 1918, commonly called the Webb-Pomerene Act, (b) the Act of Congress of 1937, commonly called the Miller-Tydings Proviso to Section 1 of the Act of Congress of July 2, 1890, entitled “An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies”, or (c) save as elsewhere in this judgment provided of the patent laws.

VII

[*Compliance*]

For the purpose of securing compliance with this judgment and for no other purpose, duly authorized representatives of the Department of Justice shall upon written request of the Attorney General or an Assistant Attorney General, and upon reasonable notice to the defendant, Universal Button Fastening and Button Company, made to its' principal office, be permitted, subject to any legally recognized privilege, (1) access during the office hours of said defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant relating to any matters contained in this judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of such defendant who may have counsel present, regarding any such matters; provided, however, that no information obtained by the means provided in this paragraph shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department except in the course of legal proceedings, to which the United States is a party, for the purpose of securing compliance with this judgment, or as otherwise required by law.

VIII

[*Jurisdiction Retained*]

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this judgment, for the amendment, modification, or termination of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

UNITED STATES V. BESSER MANUFACTURING CO., ET AL.

Civil Action No. 8144

Year Judgment Entered: 1952

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff v. BESSER MANUFACTURING COMPANY, STEARNS MANUFACTURING COMPANY, INC. JESSE H. BESSER, LOUIS GELBMAN and HAMLIN F. ANDRUS, Defendants.	Civil Action No. 8144

FINAL JUDGMENT

A judgment having been entered herein on April 12, 1951, the defendants Besser Manufacturing Company and Jesse H. Besser having appealed from said judgment directly to the Supreme Court of the United States, the said appeal having duly come on to be heard in the Supreme Court of the United States and having been argued by counsel and the Supreme Court of the United States having thereafter issued its mandate, dated June 24, 1952, wherein it is ordered, adjudged and decreed that said judgment be affirmed, and the said mandate having been filed with this Court -

NOW, on motion of John W. Neville, Special Assistant to the Attorney General, attorney for the plaintiff in this cause, it is

ORDERED, ADJUDGED and DECREED that the said mandate of the Supreme Court of the United States be, and the same hereby is, made the judgment of this Court, and it is further

ORDERED, ADJUDGED and DECREED that the said judgment heretofore entered in this cause on April 12, 1951, as revised herein, be and the same hereby is made absolute and final.

I

Defendants Besser Manufacturing Company, Stearns Manufacturing Company, Inc., Louis Gelbman, Hamlin F. Andrus and Jesse H. Besser have combined and conspired to unreasonably restrain, and to monopolize, trade and commerce in concrete block making machines in violation of Sections 1 and 2 of the Sherman Act; and defendants Besser Manufacturing Company and Jesse H. Besser have attempted to monopolize and have monopolized said trade and commerce in violation of Section 2 of the Sherman Act.

II

As used in this Final Judgment:

(A) "Besser Company" means Besser Manufacturing Company;

(B) "Stearns" means Stearns Manufacturing Company, Inc.;

(C) "Besser" means Jesse H. Besser;

(D) "Gelbman" means Louis Gelbman;

(E) "Andrus" means Hamlin F. Andrus;

(F) "Patents" means United States Letters Patent and applications therefor, and all reissues, divisions, continuations or extensions thereof, and patents issued upon said applications;

(G) "Person" means any individual, partnership, firm, corporation, association, trustee or any other business or legal entity.

III

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its subsidiaries, successors, assigns, and each of its officers, directors, agents, employees and any other person acting under, through or for such defendant.

IV

(A) Within sixty (60) days following the entry of this Final Judgment, defendants Besser Company and Besser shall present to this Court for approval their plan for divesting themselves, by January 1st, 1953, of all stock holdings and other interests, direct or indirect, in defendant Stearns.

(B) Defendants Besser Company and Besser are hereby ordered and directed to cancel and terminate any and all contracts, agreements and understandings between said defendants or either of them, and any other person, calling for the disposition of any of the capital stock of defendant Stearns, where such contracts, agreements or understandings were entered into prior to entry of this Final Judgment. Defendant Besser Company and Besser are hereby enjoined and restrained from adhering to, enforcing or claiming any rights under any of the aforesaid contracts, agreements or understandings.

V

Defendants Besser Company and Besser are each enjoined and restrained from:

(A) Acquiring, directly or indirectly, by purchase, merger, consolidation or otherwise after entry of this Final Judgment, and from holding or exercising after such acquisition ownership or control of, the business, physical assets or good will, or any part thereof, or any capital stock or securities of any person engaged in the manufacture, sale or distribution of concrete block making machines until after said defendant has, upon reasonable notice to the Attorney General and an opportunity on the part of the latter to be heard, shown to this Court that such acquisition would not substantially lessen competition in the manufacture, sale or distribution of concrete block making machines;

(B) Causing, authorizing or knowingly permitting any officer, director, agent or employee to serve as an officer, director, agent or employee of any other person engaged in the manufacture of concrete block making machines.

VI

(A) The license agreement to which defendants Gelbman, Andrus, Stearns and Besser Company are parties, dated December 7, 1942, is adjudged to be unlawful under Sections 1 and 2 of the Sherman Act and is hereby declared null and void.

(B) Defendants are jointly and severally enjoined and restrained from conveying or receiving any patent rights under any license, contract, agreement or understanding which gives the licensee joint control with any other licensee or licensees over the number of licenses issued or to be issued, or which has the same unlawful purpose and effect as the afore-described license agreement of December 7, 1942.

(C) Except for now pending actions, appeals and proceedings pursuant thereto in Andrus and Gelbman v. Whitman; Andrus and Gelbman v. Wenzel, et al; Besser Manufacturing Company v. Whitman; defendants Besser Company, Besser, Gelbman and Andrus are enjoined and restrained from instituting or threatening to institute, or maintaining or continuing any action, suit or proceeding for acts of infringement of any patent referred to in Section VII(A) of this Judgment occurring prior to the date of this Judgment.

VII

(A) Defendants Gelbman, Andrus, Besser Company, Besser and Stearns are each ordered and directed to grant to any applicant therefor a non-exclusive license to make, use and vend concrete block making machinery under any, some or all patents and patent applications pertaining to concrete block making machinery now owned or controlled by the defendant, or which are issued or applied for within ten years from the entry of this Final Judgment, and each of said defendants is hereby enjoined and restrained from making any sale or other disposition of any of said patents or patent applications which deprives it of the power or authority to

grant such licenses, unless it sells, transfers or assigns such patents and patent applications and requires as a condition of such sale, transfer or assignment that the purchaser, transferee or assignee shall observe the requirements of this Section VII, and the purchaser, transferee or assignee shall file with this Court prior to consummation of said transaction, an undertaking to be bound by the provisions of this Section VII. The reference to an "undertaking" shall not be construed as requiring the posting of a bond.

(B) Defendants Gelbman, Andrus, Besser Company, Besser and Stearns are hereby enjoined and restrained from including any restrictions or condition whatsoever in any license or sublicense granted by or pursuant to the provisions of this Section VII and in order to arrive at a fair royalty price for the use of the various patents, present and future, as above enumerated, and the form and contents of the royalty contracts —

1. Said plaintiff government and said defendants Gelbman and Andrus shall on or before April 21, 1951, each select two persons, which said four persons so selected shall act as a committee to determine such fair royalty prices and the form and contents of the royalty contracts; provided, however, that if they are unable to so agree on or before May 5, 1951, then said four persons so selected may then select and appoint a fifth person to act with them as the fifth member of said committee; and provided further that if said four are unable to agree upon the fifth member by at least a three to one vote, on or before May 12, 1951, then such questions and points not agreed upon shall forthwith be referred to this court which shall then have the right to act as the fifth member himself or select another person in his stead to aid in making the final decision;

2. It is further ordered that the same method and manner shall be used in arriving at a fair royalty price and the form and contents of the royalty contracts covering the patents, present and future, as above enumerated, owned and/or controlled by defendants Besser Manufacturing Company and Jesse H. Besser and when arrived at shall be filed as provided in sub-paragraph (C) following; and

3. It is further ordered that in the event defendant Stearns owns or controls, on the date of entry of this Final Judgment, or acquires within ten years from the said date of entry, any patents pertaining to concrete block making machinery and any person applies for a license thereunder, defendant Stearns shall immediately notify the Attorney General of such application and appoint two representatives who shall meet with two representatives from the industry for the purpose of arriving at a fair royalty price and the form and contents of the royalty contract covering the patents.

(C) It is further ordered that said final royalty prices together with the form and contents of the royalty agreement, when determined, shall be forthwith filed by the government with the United States District Court Clerk and upon so filing will then become a part of this Final Judgment just as though it were now included herein.

(D) Nothing herein shall prevent any applicant from attacking in the aforesaid proceedings, the validity or scope of any of the patents, nor shall this Final Judgment be construed as importing any validity or value to any of the said patents.

VIII.

(A) Defendant Besser Company is hereby ordered and directed, within thirty (30) days from the entry of this Final Judgment to notify each person presently leasing a concrete block making machine from said defendant that the lessee may, at its option,

(1) terminate the said lease agreement at any time prior to March 1, 1954, or

(2) continue under the terms of the lease, or

(3) enter into an agreement to purchase the machine or machines leased, and the accessory equipment used, as mutually satisfactory to the parties concerned;

provided, however, that the provisions of sub-sections 1 and 2 of this sub-paragraph (A) shall be contingent upon said lessee making his election in writing on or before December 1, 1953.

(B) Defendant Besser Company is hereby ordered and directed to sell to any existing lessee or purchaser under this Section VIII, of concrete block making machinery and accessory equipment of said defendant, repair parts upon reasonable, uniform and non-discriminatory prices, terms and conditions of sale.

IX

Defendants are jointly and severally enjoined and restrained from entering into, adhering to or claiming any rights under any contract, agreement or understanding with any person presently or hereinafter engaged in the development or manufacture of concrete block making machinery which has the purpose or effect of preventing such person, or any other person from competing with defendants or any of them in the development, manufacture or sale of concrete block making machinery.

X

Each of the defendants is enjoined and restrained from compelling, coercing or influencing any person to refrain from manufacturing concrete block making machinery or supplying steel or other materials, used in the manufacture of said machines, to any manufacturer of such machines.

XI

For the purpose of securing compliance with this Final Judgment duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or an Assistant Attorney General, and on reasonable notice to the defendant, made to its principal office, be permitted (1) access during the office hours of said defendant to

all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendants, who may have counsel present, regarding such matters. No information obtained by the means provided in this paragraph shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, 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.

XII

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the 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 thereof, or the enforcement of compliance therewith and for punishment or violation thereof.

XIII

Judgment is entered against the defendants for all taxable costs to be taxed in this proceeding.

/s/ FRANK A. PICARD
United States District Judge

Dated: July 29, 1952

A TRUE COPY
FRANK J. DINGELL, CLERK
BY _____ DEPUTY CLERK

UNITED STATES V. BRIGGS MANUFACTURING CO., ET AL.

Civil Action No. 8398

Year Judgment Entered: 1953

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Briggs Manufacturing Company, Abingdon Potteries, Inc., John Douglas Company, and Republic Brass Company., U.S. District Court, E.D. Michigan, 1952-1953 Trade Cases ¶67,603, (Nov. 3, 1953)

United States v. Briggs Manufacturing Company, Abingdon Potteries, Inc., John Douglas Company, and Republic Brass Company.

1952-1953 Trade Cases ¶67,603. U.S. District Court, E.D. Michigan, Southern Division. Civil Action No. 8398. Filed November 3, 1953. Case No. 952 in the Antitrust Division of the Department of Justice.

Clayton Antitrust Act and Sherman Antitrust Act

Consent Decree—Practices Enjoined—Tie-In Sales—Refusal To Sell—Plumbing Fixtures and Sanitary Brass Goods.—Manufacturers of plumbing supplies were enjoined from selling (1) plumbing fixtures on the condition that the purchaser shall purchase any sanitary brass goods from the manufacturers; (2) sanitary brass goods on the condition that the purchaser shall purchase any plumbing fixtures from the manufacturers; (3) plumbing fixtures on the condition that the purchaser (a) shall not purchase sanitary brass goods made by anyone other than the manufacturers, or (b) shall not use or deal in sanitary brass goods other than those made or sold by the manufacturers; (4) sanitary brass goods on the condition that the purchaser (a) shall not purchase plumbing fixtures made by anyone other than the manufacturers, or (b) shall not use or deal in plumbing fixtures other than those made or sold by the manufacturers. The manufacturers also were enjoined from refusing to sell plumbing fixtures, refusing to fill or ship, or discriminating in or delaying the filling or shipping of any orders for plumbing fixtures because the customer has not purchased, is not purchasing, or will not agree to purchase sanitary brass goods from the manufacturers, or has purchased or is purchasing sanitary brass goods other than those made or sold by the manufacturers. The decree contained a similar prohibition with respect to the refusal to sell sanitary brass goods.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; and John W. Neville, James A. Broderick, William D. Kilgore, Jr., and Charles F. B. McAleer, Attorneys.

For the defendants: Yates G. Smith, and Beaumont, Smith and Harris, Detroit, Mich.

For an opinion of the U. S. District Court, Eastern District of Pennsylvania, see 1948-1949 Trade Cases ¶ 62,470.

Final Judgment

KOSCINSKI, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on October 15, 1948, defendants having appeared and filed their answers denying the substantive allegations thereof, and the plaintiff and defendants by their attorneys having consented to the entry of this Final Judgment,

Now therefore, without any testimony or evidence having been taken herein 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

[*Clayton and Sherman Acts*]

The Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a cause of action 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, and under Section 3 of the Act of Congress of October 15, 1914, commonly known as the Clayton Act.

II

[*Definitions*]

As used in this Final Judgment:

(A) "Defendants" shall mean Briggs Manufacturing Company, Abingdon Potteries, Inc., John Douglas Company and Republic Brass Company, or any of them;

(B) "Plumbing fixtures" shall mean plumbing articles made of vitreous china or pottery (such as lavatories, water closets and urinals) and plumbing articles made of iron or steel enamelware (such as bathtubs, lavatories, and sinks), and other like goods or any one or more items of such goods;

(C) "Sanitary brass goods" shall mean bath and shower fittings (such as tub fillers, tub and shower fittings, drains and overflows), lavatory fittings (such as faucets, drains and combination fittings), and sink fittings (such as sink faucets, strainers and combination fittings), and other like goods, or any one or more items of such goods.

III

[*Applicability of Provisions*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendants, its officers, directors, agents, employees, subsidiaries, successors and assigns, and all other persons acting under, through or for such defendant.

IV

[*Tie-In Practices Prohibited*]

Defendants are hereby jointly and severally enjoined and restrained from selling or attempting to sell, or making or adhering to any contract for the sale of:

(A) Plumbing fixtures on the condition, express or implied, that the purchaser shall purchase any sanitary brass goods from the defendants, or

(B) Sanitary brass goods on the condition, express or implied, that the purchaser shall purchase any plumbing fixtures from the defendants.

V

[*Sales Restricting Use of Other Products*]

Defendants are hereby jointly and severally enjoined and restrained from selling or attempting to sell, or making or adhering to any contract for the sale of:

(A) Plumbing fixtures on the condition, express or implied, that the purchaser

(1) shall not purchase sanitary brass goods made or sold by anyone other than the defendants, or

(2) shall not use, deal in or sell sanitary brass goods other than those made or sold by the defendants;

(B) Sanitary brass goods on the condition, express or implied, that the purchaser

(1) shall not purchase plumbing fixtures made or sold by anyone other than the defendants, or

(2) shall not use, deal in or sell plumbing fixtures other than those made or sold by the defendants.

VI

[*Refusal To Sell*]

Defendants are jointly and severally enjoined and restrained from:

(A) Refusing to sell plumbing fixtures or refusing to fill or ship, or discriminating in or delaying the filling or shipping of any orders for plumbing fixtures because the customer has not purchased, is not purchasing or will not agree to purchase sanitary brass goods from the defendants, or has purchased or is purchasing sanitary brass goods other than those made or sold by defendants;

(B) Refusing to sell sanitary brass goods or refusing to fill or ship, or discriminating in or delaying the filling or shipping of any orders for sanitary brass goods because the customer has not purchased, is not purchasing or will not agree to purchase plumbing fixtures from the defendants, or has purchased or is purchasing plumbing fixtures other than those made or sold by defendants.

VII

[*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 upon 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, and subject to any legally recognized privilege, be permitted (1) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it to interview officers and employees of said defendant, who may have counsel present, regarding any such matters. For the purpose of securing compliance with this judgment any defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to its principal office, shall submit such written reports with respect to any of the matters contained in this judgment as from time to time may be necessary for the purpose of enforcement of this judgment. No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment, or as otherwise required by law.

VIII

[*Jurisdiction Retained*]

Jurisdiction of this cause is retained for the purpose of enabling any parties to this 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 judgment or for the modification or termination of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

UNITED STATES V. NATIONAL AUTOMOTIVE PARTS ASS'N, ET AL.

Civil Action No. 9559

Year Judgment Entered: 1954

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. National Automotive Parts Association, et al., U.S. District Court, E.D. Michigan, 1954 Trade Cases ¶67,749, (May 6, 1954)

United States v. National Automotive Parts Association, et al.

1954 Trade Cases ¶67,749. U.S. District Court, E.D. Michigan, Southern Division. Civil Action No. 9559. Dated May 6, 1954. Case No. 1056 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decree—Practices Enjoined—Permissive Provisions—Exclusive Dealing-Trade Associations.—Distributors of automotive parts and their trade association were enjoined, jointly and severally, from: (A) entering into or claiming any rights under any agreement with each other or any other person to purchase automotive parts exclusively from any manufacturer thereof, or refraining from purchasing automotive parts from any dealer thereof, but not from jointly selecting lines of automotive parts designated as such by members of the association, nor from agreeing with the manufacturer of any such line to purchase that line; and (B) persuading any manufacturer of automotive parts to sell such parts exclusively to any of the defendant distributors or to refrain from selling them to any other person, but not from agreeing with a manufacturer of a line of automotive parts, designated as such by the association and sold under a specific trade name or trade-mark developed by the association, that such line will not be sold to any other person under such specified trade name or trade-mark.

Consent Decree—Practices Enjoined—Agreements To Allocate Markets—Trade Associations.—The allocation or division of territories, markets, or customers for the sale of automotive parts by distributors of such parts and their trade association, jointly and severally, was enjoined by a consent decree.

Consent Decree—Practices Enjoined—Permissive Provisions—Price Fixing—Trade Associations.—Distributors of automotive parts and their trade association were jointly and severally enjoined from fixing or maintaining prices or other terms or conditions of sale of automotive parts sold to third persons, but were not deprived of any of their rights under the Miller-Tydings Act or the McGuire Act.

Consent Decree—Practices Enjoined—Uniform Selection of Jobbers Trade Associations.—Automotive parts distributors and their trade association were enjoined, jointly and severally, from engaging with any one to adhere to, any uniform policy in selecting jobbers or determining the number or location of jobbers or entering into arrangements with jobbers.

Consent Decree—Applicability of Provisions.—A consent decree provided that the provisions of the decree applicable to a defendant shall apply to such defendant, its members, officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons acting, or claiming to act, under, through, or for such defendant.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; William D. Kilgore, Jr.; John W. Neville; Charles F. B. McAleer.

For the defendants: Barnes, Hickam, Pantzer & Boyd (Hubert Hickam, Alan W. Boyd), Indianapolis, Indiana; Bodman Longley, Bogle, Armstrong & Dahling (Frederick C. Nash), Detroit, Michigan; Harold T. Halfpenny, Chicago, Illinois.

For a prior opinion of the U. S. District Court, Eastern District of Michigan, see 1950-1951 Trade Cases ¶ 62,803.

Final Judgment

ARTHUR A. KOSCINSKI, District Judge [*In full text*]: Plaintiff, the United States of America, having filed its complaint herein on June 30, 1950, and the defendants herein having filed their answer thereto on March 20, 1951; and

plaintiff and said defendants 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 any of the parties hereto in respect to any such issue; and the Court having considered the matter and being duly advised.

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

[*Jurisdiction*]

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

[*Definitions*]

As used in this Final Judgment:

(A) “Person” shall mean an individual, partnership, trust, corporation or any other form of legal or business entity;

(B) “NAPA” shall mean the defendant, National Automotive Parts Association;

(C) “Defendant distributors” shall mean each and all of the following defendants:

Genuine Parts Company

Campbell Motor Parts Company

Unit Parts Corporation

The Automotive Parts Company, Inc.

NAPA Des Moines Warehouse, Inc.

NAPA Jacksonville Warehouse, Inc.

Colyear Motor Sales Company

Standard Unit Parts Corporation (Minnesota)

Brittain Brothers, Inc.

Motor Parts Company

Quaker City Motor Parts Company, Inc.

NAPA Pittsburgh Warehouse, Inc.

NAPA Richmond Warehouse, Inc. (sued as Motor Parts Corporation)

Mendenhall Auto Parts Company, Inc.

NAPA Syracuse Warehouse, Inc.

Authorized Motor Parts Corporation

Automotive Parts Company, Inc.

General Auto Parts Company

Grand Rapids Automotive Supply Corporation

Central Motor Parts Company

Motor Parts Depot, Inc. (Texas)

Motor Parts Depot, Inc. (Kentucky)

Standard Unit Part Corporation (Indiana)

T. L. McGonagle d.b.a. Denver Gear & Parts Company

(D) "Automotive parts" shall mean separable portions of an automotive vehicle manufactured and sold for use in the repair of automotive vehicles;

(E) "NAPA line" shall mean a line of automotive parts designated as such by the members of NAPA, which, under an agreement entered into with the manufacturer thereof through NAPA, the defendant distributors purchase, stock and distribute;

(F) "Jobber" shall mean any person who purchases automotive parts from manufacturers or distributors and resells the same to operators of repair shops, service stations, or to the owners of automotive vehicles.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to a defendant shall apply to such defendant, its members, officers, directors, agents, employees, subsidiaries, successors and assigns and to all other persons acting, or claiming to act, under, through or for such defendant.

IV

[*Exclusive Dealing Prohibited*]

Defendants are jointly and severally enjoined and restrained from:

(A) Entering into, adhering to, furthering or claiming any rights under any contract, agreement or understanding with any defendant or any other person to (1) purchase or distribute automotive parts exclusively from any manufacturer thereof, or (2) refrain from purchasing automotive parts from any manufacturer thereof; provided, however, that this subsection (A) shall not be construed to prohibit defendants from (1) jointly selecting NAPA lines, or (2) agreeing with the manufacturer of a NAPA line to purchase, stock and distribute that NAPA line;

(B) Persuading or inducing, or attempting to persuade of induce, any manufacturer of automotive parts to sell such parts exclusively to distributor defendants, or any of them, or to refrain from selling automotive parts to any other person; provided, however, that this subsection (B) shall not be construed to prohibit defendants from agreeing with a manufacturer of a NAPA line which is sold under a specific trade name or trade-mark (developed by NAPA or not being used, in connection with automotive parts, by any other person at the time of its adoption by NAPA) that such NAPA line will not be sold to any other person under such specified trade name or trade-mark;

[*Agreements To Allocate Markets Enjoined*]

(C) Entering into, adhering to, furthering or claiming any rights under any contract, agreement, understanding, plan or program to allocate or divide territories, markets or customers for the distribution or sale of automotive parts;

[*Price Fixing]*

(D) Entering into, adhering to, furthering or claiming any rights under any contract, agreement, understanding, plan or program with any other person to fix, maintain, stabilize or adhere to prices, discounts or other terms or conditions of sale of automotive parts sold to third persons; provided, however, that this subsection (D) shall not be construed to prohibit any defendant from availing itself of its rights, if any, under the Act of Congress of August 17, 1937, commonly known as the Miller-Tydings Act, or the Act of Congress of July 14, 1952, commonly known as the McGuire Act;

[*Selection of Jobbers*]

(E) Entering into, adhering to, furthering or claiming any rights under any contract, agreement or understanding with any defendant or any other person to adhere to any uniform policy in selecting jobbers or determining the number or location of jobbers or in entering into arrangements with jobbers.

V

[*Publication*]

Defendant NAPA shall, within ninety days after the entry of this Judgment, mail to all manufacturers listed in the November 1953 issue of “Chilton Automotive Buyer's Guide” who sell automotive parts in competition with any line designated as a NAPA line, a letter in a form first approved by the plaintiff herein explaining the substantive provisions of subsection IV(A).

VI

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, 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, and on reasonable notice to any defendant made to its principal office be permitted (1) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment; and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it to interview officers or employees of said defendant, who may have counsel present, regarding any such matters.

For the purpose of securing compliance with this Final Judgment any defendant upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means provided 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 such Department, 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.

VII

[*Retention of Jurisdiction*]

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 its provisions, for the enforcement of compliance therewith, and for the punishment of violations thereof.

At any time following five years from the date of entry of this Final Judgment the plaintiff may apply to this Court for other and further relief, including modification or termination of any provision herein, and the relief may be granted upon the plaintiff's establishing to the satisfaction of this Court that the proportion of sales of automotive parts by the distributing defendants, to the total industry sales, has increased to an extent justifying the relief requested.

UNITED STATES V. GENERAL MILLS, INC., ET AL.

Civil Action No. 10669

Year Judgment Entered: 1955

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. General Mills, Inc., et al., U.S. District Court, E.D. Michigan, 1955 Trade Cases ¶67,979, (Feb. 2, 1955)

United States v. General Mills, Inc., et al.

1955 Trade Cases ¶67,979. U.S. District Court, E.D. Michigan, Southern Division. Civil Action No. 10669. Dated February 2, 1955. Case No. 1101 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing and Delivered Prices—Duration of Contracts—Dried Beet Pulp.—Dried beet pulp producers and a distributor were enjoined by a consent decree from entering into/any agreement with any producer of dried beet pulp (1) to fix the price at which the pulp is sold to third persons; (2) to maintain any system for selling or quoting prices of the pulp, including, but not limited to, any system having the purpose or effect of causing any producer to receive the same delivered price for a given quantity of the pulp at any point of delivery as that received by any other producer for a similar quantity at the same point of delivery; or (3) to refrain from competing in the production, sale, or distribution of the pulp. Also, the defendants were enjoined from entering: into any contract for the purchase or sale of dried beet pulp where the period of performance thereunder exceeds eighteen months.
Combinations and Conspiracies—Consent Decree—Practices Enjoined—Exchanging Price, Cost, and Other Information.—Dried beet pulp producers and a distributor were enjoined by a consent decree from transmitting or discussing any price, cost, or other information for the purpose of fixing prices, maintaining any plan concerning sales or sales prices, or sharing in agreed quotas or allocating markets or customers.
Combinations and Conspiracies—Consent Decree—Practices Enjoined—Common Sales Agent—Proof of Violation.—Dried beet pulp producers and a distributor were enjoined by a consent decree from entering into any agreement with any producer of dried beet pulp to sell the pulp through a common sales agent or to sell to a common buyer for resale. The decree provided that in any proceeding brought under the decree, the mere fact that two or more producers sell dried beet pulp through a common sales agent or sell to a common buyer for resale shall not, without more, establish the existence of any contract, agreement, or understanding. The distributor was enjoined from acting as a broker or agent in the sale of the pulp.
Department of Justice Enforcement and Procedure—Consent Decrees—Limitations on Acceptance by the Government.—A consent decree provided that neither the entry of the decree nor the consent thereto by the Government shall estop or bar the Government from proceeding against any defendant or defendants under Section 4 of the Sherman Act to enjoin violations of Section 2 of the Act on a charge that such defendant or defendants have attempted to monopolize, have monopolized, or have combined or conspired to monopolize any part of the interstate trade and commerce in dried beet pulp.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; William D. Kilgore and Worth Rowley, Special Assistants to the Attorney General; and Horace L. Flurry, Vincent A. Gorman, and William F. Rogers.

For the defendants: Hill, Lewis, Andrews, Granse & Adams, by Sherwin A. Hill, for Michigan Sugar Co.; Dickinson, Wright, Davis, McKean & Codlip, by R. William Rogers, for Robert Gage Coal Co.; Marshall, Melhorn, Block & Belt, Toledo, Ohio, by W. A. Belt, for Great Lakes Sugar Co., Inc., Menominee Sugar Co., and Superior Sugar Refining Co.; Daniel R. Hopkins for Garden City Co.; and J. F. Finn for General Mills, Inc.

Final Judgment

THEODORE LEVIN, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on June 26, 1951, and the consenting defendants having appeared and severally filed their answers to such complaint denying the substantive allegations thereof and denying the violation of law charged therein, and the plaintiff and the said defendants, by their respective attorneys having severally consented to the entry of this

Final Judgment herein, without trial or adjudication of any issue of fact or law herein and without this judgment constituting evidence or admission in respect of 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 as aforesaid of the consenting defendants and not upon evidence, it is hereby

Ordered, adjudged, and decreed as follows:

I

[*Sherman Act*]

The court has jurisdiction of the subject matter herein and of all the parties hereto, and the complaint states a claim for relief 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," as amended, commonly known as the Sherman Act.

II

[*Definitions*]

As used in this Final Judgment:

(a) "Dried beet pulp" means the fibrous residue of sugar beets resulting from the manufacture of sugar from sugar beets, which residue has been dried through the use of pulp drying equipment, but before the same is mixed, blended or treated with any other material or ingredient, other than molasses;

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

(c) "Defendants" means the defendants signatory hereto and each of them.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its officers, directors, agents, employees, subsidiaries, successors, assigns, and all other persons acting under, through or for such defendant.

IV

[*Pricing Practices, Competition, and Common Agents*]

The defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement or understanding with any producer of dried beet pulp:

(a) to control, raise, fix, or maintain the price or prices at which dried beet pulp is sold to or purchased by third persons;

(b) to maintain or adhere to any system, plan or program for selling or quoting prices for the sale to or purchase by any third person of dried beet pulp, including, but not limited to, any system, plan or program having the purpose or effect of causing any producer of dried beet pulp to receive the same delivered price for a given quantity of dried beet pulp at any point of delivery as that received by any other producer for a similar quantity at the same point of delivery;

(c) to refrain from competing, in whole or in part, in the production, sale or distribution of dried beet pulp; or

(d) to sell dried beet pulp through a common sales agent or to sell to a common buyer for resale.

In any proceeding brought under this Final Judgment the mere fact that two or more producers of dried beet pulp sell dried beet pulp through a common sales agent or sell to a common buyer for resale shall not, without more, establish the existence of any contract, agreement, or understanding.

V

[*Duration of Purchase or Sale Contracts*]

The defendants are jointly and severally enjoined and restrained from entering into any contract, agreement, or understanding for the purchase or sale of dried beet pulp where the period of performance thereunder exceeds eighteen (18) months

VI

[*Price, Cost, and Other Information*]

Defendants are jointly and severally enjoined and restrained from transmitting or discussing any price, cost, or other information relating to dried beet pulp to or with any producer of dried beet, pulp for the purpose or having the effect of:

(a) controlling, raising, fixing or maintaining the price or prices at which dried beet pulp is sold to or purchased by third persons;

(b) maintaining, adhering to or establishing any system, plan or program concerning the sale or sales prices to third persons of dried beet pulp; or

(c) sharing in agreed quotas, allocating or dividing any territory, market or customers for dried beet pulp.

VII

[*Acting as Broker or Agent*]

General Mills, Inc. is enjoined and restrained from acting as a broker or agent in the sale of dried beet pulp.

VIII

[*Judgment No Bar to Monopoly Proceedings*]

Neither the entry of this Final Judgment nor the consent thereto by the plaintiff shall estop or bar plaintiff from proceeding against any defendant or defendants herein under Section 4 of the Sherman Act to enjoin or restrain violations of Section 2 of the Sherman Act on a charge that such defendant or defendants have attempted to monopolize, have monopolized or have combined or conspired to monopolize any part of the interstate trade and commerce in dried beet pulp.

IX

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment and for no other purpose, 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 and on reasonable notice to any defendant made to its principal office be permitted subject to any legally recognized privilege (1) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it to interview officers or employees of said defendant, who may have counsel present, regarding any such matters. For the purposes of securing compliance with this Final Judgment, any defendant, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party 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 the 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 for the modification of any of the provisions hereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. General Mills, Inc., et al., U.S. District Court, E.D. Michigan, 1955 Trade Cases ¶68,118, (Jul. 19, 1955)

Federal Antitrust Cases
Trade Regulation Reporter - Trade Cases (1932 - 1992) ¶68,118

United States v. General Mills, Inc., et al.

1955 Trade Cases ¶68,118. U.S. District Court, E.D. Michigan. Southern Division. Civil Action No. 10669. Dated July 19, 1955. Case No. 1101 in the Antitrust Division of the Department of Justice.

Headnote

Sherman Antiturst Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing and Delivered Prices—Duration of Contracts—Dried Beet Pulp.—Dried beet pulp producers were enjoined by a consent decree from entering into any understanding with any other producer of dried beet pulp (1) to fix or maintain the price at which dried beet pulp is sold to third persons; (2) to maintain or adhere to any system for selling or quoting prices of dried beet pulp, including, but not limited to, any system or program having the purpose or effect of causing any producer to receive the same delivered price for a given quantity of dried beet pulp at any point of delivery as that received by any other producer for a similar quantity at the same point of delivery; or (3) to refrain from competing in the production, sale, or distribution of dried beet pulp. Also, the defendants were enjoined from entering into any agreement for the purchase or sale of dried beet pulp where the period of performance thereunder exceeds eighteen months.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Common Sales Agent—Proof of Violation.—Dried beet pulp producers were enjoined by a consent decree from entering into any understanding with any other producer of dried beet pulp to sell the pulp through a common sales agent or to sell to a common buyer for resale. The decree provided that in any proceeding brought under the decree the mere fact that two or more producers of dried beet pulp sell the pulp through a common sales agent or sell to a common buyer for resale shall not, without more, establish the existence of any contract, agreement, or understanding.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Exchanging Price, Cost and Other Information.—Producers of dried beet pulp were enjoined by a consent decree from transmitting or discussing any price, cost, or other information for the purpose of fixing or maintaining prices, adhering to any plan concerning sales or sale prices, sharing in agreed quotas, or allocating markets or customers.

Department of Justice Enforcement and Procedure—Consent Decree—Limitations on Acceptance by the Government.—A consent decree provided that neither the entry of the decree nor the consent thereto by the Government shall estop or bar the Government from proceeding against any defendant or defendants under Section. 4 of the Sherman Act to enjoin or restrain violations of Section 2 of the Sherman Act on a charge that such defendant or defendants have attempted to monopolize, have monopolized, or have combined or conspired to monopolize any part of the interstate trade and commerce, in dried beet pulp.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; W. D. Kilgore, Jr. and Worth Rowley, Special Assistants to the Attorney General and Vincent A. Gorman and Horace L. Flurry.

For the defendants: Dennis O'Rourke for Holly Sugar Corp. and Franklin County Sugar Co.

For a prior consent decree entered in the U. S. District Court, Eastern District of Michigan, Southern Division, see 1955 Trade Cases ¶ 67,979**.**

Final Judgment

THEODORE LEVIN, District Judge [*In full text*] The plaintiff, United States of America, having filed its complaint herein on June 26, 1951, and each of the consenting defendants having entered into a certain stipulation with said plaintiff, and the plaintiff and the said defendants by their respective attorneys having severally, consented to the entry of this Final Judgment herein, without trial or adjudication of any issue of fact or law herein and without this judgment constituting evidence or admission in respect of 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 as aforesaid of the consenting defendants and not upon evidence, it is hereby

Ordered, adjudged, and decreed as follows:

I

[*Sherman Act*]

The court has jurisdiction of the subject matter herein and of all the parties hereto, and the complaint states, a claim for relief 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,” as amended, commonly known as the Sherman Act.

II

[*Definitions*]

As used in this Final Judgment:

(a) “Dried beet pulp” means the fibrous residue of sugar beets resulting from the manufacture of sugar from sugar beets, which residue has been dried through the use of pulp drying equipment, but before the same is mixed, blended or treated with any other material or ingredient, other than molasses.

(b) Wherever reference is made herein to dried beet pulp, such reference shall be deemed to refer to and include only dried beet pulp which is produced east of the Rocky Mountains and sold to purchasers east of the Rocky Mountains. As used herein, the term “east of the Rocky Mountains” shall be deemed to mean and include that portion of the United States lying east of the eastern boundaries of the States of Idaho, Utah and New Mexico.

(c) “Person” means an individual, firm, corporation, association, partnership or any other legal entity.

(d) “Defendants” means the defendants signatory hereto and each of them.

III

[*Applicability: of Judgment*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its officers, directors, agents, employees, subsidiaries, successors, assigns, and all other persons acting under, through or for such defendant.

IV

[*Pricing Practices and Common Agents*]

The defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement or understanding with any producer of dried beet pulp:

(a) to control, raise, fix, or maintain the price or prices at which dried beet pulp is sold to or purchased by third persons;

(b) to maintain or adhere to any system, plan or program for selling or quoting prices for the sale to or purchase by any third person of dried beet pulp, including, but not limited to, any system, plan or program having the purpose or effect of causing any producer of dried beet pulp to receive the same delivered price for a given quantity of dried beet pulp at any point of delivery as that received by any other producer for a similar quantity at the same point of delivery;

(c) to refrain from competing, in whole or in part, in the production, sale or distribution of dried beet pulp; or

(d) to sell dried beet pulp through a common sales agent or to sell to a common buyer for resale.

In any proceeding brought under this Final Judgment the mere fact that two or more producers of dried beet pulp sell dried beet pulp through a common sales agent or sell to a common buyer for resale shall not, without more, establish the existence of any contract, agreement, or understanding.

V

[*Duration of Contracts Limited*]

The defendants are jointly and severally enjoined and restrained from entering into any contract, agreement, or understanding for the purchase or sale of dried beet pulp where the period of performance thereunder exceeds eighteen (18) months.

VI

[*Price, Cost, and Other Information*]

Defendants are jointly and severally enjoined and restrained from transmitting or discussing any price, cost, or other information relating to dried beet pulp to or with any producer of dried beet pulp for the purpose or having, the effect of:

(a) controlling, raising, fixing or maintaining the price or: prices at which dried beet pulp is sold to or purchased by third persons;

(b) maintaining, adhering to or establishing any system, plan or program concerning the sale or sales prices to third persons of dried beet pulp; or

(c) sharing in agreed quotas, allocating or dividing any territory, market or customers for dried beet pulp.

VII

[*Monopoly Proceeding Not Barred*]

Neither the entry of this Final Judgment nor the consent thereto by the plaintiff shall estop or bar plaintiff from proceeding against any defendant or defendants herein under Section 4 of the Sherman Act to enjoin or restrain violations of Section 2 of the Sherman Act on a charge that such defendant or defendants have attempted to monopolize, have monopolized or have combined or Conspired to monopolize any part of the interstate trade and commerce in dried beet pulp.

VIII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment and for no other purpose, 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 and on reasonable notice to any defendant made to its principal office be permitted subject to any legally recognized privilege (1) access during the office hours of said defendant to all books, ledgers, accounts, Correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it to interview officers or employees of said defendant, who may have counsel present, regarding any such matters.

For the purposes of securing compliance with this Final Judgment, any defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party or as otherwise required by law.

IX

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the 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 for the modification of any of the provisions hereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

UNITED STATES V. DETROIT SHEET METAL AND ROOFING CONTRACTORS ASS'N, ET AL.

Civil Action No. 12433

Year Judgment Entered: 1955

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Detroit Sheet Metal and Roofing Contractors Association, Inc.; John D. Busch & Sons, Inc.; J. D. Candler Roofing Company; Wallace Candler, Inc.; The Philip Carey Mfg. Co.; Robert Hutton & Co., Inc.; The R. C. Mahon Co.; Schreiber Roofing Co.; The Chas. Sexauer Roofing Company; Sullivan-Bernhagen Co., Inc.; William G. Busch; William W. Busch; Clarence L. Candler; Gerald W. Morrison; O. Dallas Wood; Thomas Marshall; R. C. Mahon; G, Walter Scott; Harold G. Schreiber; Frank Dempsey; E. G. Bush; William P. Sullivan, Sr; T. F. Beck; Bernard Beck; A. J. Bershback; Don Chaffee; Arthur Hesse; and Joseph A. Wittstock., U.S. District Court, E.D. Michigan, 1955 Trade Cases ¶67,986, (Mar. 7, 1955)

United States v. Detroit Sheet Metal and Roofing Contractors Association, Inc.; John D. Busch & Sons, Inc.; J. D. Candler Roofing Company; Wallace Candler, Inc.; The Philip Carey Mfg. Co.; Robert Hutton & Co., Inc.; The R. C. Mahon Co.; Schreiber Roofing Co.; The Chas. Sexauer Roofing Company; Sullivan-Bernhagen Co., Inc.; William G. Busch; William W. Busch; Clarence L. Candler; Gerald W. Morrison; O. Dallas Wood; Thomas Marshall; R. C. Mahon; G, Walter Scott; Harold G. Schreiber; Frank Dempsey; E. G. Bush; William P. Sullivan, Sr; T. F. Beck; Bernard Beck; A. J. Bershback; Don Chaffee; Arthur Hesse; and Joseph A. Wittstock.

1955 Trade Cases ¶67,986. U.S. District Court, E.D. Michigan, Southern Division. Civil Action No. 12433. Filed March 7, 1955. Case No. 1153 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing and Information—Built-up Roofs.—Built-up roofing contractors and a trade association were enjoined by a consent decree from entering into any understanding with any other person (1) to fix, determine, or maintain prices or other terms or conditions of sale or installation of built-up roofs, or (2) to collect, compile, disseminate, or exchange any information relating to prices or other conditions of sale or installation of built-up roofs.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Bidding Practices.—Built-up roofing contractors and a trade association were prohibited by a consent decree from entering into any understanding with any other person (1) to collect, compile, disseminate, or exchange any information relating to bids prior to the final submission of such bids to the awarding authority, (2) to fix or maintain any rules in computing bids to be submitted to any awarding authority, (3) to effect the award of any contract for the construction or installation of built-up roofing being-made to any particular contractor, (4) to influence or interfere with the free choice of a contractor by any awarding authority, (5) to restrict any contractor from doing business with, or submitting any bid to, any awarding authority, or (6) to refrain from bidding or competing in the sale or installation of built-up roofing. Each of the defendants was enjoined from disclosing to any other contractor any bids in advance of final submission to the awarding authority; urging any person to refrain from submitting a bid or to submit any sham, factitious, or unreasonable bid; urging any manufacturer of built-up roofing materials to deny its bonded roof guarantee or status as a bonded roofer to any person; or participating in any bid depository

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief —Dissolution of Trade Association.—A roofing contractors' association and defendant built-up roofing contractors, who were members of the association, were ordered by a consent decree to dissolve the trade association, and the members were enjoined from organizing, contributing anything of value to, or participating in, any of the

activities of any trade association of built-up roofing contractors the purpose of which is inconsistent with any of the provisions of the decree.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General, and W. D. Kilgore, Jr., Marcus A. Hollabaugh, Max Freeman, and John W. Neville.

For the defendants: Fred R. Walker for Wallace Candler, Inc., O. Dallas Wood, T. F. Beck, and A. J. Bershback. Charles Wright, Jr., for R. C. Mahon Co., R. C. Mahon, and G. Walter Scott. Crawford, Sweeny, Dodd and Kerr, by A. Stewart Kerr, for Joseph A. Wittstock. Arthur I. Gould for Bernard Beck. Dickinson, Wright, Davis, McKean and Cudlip for Philip Carey Mfg. Co. Julian G. McIntosh for Arthur Hesse. Edward P. Frohlich for Clarence L. Candler, Gerald W. Morrison, and J. D. Candler Roofing Co. Melvin S. Huffaker for John D. Busch and Sons, Inc., William G. Busch, and William W. Busch. David E. Roberts for Sullivan-Bernhagen Co., Inc., and William P. Sullivan, Sr. George S. Dixon for Don Chaffee. Friedman, Meyers and Keys, by Joseph H. Jackier, for Schreiber Roofing Co. and Harold G. Schreiber. Clark, Klein, Brucker and Waples, by Robert C. Winter, for Robert Hutton & Co., Inc.; Thomas Marshall; Chas. Sexauer. Roofing Co.; Frank Dempsey; E. G. Bush; and Detroit Sheet Metal and Roofing Contractors Assn., Inc.

Final Judgment

THEODORE LEVIN, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint on January 19, 1953; all the defendants having appeared and filed their answers to such complaint denying the substantive allegations thereof; and all parties, by their attorneys herein, 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 any party in respect of 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 the consent of the parties hereto, it is hereby

Ordered, adjudged, and decreed as follows:

I

[*Sherman Act*]

The Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a cause of action 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,” as amended, commonly known as the Sherman Act.

II

[*Definitions*]

As used hereafter in this Final Judgment:

(A) “Person” shall mean an individual, partnership, firm, association, corporation, or other business or legal entity.

(B) “Built-up roof” or “built-up roofing” shall mean all types of roofs or roofing commonly installed on flat or low pitched surface of buildings from, various combinations of felt, tar, asphalt, slag, and gravel, and other similar or like function performing materials.

(C) “Built-up roofing contractor” shall mean any person engaged in the construction and installation of built-up roofs.

(D) “Awarding authority” shall mean any person entitled or authorized to invite bids or let or negotiate a contract for the construction and installation of built-up roofs.

(E) “Bonded roof” shall mean any built up roof ultimately guaranteed as to quality, workmanship and durability by the manufacturer of the materials used in the construction of such roof.

(F) “Bonded roofer” shall mean a built-up roofing contractor authorized to construct bonded roofs.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its officers, directors, managers, agents, representatives, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise.

For the purposes of this Final Judgment a defendant and its officers, directors, managers, agents, representatives, employees and subsidiaries and the officers, directors, managers, agents, representatives and employees of its subsidiaries and of its successors and assigns shall be considered one person so long as, and only so long as, such relationship exists.

IV

[*Collusive Pricing and Bidding Practices*]

(A) Each of the defendants, with respect to the sale of materials for, and the installation of, built-up roofing, are, jointly and severally, enjoined and restrained from, directly or indirectly, entering into, renewing, maintaining, furthering, inducing, urging or influencing others to enter into, adhere to or maintain any contract, agreement, understanding, plan, program or common course of action with any other person the purpose or effect of which is to:

(1) Fix, determine, establish or maintain prices or other terms or conditions of sale or installation;

(2) Collect, compile, discuss, compare, disseminate, communicate, or exchange any information relating to prices or other conditions of sale, or installation, or relating to bids prior to the final submission of such bids to the awarding authority;

(3) Fix, determine, establish, or maintain, any rules, methods and policies in computing or determining bid or bids to be submitted to any awarding authority;

(4) Effect the award of any contract for the construction or installation of built-up roofing being made to any particular built-up roofing contractor;

(5) Allocate customers, influence or interfere with, or attempting to influence or interfere with, the free choice of a built-up roofing contractor by any awarding authority;

(6) Hinder, restrict, limit or prevent, or attempt to hinder, restrict, limit or prevent any built-up roofing contractor from, in any manner, doing business with, or submitting any bid to, any awarding authority, or any other person;

(7) Refrain from bidding or competing in the sale or installation of built-up roofing.

(B) This Section IV of this Final Judgment shall not be construed to prevent any defendant; acting singly and not in concert with any other person, from failing to bid or from submitting bona fide specific bids or from entering into bona fide contracts, agreements, arrangements or understandings, not otherwise prohibited by this Final Judgment,, for specific sales to customers, including awarding authorities, and agreeing on prices and terms or conditions of sale with regard to such individual transactions.

V

[*Individual Bidding Practices*]

Each of the defendants is enjoined and restrained from, directly or indirectly:

(A) Disclosing or making known to any other built-up roofing contractor, any bids for the construction or installation of built-up roofing in advance of the final submission of said bids to the awarding authority;

(B) Urging, influencing or suggesting, or attempting to urge, influence or suggest to any other person that such other person refrain from submitting a bid for the construction or installation of built-up roofing or change or alter a bid therefor submitted by such person to any awarding authority;

(C) Urging, influencing or suggesting, or attempting to urge, influence or suggest to, any other person, that such other person make or submit to any awarding authority any sham, false, factitious or unreasonable bid for the construction or installation of built-up roofing;

(D) Urging, influencing or suggesting, or attempting to urge, influence or suggest, to any manufacturer of built-up roofing materials that such manufacturer deny its bonded roof guarantee or status as a bonded roofer to any person or withhold or revoke any such guarantee or status theretofore granted by such manufacturer;

(E) Participating in any bid depository of any kind whatever with respect to the construction or installation of built-up roofing.

VI

[*Dissolution of Association*]

(A) The Detroit Sheet Metal and Roofing Contractors Association, Inc., is hereby ordered dissolved, and defendants who are members of said Association are ordered and directed to take such steps as may be necessary to effect, as early as possible and, in any event, not later than August 15, 1955, formal dissolution of said Association under laws of the State of Michigan upon the expiration of the following contracts:

(1) Dated May 17, 1954, between Detroit Sheet Metal and Roofing Contractors Association and United Slate, Tile and Composition Roofers, Damp & Waterproof Workers Association, Local No. 149;

(2) Dated July 1, 1954, between Detroit Sheet Metal and Roofing Contractors Association and the Sheet Metal Workers International Association, Local No. 105.

Defendant Association is ordered and directed to file with this Court a certified copy of the dissolution of said Association promptly thereafter, and to serve a copy thereof upon the Assistant Attorney General in charge of the Antitrust Division;

(B) The defendants are jointly and severally enjoined and restrained from, directly or indirectly, organizing, furthering, contributing anything of value to, becoming a member of, or participating in any of the activities of any trade association or other organization of built-up roofing contractors or any other trade association or organization, the purpose, conduct or activities of which, in any manner, are inconsistent with any of the provisions of this Final Judgment.

VII

[*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 any defendant, be permitted, subject to any legally recognized privilege, (A) access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this Final Judgment, and (B) subject to the reasonable convenience of such defendant, and without restraint or interference from it, to interview officers or employees of such 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, such defendant shall submit such written information with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of the enforcement of this Final Judgment. No information obtained by the means permitted in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department 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.

VIII

[*Jurisdiction Retained*]

Jurisdiction is retained by this Court for the purpose of enabling any of the parties of this Final Judgment to apply to this Court at any time for such further orders or 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, for the enforcement of compliance therewith, and for the punishment of violations thereof.

UNITED STATES V. R.L. POLK & CO., ET AL.

Civil Action No. 13135

Year Judgment Entered: 1955

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

R. L. POLK & COMPANY;
H. A. MANNING COMPANY;
THE PRICE & LEE CO.;
C. B. PAGE DIRECTORY COMPANY;
and ASSOCIATION OF NORTH
AMERICAN DIRECTORY PUBLISHERS;

Defendants.

CIVIL ACTION
No. 13135

FINAL JUDGMENT

Plaintiff United States of America, having filed its complaint herein on January 8, 1954; the defendants, and each of them, having severally appeared herein, 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 any evidence or admission with respect to any issue of fact or law herein,

NOW, THEREFORE, upon the consent of the parties hereto, by their respective attorneys, and without any trial or adjudication of any issue of fact or law herein, it is;

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter herein and of all the parties hereto. The complaint states a cause of action against the defendants, and each of them, under Sections 1 and 2 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 an individual, partnership, corporation, association or other legal entity;

(B) "Publisher" means any person engaged in the business of compiling, publishing, selling or distributing a city directory;

(C) "City directory" means a book containing the names and addresses of persons within a given geographical area, such information being compiled principally from but not limited to original information obtained by an actual canvass of residences and business places within such area;

(D) "Directory exchange" means an office operated or controlled by defendant Association of North American Directory Publishers, or any member thereof, which engages in the exchange of city directories between publishers thereof;

(E) "Directory library" means a collection of directories taken from more than one city throughout the United States;

(F) "Corporate defendants" means each and all of the defendants R. L. Polk & Company; H. A. Manning Company; The Price & Lee Co.; C. B. Page Directory Company, and any subsidiary of any such defendant;

(G) "Association" shall mean the defendant Association of North American Directory Publishers.

III

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its officers, directors, agents, servants, employees, attorneys, subsidiaries, successors and assigns, and to those persons in active concert or participation with any defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

(A) Defendant Association is ordered and directed to grant, upon request, and upon reasonable and nondiscriminatory terms and conditions,

membership in said Association to any person who shall have published a city directory in two or more cities or towns having a population of 5,000 or more persons;

(B) Defendant Association is enjoined and restrained from requiring, as a condition to membership in said Association or otherwise, that any publisher agree to refrain from competition with any person engaged in the publication, sale or distribution of city directories;

(C) Defendant Association is, so long as it shall operate a library exchange, ordered and directed to make such library exchange and the facilities thereof available, upon request, to any publisher who is a member of said Association upon reasonable and nondiscriminatory terms and conditions.

V

The corporate defendants are jointly and severally enjoined and restrained from, directly or indirectly:

(A) Permitting any of their officers, agents, servants or employees to serve, at the same time, as an officer, agent, servant or employee of any other publisher except a wholly-owned or controlled subsidiary. Nothing in this subsection (A) shall prevent a defendant from permitting any of its officers, agents, servants or employees, to serve also as an officer, agent, servant or employee of the Association, but only, in so doing, on clearly revealing his dual capacity of officer, agent, servant or employee for both the publisher and the Association. This subsection shall not apply to relations between defendant H. A. Manning Company and H. A. Manning Co. of New York, Inc.;

(B) Giving, loaning or otherwise making available to any person any directory library upon the condition, agreement or understanding that the recipient of such directory library will not support, endorse or sponsor any other publisher or any other city directory. In the event a publisher should lose the sponsorship, endorsement or support of any

person to whom such publisher shall have given, loaned or made available a directory library, then, and in that event, such publisher shall not be prohibited by this Section from demanding from the succeeding publisher, reimbursement for his costs of such directory library and upon failure or refusal of the succeeding publisher to pay said costs from repossessing or otherwise removing said directory library;

(C) Discriminating or attempting to discriminate against any publisher in the sale or distribution to publishers of city directories for use in any directory library;

(D) Knowingly selling, offering for sale or causing to be sold city directories below cost for the purpose or with the effect of destroying a competitor or eliminating competition.

VI

(A) The corporate defendants are jointly and severally enjoined and restrained from, directly or indirectly, entering into, adhering to, maintaining or claiming any rights under, any contract, agreement, understanding, plan or program with any defendant or with any other publisher, or with any central agency of or for publishers, to:

(1) designate or allocate any city, territory or market as the exclusive city, territory or market of any publisher for the publication, sale or distribution of city directories;

(2) hinder, restrict, limit or prevent any publisher from publishing a city directory or from soliciting or obtaining the sponsorship of any Chamber of Commerce, Board of Trade or other similar civic or trade organization in connection with the publication, sale or distribution of city directories;

(3) refrain from competing or to leave any publisher free from competition in the publication, sale or distribution of city directories in any city, territory or market, except under a reasonable covenant not to compete contained in a directory business sale-and-purchase agreement not

otherwise prohibited by this Final Judgment;

(B) The defendants are jointly and severally enjoined and restrained from, directly or indirectly, giving, loaning or otherwise making available to any person any directory library unless copies of any or all of the directories contained therein are available to any other publisher upon reasonable and nondiscriminatory terms. This provision shall not apply to a directory library maintained by a defendant at its own place of business and under its exclusive control and supervision.

VII

For a period of ten years after the date of this Final Judgment the defendant R. L. Polk & Company is enjoined and restrained from, directly or indirectly, purchasing or acquiring any of the physical assets, business or good will of any other publisher except upon application to this Court and a showing that such acquisition may not tend substantially to lessen competition or to create a monopoly in the publication, sale or distribution of city directories in any section of the United States.

VIII

The defendant Association is ordered and directed forthwith to:

(A) Mail a copy of this Final Judgment to each person who within five years prior to the date of its entry has been a member of, or has applied for membership in, said Association, and

(B) Publish and make known generally to the trade the fact that any publisher may participate in the activities and benefits of the Association and of the library exchange during its existence upon reasonable and nondiscriminatory terms and conditions.

IX

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 any defendant made to its principal office, be permitted:

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

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

(C) To require any defendant to submit such written reports relating to any of the matters contained in this Final Judgment as from time to time may become necessary for the purpose of enforcement of this Final Judgment.

No information obtained by 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 such Department, 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 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, for the enforcement of compliance therewith or for the punishment of violations thereof.

Dated: March 16, 1955

/s/ Frank A. Picard
United States District Judge

We hereby consent to the entry of this Final Judgment:

For the Plaintiff:

/s/ Stanley N. Barnes
STANLEY N. BARNES
Assistant Attorney General

/s/ Harry N. Burgess
HARRY N. BURGESS

/s/ Worth Rowley
WORTH ROWLEY
Special Assistant to the
Attorney General

/s/ William H. McManus
WILLIAM H. McMANUS

/s/ W. D. Kilgore, Jr.
W. D. KILGORE, JR.
Attorney

/s/ Donald Ferguson
DONALD FERGUSON

Attorneys

For the Defendants:

/s/ Everett H. Wells
Everett H. Wells
Attorney for R. L. Polk & Company; The Price & Lee Co.; C. B. Page Directory Company, and Association of North American Directory Publishers

/s/ Robert V. Johnson
Robert V. Johnson
Attorney for H. A. Manning Company

UNITED STATES V. MICHIGAN TOOL CO., ET AL.

Civil Action No. 12605

Year Judgment Entered: 1956

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. MICHIGAN TOOL COMPANY, THE FELLOWS GEAR SHAPER COMPANY, and NATIONAL BROACH AND MACHINE COMPANY, Defendants.	CIVIL NO. 12605 FILED: February 28, 1956

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on April 14, 1953, and each defendant herein having appeared and filed its answer to the complaint denying the substantive allegations thereof relating to it; and plaintiff and each defendant, 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 admission by any party with respect to any such issue;

NOW, THEREFORE, before any testimony has been taken, and without trial or adjudication of any issue of fact or law or admission by any party signatory hereto in respect of any such issue, and upon consent as aforesaid of all the parties hereto:

IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and of each of the parties hereto. The complaint states a claim against the defendants under Sections 1 and 2 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) "Michigan" shall mean the defendant Michigan Tool Company, a Delaware corporation;

(B) "Fellows" shall mean the defendant The Fellows Gear Shaper Company, a Vermont corporation;

(C) "National" shall mean the defendant National Broach and Machine Company, a Michigan corporation;

(D) "Gear cutting machine" shall mean any power driven machine utilizing a cutting tool, or cutter, to produce gears from a blank, including but not limited to gear hobbing machines and gear shaping machines;

(E) "Gear finishing machine" shall mean any power driven machine designed to finish a roughed-out gear to desired dimensions and which is incapable itself of producing a gear from a blank, and shall include, but not be limited to gear shaving machines, gear lapping machines, gear burnishing machines, and those gear grinding machines primarily designed for finishing gears;

(F) "Tools for use therewith" shall mean any or all types of implements or devices used, or capable of being used, in or with (i) gear cutting machines or (ii) gear finishing machines, depending on the context in which the term is used;

(G) "Machines" shall mean (i) gear cutting machines, (ii) gear finishing machines, and (iii) tools for use therewith, and each of them;

(H) "Defined Patents" shall mean United States letters patent and patent applications, all letters patent which may issue on or result from said applications, and rights under United States letters patent, including reissues and extensions thereof: (1) owned or controlled by any of the defendants on the date of entry of this Final Judgment or under which any of the defendants then had power to grant licenses or sublicenses to other persons and (2) issued to, acquired, or filed by, any of the defendants during the five years following the date of entry of this Final Judgment or under which any of the defendants during such period acquires power to grant licenses or sublicenses to other persons;

(I) "Person" shall mean an individual, partnership, trust, corporation or any other form of legal or business entity.

III

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its officers, agents, servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with it who receive actual notice of this Final Judgment

by personal service or otherwise. For the purpose of this Final Judgment, a defendant and a wholly-owned subsidiary shall be deemed to be one person.

IV

(A) Defendants are ordered and directed to terminate and cancel, to the extent not heretofore cancelled and terminated, the following agreements:

(1) Agreement dated June 7, 1937, by Michigan and National;

(2) Four agreements dated November 30, 1937, by Michigan and National;

(3) Three agreements dated December 6, 1937, by Michigan and National;

(4) Agreement dated January 3, 1939, by Michigan and National;

(5) General license and release agreement dated January 3, 1939, by Michigan and National;

(6) Agreement dated January 3, 1939, by Michigan and Fellows;

(7) Agreement dated January 3, 1939, by Michigan, National and Fellows;

(8) Agreement dated January 3, 1939, by Robert S. Drummond, National and Fellows;

(9) Agreement dated January 3, 1939, by Michigan and Fellows; entitled "General License and Release Agreement";

(10) Memorandum re interpretation of agreements dated May 5, 1939, by Fellows, Michigan and National;

(11) Agreement dated May 5, 1939, by Robert S. Drummond, Michigan and National;

(12) Supplemental agreements respectively dated July 1, 1942 and June 28, 1944, by Robert S. Drummond, Michigan and National;

(13) Agreement dated June 1, 1949, by National and Michigan;

(14) Letter agreement dated June 12, 1950, by National and Michigan;

(15) Letter agreement dated June 22, 1950, by National and Michigan; and

(16) Agreement dated May 29, 1951, between National and Fellows, provided, however, that nothing in this provision shall affect the ownership by Fellows of patents or patent applications assigned to it pursuant to such agreement of May 29, 1951, between National and Fellows.

(B) National is enjoined and restrained from enforcing, attempting to enforce, or claiming any rights under any provision of the two agreements between it and Churchill-Redman, Limited (hereinafter called "Churchill"), dated

June 30, 1950, as amended, which (1) prohibits Churchill or its licensees from exporting machines or selling machines for export to the United States or (2) requires that any rights granted or to be granted thereunder to National by Churchill shall be exclusive; and National is ordered and directed to send to Churchill a written notice of waiver of such provisions.

(C) National is enjoined and restrained from enforcing, attempting to enforce or claiming any rights under any provision of the agreement between it and Karl Hurth, Maschinen & Zahnradfabrik (hereinafter called "Hurth") dated June 10, 1938, which (1) prohibits Hurth from exporting machines or selling machines for export to the United States or (2) requires Hurth to charge minimum prices with respect to machines exported to the United States; and National is ordered and directed to send to Hurth a written notice (a) of waiver of such provisions (b) of the cancellation of the agreement between Michigan and National, dated June 7, 1937, and the agreements between such parties relating to German patents, said agreements being dated November 30, 1937, and December 6, 1937, respectively;

(D) Each of the defendants is enjoined and restrained from adhering to, performing, reviving or renewing (1) any of the agreements or portions thereof cancelled by or pursuant to subsections (A), (B) or (C) of this Section IV or (2) the agreement between Michigan and W. E. Sykes, Ltd. (which has heretofore terminated), and from entering into or adhering to any agreement, contract, or understanding

relating to the subject matter of any such agreements which contain any provision which is contrary to any provision of this Final Judgment.

V

(A) Each of the defendants is ordered and directed:

(1) Insofar as it has the power and authority to do so, to grant to any applicant making written request therefor a non-exclusive and unrestricted license to make, use and vend, for the life of the patent, under any some or all of the patents listed in Schedule (A) attached hereto and under any some or all of any other Defined Patents relating to gear finishing machines and tools for use therewith without any limitation or condition whatsoever except that:

(a) a reasonable non-discriminatory royalty may be charged and collected;

(b) reasonable provisions may be made for periodic inspection of the books and records of the licensee by an independent auditor or any other person acceptable to the licensee who may report to the defendant licensor only the amount of the royalty due and payable;

(c) the license may be non-transferable;

(d) reasonable provision may be made for cancellation of the license upon failure of the licensee to pay the royalties or to permit the inspection of its books and records as provided in this Section V;

(e) the license must provide that the licensee may cancel the license at any time by giving thirty (30) days' notice in writing to the licensor;

(f) reasonable provision may be made for marking the machines defined in Section II hereof, manufactured, used or sold by the licensee under the license with the numbers of the licensed patents covering such machines.

(2) Upon receipt of a written application for a license under the provisions of paragraph A(1) of this Section V to advise the applicant of the royalty it deems reasonable for the patent or patents to which the application

pertains. If the parties are unable to agree upon a reasonable royalty within ninety (90) days from the date of such request, the defendant may apply to this Court for a determination of a reasonable royalty giving notice thereof to the applicant and to the Attorney General, and shall make such application forthwith upon request of the applicant. In any such proceeding, the burden of proof shall be upon such defendant to establish the reasonableness of of the royalty requested by it. Pending the completion of any such court proceeding, the applicant shall have the right to make use and vend under the patent or patents to which its application pertains, without the payment of royalty or other compensation, but subject to the following provisions:

Such defendant may, with notice to the Attorney General and to the applicant, apply to this Court to fix an interim royalty rate pending final determination of what constitutes

a reasonable royalty. If the Court fixes such interim royalty rate, a license shall then issue providing for periodic payment of royalties at such interim rate from the date of the making of such application by the applicant; and whether or not such interim rate is fixed, the reasonable royalty rate when finally determined by this Court with respect to any patent shall apply retroactively to the date of the application in connection with which the determination was made. If the applicant fails to accept such license or fails to pay the interim royalty in accordance therewith, such action shall be ground for dismissal of his application, and his rights under this Section V shall terminate as to the patents which were the subject of such application. If the applicant fails to accept a license, such applicant shall

pay the court costs in such proceedings and any royalties found by the Court to be due to the defendant to whom application was made. Any licensee who, at the date of such determination by the Court, holds a license under the same patents shall have the right at its option to have such royalty rates apply retroactively, with respect to its operations to the date of the application for a license which resulted in such determination.

(3) To refrain from instituting or threatening to institute or maintaining any action or proceeding against any person for acts of infringement of any patent or patents owned or controlled by the defendant and required to be licensed under this Section V, unless such person has refused to enter into a license agreement as provided for in this Section V of the Final Judgment after being requested in writing so to do by the defendant.

(B) At the request of any applicant for a license under the provisions of this Section V, the licensor shall, to the extent it has the power to do so include, and without additional compensation, a nonexclusive grant of immunity from suit under every foreign patent corresponding to every United States patent included in the license for any product manufactured, used or sold pursuant to the license.

(C) Nothing herein shall prevent any applicant from attacking the validity or scope of any of the aforesaid patents nor shall this Final Judgment be construed as imputing any validity or value to any of said patents.

(D) Within thirty (30) days from the date of the entry of this Final Judgment, the defendants shall file as Schedule B to be attached hereto a complete list of their respective patents relating to gear finishing machines and tools for use therewith required to be licensed hereunder, to the extent such patents have not been included in Schedule (A) hereto.

(E) For the period of five years from the date of entry of this Final Judgment each defendant shall furnish to the Attorney General a copy of each patent license relating to machines issued or taken by it.

VI

Each of the defendants is enjoined and restrained from:

(A) Making any disposition of any of said patents which deprives it of the power or authority to grant licenses as hereinbefore provided in Section V, unless it requires,

as a condition of such disposition, that the purchaser, transferee, assignee or licensee as the case may be, shall observe the requirements of Section V hereof and such purchaser, transferee, assignee or licensee shall file with this Court, prior to the consummation of said disposition, an undertaking to be bound by said provisions of this Final Judgment;

(B) For a period of five years from the date of entry of this Final Judgment, granting to or accepting from any of the other defendants an exclusive license or assignment of any patent relating to machines.

(C) Instituting, threatening to institute, or maintaining any suit or counterclaim for infringement of, or collection of damages or other compensation for infringement of or for the use of, any patent required to be licensed hereunder for acts alleged to have occurred prior to the date of entry of this Final Judgment;

(D) Accepting or granting or offering to accept or grant a license or grant of immunity under any patent relating to machines upon the condition or understanding that the licensor shall not give a license or grant of immunity to any other person under such patent without the consent of the licensee, provided however that this Section VI (D) shall not prohibit such defendant from accepting or granting or offering to accept or grant exclusive licenses if the right to sublicense is included in such exclusive licenses.

VII

For the period of five (5) years from the date of entry of this Final Judgment each of the defendants is ordered and directed, within a reasonable time after written request by a licensee under the provisions of Section V hereof, to furnish to such licensee, all current written technological information, including conventional material specifications, drawings and photographs, whether patented or unpatented, relating to the structure or structures disclosed and claimed in the licensed patent or patents then used by such defendant in its commercial manufacture of such structure or structrues under such patents, the furnishing of such information being subject to payment to such defendant of its actual costs, not including overhead and administrative expenses, of preparing and furnishing material showing such specifications and drawings. Such defendant may require as a written condition for the furnishing of such information that the licensee (1) maintain such information in confidence and use it only in connection with its own manufacturing operations, and (2) agree, upon termination, or cancellation, of the license prior to expiration of the patent, to return such information and any reproductions thereof to such defendant and not to make any further use thereof, except in such structure or structures existing at the date of such termination.

VIII

The defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, plan or program with any manufacturer of machines to:

(A) Allocate or divide or refrain from competing in or for fields, markets, territories or customers for the manufacture, use, sale or servicing of machines;

(B) Exchange patents or technology relating to the manufacture or repair of machines on any basis which prevents, limits or restricts either party from making available such patents or technology to third persons;

(C) Refuse to sell machines except at published prices and discounts;

(D) Exchange with each other or any other manufacturer price, discount or trade-in allowance lists or information relating to machines.

IX

The defendants are jointly and severally enjoined and restrained from entering into adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, plan or program with any other person to:

(A) Fix, establish determine, maintain or stabilize prices or other terms or conditions of sale or servicing to or for third persons with respect to machines;

(B) Refrain from accepting from any third person machines of other than their own respective manufacture or from others than their own respective customers;

(C) Fix, establish, determine or maintain values of used machines received from third persons or formulae for determining such values.

X

The defendants are ordered and directed to mail to the National Machine Tool Builders Association, and shall cause to be published in "Machinery" and "American Machinist", a notice stating that this Final Judgment has been entered and setting forth the substantive provisions of Sections V and VII of this Final Judgment.

XI

Nothing in this Final Judgment shall prevent any defendant from availing itself of its rights, if any, under the Act of Congress of April 10, 1918, commonly known as the Webb-Pomerene Act.

XII

For the purpose of securing compliance with this Final Judgment, and subject to any legally recognized privilege, 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, and on reasonable notice to any defendant, made to its principal office, be permitted:

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

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

Upon request the defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment which may from time to time be necessary for the enforcement of said Judgment. No information obtained by the means provided in this Section XII shall be divulged by any representative of the Department of Justice to any person other than duly authorized representatives of such Department, 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.

XIII

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

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

/s/ Theodore Levin
United States District Judge

Dated: February 28, 1956

We consent to the making and entry of the foregoing Final Judgment:

For the Plaintiff:

/s/ Stanley N. Barnes
Stanley N. Barnes
Assistant Attorney General

/s/ Harry N. Burgess
Harry N. Burgess

/s/ William D. Kilgore Jr.
William D. Kilgore Jr.

/s/ John W. Neville
John W. Neville

/s/ Baddia J. Rashid
Baddia J. Rashid

/s/ Charles F. B. McAleer
Charles F. B. McAleer
Attorneys

/s/ Edward M. Feeney
Edward M. Feeney
Attorneys

For defendant Michigan Tool Company:

Harness, Dickey & Pierce

by /s/ John D. Scofield
John D. Scofield,
a member of the above firm
Attorneys

For defendant The Fellows Gear Shaper Company:

Covington & Burling

By /s/ Nestor S. Foley
Nestor S. Foley,
a member of the above firm
Attorneys

For defendant National Broach and Machine Company:

Crawford, Sweeny, Dodd and Kerr

by /s/ A. Stewart Kerr
A. Stewart Kerr
a member of the above firm
Attorneys

Michigan Tool Company

SCHEDULE A

Patent No.	Inventor	Issue Date	Title
2,164,642	Drader, J.C.	July 4, 1939	Method & Means for Constructing Gear Finishing Tools
2,167,146	Drader & Rovick	July 25, 1939	Means for Finishing Gears
2,209,562	Drader & Martin	July 30, 1940	Worm Element Lapping Machine
2,232,408	Shaw, S.M.	Feb. 18, 1941	Gear Finishing Machine
2,245,654	Drader & Rovick	June 17, 1941	Gear Lapping & Finishing Machine
2,254,240	Overstedt, E. A.	Sept. 2, 1941	Machine for Finishing Gears
2,257,195	Rovick, J. D.	Sept. 30, 1941	Internal Gear Finishing Machine
2,267,692	Dalzen, W. F.	Dec. 23, 1941	Method of Cutting & Finishing Gear Teeth
2,281,420	Drader, J. C.	Apr. 28, 1942	Built-Up Abrasive
2,305,144	Dalzen, W. F.	Dec. 15, 1942	Cutting Tool
2,305,145	Dalzen, W. F.	Dec. 15, 1942	Cutting Tool
2,321,102	Pelphrey, H.	June 8, 1943	Tooth Relieving Machine
2,337,776	Scott, G. R.	Dec. 28, 1943	Thread Polishing Apparatus
2,344,292	Drader, J. C.	March 14, 1944	Method of Finishing Gears
2,348,844	Pelphrey, H.	May 16, 1944	Gear Shaving Hob
2,348,845	Pelphrey, H.	May 16, 1944	Machine for Forming Gears
2,351,842	Seibold, P. F.	June 20, 1944	Gear Grinding Machine
2,375,079	Christensen, H. V.	May 1, 1945	Thread Grinding Machine
2,397,515	Staub, C. R.	Apr. 2, 1946	Gear Shaving Machine
2,462,522	Martin, J.	Feb. 22, 1949	Grinding Machine
2,469,807	Anderson, M. R.	May 10, 1949	Gear Grinding Machine
2,504,578	Pelphrey, H.	Apr. 18, 1950	Internal Gear Shaving Machine
2,682,100	Pelphrey, H.	June 29, 1954	Gear Shaving Cutter

SCHEDULE (A)

United States of America Letters Patent of

The Fellows Gear Shaper Company

Patent No.	Date of Issue	Patent No.	Date of Issue
2,207,438	July 9, 1940	2,368,559	January 30, 1945
2,228,965	January 14, 1941	2,371,770	March 20, 1945
2,228,966	January 14, 1941	2,387,166	October 16, 1945
2,228,967	January 14, 1941	2,387,167	October 16, 1945
2,228,968	January 14, 1941	2,388,173	October 30, 1945
2,257,850	October 7, 1941	2,392,002	January 1, 1946
2,280,045	April 14, 1942	2,405,159	August 6, 1946
2,332,603	October 26, 1943	2,491,637	December 20, 1949
2,338,528	January 4, 1944	2,499,167	February 28, 1950
2,343,567	March 7, 1944	2,523,913	September 26, 1950
2,352,557	June 27, 1944	2,549,324	April 17, 1951
2,354,144	July 18, 1944	2,561,706	July 24, 1951
2,356,868	August 29, 1944	2,604,016	July 22, 1952
2,356,869	August 29, 1944	2,644,223	July 7, 1953
2,362,762	November 14, 1944	2,644,367	July 7, 1953
2,362,763	November 14, 1944	2,662,449	December 15, 1953
2,362,764	November 14, 1944	2,669,905	February 23, 1954
2,362,785	November 14, 1944	2,669,906	February 23, 1954
2,362,787	November 14, 1944	2,678,587	May 18, 1954
2,364,542	December 5, 1944	2,696,762	December 14, 1954

SCHEDULE "A"

United States Patents of
NATIONAL BROACH AND MACHINE COMPANY

Patent No.	Inventor	Title	Date of Issue
2,157,981	Drummond	Machine for Cutting Gears	May 9, 1939
2,168,932	Drummond	Gear Cutting Machine	August 8, 1939
2,169,632	Drummond	Method of Making Rotary Gear Cutters	August 15, 1939
2,172,545	Praeg	Method of Making Rotary Gear Cutters	Sept. 12, 1939
2,202,709	Mentley	Machine for Manufacturing Rotary Gear Cutters	May 28, 1940
2,214,225	Drummond	Apparatus for Finishing Gears	Sept. 10, 1940
2,226,018	Praeg	Machine for Shaving Gear Segments	December 24, 1940
2,227,491	Drummond	Machine for Cutting Gears	January 7, 1941
2,249,251	Mentley	Method of and Apparatus for Crowning Gears	July 15, 1941
2,249,252	Mentley	Gear Finishing	July 15, 1941
2,270,421	Drummond	Machine for Cutting Gears	January 20, 1942
2,270,422	Drummond	Method of Cutting Gears	January 20, 1942
2,270,831	Drummond	Gear Finishing Machine	January 20, 1942
2,274,491	Mentley	Gear Finishing Tool	February 24, 1942
2,277,041	Drummond	Apparatus for Crowning Internal Gears	March 24, 1942
2,278,737	Praeg	Rotary Finishing Cutters	April 7, 1942
2,278,792	Mentley	Gear Finishing Machine	April 7, 1942
2,291,537	Drummond	Method of Cutting Gears	July 28, 1942
2,292,647	Mentley	Cutter Holder	August 11, 1942
2,298,471	Drummond	Gear Finishing	October 13, 1942

SCHEDULE "A"

United States Patents of
NATIONAL BROACH AND MACHINE COMPANY

Patent No.	Inventor	Title	Date of Issue
2,307,637	Praeg	Lapping Machine	January 5, 1943
2,311,037	Drummond	Gear Finishing	February 16, 1943
2,316,676	Mentley	Burring Machine	April 13, 1943
2,318,179	Mentley	Gear Finishing	May 4, 1943
2,319,117	Drummond	Gear Crowning	May 11, 1943
2,322,793	Drummond	Gear Finishing Tool	June 29, 1943
2,325,836	Praeg	Gear Crowning	August 3, 1943
2,329,284	Mentley	Gear Finishing Tool	September 14, 1943
2,346,266	Mentley	Gear Crowning	April 11, 1944
2,347,997	Drummond	Method of Gear Finishing	May 2, 1944
2,347,998	Drummond	Gear Crowning	May 2, 1944
2,350,882	Drummond	Gear Crowning Machine	June 2, 1944
2,354,670	Drummond	Gear Finishing	August 1, 1944
2,372,444	Mentley	Gear Finishing	March 27, 1945
2,380,208	Ashton	Method of Finishing Gears	July 10, 1945
2,380,224	Drummond	Herringbone Gear Finishing	July 10, 1945
2,380,261	Praeg	Method of Shaving Gears	July 10, 1945
2,387,679	Praeg	Gear Finishing Machine	October 23, 1945
2,392,803	Austin	Gear Finishing	January 15, 1946
2,394,757	Drummond	Gear Finishing Machine	February 12, 1946
2,435,405	Praeg	Method of Shaving Gears	February 3, 1948
RE.23,053	Mentley	Gear Finishing	November 30, 1948
2,484,482	Austin	Method of Shaving Shoulders Gears	October 11, 1949
2,511,418	Schulte	Gear Finishing Machine	June 13, 1950
2,524,541	Praeg	Grinder	October 2, 1950
2,536,343	Austin	Method for Shaving Crown Gears by Rocking and Traverse	January 2, 1951

SCHEDULE "A"

United States Patents of
NATIONAL BROACH AND MACHINE COMPANY

Patent No.	Inventor	Title	Date of Issue
2,541,283	Praeg	Gear Lapping	February 13, 1951
2,542,569	Praeg	Method and Apparatus for Crown Shaving Gears	February 20, 1951
2,543,985	Praeg	Method and Apparatus for Finishing Rack Sections	March 6, 1951
2,547,517	Austin	Method for Shaving Crown Gears by Rocking	April 3, 1951
2,554,752	Praeg	Method of Shaving Gears	May 29, 1951
2,557,462	Praeg	Gear Finishing	June 19, 1951
2,565,883	Praeg et al	Gear Finishing Machine	August 28, 1951
2,581,700	Praeg	Apparatus for Finishing Gears	January 8, 1952
2,581,701	Praeg	Method of Finishing Gears	January 8, 1952
2,585,261	Mentley	Gear Finishing Method	February 12, 1952
2,585,271	Praeg	Gear Finishing	February 12, 1952
2,585,272	Praeg	Automatic Gear Finishing Machine	February 12, 1952
2,598,431	Praeg	Machine for Finishing Gear with Diagonal Traverse	May 27, 1952
2,612,080	Davis	Gear Finishing Machine	September 30, 1952
2,613,486	Praeg	Method of Finishing Gears	October 14, 1952
2,617,331	Austin	Gear Finishing	November 11, 1952
2,627,141	Praeg	Gear Finishing Machine	February 3, 1953
2,635,507	Praeg	Method and Machine for Crown Finishing Gears	April 21, 1953
2,644,564	Bassoff	Feed Shute	July 7, 1953
2,660,929	Praeg	Method of Shaving Gears	December 1, 1953
2,686,956	Praeg	Built-up Gear Shaving Cutters	August 24, 1954

S C H E D U L E "A"

United States Patents of
NATIONAL BROACH AND MACHINE COMPANY

Patent No.	Inventory	Title	Date of Issue
2,686,993	Mentley	Generating Apparatus	August 24, 1954
2,692,535	Praeg	Automatic Loading Fixture	October 26, 1954
2,692,536	Gates	Automatic Loading Equipment for Machine Tools	October 26, 1954
2,725,871	Bassoff	Trimmer	December 6, 1955
2,733,641	Praeg	Gear Finishing	February 7, 1956

UNITED STATES V. THE CINCINNATI MILLING MACHINE CO., ET AL.

Civil Action No. 13401

Year Judgment Entered: 1954

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	CIVIL NO. 13401
THE CINCINNATI MILLING MACHINE COMPANY; KEARNEY & TRECKER CORPORATION; and CINCINNATI GRINDERS, INCORPORATED, Defendants.	)	1/19/54

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on April 19, 1954, and each defendant herein having appeared and filed its answer to the Complaint denying the substantive allegations thereof relating to it; and plaintiff and each defendant, 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 admission by any party in respect of any such issue;

NOW, THEREFORE, before any testimony has been taken, and without trial or adjudication of any issue of fact or law, and upon consent as aforesaid of all the parties hereto,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and of each of the parties hereto. The complaint states a cause of action against the defendants under Sections 1 and 2 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) "Cincinnati" shall mean the defendant, the Cincinnati Milling Machine Company, an Ohio corporation;

(B) "Kearney" shall mean the defendant, Kearney & Trecker Corporation, a Wisconsin corporation;

(C) "Cincinnati Grinders" shall mean the defendant, the Cincinnati Grinders, Incorporated, an Ohio corporation;

(D) "Milling machine" shall mean (a) a power operated metal cutting machine tool which uses a rotating multitoothed, hard metal edged cutter to shape surfaces by removing metal in the form of chips, such as, for example but not by way of limitation, machine tools of the types listed in Standard Commodity Classification Code No. 3417, published by the Munitions Board Cataloging Agency, in the 1951 revision of Directory of Metal Working Machinery (a copy of which code is attached hereto as Exhibit A) and (b) devices and parts used or suitable for use therewith and attached or intended to be attached thereto, including pattern contacting mechanisms which follow and thereby automatically reproduce the shape and form of a pattern or model on a workpiece;

(E) " Patents" shall mean United States Letters Patent, including re-issues and extensions thereof, relating, but only insofar as they relate, to milling machines;

(F) "Person" shall mean an individual, partnership, trust, corporation or any other form of legal or business entity.

III

The provisions of this Final Judgment applicable to a defendant shall apply to such defendant, its directors, officers, agents, employees, representatives, successors, assigns and controlled

and wholly owned subsidiaries, and to all other persons acting under, through or for such defendant. For the purpose of this Final Judgment, a defendant and a controlled or wholly owned sibsidiary shall be deemed to be one person. The provisions of this Final Judgment shall apply only to operations, activities or agreements which affect the domestic commerce of the United States.

IV

Each of the defendants is ordered and directed to terminate and cancel, to the extent not heretofore terminated, the following agreements and any provision of any other license agreement, contract or understanding which is contrary to any of the terms of this Final Judgment, and each of the defendants is enjoined and restrained from entering into, renewing, maintaining or adhering to any future license agreement, contract or understanding, any provision of which is contrary to the terms of this Final Judgment:

(A) Agreement dated July 23, 1931, between the Ingersoll Milling Machine Company, an Illinois corporation (hereinafter called "Ingersoll"), and Cincinnati, as modified November 23, 1931;

(B) Agreement dated October 14, 1933, between Cincinnati, Ingersoll and Kearney;

(C) Agreement dated October 15, 1933, between Cincinnati and Kearney;

(D) Agreement dated October 15, 1933, between Cincinnati Grinders and Kearney;

(E) Agreement dated October 23, 1933, between Kearney and Ingersoll;

(F) Agreement dated June 1, 1938, between Kearney and Vickers, Incorporated;

(G) Agreement dated October 15, 1940 (signed December 7, 1939), between Cincinnati, Cincinnati Grinders and Kearney;

(H) Agreement dated May 22, 1940, between Cincinnati, Kearney, Ingersoll and Kent-Owens Machine Company;

(I) Agreement dated July 1, 1940, between Cincinnati, Kearney, Ingersoll and Vickers, Incorporated;

(J) Agreement dated July 31, 1940, between Cincinnati, Kearney and Ingersoll;

(K) Agreement dated August 1, 1944, between Cincinnati, Kearney, Ingersoll and Vickers, Incorporated;

(L) Agreement dated December 18, 1951, between Cincinnati and Kearney;

(M) Agreement dated December 19, 1951, between Cincinnati and Kearney; and

(N) Agreement dated December 19, 1951, between Kearney and Cincinnati.

V

(A) Each of the defendants is ordered and directed:

(1) Insofar as it has the power or authority to do so, to grant to any applicant making written request therefor a non-exclusive and unrestricted license to make, use and vend milling machines, for the life of the patent, under any, some or all of the issued patents owned or controlled by it at the date of entry of this Final Judgment, including but not limited to those listed in Exhibit B attached hereto, without any limitation or condition whatsoever except that:

(a) a reasonable and non-discriminatory royalty may be charged and collected;

(b) reasonable provision may be made for periodic inspection of the books and records of the licensee by an independent auditor who may report to the defendant licensor only the amount of the royalty due

and payable and no other information;

(c) the license may be non-transferable;

(d) reasonable provision may be made for cancellation of the license upon failure of the licensee to pay the royalties or to permit the inspection of its books and records as provided in this Section V;

(e) the license must provide that the licensee may cancel the license at any time by giving thirty (30) days' notice in writing to the licensor.

(2) Upon any application for a license in accordance with the provisions of subsection (1) of this Section V, to advise the applicant of the royalty it deems reasonable for the patent or patents to which the application pertains. If the defendant and the applicant are unable to agree upon what constitutes a reasonable royalty, the defendant may apply to this Court for a determination of a reasonable royalty, giving notice thereof to the applicant and the Attorney General, and shall make such application forthwith upon request of the applicant. In any such proceeding the burden of proof shall be upon the defendant to whom application is made to establish a reasonable royalty. Pending the completion of any such court proceeding, the applicant shall have the right to make, use and vend under the patent or patents to which its application pertains, without the payment of royalty or other compensation, but subject to the following provisions: Such defendant may, with notice to the Attorney General, apply to the Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty. If the Court fixes such interim royalty rate, a license shall then issue providing for the

periodic payment of royalties at such interim rate from the date of the making of such application by the applicant; and whether or not such interim rate is fixed, any final order may provide for such readjustments including retroactive royalties as the Court may order after final determination of a reasonable and non-discriminatory royalty.

(3) To refrain from instituting, or threatening to institute, or maintaining any action or proceeding against any person for acts of infringement of any patent or patents owned or controlled by such defendant and required to be licensed under this Section V, unless such person has refused to enter into a license agreement as provided for in this Section V of the Final Judgment after being requested in writing so to do by the defendant.

(B) Nothin herein shall prevent any applicant from attacking the validity or scope of any of the aforesaid patents nor shall this Final Judgment be construed as importing any validity or value to any of the said patents.

VI

Each of the defendants is enjoined and restrained from:

(A) Making any disposition of any patents, or rights with respect thereto, which deprives it of the power or authority to grant licenses as hereinbefore provided in Section V unless it requires, as a condition of such disposition, that the purchaser, transferee, assignee or licensee, as the case may be, shall observe the requirements of Section V hereof and such purchaser, transferee, assignee or licensee shall file with this Court, prior to the consummation of said transaction, an undertaking to be bound by said provisions of this judgment;

(B) Instituting, threatening to institute or maintaining any suit or counterclaim for infringement of, or for collection of damages

or other compensation for infringement under or for the use of, any patent for acts alleged to have occurred prior to the date of entry of this Final Judgment.

VII

Each of the defendants is ordered and directed, upon written request made within five years after the date hereof by a licensee under a patent owned or controlled by such defendant at the date of entry of this Final Judgment, to furnish to such licensee conventional material specifications and drawings showing dimensions relating to the structure or structures disclosed and claimed in the licensed patent or patents then used by such defendant in its manufacture of milling machines under such patents, the furnishing of such information to be subject to payment to such defendant of its actual costs in preparing and furnishing material showing such specifications and drawings. Such defendant may require as a condition of the furnishing of such information that the licensee (a) maintain such information in confidence and use it only in connection with its own manufacturing operations, and (b) agree, upon termination or cancellation of the license prior to the expiration of the patent, to return such information and any reproductions thereof to such defendant and not to make any further use thereof except in machines existing at the date of such termination.

VIII

Each of the defendants is enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, plan or program with any other manufacturer of milling machines to:

(A) Fix, establish, determine, maintain or adhere to advertising policies or practices with respect to milling machines;

(B) Refrain from the manufacture, use or sale of any type, model or size of milling machine, patented or unpatented;

(C) Allocate customers or divide territories, markets or fields for the manufacture, distribution, sale or use of milling machines.

IX

Each of the defendants is enjoined and restrained from:

(A) Instituting or threatening to institute suit for infringement of a patent or patents against a purchaser or user of a milling machine manufactured in the United States unless infringement of such patent or patents has been established previously by the adjudication of a court of competent jurisdiction against the manufacturer or seller of such machine.

(B) Granting or offering to grant a license or grant of immunity under any patent upon the condition, expressed or implied, that the licensee or sublicensee grant back to such defendant or any other person a similar license or grant of immunity under a patent or patents owned or controlled by such licensee or sublicensee, provided, however, that the provisions of this Article IX (B) shall not prohibit the settlement of bona fide patent interferences by the grant of a non-exclusive license or immunity under an application in interference or a patent to be issued upon such an application upon condition that the other party to such interference grant back a similar license or grant of immunity;

(C) Granting or offering to grant a license under any patent on the condition or understanding that the licensee must use parts or materials obtained from any source;

(D) Selling or offering to sell milling machines upon the condition or understanding that the purchaser must use parts or materials obtained from any source;

(E) Furnishing to any manufacturer or seller of milling machines, or requiring any such manufacturer or seller to furnish to it,

the names of purchasers of milling machines except that such defendant may require its dealers or distributors to furnish the names of persons to whom the have sold or propose to sell milling machines manufactured by such defendant;

(F) Accepting or granting, or offering to accept or grant, a license or grant of immunity under any patent upon the condition or understanding that the licensor shall not give a license or grant of immunity to any other person under such patent without the consent of the licensee, provided, however, that this subsection (F) shall not prohibit such defendant from accepting or granting, or offering to accept or grant, exclusive licenses if the right to sublicense is included in such exclusive licenses.

X

Each defendant ios enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, plan or program with any other person to fix, establish, maintain or adhere to prices, terms or conditions for the sale of milling machines to any third person.

XI

The defendants are ordered and directed to mail to each manufacturer of milling machines listed in Exhibit C hereto, and shall cause to be published in Machinery, a magazine published by The Industrial Press, a notice stating that this Final Judgment has been entered and setting forth the substantive provisions of Section V of this Final Judgment.

XII

Nothing contained in this Final Judgment shall prevent any defendant from availing itself of its rights, if any under the Act of Congress of April 10, 1918, commonly known as the Webb-Promerene Act, the Act of Congress of August 17, 1937, commonly known as the Miller-Tydings

Act, or the Act of Congress of July 14, 1952, commonly known as the McGuire Act, or any future Act of Congress.

XIII

For the purpose of 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, and on reasonable notice to any defendant, made to its principal office, be permitted:

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

(B) Subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters. Upon request the defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of said judgment.

No information obtained by the means provided in this Section XIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, 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.

XIV

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

Dated: April 19, 1954.

/s/ Arthur A. Koscinski
United States District Judge

We hereby consent to the entry of the foregoing Final Judgment:

For the Plaintiff:

/s/ Stanley N. Barnes
Assistant Attorney General

/s/ William D. Kilgore, Jr.

/s/ Baddia J. Rashid

/s/ Charles F. B. McAleer

/s/ John W. Neville

/s/ John H. Earle

/s/ Samuel B. Prezis

For the Defendants The Cincinnati Milling Machine Company and Cincinnati Grinders, Incorporated:

/s/Cravath, Swaine & Moore

by /s/George B. Turner
a member of the above firm

For the Defendant Kearney & Trecker Corporation:

/s/Lines, Spooner & Quarles

by /s/ Lester S. Clemons
a member of the above firm

EXHIBIT B

1. Patents owned or controlled by the Cincinnati Milling Machine Co. and/or Cincinnati Grinders, Incorporated.

Date Issued	Patent No.	Name of Device	Patentee
4/13/37	2,076,859	Trans. & Cont. Mech.	Nenninger
4/13/37	2,076,865	Manually Cont. Copying Machine	Romaine
4/13/37	2,076,944	Gaging Mechanism	Howe
5/11/37	2,079,717	Machine for Milling Turbine Blades	Roehm et al.
6/15/37	2,083,774	Sensitive Valve Mech.	Campbell
6/29/37	2.085,303	Hy. Circuit Control Mech.	Ernst
8/ 3/37	2,089,099	Bottle Mold Machine	Roehm et al.
8/24/37	2,090,992	Thread Milling Machine	Archea
8/24/37	2,091,000	Internal Milling Machine	Hoier
12/ 7/37	2,101,544	Mill. Mche. Trans. & Cont. Mech.	Isler
12/ 7/37	2,101,712	Tracer Mech. for Dupli. Mches.	Johansen
2/ 1/38	2,107,063	Pattern Cont. Milling Machine	Roehm
2/22/38	2,109,356	Slotting Machine	Larsen
3/15/38	2,111,332	Auto. Pat. Cont. Milling Machine	Roehm
3/15/38	2,111,288	Milling Machine	Horlacher
3/15/38	2,111,271	Tracer Cont. Lapping Mche.	Nenninger
5/24/38	2,118,515	Slotting Machine	Larsen
6/ 7/38	2,120,196	Hyd. Contour Att. for Mche. Tools	Wright
6/ 7/38	2,119,902	Mche. Tool Trans. & Cont. Mech.	Blood
11/22/38	2,137,462	Servo-operated Index Head	Romaine
12/27/38	2,142,061	Auto. Univ. Profile & Die Sink. Mche.	Sassen
12/27/38	2,142,034	Work Holder Mech. for Mche. Tools	Patrick
12/27/38	2,142,029	Comb. Delayed Trip & Spindle Stop Mech. for Machine Tools	Horlacher
4/18/39	2,154,718	Duplicating Machine	Bannon
7/ 4/39	2,164,876	Hydr. Vane Motor	Horlacher
7/ 4/39	2,164,884	Power Shift Mech. for Milling Mche.	Nenninger & Roehm

Date Issued	Patent No.	Name of Device	Patentee
8/22/39	2,170,503	Servo-Cont. for Hyd. Table	Martellotti et al.
8/22/39	2,170,502	Machine Tool Trans.	Martellotti
8/22/39	2,170,291	Trans. & Cont. Mech. for Milling Machines	Martellotti
2/20/40	2,191,131	Backlash Eliminator	Martellotti
2/20/40	2,190,988	Duplicating Machine.	Johansen
3/ 5/40	2,192,856	Spindle Construction	Nenninger
5/ 7/40	2,199,465	Pattern Cont. Milling Machine	Martellotti
7/30/40	2,209,469	Operating Cont. Mech. for Milling Machines	Nenninger and Roehm
10/ 1/40	2,216,550	Machine Tool Cont. Mech.	Ernst
10/15/40	2,218,469	Overarm Actuating Mechanism	Hassman
11/12/40	2,221,459	Manually Cont. Contour. Mche.	Sassen
12/24/40	2,226,431	Lubricating Mech. for Mche. Tools	Hassman and Vancil
1/14/41	2,228,902	Auto. Cont. Machine Tool and Follow-up Mechanism	Allen
3/18/41	2,235,085	Machine Trans. & Control Mechanism	Roehm et al.
3/18/41	2,235,092	Duplicating Machine	Wall
3/22/41	2,239,567	Milling Machine Spindle Constr.	Nenninger
3/22/41	2,239,625	Profile Milling Machine	Roehm et al.
10/ 7/41	2,257,849	Machine Tool Temperature Control	Martellotti
10/21/41	2,260,098	Arbor Support and Harness Struc.	Blood
11/25/41	2,263,635	Slotting Machine	Larsen
3/10/42	2,275,783	Overarm Structure	Martellotti
4/21/42	2,280,760	Backlash Eliminator for Mche. Tools	Martellotti
5/ 5/42	2,281,774	Slotting Machine	Larsen
7/ 7/42	2,289,110	Speed Selecting Mechanism	Ernst et al.
7/21/42	2,290,590	Indexing Mechanism	Hawley et al.
11/17/42	2,302,575	Backlash Eliminator for Spindle Drive	Romaine et al.

Date Issued	Patent No.	Name of Device	Patentee
1/19/43	2,308,688	Milling Mche. Cont. Mech. Feed	Hassman
1/19/43	2,308,708	Milling Machine Trans. & Cont. Mech.	Henninger & Hassman
1/19/43	2,308,728	Safety Cont. for Machine Tools	Vancil and Trible
6/ 1/43	2,320,353	Power Transmission Mechanism	Ernst & Martellotti
8/17/43	2,327,107	Milling Machine	Hassman
10/ 5/43	2,330,890	Profile Milling Machine	Horlacher
10/12/43	2,331,442	Plugging Switch	Trible
10/19/43	2,331,967	Calculating Device	Ernst & Wortendyke
10/26/43	2,332,532	Dual Pattern Cont. Mche. Tool	Roehm
10/26/43	2,332,533	Tracer Mechanism	Roehm
5/23/44	2,349,595	Mche. Tool Control Mechanism	Martellotti
5/23/44	2,349,597	Lubrication System for Mche. Tools	Nenninger et al.
12/12/44	2,365,043	Milling Machine	Blood and Ernst
12/12/44	2,365,075	Milling Machine	Hassman
12/12/44	2,365,078	Rotary Table Att. for Mill.Mches.	Hoier
1/23/45	2,368,061	Milling Machine	Wortendyke
1/29/46	2,393,928	Cont. Mech. for Milling Machines	Nenninger et al.
1/29/46	2,393,907	Milling Mche. Vibration Dampener	Herfurth
6/18/46	2,402,290	Knee Actuating Mech. for Milling Machines	Nenninger et al.
12/10/46	2,412,549	Auto. Pattern Cont. Milling Mche.	Yates & Armandroff
12/10/46	2,412,499	Mche Tool Vibration Dampener	Ernst,Grieb,Field
2/25/47	2,416,539	Milling Machine Indicating Dial	Nenninger et al.
6/17/47	2,422,448	Remote Cont. Means for Speed Chge. Mechanisms	Trible
6/17/47	2,422,414	Index Milling Machine	Hoier
8/19/47	2,425,903	Lubricating System for Milling Mches.	Vancil et al.
11/ 4/47	2,430,127	Thermally Controlled Machine Tool	Kronenberg et al.

Date Issued	Patent No.	Name of Device	Patentee
6/22/48	2,443,793	Pattern Cont. Machine Tool	Lensky et al.
8/17/48	2,447,446	Pattern Cont. Machine Tool	Wilder & Horlacher
11/ 2/48	2,452,674	Knee Act. Mech. for Milling Machines	Nenninger & Hassman
11/ 9/48	2,453,600	Indexing Mechanism	Soden
1/11/49	2,458,597	Milling Machine	Hoier and Clifton
1/25/49	2,459,976	Milling Mche. Trans. & Control	Vancil et al.
1/25/49	2,459,937	Hydraulic Control System	Hassman et al.
1/25/49	2,459,825	Bearings	Martellotti
1/25/49	2,459,826	Fluid Pressure Bearing	Martellotti
5/24/49	2,471,097	Pattern Controlled Machine Tool	Dall et al.
6/21/49	2,473,741	Pattern Controlled Milling Machine	Wilder et al.
10/18/49	2,484,910	Variable Speed Mechanism	Romaine et al.
10/18/49	2,484,885	Verticle Spindle Milling Mche.	Hassman et al.
11/22/49	2,489,227	Milling Machine	Roehm et al.
12/27/49	2,492,687	Hydraulic Power Unit	Dall
12/27/49	2,492,688	Hydraulic Power Unit	Dall
4/18/50	2,504,443	Milling Mche. Trans. & Control	Nenninger & Hassman
4/18/50	2,504,413	Braking Mech. for Mche. Tools	Hassman and Vancil
12/26/50	2,535,896	Pattern Cont. Milling Machine	Buckles et al.
12/26/50	2,535,895	Automatic Profile Cutting Mche.	Buckles
12/26/50	2,535,909	Hydraulic Transmission	Ernst et al.
12/26/50	2,535,957	Precision Positioning Mech.	Romaine et al.
1/ 2/51	2,536,965	Hydraulic Valve Operated by Differential Pressures	Taylor
5/ 1/51	2,550,672	Diaphragm Anchoring Means	Chyba
1/ 9/51	2,537,409	Jogging Mech. for Mche. Tools	Hassman and Vancil
3/20/51	2,546,062	Torque Converter	Ernst
5/29/51	2,555,242	Milling Mche. Transmission & Control Mechanism	Nenninger et al.

Date Issued	Patent No.	Name of Device	Patentee
5/29/51	2,555,223	Wiper Mechanism	Cox
7/ 3/51	2,559,089	Pat. Cont. Mche. Tools	Plimmer
7/ 3/51	2,559,097	Reproducing Machine	Trinkle
10/23/51	2,572,756	Combined Machine Tool	Plimmer & Kistner
10/31/51	2,573,098	Hyd. Feeding Mechanism	Ernst & Dall
12/18/51	2,578,713	Fluid Pressure Bearing	Martellotti
12/18/51	2,578,712	Fluid Pressure Bearing	Martellotti
9/30/52	2,612,184	Sensitive Control Valve Mechanism	Evans
11/18/52	2,618,244	Tracer Mechanism	Roehm
12/ 9/52	2,620,823	Tracer Valve Mechanism	Adams et al.
12/23/52	2,622,486	Spindle Transmission and Postioning Mechanism	Roehm et al.
12/23/52	2,622,454	Auxiliary Trans. Mech. for Milling Machines	Roehm
12/23/52	2,622,537	Pumping Mechanism	Wortendyke
12/23/52	2,622,614	Rate Valve	Cox
12/23/52	2,622,489	Tracer Control Mechanism	Roehm
3/31/53	2,633,061	Milling Machine Cont. Mech.	Roehm et al.
6/16/53	2,641,969	Machine Tool Cont. Mechanism	Roehm
6/16/53	2,641,970	High Speed Spdle. Construction	Plimmer
12/ 1/53	2,660,985	Hydraulic Feed System	Ernst

EXHIBIT B

2. Patents owned or controlled by Kearney & Trecker Corporation.

Date Issued	Patent No.	Name of Device	Patentee
4/20/37	2,077,434	Machine Tool	Parsons
4/20/37	2,077,435	Machine Tool Transmission and Control	Parsons
4/27/37	2,078,859	Mounting for a High Speed Cutting Tool	Lapham
5/25/37	2,081,288	Machine Tool Transmission and Control	Armitage
6/29/37	2,085,272	Transmission and Control Mechanism	Pohl
7/ 6/37	2,085,888	Machine Tool Transmission and Control	Armitage
3/ 8/38	2,110,173	Machine Tool Transmission and Control	Pohl et al
4/23/40	Re.21,434	Machine Tool Transmission and Control	Pohl et al
4/26/38	2,115,058	Milling Machine	Armitage
5/24/38	2,118,357	Machine Tool	Parsons et al
5/24/38	2,118,358	Machine Tool	Parsons et al
12/27/38	2,141,263	Indexing Work Holder	Curtis
4/ 4/39	2,153,424	Position Indicator for Machine Tools	MacRae
5/ 9/39	2,157,471	Machine Tool	Armitage
5/16/39	2,158,649	Precision Apparatus for Machine Tools	Armitage
8/15/39	2,169,484	Machine Tool Transmission and Control Mechanism	Armitage
12/ 5/39	2,182,421	Milling Machine	Armitage
4/ 2/40	2,195,799	Backlash Eliminator	Parsons
4/23/40	2,198,102	Machine Tool Transmission and Control Mechanism	Armitage
6/18/40	2,205,361	Dividing Head	Kearney et al
9/24/40	2,215,684	Machine Tool	Armitage
10/15/40	2,217,938	Milling Machine Attachment Supporting Apparatus	Armitage
1/ 7/41	2,227,620	Milling Machine	Armitage et al
1/14/41	2,228,583	Indexing Mechanism	Parsons
3/11/41	2,234,775	Profile Copying Mechanism	Parsons

Date Issued	Patent No.	Name of Device	Patentee
5/ 6/41	2,240,973	Mche. Tool Structure and Control Mech.	Armitage
5/20/41	2,242,445	Mche. Tool Trans. and Control Mech.	Armitage
6/ 3/41	2,244,413	Precision Indicating Apparatus for Machine Tools	Armitage
6/10/41	2,244,985	Machine Tool	Armitage et al.
11/18/41	2,263,404	Boring and Milling Machine	Armitage et al.
3/ 3/42	2,275,241	Machine Tool Trans. and Control Mech.	Armitage et al.
8/25/42	2,293,880	Mche. Tool Trans. and Control Mech.	Armitage et al.
5/18/43	2,319,480	Adjustable Micrometer Dial	Saving et al.
10/26/43	2,332,684	Adjusting and Locking Device	Armitage
11/30/43	2,335,304	Pattern Controlled Copying Machine	Parsons
11/30/43	2,335,305	Mche. Tool Trans. and Control Mech.	Parsons
12/21/43	2,337,223	Mche. Tool Trans. and Control Mech.	Armitage
1/11/44	2,339,102	Trans. and Control Mechanism	Parsons
1/25/44	2,340,210	Milling Machine	Armitage et al.
2/29/44	2,342,829	Milling Machine	Armitage
3/21/44	2,344,529	Mche. Tool Trans. and Control Mech.	Armitage
3/28/44	2,345,171	Mche. Tool Trans. and Control Mech.	Armitage et al
5/30/44	2,349,959	Cutting Tool	Guetzkow
8/ 8/44	2,355,082	Machine Tool	Kearney et al.
8/ 8/44	2,355,554	Transmission and Control Mechanism	Parsons
8/29/44	2,357,222	Transmission and Control Mechanism	Parsons
10/3/44	2,359,601	Work Fixture and Indexing Mech. Therefor	Andrew et al.
3/ 6/45	2,370,764	Machine Tool	Armitage et al.
5/ 1/45	2,374,719	Machine Tool Trans. and Control Mech.	Armitage
7/ 3/45	2,379,405	Milling Machine	Armitage
8/14/45	2,382,934	Mche. Tool Trans, and Control Mech.	Armitage
8/14/45	2,382,935	Variable Speed Drive Mechanism	Armitage
10/ 2/45	2,385,907	Mche. Tool Power Trans. and Control Mech.	Armitage et al.
1/15/46	2,392,963	Milling Machine	Armitage et al.

Date Issued	Patent No.	Name of Device	Patentee
1/15/46	2,392,964	Automatic Indexing Mechanism	Armitage et al.
9/17/46	2,407,913	Mche. Tool Trans. and Control Mech.	Armitage et al.
9/24/46	2,407,970	Work Indexing Mechanism	Andrew et al.
2/11/47	2,415,801	Pattern Controlled Machine Tool	Armitage et al.
3/18/47	2,417,671	Machine Tool Way Guard	Armitage
3/18/47	2,417,672	Way Guard Structure	Armitage
1/20/48	2,434,750	Machine Tool	Trecker et al.
1/20/48	2,434,751	Machine Tool	Trecker et al.
6/22/48	2,443,734	Machine Tool Guard	Kearney et al.
1/ 4/49	2,457,893	Machine Tool Lubricating System	Hlinsky
7/12/49	2,476,214	Pattern Controlled Machine Tool	Parsons
10/ 4/49	2,483,451	Machine Tool Spindle	Armitage et al.
10/25/49	2,486,294	Machine Tool Transmission	Kearney et al.
12/27/49	2,492,797	Milling Cutter	Guetzkow
1/10/50	2,493,827	Trans. and Control Mech. for Mche.Tools	Parsons
1/10/50	2,493,828	Mche. Tool Trans. and Control Mech.	Parsons
2/14/50	2,497,842	Mche. Tool Trans. and Control Mech.	Armitage et al.
2/28/50	2,498,870	Backlash Compensator	Armitage et al.
2/28/50	2,498,897	Backlash Compensator	Riedel
3/ 7/50	2,499,842	Milling Machine	Armitage
6/20/50	2,511,956	Tracer Controlled Machine Tool	Wetzel
9/ 5/50	2,521,185	Mche. Tool Trans. and Control Mech.	Parsons
9/12/50	2,522,206	Trans. Control Mechanism	Armitage
11/14/50	2,529,680	Slotting Machine	Eserkaln et al.
12/ 5/50	2,532,591	Slotting Machine	Armitage et al.
12/12/50	2,533,753	Machine Tool Control Mechanism	Armitage et al.
4/10/51	2,548,188	Mche. Tool Trans. and Control Mech.	Armitage et al.
6/19/51	2,557,404	Cutting Tool	Armitage et al.
6/19/51	2,557,405	Adjustable Bearing	Armitage et al.
7/10/51	2,559,839	Mche. Tool Positioning Mechanism	Andrew et al.

Date Issued	Patent No.	Name of Device	Patentee
7/10/51	2,560,149	Positioning Mech. for Mche. Tools	Armitage
12/11/51	2,577,943	Mche. Tool Organization and Control Mech.	Andrew et al.
2/19/52	2,586,332	Computing Indexing Mech.	Hinds
3/11/52	2,589,204	Copying Machine	Parsons
6/10/52	2,600,043	Hydraulic Clutch Mechanism	Armitage et al.
7/15/52	2,603,321	Mche. Tool Control Mech.	Armitage et al.
6/ 5/52	2,605,677	Milling Machine	Armitage
8/5/52	2,605,678	Milling and Boring Machine	Armitage et al.
11/18/52	2,618,202	Mche. Tool Trans. and Control Mech.	Eserkaln
2/16/52	2,621,566	Mche. Tool Structure and Trans. Mech.	Armitage et al.
3/10/53	2,630,717	Trans. and Control Mech.	Armitage et al.
7/ 7/53	2,644,370	Pattern Controlled Milling Machine	Armitage
9/ 8/53	2,651,746	Control Device	Gano
9/29/53	2,653,519	Mche. Tool Trans. and Control Mech.	Armitage et al.
1/ 3/53	2,657,616	Mche. Tool Trans. and Control Mech.	Armitage et al.

EXHIBIT C

LIST OF MILLING MACHINE MANUFACTURERS

Abrasive Machine Tool Co., Providence, R. I.

Atlas Press Co., Kalamazoo, Mich.

Auto Engraver Co., P. O. Box 366, Ridgefield, Conn.

The Baird Machine Co., Stratford 9, Conn.

Benchmaster Mfg. Co., 2952 W. Pico Blvd., Los Angeles 6, Calif.

Billings & Spencer Co., Hartford, Conn.

Edward Blake Co., 437 Cherry St., West Newton 65, Mass.

Bridgeport Machines Inc., Bridgeport, Conn.

Brown & Sharpe Mfg. Co., Providence, R. I.

Burke Machine Tool Div. of U.S.Burke Machine Tool Co., Cincinnati, Ohio

Cochrane Bly Co., Div. of Interstate Mfg. Corp., Boston Post Rd., Orange, Conn.

Cincinnati Gilbert Machine Tool Co., Cincinnati 23, Ohio

Consolidated Machine Tool Corp., Rochester 10, N. Y.

Cooper Brothers, Inc., Cortland, N. Y.

The James Coulter Machine Co., 629 Railroad Ave., Bridgeport, Conn.

The Cross Co., 3250 Bellevue Ave., Detroit, Mich.

Crowningshield-Harris Co., Greenfield, Mass.

Danly Machine Specialties Inc., 2100 S. 52nd Ave., Chicago, Ill.

Davis & Thompson Co., Milwaukee, Wis.

T. W. Derbyshire Inc., 157 High St., Waltham 54, Mass.

Duro Metal Products Co.,2649-61 No. Kildare Ave., Chicago, Ill.

Elgin Tool Works, 1770 W. Bertram Ave., Chicago, Ill.

Engineering Appliance Co., 53 W. Jackson Blvd., Chicago, Ill.

Engineering and Research Corp., Riverdale, Maryland.

Ex-Cell-O Corp., 1200 Oakman Blvd., Detroit 32, Mich.

Farnham Manufacturing Div. of Weisner-Rapp Co., Inc., 1600 Seneca St., Buffalo 10, N. Y.

Fitchburg Engineering Corp., Fitchburg, Mass.

Fray Machine Tool Co., Glendale 4, Calif.

Frew Machine Co., 123 E. Luray St., Philadelphia 20, Pa.

General Engineering & Manufacturing Co., St. Louis, Mo.

Giddings & Lewis Co., Fond du Lac, Wisconsin

Geo. Gorton Machine Co., Racine, Wisconsin

Gould & Eberhardt Inc., Irvington, N. J.

The G. A. Gray Co., 3611 Woodburn Ave., Cincinnati, Ohio

The Greaves Machine Tool Co., Cincinnati, Ohio

Hack Machine Co., Des Plaines, Ill.

Hall Planetary Co., Fox St. & Abbotsford, Philadelphia, Pa.

Hanson-Whitney Machine Co., Hartford, Conn.

Hardinge Bro. Inc., 1918 Evans Ave., Elmira, N. Y.

Heald Machine Works, Benton & Oliver Sts., Springfield, Mo.

Hoern & Dilts Inc., 925 Rust St., Saginaw, Mich.

Index Machine & Tool Co., Jackson, Mich.

Ingersoll Milling Machine Co., Rockford, Ill.

Kearney & Trecker Corp., 6784 W. National Ave., Milwaukee, Wis.

The Kempsmith Machine Co., Milwaukee, Wis.

Kent-Owens Machine Co., 958 Wall St., Toledo, Ohio

W. B. Knight Machinery Co., 3920 W. Pine Blvd., St. Louis, Mo.

Lees-Bradner Co., 12120 Elmwood Ave., Cleveland, Ohio

J. L. Lucas & Son, Inc., Bridgeport, Conn.

Marburg Brothers Inc., 90 West St., New York, N. Y.

Midway Machine Co., 2324 University Ave., St. Paul, Minn.

Moline Tool Co., Moline, Ill.

Morey Machinery Co., Inc., 410 Broome St., New York, N. Y.

Motch & Merryweather, Cleveland, Ohio

Murchey Div. of Sheffield Corp., 717 Springfield St., Dayton, Ohio

National Broach & Machine Co., 5600 St. Jean Ave., Detroit, Mich.

New Hermes Inc., 13-19 University Place, New York 3, N. Y.

W. H. Nichols Co., Waltham, Mass.

Norco Machinery Co., Norwood, Ohio

The Ohio Machine Tool Co., Kenton, Ohio

Oliver Machinery Co., Grand Rapids, Mich.

Onsrud Machine Works, Inc., 3910 Palmer St., Chicago, Ill.

Plan-O-Mil Corp., Hazel Park, Mich.

Pope Machinery Corp., Haverhill, Mass.

Pratt & Whitney Div. of Niles-Bement-Pond, West Hartford, Conn.

H. P. Preis Engraving Machine Co., 651 State Highway #29, Hillside 5, N. J.

Production Machinery Development Co., 4849 St. Aubin Ave., Detroit 17, Mich.

Producto Machine Co., 990 Housatonic Ave., Bridgeport, Conn.

Reed-Prentice Corp., Worcester, Mass.

Rohnberg-Jacobson Mfg. Co., Rockford, Ill.

The Rowbottom Machine Co., Inc., Waterbury, Conn.

Sheffield Corp., Dayton, Ohio

Shields Manufacturing Co., Inc., Long Island City, N. Y.

Simmons Machine Tool Corporation, Albany, N. Y.

Sloan & Chace Mfg. Co., Inc., Kearney, N. J.

Snyder Tool & Engineering Co., 3400 E.Lafayette Ave., Detroit 7, Mich.

Standard Engineering Works, Pawtucket, R. I.

Stark Tool Co., Waltham, Mass.

Stokerunit Corp., Simplex Machine Tool Div., Milwaukee, Wis.

Sundstrand Machine Tool Corp., Rockford, Ill.

Superior Machine and Engineering Co., 1930 Ferry Park, Detroit, Mich.

Taylor & Fenn Co., Hartford, Conn.

Thurston Manufacturing, 45 Borden St., Providence 1, R. I.

Tree Tool & Die Works, 1600 Junction Ave., Racine, Wis.

U.S.Machine Tool Co. Div. of U.S. Burke Machine Tool Co., Cincinnati, Ohio

U. S. Press & Tool Corp., 6440 No. Hamlin Ave., Chicago 45, Ill.

U. S. Tool Co., Inc., Ampere (East Orange), N. J.

J. A. Richards Co., Kalamazoo, Mich.

Van Norman Co., Springfield 7, Mass.

Waltham Machine Works, Waltham, Mass.

Wardwell Mfg. Co., 3167 Fulton Road, Cleveland, Ohio

UNITED STATES V. SCOTT PAPER CO., ET AL.

Civil Action No. 32049

Year Judgment Entered: 1969 (and modified in 1970)

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Scott Paper Co. and Chemotronics, Inc., U.S. District Court, E.D. Michigan, 1969 Trade Cases ¶72,919, (Oct. 24, 1969)

United States v. Scott Paper Co. and Chemotronics, Inc.

1969 Trade Cases ¶72,919. U.S. District Court, E.D. Michigan, Southern Division. Civil Action No. 32049. Entered October 24, 1969. Case No. 2028 in the Antitrust Division of the Department of Justice.

Sherman and Clayton Acts

Combinations and Conspiracies — Patents — Restrictive Patent Practices — Consent Decree—Practices Enjoined.—A producer of polyurethane foam and a research firm owning a patent covering a reticulating process used in manufacturing the foam were barred by a consent decree from continuing an exclusive licensing agreement which restricted use and development of the process by others, in violation of Sec. 1 of the Sherman Act and Sec. 7 of the Clayton Act. The decree, among other matters, requires both companies to (1) grant nonexclusive licenses to others at reasonable royalties under any existing or pending patent of the process; (2) grant, without additional compensation, a nonexclusive grant of immunity from suit under any corresponding foreign patent or application owned or controlled by them with respect to any reticulated polyurethane foam manufactured in the United States; (3) furnish technical information relating to the process to licensees under certain terms and conditions; and (4) give public notice of the availability of licenses covering the process within 90 days from the date of the final decree. Defendants were precluded from entering into any agreement which would restrict defendant research firm from performing research for any third person with respect to the process.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen., Baddia J. Rashid, Harry N. Burgess, and John L. Wilson, Attys., Dept. of Justice.

For the defendants: Robert B. Owen, of Covington & Burling, Washington, D. C. and Norman M. Heisman, Philadelphia, Pa., for Scott Paper Co.; Winston E. Miller, of Miller, Morriss, Pappas & McLeod, Lansing, Mich., for Chemotronics, Inc.

Final Judgment

MACHROWICZ, D. J.: Plaintiff, United States of America, having filed its complaint herein on November 29, 1968, and the defendants, Scott Paper Company and Chemotronics, Incorporated, having appeared and filed their answers to the complaint denying the substantive allegations thereof, and the parties hereto, by their respective attorneys, having consented to the entry of this Final Judgment:

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and without said judgment constituting evidence or an admission by any party hereto with respect to any such issue and upon consent of all 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 under which relief may be granted under Section 1 of the Sherman Act, 15 U. S. C. § 1, and under Section 7 of the Clayton Act, 15 U. S. C. § 18.

II.

[*Definitions*]

As used in this Final Judgment:

(A) “Person” shall mean an individual, partnership, firm, corporation or any other legal entity.

(B) “Scott” shall mean the defendant Scott Paper Company.

(C) “Chemotronics” shall mean the defendant Chemotronics, Incorporated.

(D) “Polyurethane foam” shall mean a cellular product resulting from the reaction of a diisocyanate and polyhydroxy-compound, which can either be a polyester on polyether material, with the addition of water so that bubbles are formed by the reaction of water and the diisocyanate. In addition, bubbles may be formed in part by a volatilization of a low boiling inert material, such as a fluorocarbon.

(E) “Reticulated polyurethane foam” shall mean polyurethane foam from which the membranes or “windows” have been sub stantially or entirely removed.

(F) “Reticulation” shall mean the substantial or entire removal of the membranes or “windows” of polyurethane foam.

(G) “Geen Patent” shall mean (1) U. S. Patent 3,175,025 and (2) U. S. Patent 3,175,030 and (3) any other rights under presently existing U. S. patents or presently pending patent applications of Chemotronics covering the thermal process for (a) the reticulation of polyurethane foam and/or (b) the explosion bonding of separate or individual pieces of polyurethane foam.

(H) “Know-how” shall mean all the technical information relating to the process of thermal reticulation of polyurethane foam, which information is known to the defendants as of the date of this Final Judgment. It shall include (a) the preparation of a written manual or manuals describing, as of the date of this Final Judgment, the materials, formulations, processing methods, and equipment employed by the defendants in reticulating polyurethane foam by the thermal process, including blueprints, drawings and specifications of defendants' ovens, equipment, gases and formulations used in reticulating polyurethane foam by the thermal process at defendants' locations in the United States; (b) defendants' complete thermal process for the reticulation of polyurethane foam, sufficient, if the instructions are properly followed, to enable the licensee of such information to reticulate thermally his foam as proficiently as the defendants could thermally reticulate the same foam as of the date of this Final Judgment; and (c) a motion picture in color with explanatory commentary describing in detail the complete thermal reticulation process as practiced in Scott's most modern plant as of the date of this Final Judgment.

(I) “United States” shall mean the 50 states, the District of Columbia, and all United States territories and possessions.

III.

[*Applicability*]

The provisions of this Final Judgment applicable to a defendant shall apply to such defendant, its officers, directors, agents, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

[*Licensing Practices*]

(A) Chemotronics is ordered and directed to grant to each applicant making written request to Chemotronics therefor a non exclusive, non-transferable, non-discriminatory license under the “Geen Patent”.

(B) Chemotronics is hereby enjoined and restrained from including any restriction whatsoever in any patent license granted by it pursuant to the provisions of this Final Judgment, except:

(1) Reasonable royalties may be charged and such royalties shall be non-discriminatory as among licensees procuring the same rights under the same patents;

(2) Reasonable provisions may be made for periodic royalty reports by the licensee and inspection of the relevant books and records of the licensee by an independent auditor or other person acceptable to both licensor and licensee (or, in the absence of agreement, a person selected by the Court), who shall report to the licensor only the amount of the royalty due and payable;

(3) Reasonable provisions may be made for cancellation of the license upon failure of the licensee to make the reports, pay the royalties, or permit the inspection of his books and records as hereinabove provided;

(4) The license must provide that the licensee may cancel *the* license in *whole or* as to any specified patents at any time after one year from the initial date thereof by giving 30 days' notice in writing to the licensor.

(C) Chemotronics shall grant without additional compensation a non-exclusive grant of immunity from suit under any corresponding foreign patent or application owned or controlled by it with respect to any reticulated polyurethane foam manufactured in the United States by a licensee under a license pursuant to Paragraph (a) of this Section IV.

(D) Chemotronics shall, upon written request, also make available to any licensee under Paragraph (A) hereof, subject to any legally recognized privilege, any and all information in its possession or control relating to the validity, invalidity or scope of U. S. Patent 3,171,820.

V.

[*Licensing of Thermal Process Patent*]

(A) Scott is ordered and directed to grant, in accordance with the provisions of Section IV, to each applicant making writ ten request to Scott therefor, a non-exclusive, non-transferable, non-discriminatory license under any presently existing U. S. patent or presently pending U. S. patent application of Scott relating to improvements on the thermal process for the reticulation of polyurethane foam.

(B) Scott shall grant without additional compensation a non-exclusive grant of immunity from suit under any corresponding foreign patent or application owned or controlled by it with respect to any reticulated polyurethane foam manufactured in the United States by a licensee under a license pursuant to Paragraph (A) of this Section V.

VI.

[*“Know-How”*]

(A) Defendants are ordered and directed to provide in connection with each patent license granted pursuant to Sections IV and V hereof, an option on the part of the licensee to obtain upon written request “know-how” under a non-exclusive, non-transferable, non-discriminatory license.

(B) Defendants are hereby enjoined and restrained from including any restriction whatsoever in any “know-how” license granted by it pursuant to the provisions of this Section, except as hereinafter provided:

(1) Reasonable royalties may be charged;

(2) Reasonable and non-discriminatory charges may be made for the actual cost solely of preparing and reproducing the materials furnished, and for such further technical information as may be furnished, including compensation for consultation, services, and advice given at a rate not to exceed $200 per day per person plus actual living and travel expenses;

(3) Reasonable provisions may be made to prevent the disclosure of “know-how” to third persons;

(4) Reasonable provisions may be made for periodic royalty reports by the licensee and inspection of the relevant books and records of the licensee by an independent auditor or other person acceptable to both licensor

and licensee (or, in the absence of agreement, a person selected by the Court), who shall report to the licensor only the amount of the royalty due and payable;

(5) Reasonable provisions may be made for cancellation of the license upon failure of the licensee to make the reports, pay the royalties, or permit the inspection of his books and records as hereinabove provided;

(6) Reasonable provisions may be made to prevent further use by the licensee, in the event of cancellation, of the "know-how" acquired by the licensee pursuant to such license.

(C) If requested by a licensee pursuant to the provisions of this Section VI, Scott will make available, for the compensation provided for in this Section VI, technically qualified persons from among its employees to explain to such licensee at the licensee's place of manufacture all or any portion of the licensed "know-how", so as to enable such licensee, if such person's instructions are properly followed, to reticulate thermally such licensee's foam as proficiently as Scott could thermally reticulate the same foam as of the date of this final judgment, provided that such counseling shall be given at reasonable times and for reasonable periods.

VII.

[*Reasonable Royalties*]

(A) Upon receipt of written application for a license under the provisions of Paragraphs IV, V or VI, defendant (Chemotronics or Scott, as the case may be) shall advise the applicant in writing within 30 days of the royalties which such defendant deems reasonable for the patent(s) or "know-how" to which the request pertains. If the applicant rejects the royalties proposed by such defendant, and if such defendant and applicant are unable to agree upon reasonable royalties within 60 days from the date such rejection is communicated in writing to defendant, the applicant or defendant may, upon notice to the Attorney General, apply to this Court for the determination of (1) reasonable royalties and (2) such reasonable interim royalties (pending the completion of any such proceeding) as the Court may deem appropriate. In any such proceeding, the burden of proof shall be on defendant to establish the reasonableness of the royalties requested by it. Pending the completion of negotiations or any such proceedings, the applicant shall have the right to make, have made, use and vend under the patents to which his application pertains, subject to the payment of reasonable interim royalties. A final Court determination of reasonable royalties shall be applicable to the applicant from the date upon which the applicant requested such license, and shall after such determination, unless otherwise ordered by the Court in a proceeding instituted under this Section VII, be applicable to any other licensee then having or thereafter obtaining the same rights under the same patents. If the applicant fails to accept a license, such applicant shall pay any royalties found by the Court to be due to defendant and such costs as the Court may determine to be just and reasonable.

(B) Nothing herein shall prevent any applicant from attacking, in the aforesaid proceeding or in any other controversy, the validity or scope of any of the patents, nor shall this Final Judgment be construed as imputing any validity to any of said patents.

VIII.

[*Infringement Suits*]

(A) Scott is enjoined from suing any licensee of the Geen Patent for infringement of claims one (1) through six (6) of U. S. patent 3,171,820 with respect to reticulated polyurethane foam produced by the thermal process prior to the date of this judgment.

(B) Scott has informed the plaintiff that it presently proposes to enforce the "Volz patent", No. 3,171,820, against any person who Scott believes infringes that patent in the production of reticulated polyurethane foam, even if such person has a license under Sections IV, V or VI of this judgment. Nothing in this Final Judgment nor any license granted pursuant thereto shall constitute a license or a waiver of, or shall otherwise affect, such rights, if any, as Scott may have under that patent.

IX.

[*Restrictions on Disposition*]

Defendant Chemotronics is enjoined and restrained from making any sale or other disposition of any "Geen Patent" which deprives it of the power or authority to grant licenses in accordance with the provisions of this Final Judgment, unless the purchaser, transferee or assignee shall file with this Court, prior to the consummation of said transaction, an undertaking to be bound by its provisions.

X.

[*Public Notification*]

Chemotronics and Scott are jointly and severally ordered and directed within ninety (90) days of the effective date of this Final Judgment, to give (a) public notice of the availability of the licenses referred to in Sections IV, V and VI; such public notice requirement shall be satisfied by causing such availability to be made known in the Official Gazette of the United States Patent Office, maintained by the Department of Commerce and in Modern Plastics magazine and (b) notice of such availability to all persons who within the five (5) years prior to the date of entry of this Final Judgment have indicated to Chemotronics or to Scott an interest in obtaining a license under the "Geen Patent".

XI.

[*Restriction on Research*]

Chemotronics is enjoined and restrained from entering into or adhering to any exclusive agreement with Scott which would prevent Chemotronics from performing research for any third person with respect to the reticulation of polyurethane foam.

XII.

[*Purchase Restriction*]

Scott is enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from acquiring by purchase from any person (other than a Scott employee or Scott consultant) any patent or any exclusive rights, license or immunity under any patent relating to the process of reticulating polyurethane foam.

XIII.

[*Amendment of Agreement*]

The agreement between Scott and Chemotronics dated November 20, 1965, shall be deemed, and hereby is, amended only to the extent necessary to permit the parties to comply with the provisions of this Final Judgment.

XIV.

[*Sharing of Reticulation Service*]

In the event that Scott, in the exercise of its own best judgment, shall decide to offer, and shall offer, to perform the service of reticulation with respect to polyurethane foam presented to Scott for such "custom reticulation" on a fee basis, Scott is hereby ordered and directed to offer and provide such custom reticulation service to all applicants on a non-discriminatory basis.

XV.

[*Inspection and Compliance*]

(A) 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 made to the defendant's principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the office hours of defendant, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant which re late to any matter contained in this Final Judgment;

(2) Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview officers or employees of defendants, who may have counsel present, regarding such matters.

(B) Upon written request of the Attorney General, or the Assistant Attorney General, in charge of the Antitrust Division, defendants shall submit such reports in writing and under oath or affirmation if so requested, with respect to the matters contained in this Final Judgment, as may from time to time be requested.

(C) No information obtained by the means provided in this Section 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 the Final Judgment or as otherwise required by law.

XVI.

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

XVII.

[*Validity of Volz Patent*]

Nothing contained in this Judgment shall be construed as an acknowledgment by the plaintiff of the validity or invalidity of the Volz patent or of the propriety or impropriety of the enforcement thereof.

United States v. Scott Paper Co. and Chemotronics, Inc.

In the United States District Court for the Eastern District of Michigan, Southern Division. Civil Action No. 32049. Filed March 3, 1970.

Case No. 2028 in the Antitrust Division of the Department of Justice.

Sherman and Clayton Acts

Combinations and Conspiracies—Patents—Restrictive Patent Practices—Order Amending Consent Judgment—Availability of "Know-How" Licenses.—Since notice of the availability of a "know-how" license may not be published in the Official Gazette of the United States Patent Office pursuant to its regulations, a provision of a consent judgment requiring a producer of polyurethane foam and a research firm owning a patent covering a reticulating process used in manufacturing the foam to give public notice of the availability of licenses covering the process in the Gazette was amended. The defendants were relieved from any obligation to publish notice in the Official Gazette of the availability of any "know-how" license.

See Department of Justice Enforcement and Procedure, Vol. 2, ¶ 8834.10.

Amending consent judgment in 1969 Trade Cases ¶ 72,919.

For the plaintiff: R. Clark, E. Zimmerman, B. Rashid, J. Sarbaugh, R. Grace, R. Hernacki, R. Reinish, R. J. Rappaport, and John L. Wilson, Attys., Dept. of Justice.

For the defendants: Norman M. Heisman, of Scott Paper Co. (Barnes, Kisselle, Raisch & Choate, Detroit, Mich., assoc. counsel; Covington & Burling, Washington, D. C., of counsel), for Scott Paper Co.; Winston E. Miller, of Miller, Morriss, Pappas & McLeod, Lansing, Mich., for Chemotronics, Inc.

Order Amending Final Judgment

FREEMAN, D. J.: Whereas, Section X of the Final Judgment of this Court entered in this action on October 23, 1969 provides:

"Chemotronics and Scott are jointly and severally ordered and directed within ninety (90) days of the effective date of this Final Judgment, to give (a) public notice of the availability of the licenses referred to in Sections IV, V and VI; such public notice requirement shall be satisfied by causing such availability to be made known in the Official Gazette of the United States Patent Office, maintained by the Department of Commerce and in Modern Plastics magazine . . ."

And whereas, the regulations of the United States Patent Office do not permit publication in its Official Gazette of a notice of the availability of a "know how" license such as those provided for in this Court's judgment;

And whereas, the parties by their attorneys consent to the making of this Order;

Now, therefore, it is ordered that Section X of the Judgment is amended so as to relieve defendants Scott Paper Company and Chemotronics, Incorporated from any obligation to publish notice in the Official Gazette of the United States Patent Office of the availability of any "know how" license.

UNITED STATES V. FORD MOTOR CO., ET AL.

Civil Action No. 21911

Year Judgment Entered: 1970 (and modified in 1974)

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Ford Motor Company and The Electric Autolite Company., U.S. District Court, E.D. Michigan, 1971 Trade Cases ¶73,445, (Dec. 18, 1970)

United States v. Ford Motor Company and The Electric Autolite Company.

1971 Trade Cases ¶73,445. U.S. District Court, E.D. Michigan, Southern Division. Civil Action No. 21911. Dated December 18, 1970. Case No. 1634, Antitrust Division, Department of Justice.

Clayton Act

Acquisition—Automotive Accessories Manufacturer by Automobile Manufacturer—Divestiture—Judgment.—An automobile manufacturer was required by a litigated judgment in an antimerger suit to divest itself of all of its interest in the trademark, trade name and U. S. battery and spark plug production facilities of an automotive accessory manufacturer, with the exception of a specified battery plant. From the date of divestiture of the spark plug assets, as a unit, the automobile manufacturer was prohibited from manufacturing spark plugs in the United States for ten years; was required to purchase one-half of its total annual requirements of spark plugs from the person acquiring the spark plug assets for five years; and was not permitted to use or market a private label spark plug for five years. In addition, the automobile manufacturer was prohibited from selling spark plugs to its dealers at less than the prevailing jobbers' selling prices for ten years after divestiture, and to the extent that it sells the trademarked plugs to its dealers, these plug must be packaged and numbered identically as those obtained by dealers from independent jobbers. As a condition to acquiring the spark plug assets, the purchaser must agree to carry out all wage and pension obligations of the seller as of the date of acquisition. Should the automobile manufacturer remove its non-plug operations from the divested plant to other factories owned by it, to the extent that new jobs are thereby created at these factories, it must offer employment to those displaced by the transfer and bear the cost of relocating those employees who accept such offers of transfer. The automobile manufacturer was prohibited from acquiring or building new battery plants and from expanding its remaining plant for a period of five years.

Judgment subsequent to opinion on relief, 1970 Trade Cases ¶ 73,254.

Final Judgment

FREEMAN, D. J.: Plaintiff, the United States of America, having filed its complaint herein on November 27, 1961; full trial on all issues of liability and relief being had; and the parties having briefed the court on all issues of fact and law:

Now, Therefore, it is hereby Ordered, Adjudged and Decreed as follows:

I.

[*Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and of the parties hereto.

The acquisition in 1961 by Ford Motor Company of a battery plant in Owosso, Michigan, a spark plug plant in Fostoria, Ohio, and the tradename and trademark “Autolite”, from the defendant The Electric Autolite Company, violated Section 7 of the Clayton Act.

II.

[*Definitions*]

As used in this Final Judgment:

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

(B) “Ford” means Ford Motor Company, a Delaware corporation;

(C) “Subsidiary” means any person coir-trolled by, or more than fifty per cent o* whose voting stock is directly or indirectly controlled by, defendant.

III.

[*Applicability*]

The provisions of this Final Judgment shall apply to defendant Ford and to each of its subsidiaries, successors and assigns, and to each of their respective officers, directors, agents, employees, successors and assigns, and to those persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

[*Divestiture of Assets*]

No later than eighteen (18) months after this Judgment is not subject to further appeal, Ford shall divest itself of all of its interest in the tradename and trademark “Autolite” and all of its facilities in the United States for the production of automotive batteries and spark plugs, except a battery plant located at Shreveport, Louisiana. Said production facilities shall be divested in going, viable and operating condition.

The assets to be divested shall include the tradename and trademark “Autolite” and the spark plug and battery production facilities which were acquired from The Electric Autolite Company by Ford in 1961, and all improvements, betterments, replacements and additions made thereto by Ford since such acquisition up to the date of divestiture.

Divesture of the facilities for the production of automotive batteries may be made separately but in any event, the tradename and trademark “Autolite” and the facilities for the production of spark plugs (hereinafter referred to as Autolite assets) shall be disposed of as a unit.

V.

[*Manufacture of Spark Plugs*]

For a period of ten (10) years from the date of divestiture of the Autolite assets, Ford is enjoined from manufacturing spark plugs in the United States.

VI.

[*Purchase and Marketing of Spark Plugs*]

For a period of five (5) years from the date of divestiture of the Autolite assets:

(A) Ford shall purchase from, and the person acquiring the divested Autolite assets shall furnish and sell to Ford, at least one-half of Ford's annual requirements of spark plugs, such spark plugs to be labeled with the “Autolite” name and/or trademark, to conform to Ford's designs, specifications, quality standards and delivery requirements and to be priced competitively. For the purpose of this paragraph, Ford's annual requirements shall be the annual total number of spark plugs needed by Ford for installation in vehicles and engines manufactured and/or sold in the United States and all spark plugs needed by Ford for export from the United States and for resale to dealers, warehouse distributors, jobbers, national accounts or others in the United States.

(B) Ford shall not use or market in, or import into, the United States any spark plugs bearing a tradename or trademark owned by or licensed to Ford. The restriction contained in this sub-section VI (B) shall not apply to any spark plugs bearing the tradename and/or trademark “Autolite” which are manufactured by or for Ford outside of the United States and are installed, in vehicles and engines imported into and sold by Ford in the United States.

VII.

[*Price to Dealers*]

For a period of ten (10) years from the date of divestiture of the Autolite assets, Ford is enjoined from at any time selling spark plugs in the United States to its franchised automobile dealers at a price less than its prevailing minimum suggested jobbers' selling price. To the extent that Ford sells “Autolite” branded spark plugs to its franchised automobile dealers in the United States, such spark plugs shall be packaged and numbered identically as those sold by Ford to purchasers other than its franchised dealers in the United States.

VIII.

[*Employee Rights*]

(A) The person acquiring the Autolite assets shall, as a condition of purchase, submit to the jurisdiction of this Court for entry of further orders as this Court may deem appropriate and agree to carry out all wage and pension obligations of Ford as may exist at the Fostoria, Ohio plant as of the date of acquisition.

(B) Should Ford remove to other of its factories operations at the Fostoria, Ohio plant not relating to the manufacture of spark plugs, then to the extent that new jobs are thereby created at such other Ford factories, Ford shall offer employment at such other factories to those employees at the Fostoria, Ohio plant who would be displaced by such removal. Ford shall bear the cost of relocating those employees who accept such offers of transfer.

IX.

[*Maintenance of Assets*]

Ford shall use its best efforts to maintain the assets to be divested until the time of divestiture thereof as going and viable, at standards of operating performance prevailing at the time of entry of this Final Judgment.

X.

[*Terms of Divestiture*]

No divestiture shall be made directly or indirectly, to any person who is at the time of divestiture (a) an officer, director, employee, or agent of Ford, or (b) who beneficially owns, or has power to vote, or controls, or has rights to own or control, more than one per cent (1 %) of the outstanding shares of stock of Ford, or (c) in whom Ford has a financial interest whether by any equity interest or otherwise other than as may arise out of a customer or supplier relationship, provided, however, that this provision shall not apply to an interest arising out of the conversion of a debt interest acquired incident to a sale or other credit transaction and disposed of within a reasonable period of time.

If divestiture is accomplished in whole or in part by distribution of stock, defendant Ford shall require that any officer or director of Ford, or any stockholder of Ford beneficially owning or controlling, or having rights, in excess of an aggregate of one per cent (1 %) of defendant's outstanding shares entitled to vote, shall within six (6) months of receipt of divested stock dispose of all divested stock to a person not described in this Section X.

XI.

[*Divestiture by Sale*]

(A) If defendant proceeds with divestiture by sale, then not less than sixty (60) days prior to the closing date designated in any contract for the sale of the assets or stock to be divested, defendant shall advise plaintiff in writing of the name and address of the proposed purchaser together with the terms and conditions of the proposed sale, and such other information concerning the transaction as plaintiff may request. At the same time, defendant shall also make known to plaintiff in writing the names and addresses of any other person or persons who have made an offer in writing, or expressed in writing a desire, to purchase any such assets together with the terms and conditions thereof.

(B) Not more than thirty (30) days after the receipt of the information required by subsection (A), above, including specifically the additional information which the plaintiff may request, plaintiff shall advise defendant in writing whether it objects to the proposed sale. If plaintiff does not object to the proposed sale, it may be consummated, but if objection is made, then the proposed sale shall not be consummated until plaintiff's objection is withdrawn or defendant obtains approval by the Court.

XII.

[*Public Sale*]

If divestiture is accomplished in whole or in part by means of sale of stock in the spark plug or battery business to the public, defendant Ford shall prohibit each of its officers, directors, employees, agents of Ford or stockholders described in Section X of this Judgment from initially acquiring, or in the case of any such officer, director, employee or agent from owning, any such stock so long as he remains in any such position.

XIII.

[*Future Acquisitions*]

(A) Ford is perpetually enjoined from reacquiring control over any of the divested assets.

(B) For a period of ten (10) years from the date of divestiture of the Autolite assets, Ford is enjoined from acquiring or holding, directly or indirectly, any assets of or stock or other beneficial interest in any person engaged in the manufacture in the United States of automotive spark plugs, except that Ford's insurance subsidiaries and the pension and profit sharing trusts of Ford and its subsidiaries may acquire and hold in the aggregate up to two per cent (2 %) of such assets, stock or other beneficial interests in any such person.

(C) For a period of five (5) years from the date of sale of the Owosso, Michigan battery plant, Ford is enjoined from acquiring or holding any assets or stock or other beneficial interest in any person engaged in the United States in the manufacture of automotive batteries and from building any new battery plant in the United States or expanding the battery plant owned by Ford, located at Shreve-port, Louisiana, except that Ford's insurance subsidiaries and the pension and profit sharing trusts of Ford and its subsidiaries may acquire and hold in the aggregate up to two per cent (2 %) of such assets, stock or other *beneficial interests* in any such person.

XIV.

[*Compliance and Inspection*]

For the purpose of securing or determining compliance with this Final Judgment:

(A) Any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to defendant Ford, made to its principal office, be permitted subject to any legally recognized privilege:

(1) Reasonable access during the office hours of defendant, which may have counsel present, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant which relate to any matters contained in this Final Judgment;

(2) Subject to the reasonable convenience of defendant, to interview officers or employees of defendant, who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such reports in writing with respect to any matters contained in this Final Judgment as from time to time may be requested.

(C) No information obtained by the means provided for in this Section 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 plaintiff is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XV.

[*Jurisdiction Retained*]

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

XVI.

[*Costs*]

Defendant Ford shall pay all of plaintiff's taxable costs herein.

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Ford Motor Co. and the Electric Autolite Co., U.S. District Court, E.D. Michigan, 1983-1 Trade Cases ¶65,436, (Jan. 31, 1974)

Federal Antitrust Cases
21911
Trade Regulation Reporter - Trade Cases (1932 - 1992) ¶65,436

United States v. Ford Motor Co. and the Electric Autolite Co.

1983-1 Trade Cases ¶65,436. U.S. District Court, E.D. Michigan, Southern Division, Civil Action No. 21911, Dated January 31, 1974 Case No. 1634, Antitrust Division, Department of Justice.

Clayton Act

Headnote

Acquisition: Divestiture: Automobile Spark Plugs: Modification of Judgment..–
A 1970 judgment was modified in 1974 to reflect the court's intended price standard for an automobile manufacturer's sales of spark plugs following divestiture of a spark plug company.
Modifying (by consent) 1971 Trade Cases ¶73,445.

For plaintiff: William H. McManus, Atty., Dept. of Justice. **For defendants:** George E. Brand, Jr., for Ford Motor Co.

FREEMAN, D. J.: Final Judgment approved as to form by the parties having been entered herein on December 18, 1970; the terminology of Paragraph VII of said Final Judgment not being the terminology of this Court's Opinion on relief; and the parties now consenting to this modification pursuant to the jurisdiction retained by the Court in Paragraph XV of said Final Judgment.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that Paragraph VII of the Final Judgment entered herein on December 18, 1970 be modified to read as follows:

> For a period of ten years from the date of divestiture of the Autolite assets Ford is enjoined from at any time selling spark plugs in the United States to its franchised automobile dealers at less than prices which are competitive with the prevailing prices obtainable by the dealers from independent jobbers. To the extent that Ford sells “Autolite” branded spark plugs to its franchised automobile dealers in the United States, such spark plugs shall be packaged and numbered identically as those sold by Ford to purchasers other than its franchised dealers in the United States.

Said Final Judgment as so modfied to continue in full force and effect.

UNITED STATES V. G. HEILEMAN BREWING CO., ET AL.

Civil Action No. 38162

Year Judgment Entered: 1973

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. G. HEILEMAN BREWING CO., INC. and ASSOCIATED BREWING CO., INC., Defendants.	FINAL JUDGMENT AND DECREE Case No. 38162 Filed: June 13, 1973 Entered: July 13, 1973

Plaintiff, United States of America, having filed its complaint herein on April 17, 1972, and defendants having appeared by their attorneys and filed their answers to such complaint, denying the substantive allegations thereof, and

Plaintiff and defendant Heileman having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without any admission by plaintiff or defendants in respect to any such issue,

NOW, THEREFORE, before any testimony has been taken 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 hereof and of the parties hereto pursuant to Section 15 of the Act of Congress of October 15, 1914, as amended,

entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, and the complaint states a claim upon which relief may be granted under Section 7 of said Act.

II

As used in this Final Judgment:

(A) "Heileman" shall mean defendant, G. Heileman Brewing Co., Inc., a corporation organized under the laws of the State of Wisconsin;

(B) "Eight state area" shall mean the states of Minnesota, Michigan, Wisconsin, Iowa, Illinois, Indiana, Ohio, and Kentucky.

III

The provisions of this Final Judgment applicable to Heileman shall apply to Heileman and to its officers, directors, agents, servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with Heileman who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Heileman is ordered and directed, on or before June 15, 1975, to divest to a purchaser or purchasers approved by plaintiff or, failing such approval, by the Court, all its right, title and interest in brands of beer owned or licensed by Heileman and/or to transfer to brewers approved by plaintiff or, failing such approval, by the Court, all production agreements relating

to brands of beer produced by Heileman accounting, in total, for at least 400,000 barrels of 1972 sales, at least 300,000 barrels of which shall have been sales within the eight state area. Such brands divested shall include a brand accounting for at least 100,000 barrels of 1972 sales.

V

Heileman is enjoined and restrained, for a period of ten years after the date of entry of this Final Judgment, from acquiring, without approval of plaintiff or, failing such approval, of the Court, any brewery brewing and selling beer in the eight state area.

VI

Heileman is ordered and directed, for a period of ten years after the date of entry of this Final Judgment, to notify plaintiff at least sixty days prior to its entry into any final agreement to acquire, directly or indirectly, the stock or assets or any brand of beer of any brewery outside the eight state area. Heileman is further ordered and directed to furnish whatever information plaintiff may reasonably request concerning any such acquisition and to refrain from closing any such acquisition until at least thirty days after receipt by plaintiff of such information.

VII

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General,

or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to Heileman, at its principal office, be permitted:

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

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

Heileman upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be requested.

No information obtained by the means provided in this Section VII 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 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.

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

Dated this 13 day of July, 1973, at Detroit, Michigan.

/s/ Robert E. DeMascio
District Judge

MICHIGAN NATIONAL CORP., ET AL.

Civil Action No. 4-70667

Year Judgment Entered: 1976

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. MICHIGAN NATIONAL CORPORATION, MICHIGAN NATIONAL BANK, and FIRST NATIONAL BANK OF EAST LANSING, and E. L. NATIONAL BANK, Defendants, and JAMES E. SMITH, COMPTROLLER OF THE CURRENCY, Intervenor.	)	Civil Action No. 4-70667 Filed: June 29, 1976 Entered: September 22, 19[illegible]

FINAL JUDGMENT

Plaintiff United States of America, having filed its complaint herein on November 14, 1973, and defendants having appeared by their attorneys, and plaintiff and the defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of law or fact herein and without this Final Judgment constituting evidence or admission by any party with respect to any issue of law or fact herein;

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:

I

This Court has jurisdiction over the subject matter herein and the parties consenting hereto. The complaint states a claim upon which relief may be granted under Section 7 of the Act of Congress of October 15, 1914 (15 U.S.C. §18), as amended, commonly known as the Clayton Act.

II

As used in this Final Judgment:

(A) "Michigan National" means defendants Michigan National Corporation, Michigan National Bank and their subsidiaries;

(B) "First National" means defendant First National Bank of East Lansing.

III

The provisions of this Final Judgment shall apply to the defendants and to their officers, directors, agents, employees, successors and assigns and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

(A) Michigan National is hereby ordered and directed to divest, as a single competitive entity, all of its ownership interest, direct or indirect, in First National within two (2) years and six (6) months of the date of entry of this Final Judgment. If the divestiture has not been made within said two and one-half year period, Michigan National is ordered and directed to immediately commence to divest by means of a spin off to its own shareholders all of its ownership interest in First National.

(B) Michigan National shall take such action as is necessary for First National to sustain itself as a viable banking entity in order to insure Michigan National's ability to comply with subsection (A).

(C) Michigan National shall submit to plaintiff for approval the details of any proposed plan of divestiture intended to implement the provisions of subsection (A) above. Within thirty (30) days of the receipt of these details, the plaintiff may request supplementary information concerning the plan, which shall be furnished by Michigan National. Following the receipt of any such supplementary information submitted pursuant to plaintiff's request for such information, plaintiff shall have thirty (30) days in which to object to such plan of divestiture by written notice to Michigan National. If no request for supplementary information is made, said notice of objection shall be given within thirty (30) days of receipt of the originally submitted details of the plan. If plaintiff objects to the proposed plan it shall not be consummated unless plaintiff withdraws its objection or the Court gives its approval to the plan notwithstanding the objection.

(D) If the proposed plan of divestiture is contingent upon the approval of the Board of Governors of the Federal Reserve System or any other federal or state bank regulatory agency, the time period set forth in subsection (A) above shall be tolled from the date of application to the Board or agency until such application is approved or denied.

(E) Should Michigan National regain ownership or control of any property divested pursuant to this Final Judgment, Michigan National shall divest such reacquired

property in accordance with the provisions of this Final Judgment within two (2) years from the date of such re-acquisition.

V

No officer, director or employee of Michigan National shall at the same time be an officer, director, agent or employee of the purchaser of any stock or assets divested pursuant to this Final Judgment.

VI

Michigan National is enjoined and restrained, for a period of five (5) years from the effective date of this Final Judgment from acquiring all or part of the stock or assets of any commercial bank by merger or any other means within a fifteen (15) mile radius of Grand Rapids or Saginaw, Michigan without the prior consent of plaintiff or if plaintiff does not give its consent, without the approval of the Court. Nothing in this section shall be construed to prohibit, or require said prior consent as to, the creation and acquisition of de novo banking subsidiaries or the reorganization of existing bank subsidiaries or their branches, or the acquisition of a bank or its assets where a state or federal regulatory agency determines that said bank has failed or that an acquisition must be effected immediately to prevent probable failure.

VII

Beginning ninety (90) days after the date of entry of this Final Judgment, and continuing at the end of every six (6) month period during the divestiture period, Michigan National shall furnish a written report to plaintiff

setting forth the steps it has taken to accomplish the divestiture required herein.

VIII

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose:

(A) Any duly authorized representative of the Department of Justice shall, upon 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:

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

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

(B) A defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means provided in this Section VIII 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, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX

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

X

Entry of this Final Judgment is in the public interest.

/s/ Lawrence Gubow
United States District Judge

Dated: Sept. 22, 1976

UNITED STATES V. BEATRICE FOODS CO., ET AL.

Civil Action No. 4-71922

Year Judgment Entered: 1977

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Beatrice Foods Co., Olsonite Corp., Bemis Manufacturing Co., and Standard Tank & Seat Co., U.S. District Court, E.D. Michigan, 1977-2 Trade Cases ¶61,739, (Nov. 3, 1977)

United States v. Beatrice Foods Co., Olsonite Corp., Bemis Manufacturing Co., and Standard Tank & Seat Co.

1977-2 Trade Cases ¶61,739. U.S. District Court, E.D. Michigan, Southern Division, Civil No. 4-71922, Entered November 3, 1977, (Competitive impact statement and other matters filed with settlement: 42 *Federal Register* 41671).

Case No. 2392, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Exchange of Information: Toilet Seats: Consent Decree.– Four major manufacturers of toilet seats were enjoined by a consent decree from entering into any agreement to fix the price, discount, markup or any other term or condition related to sales of toilet seats and from exchanging information concerning any price, discount, markup or any other term or condition with respect to those sales.
Exchange of Information: Bona Fide Sales: Legal Proceedings: Toilet Seats: Consent Decree.– The provisions of a consent decree enjoining four manufacturers of toilet seats from exchanging information concerning any price, discount, markup or any other condition with respect to toilet seats sales did not apply to proposed or actual bona fide purchases or sales or to the exchange of information between counsel in connection with bona fide prospective or actual legal proceedings.

For plaintiff: John H. Shenefield, Actg. Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Joseph H. Widmar, Arthur A. Feiveson, H. Arthur Rosenthal, and Kenneth L. Jost. **For defendants:** Earl A. Jinkinson, of Winston & Strawn, Chicago, Ill., for Beatrice Foods Co.; A. Stewart Kerr, of Kerr, Wattles & Russell, Detroit, Mich., for Olsonite Corp.; Robert G. Cutler, of Dykema, Gossett, Spencer, Goodnow & Trigg, Detroit, Mich., for Bemis Manufacturing Co.; Miles W. Kirkpatrick, of Morgan, Lewis & Bockius, Philadelphia, Pa., for Standard Tank & Seat Co.

Final Judgment

Keith, D. J.: Plaintiff, United States of America, having filed its complaint herein on June 19, 1974, and the plaintiff and the defendants, 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 against or admission by any party with respect to any issue of fact or law herein:

Now, Therefore, without any testimony being taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of all parties hereto, it is hereby

Ordered, Adjudged and Decreed:

I.

[*Jurisdiction*]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under Section 1 of the Sherman Act (15 U. S. C. §1).

II.

[*Definitions*]

As used in this Final Judgment:

(A) “Person” shall mean any individual, corporation, partnership, firm, association or other business or legal entity; and

(B) “Toilet seat shall mean any toilet seat which is manufactured from any material and sold with or without the toilet seat cover as the case may be.

III.

[*Applicability*]

The provisions of this Final Judgment are applicable to all defendants herein and shall also apply to each of said defendants' officers, directors, agents, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

[*Price Fixing; Information*]

Each defendant is enjoined and restrained from:

(A) Entering into, adhering to, maintaining or claiming any rights, under, directly or indirectly, any contract, agreement, understanding, plan, program, combination or conspiracy with any other manufacturer of toilet seats to raise, fix, stabilize or maintain the price, discount, markup or any other term or condition with respect to the sale of any toilet seat to any third person; and

(B) Furnishing to or requesting from any other manufacturer of toilet seats any information concerning any price, discount, markup, or any other term or condition with respect to the sale of any toilet seat, which sale occurs after the date of this Final Judgment, unless the information in question previously has been published and/or announced and made generally available to the trade.

V.

[*Purchase and Sale; Legal Proceeding*]

Nothing contained in Section IV (B) of this Final Judgment shall apply to any negotiation or communication between a defendant and any other defendant, or other defendant, or other manufacturer or seller of toilet seats, or any of their agents, distributors or representatives or any other person whose purpose is (1) a proposed or actual bona fide purchase or sale of toilet seats, or (2) the exchange of information between counsel in connection with bona fide prospective or actual legal proceedings.

VI.

[*Compliance*]

(A) Each defendant shall take affirmative steps (including written directives setting forth corporate compliance policies, distribution of this Final Judgment and meetings to review the terms and the obligations it imposes) to advise each of its officers, directors, managing agents and employees who have responsibility for or authority over the establishment of prices, bids, discounts or markups by which said defendant sells or proposes to sell toilet seats of its and their obligations under this Final Judgment and of the criminal penalties for violation of Section IV of this Final Judgment.

(B) In addition, each defendant shall, for a period of five (5) years from the date of this Final Judgment, cause a copy of this Final Judgment to be distributed at least once each year to each of the persons identified in subparagraph (A) above.

(C) Defendants are ordered and directed, within one hundred and twenty (120) days after the entry of this Final Judgment, to serve upon plaintiff affidavits concerning the fact and the manner of their compliance with the provisions of subparagraph (A) above.

VII.

[*Reports*]

For a period of five (5) years from the date of entry of this Final Judgment, each defendant shall file with this Court and with plaintiff, on the anniversary date of this Final Judgment, a sworn statement by an officer or responsible executive, designated by that defendant to perform such duties, setting forth all steps it has taken during the preceding year to discharge its obligations under Paragraph VI (A) and (B) above. Said report shall be accompanied by copies of all written directives issued by said defendant during the prior year with respect to compliance with the terms of this Final Judgment.

VIII.

[*Notice*]

(A) Each defendant is ordered to include with its next price list stating the terms and conditions of sale for toilet seats, or with any other document stating the terms and conditions of sale for toilet seats, a conspicuously placed notice acceptable to plaintiff which shall fairly and fully apprise the readers thereof of the substantive terms of this Final Judgment. This notice shall be sent by each defendant to all its usual toilet seat customers who would be sent such price lists in the normal course of business. The notice must also state that a copy of this Final Judgment may be obtained from the defendant upon request.

(B) The notice required by subsection (A) shall in no circumstances be sent later than one hundred and eighty (180) days after the effective date of this Final Judgment. If any defendant has not disseminated a new price list stating the terms and conditions of sale for toilet seats or any other document stating the terms and conditions of sale for toilet seats within said one hundred and eighty (180) days, then this defendant is required to send a separate mailing the notice required by subsection (A) to all those customers who would be furnished notice of any price changes in the normal course of business.

(C) Each defendant shall submit an affidavit to the plaintiff within one hundred and ninety-five (195) days after the effective date of this Final Judgment setting forth the manner in which it has complied with this section.

IX.

[*Inspections*]

(A) For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, any duly authorized representative of the Department of Justice shall, upon 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:

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

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

(B) A defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

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 United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

X.

[*Retention of Jurisdiction*]

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

XI.

[*Public Interest*]

Entry of this Final Judgment is in the public interest.

UNITED STATES V. ARROW OVERALL SUPPLY CO., ET AL.

Civil Action No. 571167

Year Judgment Entered: 1978

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Arrow Overall Supply Co., Cadillac Overall Supply Co., Central-Quality Services Corp., and Work Wear Corp., U.S. District Court, E.D. Michigan, 1978-2 Trade Cases ¶62,275, (Sept. 26, 1978)

United States v. Arrow Overall Supply Co., Cadillac Overall Supply Co., Central-Quality Services Corp., and Work Wear Corp.

1978-2 Trade Cases ¶62,275. U.S. District Court, E.D. Michigan, Southern Division, Civil No. 571167, Entered September 26, 1978, (Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 21062).

Case No. 2459, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Exchanges of Information: Industrial Launderers: Limits on Terms of Customer Contracts: Consent Decree.– Industrial launderers were prohibited by a consent decree from agreeing on prices, allocating customers, and exchanging price information. Additionally, the firms were barred from entering into customer agreements calling for automatic renewal, liquidated or other formula damages in unreasonable amounts, long-term periods (subject to exceptions), and restrictions on the customer's right to terminate for uncured failure of performance. The decree, however, permitted employee- and sale-of-business-noncompetition covenants, steps to prevent interference with contracts, and joint labor agreements.

For plaintiff: John H. Shenefield, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, John A. Weedon, Robert M. Dixon, Jerome C. Finefrock, Susan B. Cyphert, and Deborah Lewis Hiller, Attys., Antitrust Div., Dept. of Justice, Cleveland, Ohio, James K. Robinson, U. S. Atty. **For defendants:** Alan R. Miller, of August, Thompson, Sherr & Miller, Birmingham, Mich., for Arrow Overall Supply Co.; Patrick B. McCauley, of Nederlander, Dodge & McCauley, Detroit, Mich., for Cadillac Overall Supply Co.; Allen Zemmol, of Dingell, Hylton & Zemmol, Detroit, Mich., for Central-Quality Services Corp.; Arnold Lerman, of Wilmer, Cutler & Pickering, Washington, D. C., for Mechanics Laundry Co. of Detroit, Inc., and Aratex Services, Inc.

Final Judgment

Keith, D. J.: Plaintiff, United States of America, having filed its complaint herein on June 19, 1975, and the defendants having appeared and filed their answers to the complaint, and the plaintiff and defendants, 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 against or any admission by any party with respect to any issue of fact or law herein;

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:

I.

[*Jurisdiction*]

This Court has jurisdiction over the subject matter herein and 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, as amended (15 U. S. C. §1), commonly known as the Sherman Act.

II.

[*Definitions*]

As used in this Final Judgment:

(A) "Industrial garment" shall mean any item of work clothing, including but not limited to work pants, work shirts, coveralls, overalls, jackets, coats, uniforms and any other such products, including but not limited to shop towels and dust control materials;

(B) "Industrial laundry business" shall mean the business of renting and/or servicing industrial garments in the lower peninsula;

(C) "Person" shall mean any individual, corporation, partnership, firm, association, or business or legal entity;

(D) "Operator" shall mean any person engaged in the industrial laundry business;

(E) "Lower peninsula" shall mean the geographic area of the State of Michigan south of the Straits of Mackinac;

(F) A corporation "under common control" with a defendant shall mean any corporation (i) which is a subsidiary, directly or indirectly, of a parent corporation of a defendant or (ii) 50% or more of whose stock is owned or controlled by a person who also owns or controls 50% or more of the stock of a defendant.

III.

[*Applicability*]

The provisions of this Final Judgment are applicable to all defendants and to their subsidiaries, officers, directors, agents, employees, successors and assigns and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

[*Prices; Markets; Servicing*]

Each defendant is enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, plan, program, combination, or conspiracy with respect to the industrial laundry business with any operator to:

(A) Fix, raise, stabilize, establish or maintain any price, markup, discount or other term or condition or contract provision for the rental and/or servicing of any industrial garment.

(B) Divide, allocate or apportion any market territory, customer or potential customer for the rental and/or servicing of any industrial garment.

(C) Refrain from soliciting the business of any customer or potential customer for the rental and/or servicing of any industrial garment.

(D) Refrain from renting and/or servicing any industrial garment to and/or for any customer or potential customer.

(E) Eliminate or prevent any person from engaging in the industrial laundry business.

The provisions of subsections (C), (D), and (E) of this Section IV shall not apply to lawful covenants not to compete which are a part of (i) an employment contract, or (ii) a contract of sale of an industrial laundry or interest therein entered into in good faith and on a non-reciprocal basis between a defendant and another person.

V.

[*Information*]

Each defendant is enjoined and restrained from directly or indirectly furnishing to or requesting or accepting from any operator

(i) prices or charges, or

(ii) terms of bids or offers, or

(iii) the identity of customers,

for the rental and/or servicing of any industrial garment in the lower peninsula.

VI.

[*Contracts*]

Each defendant is enjoined and restrained, in any contract or agreement for the rental and/or servicing of industrial garments in the lower peninsula, from directly or indirectly entering into, enforcing, furthering, adhering to, maintaining or claiming any right pursuant to any provision:

(A) For the automatic renewal of the contract or agreement;

(B) For liquidated or other formula damages in such unreasonable amount as to constitute a penalty;

(C) Of a contract or agreement which provides for a term longer than thirty months from the date of its execution or last renewal, whichever is later; except that contracts which are in existence on the effective date of this Section of the Final Judgment can continue for no longer than twenty-four months from that effective date; and provided that such a provision shall not be prohibited in a contract or agreement entered into after the sixth anniversary of the date of entry of this Final Judgment, if the defendant at the time of negotiation has furnished its customer clear and conspicuous written notice that the duration of the contract or agreement is subject to negotiation between the parties;

(D) Prohibiting a customer's right to terminate its contract because of a defendant's material breach by substantial failure of performance which the defendant refuses to cure upon proper notice. This subsection (D) shall not apply to a failure of performance or cure outside the control of the defendant.

This Section VI shall become effective sixty days after the date of entry of this Final Judgment and shall remain in effect for a period of ten years from that date. The provisions of this Section VI shall not apply to any written agreement or specification prepared or submitted by a customer.

VII.

[*Sale of Business*]

Each defendant shall require as a condition of the sale or other disposition of all or substantially all of its industrial laundry business in the lower peninsula that the acquiring party agree to be bound by the provisions of this Final Judgment. Any person acquiring all or substantially all of the industrial laundry business of a defendant shall file with the Court and serve upon the plaintiff its consent to be bound by this Final Judgment.

VIII.

[*Interpretation*]

(A) For purposes of Sections IV, V, and VI of this Final Judgment a defendant and its direct or indirect parent, or a defendant and a corporation under common control with it, shall be deemed to be one person.

(B) This Final Judgment shall not be construed to prohibit a defendant: (i) acting upon the bona fide belief that one of its contracts is being interfered with by another person, from notifying that person of the existence of the contract; nor (ii) from pursuing in good faith its legal remedies or the resolution of legal claims with respect to tortious interference with a specific contractual relationship.

(C) The provisions of Section IV and V shall not apply to a bona fide transaction between a defendant and an operator (i) for the purchase or sale of an industrial laundry or an interest therein; or (ii) for the purchase of

goods and services by a defendant, or the sale of goods and services by a defendant; or (iii) for the exchange of information between a defendant and another operator solely for and necessary to such transactions.

(D) The provisions of this Final Judgment shall not be construed to prohibit a defendant from engaging with other operators in joint negotiations, agreements or activity the sole purpose or effect of which is to deal with labor unions or labor disputes except that there shall be no exchange hereunder of prices or other terms of pending bids or offers.

IX.

[*Notice to Personnel*]

Within sixty days of the entry of this Final Judgment, and annually thereafter for a period of ten years, each defendant shall take affirmative steps to advise each of its officers, directors and employees engaged in sales in the industrial laundry business, of its and their obligations under this Final Judgment and of the criminal penalties for violations of the Judgment and of the antitrust laws. In addition, each defendant shall, for so long as it remains in the industrial laundry business, cause a copy of this Final Judgment to be distributed annually to each of its officers.

X.

[*Reports*]

For a period of ten years from the date of entry of this Final Judgment, each defendant shall file with plaintiff, on each anniversary date of this Final Judgment, a report setting forth the steps it has taken during the preceding year to discharge its obligations under Section IX above. Said report shall be accompanied by copies of all written directives issued by said defendant during the prior year with respect to compliance with the terms of this Final Judgment.

XI.

[*Notice to Customers*]

Within sixty days of the entry of this Final Judgment each defendant shall mail or deliver to each of its industrial laundry customers who pay rentals of less than three hundred fifty dollars per week either a copy of the Final Judgment or a notice of its entry, which notice shall set forth, in a form acceptable to the Department of Justice, a summary of the prohibitions of Section VI and an offer to make a copy of the Judgment available upon written request. Where a defendant has contracts with individuals in the same establishment, the copy or notice may be mailed or delivered to the person responsible for administering the contracts.

XII.

[*Inspection and Compliance*]

For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

(1) Access during the office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, which may have counsel present, relating to any of the matters contained in this Final Judgment; and

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

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information obtained by the means provided in this Final Judgment 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, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at the time information or documents are furnished by a defendant to the United States, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, “Subject to Claim of Protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,” then ten days' notice shall be given by the United States to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

XIII.

[*Retention of Jurisdiction*]

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

XIV.

[*Public Interest*]

Entry of this Final Judgment is in the public interest.

UNITED STATES V. NU-PHONICS, INC., ET AL.

Civil Action No. 671378

Year Judgment Entered: 1979

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Nu-Phonics, Inc., Lucas, Inc., Ferndale Hearing Aid Center, Inc., Eastside Hearing Aid Center, Inc., Downriver Hearing Aid Center, Daniel F. Bifano, d/b/a Cadillac Hearing Aid & Optical Co., Murray Davis Peppard, d/b/a Dearborn Hearing Aid Center, Allan M. Kazel, d/b/a Metro Hearing Aid Center, and William T. Lafler, d/b/a Oakland County Hearing Aid Service., U.S. District Court, E.D. Michigan, 1979-1 Trade Cases ¶62,652, (Apr. 18, 1979)

United States v. Nu-Phonics, Inc., Lucas, Inc., Ferndale Hearing Aid Center, Inc., Eastside Hearing Aid Center, Inc., Downriver Hearing Aid Center, Daniel F. Bifano, d/b/a Cadillac Hearing Aid & Optical Co., Murray Davis Peppard, d/b/a Dearborn Hearing Aid Center, Allan M. Kazel, d/b/a Metro Hearing Aid Center, and William T. Lafler, d/b/a Oakland County Hearing Aid Service.

1979-1 Trade Cases ¶62,652. U.S. District Court, E.D. Michigan, Southern Division, Civil No. 671378, Entered April 18, 1979, (Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 61029).

Case No. 2532, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Exchange of Information: Restrictions on Advertising: Bona Fide Transactions: Hearing Aids: Consent Decree.– Hearing aid dealers were barred by a consent decree from fixing prices, giving price quotations over the telephone and advertising prices in connection with the sale or service of hearing aids. They were also enjoined from exchanging information with any other dealer in the Detroit area regarding future prices, markups, or discounts in the sale or service of hearing aids. However, the exchange of information prohibition would not apply to *bona fide* transactions between any defendant and other hearing aid dealer.

For plaintiff: John H. Shenefield, Asst. Atty. Gen., William E. Swope, Charles B. McAleer, and John A. Weedon, Attys., Dept. of Justice, David F. Hils, Susan B. Cyphert, and Dan Aaron Polster, Attys., Dept. of Justice, Cleveland, Ohio, Kenneth J. Haber, Asst. U. S. Atty. **For defendants:** William J. Weinstein, of Weinstein, Kroli & Gordon, P. C., Royal G. Targan and Clyde B. Pritchard, of Barris, Crehan, Golob & Pritchard, David R. Kratze, of David R. Kratze, P. C., William A. Sankbeil, of Kerr, Wattles and Russell, Alan R. Miller, of August, Thompson, Sherr & Miller, P. C., Richard Zipser, of Becker & Zipser, P. C.

Final Judgment

JOINER, D. J.: Plaintiff United States of America, having filed its Complaint herein on June 30, 1976 and plaintiff and defendants, by their respective attorneys, having consented to the making and entry of this Final Judgment without further trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or admission by any party with respect to any issue of fact or law herein;

Now, Therefore, before any other testimony or evidence has been taken herein and upon said consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The Complaint states a claim against the defendants 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," (15 U. S. C. §1), commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

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

(B) "hearing aid" means an electrical device which is usually worn by an individual and which assists the individual's ability to hear;

(C) "hearing aid dealer" means a person who sells hearing aids to the public or to the State of Michigan;

(D) "Detroit area" means the counties of Wayne Macomb, and Oakland in the State of Michigan.

III

[*Applicability*]

The provisions of this Final Judgment applicable to each of the defendants shall also apply to each of its officers, directors, partners, agents, employees, subsidiaries, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

[*Price Fixing*]

Each defendant is enjoined and restrained from entering into, adhering to, maintaining, furthering, or renewing any contract, agreement, understanding, plan, program or concert of action with any other hearing aid dealer in the Detroit area, directly or indirectly, to:

(A) refrain from giving price quotations for hearing aids over the telephone;

(B) refrain from advertising prices for hearing aids;

(C) fix, determine, establish, maintain, stabilize, increase or adhere to prices, markups, discounts or other terms or conditions, for the sale or service of hearing aids.

V

[*Exchange of Information*]

Each defendant is enjoined and restrained from, directly or indirectly:

(A) communicating to any other hearing aid dealer in the Detroit area information concerning:

(1) future prices, markups, or discounts at which, or terms or conditions upon which, any hearing aid or any service will be sold or offered for sale by said defendant;

(2) the fact that such defendant is considering making changes or revisions in the prices, markups, or discounts at which, or the terms or conditions upon which, such defendant sells or offers to sell any hearing aid or any service;

(B) requesting from another hearing aid dealer in the Detroit area any information which said defendant could not communicate without violating subparagraph (A) of this Section V.

VI

[*Business Transactions*]

Nothing in Section V hereof shall prohibit the communication of applicable information, including prices and quotations, by a defendant to another hearing aid dealer in the course of, and solely related to, negotiating for, entering into, or carrying out a *bona fide* purchase or sales transaction between such defendant and such other hearing aid dealer.

VII

[*Notice*]

Each defendant is ordered and directed:

(A) within thirty (30) days after the date of entry of this Final Judgment, to furnish a copy thereof to each of its employees who has pricing responsibility in connection with the sale of hearing aids;

(B) after the date of entry of this Final Judgment, to furnish a copy of this Final Judgment to each new employee who has pricing responsibility in connection with the sale of hearing aids, within thirty (30) days after employment;

(C) to attach to each copy of this Final Judgment furnished pursuant to subsections (A) and (B) of this Section VII a statement, in substantially the form set forth in Appendix A attached hereto, advising each person of his obligations and defendants' obligations under this Final Judgment, and of the penalties which may be imposed upon him and/or upon the defendants for violation of this Final Judgment.

VIII

[*inspections*]

For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

(A) duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:

(1) access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant who may have counsel present, relating to any of the matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of such defendant and without restraint on interference from it, to interview officers, directors, agents, partners or employees of such defendant, who may have counsel present, regarding any such matters;

(B) upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VIII 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 in which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents which is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, “Subject to claim of protection under the Federal Rules of Civil Procedure,” then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

IX

[*Retention of Jurisdiction*]

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

X

[*Public Interest*]

Entry of this Final Judgment is in the public interest.

Appendix A

The Final Judgment entered ....., 1978 in this case applies to each of the defendants named therein, to defendants' officers, directors, agents, employees and subsidiaries. It is the obligation of each defendant and of its officers, directors, partners, agents and employees to abide by the terms of the Final Judgment. Violation of any of the provisions of the said Final Judgment may subject each defendant and its officers, directors, partners, agents and employees to fines and/or imprisonment.