

EXHIBIT A
FINAL JUDGMENT

UNITED STATES v.
BAUSCH & LOMB OPTICAL COMPANY, *et al.*

Civil Action No.: No. 9-404

Year Judgment Entered: 1940

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Bausch & Lomb Optical Company, M. H. Eisenhart, Carl L. Bausch, and Theodore B. Drescher., U.S. District Court, S.D. New York, 1940-1943 Trade Cases ¶56,052, 34 F. Supp. 267, (Jul. 9, 1940)

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United States of America v. Bausch & Lomb Optical Company, M. H. Eisenhart, Carl L. Bausch, and Theodore B. Drescher.

1940-1943 Trade Cases ¶56,052. U.S. District Court, S.D. New York. No. 9-404, July 9, 1940. 34 FSupp 267

Defendants, manufacturers of military optical instruments, consent to a decree enjoining them from conspiring with any other manufacturer of similar equipment (1) to divide the market or restrain competition, (2) to refrain from selling, offering for sale, or making quotations, (3) to fix prices, quotations, or terms of sale, (4) to refuse to permit any person, wishing to manufacture the same equipment, who is willing to make adequate payment, from using any of the defendants' devices, information, machinery or equipment, (5) to agree upon the prices which any other manufacturer of these instruments shall charge for them, (6) to make bids or price quotations on these instruments at the request of any other manufacturer of similar instruments, (7) to offer for sale, sell, or make price quotations of these instruments on condition of the consent of other manufacturers of similar instruments, all being illegal under the Sherman Anti-Trust Act.

Performance of agreements between defendants and a German manufacturer, providing among other things for payment of royalties, is enjoined.

For purposes of enforcing compliance with the decree the Court retains jurisdiction and the defendants consent to the government's right to inspect their books and records.

Nothing in the decree prohibits the defendant from selecting customers or declining business other than in connection with military optical instruments.

Bondy, U. S. District Judge.

Attorneys for plaintiff: Thurman Arnold, Assistant Attorney General; Samuel S. Isseks, Special Assistant to the Attorney General.

Attorneys for defendants: Simpson, Thatcher & Bartlett.

[*Consent to Decree*]

I. The United States of America filed its petition herein on July 8th, 1940; each of the defendants appeared and asserted their innocence of any violation of law; no testimony having been taken, each of the defendants consented to the entry of this decree without any findings of fact, upon condition that neither such consent nor this decree shall be evidence, admission or adjudication that they have violated any statute of the United States; and the United States of America, by its counsel, having consented to the entry of this decree and to each and every provision thereof, and having moved the Court for this injunction,

Therefore, it is ordered, adjudged and decreed as follows:

[*Jurisdiction of Court*]

II. That the Court has jurisdiction of all persons and parties hereto; and for the purposes of this decree and proceedings for the enforcement thereof, and for no other purpose, that the Court has jurisdiction of the subject matter hereof and the petition states a cause of action against the defendants under the Act of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," and under Section 73 of the Act of August 27, 1894, entitled "An Act to Reduce Taxation, to Provide Revenue for the Government, and for other purposes," as amended by the Act of February 12, 1913, entitled "An Act to Amend Section 73 and 76 of the Act of August 27, 1894," commonly known as the Wilson Tariff Act.'

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[*Definition of "Military Optical Instruments"*]

III. Whenever the term "military optical instruments" is used hereinafter, it shall be understood to mean such instruments as periscopes, range finders, altimeters, bore-sights, bomb-sights, torpedo directors, sights for guns, and other similar scientific optical instruments used to direct and control the firing of modern instruments of warfare.

[*Acts Prohibited*]

IV. The individual defendants and the defendant Bausch & Lomb Optical Company, its successors, officers, directors, managers, employees and agents, and each of them, be and they hereby are perpetually enjoined and restrained from agreeing, combining or conspiring with any other manufacturer of military optical instruments:

1. To divide or allot among themselves the world market for military optical instruments, and to refrain from competing among themselves in the sale and distribution of such instruments in any portion of such market;
2. To refrain, whether with or without the prior consent of any other manufacturer, from selling, offering for sale or making price quotations on, military optical instruments for use in the area or territory allotted to such other manufacturer of such instruments;
3. To fix or maintain prices, quotations or terms of sale of military optical instruments;
4. To refuse to permit any person, firm or corporation engaged, or which wishes to engage, in the business of manufacturing and distributing military optical instruments, to use any of the devices, information, instruments, machinery or equipment of the defendant Bausch & Lomb Optical Company in connection with such manufacture and distribution if such persons, firms or corporations are ready, willing and able to compensate said Bausch & Lomb Optical Company adequately for the use of such devices, information, instruments, machinery or equipment;
5. To agree upon the prices which any other manufacturer of military optical instruments shall charge for such instruments;
6. To make bids or price quotations on military optical instruments at the request of any other manufacturer of such instruments;
7. To make offers for sale, price quotations or sales of military optical instruments conditional upon the consent of any other manufacturer of such instruments.

Nothing contained herein shall apply to the lawful conduct of the individual business of the defendant Bausch & Lomb Optical Company, its affiliates or subsidiaries (including, without limiting the foregoing, its unrestricted right to select its customers and to decline any business), or to the activities of the defendants other than in connection with military optical instruments.

[*Specific Agreements Enjoined*]

V. The following agreements between defendant Bausch & Lomb Optical Company and the firm of Carl Zeiss of Jena, Germany (hereinafter referred to as "Carl Zeiss"), are hereby declared unlawful and the defendant Bausch & Lomb Optical Company is hereby enjoined from carrying out any of their provisions: Agreement dated April 28, 1921; Supplementary Agreement to the Agreement of April 28, 1921, dated June 27, 1925; Supplementary Agreement to the Agreement of April 28, 1921, dated October 28, 1925. The Agreement between Bausch & Lomb Optical Company and Carl Zeiss, dated at Rochester, November 26, 1926, and at Jena, December 24, 1926, is hereby declared unlawful, and the further execution and performance of the same having heretofore become impossible and the said agreement having heretofore been suspended, the defendant Bausch & Lomb Optical Company is enjoined from carrying out any of its provisions, including the payment of any royalties thereunder until the further order of this Court; provided, however, that nothing herein contained shall be construed to affect the rights of Bausch & Lomb Optical Company under any patents for the manufacture of military optical instruments.

[*Right of Future Access to Defendants' Records, etc.*]

VI. 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 as to time and subject matter, made to the principal office of the defendants, be permitted (1) reasonable access, during the office hours of the corporate defendant, 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, (2) subject to the reasonable convenience of the defendants and without restraint or interference from them, and subject to any legally recognized privilege, to interview officers or employees of the corporate defendant, who may have counsel present, regarding any such matters; and the corporate defendant, 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.

[*Retention of Jurisdiction*]

VII. 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 thereof (including, but without being limited to, any modification in order to conform this decree to any Act of Congress enacted or repealed after the entry of this decree), for the enforcement of compliance therewith, and for the punishment of violations thereof. Whenever obligations are imposed upon the defendants by the laws or regulations of any State with which the defendants by law must comply in order to do business within such State, the Court, upon application of the defendants or any of them, shall from time to time enter orders relieving the defendants from compliance with any requirement of this decree in conflict with such laws or regulations, and the right of the defendants to make such applications and to obtain such relief is expressly granted.

Any application by any party hereto under the provisions of this paragraph, shall be made in open court upon notice to all of the parties hereto, and any of the parties hereto, upon such application, shall have the right and privilege of requiring the production of witnesses upon whose testimony such application is sought or opposed, and of examining and cross-examining such witnesses in accordance with the rules of the Court.

VIII. This decree shall go into effect immediately.