

United States v. American Can Company.

In the United States District Court for the Northern District of California, Southern Division. Civil Action No. 26345-H. Filed June 22, 1950.

Sherman Antitrust Act, Clayton Antitrust Act

Canning Machinery—Final Judgment—Conditioned Leases, Requirements Contracts, Compulsory Patent Licensing.—A manufacturer of can-closing machinery, found to have violated the Sherman and Clayton Acts, is in a final judgment enjoined from selling or leasing its machines on condition that they be used only with the lessor's supplies, from entering contracts to supply total requirements of materials for a longer period than one year, from selling on terms other than f.o.b., from discriminating in sales prices, credit terms, or technical assistance, or granting discounts other than those reflecting actual cost savings, and from purchasing assets or securities of container manufacturers except after obtaining permission of the court. The judgment requires that machines be sold, leased or rented to all applicants, together with warranties, non-discriminatory credit terms, and maintenance services, that the company's service school be open free of tuition to employees of machine users, that royalty-free licenses be granted to make, use and vend machines presently patented, that future patents be licensed to all applicants at reasonable royalties, and that the manufacturer's know-how be made available to licensees. Provisions in the judgment permit inspection by Department of Justice investigators, and retain jurisdiction for supervision of enforcement and to receive petitions for amendment.

See the Sherman Act annotations, Vol. 1, ¶ 1210.335, 1220.101, 1220.193, 1220.203, 1270.401; Clayton Act annotations, Vol. 1, ¶ 2023.11, 2027.

For the plaintiff: Herbert A. Bergson, Assistant Attorney General, Washington, D. C.; Frank J. Hennessy, U. S. Attorney, San Francisco, California; William C. Dixon, Special Assistant to the Attorney General, Los Angeles, California; Wallace Howland, Special Assistant to the Attorney General, George W. Jansen, Trial Attorney, and Lyle L. Jones and Arthur H. Tibbits, Attorneys, all of San Francisco, California.

For the defendant: Simpson, Thacher & Bartlett, Whitney North Seymour, Fifield Worsam, Douglas A. Calkins, Armand F. MacManus, Chester C. Davis, David S. Junker, Richard Hawkins, Thomas Thacher, Sidney A. Woodd-Calusac and Alexander R. Ormond, all of New York, New York, of counsel; Frederick M. Fisk and W. Burleigh Pattee, Chackering & Gregory, of counsel, all of San Francisco, California.

For earlier opinion in the same case, see 1948-1949 TRADE CASES ¶ 62,511.

Final Judgment

GEORGE B. HARRIS, D. J.: Plaintiff, United States of America, filed its complaint herein on August 27, 1946, and its amended complaint herein on May 25, 1948. The defendant, American Can Company, filed its answers to said complaint and amended complaint, respectively. This cause came on for trial November 24, 1948, and the trial was completed on March 31, 1949. The Court filed its opinion on November 10, 1949, finding and adjudging the defendant to have violated Sections 1 and 2 of the Sherman Antitrust Act, and Section 3 of the Clayton Act. By order filed June 22, 1950, the Court adopted said opinion, as supplemented by order dated June 22, 1950, as the findings of fact and conclusions of law herein, pursuant to Rule 52 of the Rules of Civil Procedure.

NOW, THEREFORE, after hearing plaintiff and defendant, by their attorneys, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I.

DEFINITIONS

When used in this Judgment:

A. The term "defendant" means the defendant American Can Company, its directors, officers, agents, representatives, employees, domestic subsidiaries, successors, and any person acting or claiming to act, under, through, or for said American Can Company, its domestic subsidiaries, and successors.

B. The term "requirements contract" means any contract, understanding, or agreement whereby for a specified period of time the purchaser buys from defendant all or any percentage of his requirements of metal or fiber containers or all or any percentage of his requirements of a particular type or size of metal or fiber container, for use at any, some, or all plants of the purchaser.

C. The term "container closing machine" means any integral machine manufactured or acquired by the defendant which performs as its primary function the final double seaming, clinching, seating or crimping of metal or fiber covers to metal or fiber containers.

D. The term "related equipment" means any integral machine manufactured or acquired by the defendant (other than container closing machines) which is used to

supplement the operation of a container closing machine, or used in the preparing, filling or weighing of the contents prior to the final seaming, clinching, seating, or crimping of the metal or fiber covers, or in the unsealing, filling, and resealing of containers, or in the subsequent marking, identification, weighing, or handling of the closed container, including but not limited to key clinchers, spout clinchers and can opening machines.

E. The term "auxiliary equipment" means:

(1) Supplementary non-integral mechanisms manufactured or acquired by the defendant, which may be directly attached to container closing machines or related equipment to perform functions other than the double seaming, clinching, seating or crimping of metal or fiber covers to metal or fiber containers, including, but not limited to, can feeds, non-spill devices, take-away conveyors, discharge devices, but shall not include any particular special device made to one customer's specifications, and not manufactured thereafter.

(2) Sets of change parts for container closing machines and related equipment manufactured or acquired by the defendant, and all other devices and equipment which will enable any container closing machine or related equipment to accommodate the containers of various types and sizes within the range of the particular container closing machine or related equipment.

F. The term "repair part" means any part of a container closing machine, related equipment or auxiliary equipment which replaces a worn or damaged part thereof, or which is an improvement part for or on a container closing machine, related equipment or auxiliary equipment.

G. The term "applicant" means any person, company, association, partnership, corporation, or other business entity, other than Continental Can Company, Inc.

H. The term "technical services" means any form of technical assistance, including but not limited to, any plans, specifications, technical memoranda, and similar documents; the making of tests and the furnishing of testing facilities; and the making available of technical personnel or supervision.

I. The term "machine services" means any form of technical services in connection with the installation, repair, overhaul, reconditioning, maintenance and related serv-

ices of container closing machines, related equipment, and auxiliary equipment.

J. The term "Continental Can Company, Inc.," means that corporation and its domestic subsidiaries.

K. The term "United States" means the United States of America, its territories and possessions.

II.

INJUNCTIVE PROVISIONS

Tie-In

1. Defendant is hereby enjoined and restrained from:

A. Selling, leasing or making or adhering to any contract for the sale or lease of container closing machines, related equipment, auxiliary equipment, or any other equipment, whether patented or unpatented, or fixing a price or rental charged therefor, or discount from or rebate upon such price or rental, on or accompanied by any condition, agreement, or understanding:

(1) That the lessee or purchaser thereof shall not purchase for use in connection with said machines or equipment metal or fiber containers made or sold by anyone other than defendant, or

(2) That the lessee or purchaser shall purchase from the defendant a specified volume, quota, percentage or value of metal or fiber containers.

B. Selling, making, or adhering to a contract for the sale of, or otherwise making available, metal or fiber containers, or fixing a price charged therefor, or discount from, or rebate upon such price, on or accompanied by any condition, agreement, or understanding:

(1) That the purchaser or recipient thereof shall not use such containers in connection with container closing machines, related equipment, auxiliary equipment, or other equipment, made or sold by anyone other than defendant; or

(2) That the purchaser or recipient thereof shall use such containers, or any specified volume, quota, percentage or value thereof, in container closing machines, related equipment, auxiliary equipment or other equipment made or sold by defendant.

C. Entering into, adopting, adhering to, or furthering any agreement or course of conduct for the purpose of, or which in effect constitutes, the leasing, selling or making or

adhering to a contract contrary to the provisions of subparagraphs A and B above.

D. Conditioning the availability of container closing machinery, related equipment, auxiliary equipment, or any other equipment, repair parts or mechanical services in connection therewith upon the procurement of metal or fiber containers from defendant or any other designated source, or the availability of metal or fiber containers or technical services in connection therewith upon the purchase or lease of container closing machines, related equipment, auxiliary equipment, or any other equipment, or repair parts from defendant or any other designated source.

E. Removing container closing machines, related equipment, auxiliary equipment or any other equipment from the premises of any lessee thereof because such lessee purchases, uses, or deals in metal or fiber containers or machinery or equipment manufactured or sold by any one other than defendant.

F. Altering or changing container closing machines, related equipment or auxiliary equipment or utilizing patents on such alterations or changes, in such a manner as to prevent the use thereof with metal or fiber containers manufactured or sold by anyone other than the defendant, provided, however, that this subsection F shall not apply if the alteration or change improves the operation or efficiency of the container closing machine, related equipment or auxiliary equipment.

G. Altering or changing metal or fiber containers, or utilizing patents on such alterations or changes, in such a manner as to prevent the use in connection therewith of container closing machines, related equipment or auxiliary equipment, manufactured or sold by anyone other than the defendant, provided, however, that this subsection G shall not apply if the alteration or changing results in more efficient operation.

H. Conditioning any license or immunity, expressed or implied, to practice any invention relating to container closing machines, related equipment or auxiliary equipment or to metal or fiber containers claimed in any patent, by the tying of any license or immunity for such invention to the purchase, procurement or leasing of container closing machines, related equipment or auxiliary equipment, or to the purchase or procurement of metal or fiber containers, or any similar product or article, from the defendant or any other designated source.

Requirements Contracts

2. Defendant is hereby enjoined and restrained from:

A. Entering into, adhering to or maintaining after January 1, 1951 any requirements contract or any renewal thereof with a user of metal or fiber containers under which the container user is obligated to purchase containers for a period of more than one (1) year; provided, however, that nothing in this Judgment shall be construed to prevent the defendant from executing a further one (1) year requirements contract within a period not in excess of ninety (90) days prior to the time the further one (1) year contract term begins.

B. Whenever any contract, agreement or arrangement for the sale or supply of metal or fiber containers is in question under paragraph 2 or 3 of this Section II, the burden shall be upon the defendant to show that such contract, agreement or arrangement is not a requirements contract as defined in paragraph B of Section I of this Judgment.

Supply Contracts

3. Defendant is hereby enjoined and restrained from:

A. For a period of five (5) years from January 1, 1951 entering into any contract, agreement or arrangement involving the sale or supply of metal or fiber containers for a period in excess of twelve (12) months from the effective date of such contract, agreement or arrangement, but in the event that such performance within a twelve (12) month period becomes impossible due to conditions at the end of that period beyond the control of either defendant or its customers, the performance thereof may be completed as soon as practicable after the expiration of the twelve (12) month period.

B. Where a contract, agreement or arrangement for the sale or supply of metal or fiber containers is in effect with any customer, executing a new contract, agreement or arrangement with that customer except during the period of the ninety (90) days immediately preceding the expiration of the prior contract, agreement or arrangement, provided that this paragraph shall not apply to non-requirements contracts effective after January 1, 1956.

Single Plant Contracts

4. Subject to the provisions of paragraph 7 of this section defendant is hereby re-

strained and enjoined from entering, performing or enforcing any contract, agreement or arrangement for the purchase and sale of containers, or from bargaining or negotiating for any such contract, agreement or arrangement, except on the basis of the individual plants of each customer.

Container Pricing

5. Defendant is hereby enjoined and restrained from publishing, printing, quoting or charging prices for containers on any basis other than (a) f.o.b. at the actual place of manufacture or origin of shipment of said products, or (b) on a basis which at destination at no time shall be higher than the f.o.b. price at the actual place of manufacture or origin of shipment of said products plus actual transportation and other delivery charges, with every purchaser having an option to purchase f.o.b. at the actual place of manufacture or origin of shipment of said products, and an option to determine the mode of transportation.

Contract Differentials

6. Defendant is hereby enjoined and restrained from granting, maintaining, or allowing in the sale of any particular type or size of metal or fiber container, any previously announced or constantly maintained lower price or other more favorable terms and conditions of sale for customers under a requirements contract than it grants, maintains, or allows for other customers, but this provision shall not be construed to prevent the charging of different prices to such other customers so long as the differentials reflect only changes in the cost of raw materials, manufacture, or transportation of, or in marketability of the same types and styles of metal or fiber container which have occurred since the price for the same type and style container under requirements contracts currently in effect was announced from the same point of shipment. Defendant is further enjoined and restrained from unlawfully discriminating as to price, terms, and other conditions of sale among customers under contract. Defendant is hereby restrained and enjoined from refusing to sell or from discriminating in the sale of metal or fiber containers to any user because such user does not enter into or propose to enter into any particular contract, agreement or arrangement for the sale or supply of such container.

Discounts

7. Defendant is hereby restrained and enjoined, for a period of five (5) years, from granting, maintaining or allowing, in the sale of metal or fiber containers any discount based upon aggregation in any manner of volumes purchased at one time or over a period of time, other than price differentials for minimum and maximum single orders for specially fabricated or lithographed metal or fiber containers where the differences in price represent only differences in the cost of manufacturing such specially fabricated or lithographed containers. Nothing in this judgment shall prohibit the defendant after January 1, 1956 from granting, maintaining or allowing any lawful aggregate quantity discount.

Transactions with Customers

8. Defendant is hereby enjoined and restrained from crediting, giving, granting, or paying, directly or indirectly, through or by any means or device whatsoever, to any container user, in connection with the sale of metal or fiber containers, any sums of money, real property, or other valuable considerations, except:

A. Payments in bona fide settlement of claims in accordance with a uniform policy and procedure.

B. Tin plate refunds representing only actual average savings, in the purchases of particular kinds or types of tin plate made available on a proportionately equal basis to all persons to whom metal containers manufactured of the particular kind and type of tin plate were delivered from the factory or factories of the defendant to which such savings apply, during any period not in excess of twelve (12) months in which such tin plate savings were made.

C. Such transportation costs as are permissible under paragraph 5 of this Section II and paragraph 17 of Section III of this Judgment.

D. Discounts for prompt payment, or price corrections covering only statistical errors in calculation, made available to all affected customers.

E. The compromise or cancellation, in whole or in part, on the basis of financial distress only, of any outstanding indebtedness.

F. Where necessary for the purpose of storage or manufacturing by the defendant, and for a price or rental not in excess of

that determined to be reasonable by an independent appraisal, the payment of the sale price or lease rental for any premises, provided that in any proceeding brought to enforce this subparagraph F the burden shall be on the defendant to establish that such purchase or lease was necessary for the purpose of storage or manufacturing by the defendant.

G. After a period of five (5) years from January 1, 1951, payments for any used machinery or equipment in any amount not in excess of the open market sale value thereof, if any, or salvage value, in either event as determined by an independent appraisal; or at any time payments for used closing machines, related equipment or auxiliary equipment traded in on the purchase of other such machines or equipment from defendant not in excess of the open market sales value thereof, if any, or salvage value.

H. The bona fide settlement of obligations arising out of any contract in effect prior to January 1, 1951.

If it appears hereafter that certain additional exceptions should be included herein the Court may amend the Judgment appropriately upon application of the defendant with notice to the Attorney General.

Loans and Guarantees

9. Defendant is hereby enjoined and restrained from making loans to container users or guarantees of loans or credit for container users, excepting where reasonably necessitated by the financial distress of the container user.

Terms and Credit to Customers

10. Defendant is hereby ordered and directed in the sale of metal or fiber containers to afford to customers uniform and non-discriminatory terms and conditions of payment. But nothing in this provision shall be construed to prohibit the exercise by defendant of reasonable business judgment in the extension or withholding of credit terms to customers.

Technical Services

11. Defendant is hereby enjoined and restrained from affording to any particular customer purchasing metal or fiber containers any technical service which it does not make available on a comparable basis to all other customers.

Container Facility Acquisitions

12. Defendant is hereby enjoined and restrained from acquiring by purchase or acquisition of assets or of securities or otherwise, or from leasing, from any other person, or holding, directly or indirectly, any ownership interest in, or from acquiring control over, any other person, engaged, in whole or in part, in the manufacture for sale of containers in the United States, except after an affirmative showing to this Court, upon reasonable notice to the Attorney General, that the effect of such acquisition may not be substantially to lessen competition.

Machine Facility Acquisitions

13. Defendant is hereby enjoined and restrained from acquiring by purchase or acquisition of assets or of securities or otherwise, or from leasing, from any other person, or holding, directly or indirectly, any ownership interest in, or from acquiring control over any other person engaged in whole or in part in the manufacture, sale or distribution of container closing machines, related equipment, or auxiliary equipment in the United States, except after an affirmative showing to this Court, upon reasonable notice to the Attorney General, that the effect of such acquisition may not be substantially to lessen competition.

14. Nothing in this Section II shall be construed to adjudicate, determine or affect the legality or illegality under Section 2 of the Clayton Act, as amended, of any of defendant's prices, discounts, or pricing practices in effect prior to the effective date of this Judgment.

III.

MACHINES AND EQUIPMENT

Policy

1. It is the express purpose of this Judgment to assure to those interested in owning container closing machines, related equipment and auxiliary equipment, the opportunity to purchase such machines and equipment owned or controlled by defendant as of January 1, 1951; and, with respect to container closing machines, related equipment and auxiliary equipment manufactured or acquired by defendant after January 1, 1951, for defendant to adopt a policy of affording to all those desiring such machines or equipment every available economic incentive to purchase such machines and equipment.

Defendant is hereby ordered and directed to utilize its maximum efforts to promote, implement and achieve the purposes as set forth herein; and to afford through available sales media, to existing lessees of closing machines, related equipment, and auxiliary equipment, owned by it on January 1, 1951, complete information as to the methods of purchasing such machines and equipment as compared with the continued leasing of them.

Closing Machines—Sale

2. Defendant is hereby ordered and directed to sell, for a period of ten (10) years from the effective date of this provision, to any applicant, for use, sale or lease in the United States, in accordance with and subject to the provisions of this Judgment, any container closing machine which it owns on the effective date of this provision, or thereafter manufactures or acquires.

2a. In order to effectuate and implement the provisions contained in section 2 hereof, the Court does hereby appoint a master who shall be empowered to take all necessary and lawful steps in obtaining such information and evidence as may be available in order to evaluate defendant's efforts under the foregoing provisions, sub 2, as well as to afford the Court a judicial basis upon which to measure the available market, if any, for the sale and disposition of said closing machines. On or before January 1, 1952 the master so appointed shall file with the Court and with the Attorney General a full and complete survey and report, and such Court hearing or hearings shall be had thereon as may be necessary and proper in a determination by the Court as to the percentage of all closing machines owned and leased by defendant or thereafter acquired, which shall be sold and disposed of by the expiration of five years from and after January 1, 1951.

The purpose or purposes of said survey, report and hearing or hearings thereon is to provide the Court with a factor as to the salability and disposition of said machines and the market conditions generally obtaining, independent of and otherwise divorced from any representations made by the Government or by the defendant.

That upon the completion of said report and survey by the master and the judicial hearings thereon his duties shall terminate and be dispensed with unless at that time it ap-

pears to the Court that additional reasons exist for the continuance of his duties herein.

Said master so appointed shall have the rights and powers necessary and proper to the fulfillment of his duties hereunder and may apply to the Court for instructions from time to time as may be proper and necessary in effectuating his duties herein.

The reasonable expenses occasioned by such person in effectuating and carrying on any or all of his duties herein, including the reasonable compensation to be fixed by the Court for said services, shall be borne, paid for and discharged by the defendant in a manner and at such time as may be directed by this Court.

Related Equipment—Sale

3. Defendant is hereby ordered and directed to sell, for a period of ten (10) years from the effective date of this provision, to any applicant, for use, sale or lease in the United States, in accordance with and subject to the provisions of this Judgment, any related equipment which it owns on the effective date of this provision, and any related equipment which it thereafter manufactures, or acquires.

Auxiliary Equipment—Sale

4. Defendant is hereby ordered and directed to sell, for a period of ten (10) years from the effective date of this provision, in accordance with and subject to the provisions of this Judgment, to any purchaser, owner, or lessee of any container closing machine or any related equipment sold or leased by defendant, any auxiliary equipment which it owns on the effective date of this provision and any auxiliary equipment which it thereafter manufactures or acquires.

Closing Machines—Presently Owned— Sales Price

5. The maximum sales price for any container closing machine owned by defendant on or prior to January 1, 1951, shall be computed in the following manner:

A. The base price shall be ten (10) times the rental for the particular type and model of container closing machine which was in effect for the calendar year 1950. In the event that the weighted average depreciated cost of the particular type and model of container closing machine, on the effective date of this Judgment, is higher than the base price such weighted average depreciated cost shall be taken as the base price;

but in no instance shall this latter base price be higher than the current factory cost of that type and model of container closing machine on the effective date of this Judgment.

B. The container closing machines to be sold under the terms and provisions of this Section III shall be in first class operating condition comparable to the condition in which such machines and equipment are made available to new lessees thereof. Where any particular container closing machine is not in such condition, the purchaser may, at his election, purchase such machine at the base price specified in subparagraph A, with the unconditional right, upon reasonable notice, to have it reconditioned by the defendant without charge and within a reasonable period, either in the place of location or where necessary and upon payment of transportation and shipping costs both ways, and no other costs, at the nearest available repair shop of the defendant. Such reconditioning shall put the machine in first class operating condition comparable to the condition in which such machines are made available to new lessees thereof.

C. If any purchaser of any such closing machine desires to purchase it in its existing condition, there shall be deducted from the applicable base price specified in subparagraph A, an amount representing four (4) per cent of such base price, for each complete calendar year of use since the date the particular container closing machine was last reconditioned by or for the defendant or, if it has not been so reconditioned, since the date of manufacture.

D. In the event that any purchaser of any container closing machine desires to purchase any such container closing machine, in its existing condition, and where located, and with no further expense to the defendant, a further deduction of two (2) per cent shall be allowed from the sales price.

E. Defendant shall further allow in all cases a cash discount of one (1) per cent for payment within ten (10) days. Every lease of any closing machine owned by defendant on January 1, 1951, shall contain or be accompanied by an option to purchase the leased machine in accordance with this Section III.

Related Equipment, Auxiliary Equipment— Presently Owned—Sales Price

6. A. The maximum sales price of any related equipment owned by defendant on

or prior to January 1, 1951, shall be computed in accordance with the provisions of paragraph 5 of this Section III. Where defendant had no established rentals in effect for the calendar year 1950 with respect to related equipment, the sales price thereof shall be reasonable, uniform and nondiscriminatory as provided for auxiliary equipment in paragraph 6B of this Section III.

B. The sales price of any auxiliary equipment owned by defendant on or prior to January 1, 1951, shall be reasonable, uniform and nondiscriminatory. The terms and conditions of sale of auxiliary equipment shall be reasonable, uniform and nondiscriminatory.

Notice of Price and Location

7. Within one hundred twenty (120) days after the date of this Judgment, defendant shall send written notice in a form approved by the Attorney General, by registered mail, to each person with whom defendant then has a written or oral lease for any closing machine, related equipment or auxiliary equipment, informing said person of his right to purchase, pursuant to paragraphs 2 to 4, inclusive, of this Section III, said machines or equipment under this Judgment, and quoting therein the computed sales price as of January 1, 1951, of said machines or equipment. Defendant is hereby ordered and directed, upon written request, to quote to any applicant the sales price, f. o. b. location, of any container closing machine, related equipment or auxiliary equipment available for sale under paragraphs 2, 3, and 4 of this Section III, and shall in each instance inform the applicant of the sales price and location of the nearest available machines or equipment of the type specified by the applicant. All sales of container closing machines, related equipment and auxiliary equipment, shall be made on nondiscriminatory terms and conditions.

Warranties in Sale

8. All sales of container closing machines, related equipment, and auxiliary equipment, shall be made with such covenants and warranties, expressed or implied, as are customary in the food machinery business in the sale under like conditions of new or used machinery.

Credit Terms in Sale

9. The defendant is hereby ordered and directed to provide such nondiscriminatory

credit terms for a period of ten (10) years from the effective date of this provision as will promote the purpose of this Judgment. Where a container user has satisfactory credit, the defendant shall afford all reasonable opportunity for the purchase of existing container closing machines, related equipment or auxiliary equipment upon an installment basis, comparable to the rentals charged for the same machine or equipment with the right to require a reasonable down payment. With respect to new machines or equipment such additional deposit and terms of sale shall be imposed as may be consistent with current financial practice dealing with such installment contracts.

Compensatory Rentals

10. The defendant is hereby ordered and directed for a period of three (3) years from January 1, 1951 to establish and maintain a rental for each type and model of leased container closing machine, related equipment, and auxiliary equipment which shall be not less than reasonable under circumstances from time to time existing, including but not limited to the age, efficiency, and serviceability of such type and model of machine or equipment. On and after January 1, 1954, defendant is hereby ordered and directed to establish and maintain rentals for leased container closing machines, related equipment, and auxiliary equipment at compensatory rates which shall take account of, in the aggregate, not less than the expenses incurred by it in the leasing of such machines and equipment, including depreciation thereon, a reasonable return on the current investment after depreciation therein, and the cost of providing services in connection with the leasing of such machines and equipment. In any proceeding brought to enforce this provision the defendant shall bear the burden of establishing that the rentals are in compliance with it.

Leasing of Machines

11. Defendant is hereby ordered and directed, for a period of five (5) years from the effective date of this provision, to lease, upon written request, to any applicant (other than a container manufacturer) desiring to use the same for closure of containers in the United States and who is purchasing containers for which a particular type and model of machine or equipment is adaptable, and whether or not such applicant is a container customer of defendant, any con-

container closing machine, and any related equipment or auxiliary equipment which it is then leasing to anyone, and which machine or equipment it has in stock or is currently manufacturing. Defendant shall not be required to manufacture for compulsory leasing hereunder any additional container closing machines, related equipment or auxiliary equipment requiring an aggregate expenditure of more than \$2,000,000 in any calendar year, nor shall defendant be required to accept further applications for lease at any time when its stocks of that type of container closing machine and its annual capacity for the construction of additional container closing machines, related equipment, auxiliary equipment, repair parts and for reconditioning such machines and equipment, shall be completely utilized. Each lease may contain uniform terms and conditions respecting the obligations of the lessee, as a condition of the lease, to maintain the leased machine in good repair, and all other customary lease covenants not inconsistent with this Judgment.

Nondiscriminatory Leasing

12. As long as defendant leases any container closing machine, related equipment or auxiliary equipment, defendant is ordered and directed during any rental period to offer to lease and to lease, such machines and equipment on the basis of uniform and nondiscriminatory rentals, terms and conditions of lease.

Lease Term

13. Defendant is hereby ordered and directed to afford to each lessee of any container closing machine, related equipment, or auxiliary equipment the option to renew such lease for at least an additional one (1) year period, at the rental prevailing during such period. The ending of the term of any lease of any container closing machine, auxiliary equipment, or related equipment, shall be fixed so as not to occur within three (3) months after the termination date of any contract then in effect between the defendant and the lessee for the sale and purchase of containers intended for use at the customer's plant at which such equipment is located and for which such machine or equipment is appropriate.

Repair Parts—Sale

14. Defendant is hereby ordered and directed, so long as it shall manufacture, sell

or lease, any container closing machines, related equipment or auxiliary equipment, and for a reasonable time thereafter, to sell on nondiscriminatory terms and conditions of sale to any purchaser, owner or lessee of such machines or equipment originally owned by defendant, or to any repair man for such purchaser, owner, or lessee, any repair parts needed for such machines and equipment, and to maintain in stock sufficient supplies of repair parts to meet normal demands on the part of purchasers and lessees.

Services on Machines Sold

15. Defendant is hereby ordered and directed, so long as it shall manufacture and lease the same type and model of any container closing machine, related equipment, or auxiliary equipment, to provide, upon reasonable written notice, and at reasonable, uniform and nondiscriminatory charges equivalent to those imposed on lessees and reflected in rentals, any needed technical service for the installation, repair, or overhaul, on any such machine or equipment which it has sold.

Priorities for Purchase and Lease of Machines

16. Container closing machines, related equipment and auxiliary equipment are to be made available in the following order of priority to be established by January 1, 1951.

A. The lessee of any container closing machine, related equipment or auxiliary equipment on lease by the defendant shall have an absolute priority for the purchase of the leased machine or equipment.

B. The lessee of any container closing machine, related equipment, or auxiliary equipment shall have a priority to renew the lease of the leased equipment, and for its replacement in the event of major breakdown or destruction.

C. Defendant shall be permitted to supply its own requirements of any equipment necessary for use in its own manufacturing operations, and for the purpose of providing substitutes for container closing machines, related equipment, or auxiliary equipment, requiring reconditioning and emergency replacement, in the event of major breakdown or destruction.

D. Priorities thereafter shall be afforded to supply applicants for purchase or prospective lessees of each type and model of container closing machines, related equip-

ment and auxiliary equipment in the chronological order in which their written firm orders are received, and such applications for purchase or for lease shall be considered together, except that when any applicant has attained a priority for the purchase of container closing machines, that priority shall include, at the applicant's option, the right to obtain any auxiliary equipment which may be presently in use with such closing machine, or any available auxiliary equipment not subject to prior applications which such applicant desires to use with such machine.

Transportation of Machines and Equipment

17. Defendant is hereby restrained and enjoined from paying the cost of transportation of any container closing machine, related equipment, or auxiliary equipment from defendant to any lessee or from any purchaser or lessee to defendant, except that defendant may pay the cost of such transportation on leased machines or equipment returned for overhaul at its request or with its consent.

Service Schools

18. Defendant is hereby ordered and directed, upon application, to afford to the employees of any applicant the opportunity to attend, without payment of tuition, the service training schools which defendant provides for the employees of its container customers for the purpose of educating them in the operation and repair of closing machines, related equipment and auxiliary equipment, sold or leased by defendant, during whatever periods and on the same basis as defendant affords such training courses to the employees of its container customers. Such schools shall not be discontinued within the period of five (5) years from January 1, 1951.

Reports

19. The defendant is hereby ordered and directed for a period of five (5) years from January 1, 1951 to file with the Attorney General a semi-annual statement setting forth the number of container closing machines and units of related equipment and auxiliary equipment sold in the particular six months period, the number of such machines and units of equipment leased to non-customers during the same period, and the sales prices of each unit of closing machines and related or auxiliary equipment sold and any

changes in rentals occurring during said preceding six months period. Such report shall be filed within sixty days after the termination of the particular period covered by the statement.

Defendant's Petition

20. Upon sixty (60) days' written notice to the Attorney General, the defendant may file a petition with this Court, at any time after five (5) years following January 1, 1951, for the abatement of the directives contained in paragraphs 2, 3 and 4 of this Section III. In any such proceeding the burden shall be upon the defendant to establish the reasons for such abatement. Upon the hearing of such petition, the record of all proceedings in this case prior to the entry of this Judgment shall be part of the record before the Court, and may be considered by the Court, together with any additional evidence which the plaintiff or the defendant may submit to support or oppose the relief sought.

Plaintiff's Petition

21. Upon sixty (60) days' written notice to the defendant, the plaintiff may file a petition with this Court, at any time after five (5) years following January 1, 1951, for such other or further relief relating to the manufacture, sale or lease of closing machines and related equipment and auxiliary equipment as may be appropriate, upon the basis that the provisions of this Judgment have not operated to restore competition, or to remove the effects of the violations of law adjudged to have occurred, with respect thereto. Upon the hearing of such petition, the record of all proceedings in this case prior to the entry of this Judgment shall be part of the record before the Court, and may be considered by the Court together with any additional evidence which the plaintiff or the defendant may submit to support or oppose the relief sought.

The entry of this Judgment shall not be deemed a bar to any of the above mentioned relief that the Court may grant after a hearing upon a petition filed by plaintiff or defendant, pursuant to paragraphs 20 or 21 of this Section III.

IV.

PATENTS

Compulsory Licensing—Present Patents

1. Defendant is hereby ordered and directed to grant to any applicant making

written request therefor, for manufacture in the United States, a royalty-free, nonexclusive license to make, use and vend container closing machines, related equipment and auxiliary equipment, under any, some or all existing container closing machine, related equipment and auxiliary equipment patents, owned or controlled by defendant at the date of this Judgment. Within sixty (60) days of the date of entry of this Judgment, defendant shall file with the clerk of the court a list of all of its said patents. Any license granted under this provision shall be without any limitation or condition whatsoever. The defendant may charge however, a reasonable royalty, non-discriminatory as between applicants, in respect of patents on fiber container closing machines, fiber container related equipment and fiber container auxiliary equipment.

Compulsory Licensing—Future Patents

2. Defendant is hereby ordered and directed to grant to any applicant making written request therefor, for manufacture in the United States, a nonexclusive license to make, use or vend container closing machines, related equipment and auxiliary equipment under any, some or all patents thereon which may be acquired or applied for by defendant within five (5) years from the date of this Judgment, without any limitation or condition whatsoever except that:

A. A reasonable charge in the form of a royalty or otherwise, and nondiscriminatory as between such applicants, may be made in respect of any patents so licensed;

B. Reasonable provision may be made for periodic inspection of the books and records of the licensee by an independent auditor, who shall report to defendant only the amount of money due and payable;

C. The license may be nontransferable; and

D. Reasonable provisions may be made for cancellation of the license upon failure of the licensee to pay the royalties or to permit the inspection of his books and records as hereinabove provided.

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

Royalty Determination

3. Upon receipt of written request for a license under the provisions of paragraph 2

of this Section IV, defendant shall advise the applicant in writing of the royalty or other charge which it deems reasonable for the patent or patents to which the request pertains. If the parties are unable to agree upon a reasonable royalty or charge within sixty (60) days from the date such request for the license was received by defendant, the applicant therefor may forthwith apply to this Court for the determination of a reasonable royalty or charge, and defendant shall, upon receipt of notice of the filing of such application, promptly give notice thereof to the Attorney General.

In any such proceeding, the burden of proof shall be on defendant to establish, by a fair preponderance of the evidence, the reasonableness of the royalty or charge requested by it, and the Attorney General shall have the right to be heard thereon, and the reasonable royalty rates or charges, if any, as once finally determined by the Court, shall apply to the applicant and to all licenses of the same patent or patents thereafter granted, and any licensee who, at the date of such determination by the Court, holds a license under the same patent or patents, shall have the right, at his option, to have such royalty rates or charges applied retroactively with respect to its operations, to the date of the application to the Court which resulted in such determination. Pending the completion of negotiations or any such proceeding, the applicant shall have the right to make, use and vend under the patents to which his application pertains without payment of royalty or other compensation, but subject to the provisions of paragraph 4 of this Section IV.

Interim Royalty Rate

4. Where the applicant has the right to make, use and vend under subparagraph 3 of this section, defendant may apply to the Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty or charge, if any. If the Court fixes such interim royalty rate, defendant shall then issue and the applicant shall accept a license, or, as the case may be, a sublicense providing for the periodic payment of royalties at such interim rate from the date of the filing of such application by the applicant. If the applicant fails to accept such license or fails to pay the interim royalty in accordance therewith, such action shall be ground for the dismissal of

his application. Where an interim license or sublicense has been issued pursuant to this paragraph, reasonable royalty rates or charges, if any, as finally determined by the Court shall be retroactive for the applicant and all other licensees under the same patents to the date the applicant files his application with the Court.

Validity of Patents

5. Nothing in this Judgment shall be construed as importing any validity or value to any of the patents covered by this Section IV.

Disposition of Patents

6. Defendant is hereby enjoined and restrained from 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 this Section IV 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 IV hereof and such purchaser, transferee, assignee, or licensee shall file with this Court, prior to the consummation of the transaction, an undertaking to be bound by said provisions of this Judgment.

V.

KNOW-HOW

Defendant is hereby ordered and directed for a period of five (5) years from the date of this Judgment to furnish technical information to any applicant desiring the same for use in manufacture in the United States, upon written request, with respect to any container closing machine, related equipment, and auxiliary equipment, manufactured by defendant at the time of such application, or at any time during the preceding five (5) years, as follows:

Description of Materials

1. Copies of all of defendant's detailed working drawings, specifications of materials, prescribed production methods, and assembly blueprints employed by it in the manufacture and assembly of such machines and equipment.

Additional Information

2. In the event any applicant represents to defendant in writing that the technical information contained in the material fur-

nished by defendant under paragraph 1 above is inadequate to enable him satisfactorily to manufacture and assemble the machines and equipment covered thereby, defendant shall supply such applicant, without warranty, further information, as the case requires, either:

A. In writing, or

B. By making available a reasonable number of technical personnel for consultation with such applicant, or

C. By permitting such applicant or his representative, during business hours to visit defendant's machine shops where such machines and equipment are manufactured to observe the manufacture thereof.

Cost of Materials and Information

3. The technical information furnished by defendant pursuant to paragraphs 1 and 2 A of this Section V shall be charged for by it at no more than the actual cost to defendant of furnishing such technical information. The technical information furnished pursuant to paragraphs 2 B and C shall be charged for by defendant at the hourly rate of compensation usual for the technical personnel of defendant engaged in supplying such technical information, together with any traveling expenses which may be incurred by such personnel in connection therewith.

VI.

INSTRUCTIONS TO EMPLOYEES

Defendant is hereby ordered and directed:

A. To instruct in writing, within sixty (60) days from the date of this Judgment, those of its agents, solicitors, salesmen, service and repairmen, engineers and other employees or persons engaged in the sale of metal or fiber containers and the furnishing of technical services in connection therewith and the sale of container closing machines, related equipment, auxiliary equipment, repair parts and any other equipment and the furnishing of machine services in connection therewith:

(1) That the practices described in Section II of this Final Judgment are enjoined and that each and every such employee and person is enjoined by this Final Judgment from engaging in said practices; and

(2) Of the contents of Sections III, IV, V hereof, and the necessity for compliance therewith.

Records of Container Business

B. To maintain for a period of ten (10) years complete and intact, in orderly classification and available promptly on notice, permitting prompt and selective examination of particular documents, or categories of documents, all its books and records, correspondence, memoranda, reports and other writings relating to its business of manufacturing, selling and distributing metal and fiber containers and the furnishing of technical services in connection therewith, or attempts to manufacture, sell and distribute metal and fiber containers and to furnish technical services in connection therewith.

Records of Machine and Equipment Business

C. To maintain, separate and apart from the materials referred to in subparagraph B above, for a period of ten (10) years complete and intact, in an orderly classification and available promptly on notice, permitting prompt and selective examination of particular documents or categories of documents, all its books, records, correspondence, memoranda, reports and other writings relating to its business of manufacturing, selling, and distributing container closing machines, related equipment, auxiliary equipment, repair parts, and other equipment and the furnishing of machine services in connection therewith, or attempts to manufacture, sell and distribute container closing machines, related equipment, auxiliary equipment, repair parts, and other equipment, and to furnish machine services in connection therewith.

VII.

DISTRIBUTION OF JUDGMENT

Defendant is hereby ordered and directed to furnish, within sixty (60) days from the date of this Judgment, a copy of this Final Judgment to each metal or fiber container customer, and to each lessee of container closing machines, related equipment and auxiliary equipment as of the date of this Judgment.

VIII.

VISITATION AND REPORTS

For the purpose of securing compliance with this Judgment, and for no other purpose, any duly authorized representative or representatives of the Department of Justice shall, upon written request of the Attorney

General or an Assistant Attorney General, and on notice reasonable as to time and subject matter to defendant, made to its principal office, and subject to any legally recognized privilege, 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 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 such matters, and upon request said defendant shall submit such reports as might from time to time be reasonably necessary to the enforcement of this Judgment, provided, however, that no information obtained by the means provided in this Section VIII shall be divulged by 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, or as otherwise required by law.

IX.

EFFECTIVE DATE

The provisions of Section II and Section III of this Judgment shall not become effective until January 1, 1951.

X.

NON-APPLICABILITY CLAUSE

The provisions of this Judgment shall not apply to operations or activities not in or affecting commerce as defined in Section 1 of the Clayton Act.

XI.

RETENTION OF JURISDICTION AND COSTS

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 in relation to the construction of, or carrying out of this Judgment, for the amendment or modification of any of the provisions thereof, or the enforcement of compliance therewith and for the punishment of violations thereof.

Judgment is entered against the defendant for all costs to be taxed in these proceedings.