

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Food Machinery and Chemical Corporation; California Packing Corporation; Libby, McNeill & Libby; Pacific Machinery Company., U.S. District Court, N.D. California, 1954 Trade Cases ¶67,829, (Aug. 9, 1954)

[Click to open document in a browser](#)

United States v. Food Machinery and Chemical Corporation; California Packing Corporation; Libby, McNeill & Libby; Pacific Machinery Company.

1954 Trade Cases ¶67,829. U.S. District Court, N.D. California, Southern Division. Civil Action No. 29308-G. Dated August 9, 1954. Case No. 997 in the Antitrust Division of the Department of Justice.

Clayton Antitrust Act and Sherman Antitrust Act

Department of Justice Enforcement and Procedure—Consent Decree—Specific Relief —Option To Purchase Peach Pitting Machinery.—Patentees of peach pitting machinery were required by a consent decree (1) to give present lessees of such machinery options to purchase at reasonable and nondiscriminatory prices, (2) to include such options in leases entered into in the future, (3) to sell available existing type peach pitters at reasonable and nondiscriminatory terms, and (4) to lease, upon written request, to any domestic manufacturer or lessor of peach pitters certain available accessory machinery.

Department of Justice Enforcement and Procedure—Consent Decree—Specific Relief —Licensing—Royalties—Immunities Under Foreign Patents.—A consent decree required defendants to grant nonexclusive licenses to manufacture, use, and vend peach pitting machinery under United States patents owned or controlled by the defendants during the entire term of the patents. The defendants were enjoined from including restrictive conditions in licenses, except that (1) a license may be nontransferable, (2) a reasonable, nondiscriminatory royalty may be charged, (3) provision may be made for the periodic inspection of a licensee's books and records, (4) a license may be cancelled for failure to pay royalties or to permit accounting inspections, and (5) the license must provide that the licensee may cancel at any time after one year from the initial date of the license upon 30 days' notice in writing to the licensor. In addition, the decree required the granting of immunities under foreign patents.

Department of Justice Enforcement and Procedure—Consent Decree—Specific Relief —Furnishing of Technical Information.—A consent decree required defendant holders of food machinery patents to give to each of their licensees, upon written request, technical assistance and information disclosing methods and processes used in the commercial practice of the licensed invention.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Exclusive Dealing—Tie-in Arrangements.—A consent decree restrained food machinery patentees from (1) conditioning peach pitting machinery leases to domestic canners upon any agreement that the lessee is to lease, purchase, or use any other machinery or device, (2) leasing peach pitters for longer than one year, except that new types of machinery may be leased initially for a three-year period, (3) requiring lessees to acknowledge, or refrain from contesting, the validity of any patent of any defendant, and (4) requiring lessees to refrain from using peach pitters other than those leased, sold or otherwise furnished by a defendant.

Combinations and Conspiracies—Consent Decree—Discrimination—Patent Suits.—Patentees of food machinery consented to the entry of a decree enjoining each of them from entering into or adhering to any contract or agreement with any other defendant patentee which has the purpose or effect of discriminating in favor of any defendant in the manufacture of peach pitters. The decree restrained also the preferential treatment of any person in connection with the sale or lease of such machinery. Also enjoined was the institution or maintaining of any suit or proceeding for infringement, or to collect charges, damages or royalties, which occurred or accrued prior to August 9, 1954.

Combinations and Conspiracies—Consent Decree—Types of Practices Enjoined—Acquisitions.—A consent decree enjoined food machinery patent holders from acquiring or holding any right, title or interest

in the business, physical assets, or capital stock of a competitor in the manufacture, sale, or distribution of peach pitters, and from acquiring any right, title or interest in any existing or future patent or patent application. However, the decree did not prevent the acquiring of patent rights from a bona fide officer, director, or employee of a defendant who is the actual inventor of the subject of the patent, from acquiring patent licenses which grant sublicensing rights, and from acquiring nonexclusive licenses owned by any other person in instances where the defendant, despite its bona fide efforts to do so, has been unable to secure a license granting it full or partial sublicensing rights. The decree prohibited authorizing or knowingly permitting any officer, director, agent or employee to serve as an officer, director, agent, or employee of a competitor.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Territorial Allocation—Specific Relief—Dissolution.—A consent decree enjoined the defendants from contracting in regard to peach pitting machinery to restrict, allocate or divide territories or markets for the manufacture, distribution, sale, or lease of such machinery. However, patent rights alone may be conveyed. The decree required further that the defendants dissolve a jointly-controlled patent holding company.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; William D. Kilgore, Jr.; Vincent Gorman; Lyle L. Jones; William B. Richardson; and Don H. Banks.

For the defendants: Marshall P. Madison, Eugene D. Bennett, and James Michael, of Pillsbury, Madison & Sutro, San Francisco, Cal. (for California Packing Corp., Libby, McNeill & Libby, and Pacific Machinery Corp.). Roland Foerster, and Boice Gross, of Morrison, Hohfeld, Foerster, Shuman & Clark, San Francisco, Cal. (for Food Machinery & Chemical Corp.)

Final Judgment

GEORGE B. HARRIS, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on November 21, 1949; all of the defendants having appeared and filed their answers to such complaint denying the substantive allegations thereof; and all parties, by their respective attorneys herein, having severally consented to the entry of this Final Judgment herein without trial or adjudication of any issue of fact or law and without admission by any party in respect of any such issue;

Now, therefore, before any testimony has been taken herein, and upon consent of all parties hereto, it is hereby Ordered, adjudged and decreed as follows:

I

[*Jurisdiction*]

The Court has jurisdiction of the subject matter hereof and of all parties hereto. 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", as amended, commonly known as the Sherman Act, and under Section 3 of the Act of Congress of October 15, 1914, entitled "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for Other Purposes," commonly known as the Clayton Act.

II

[*Definitions*]

As used in this Judgment:

(A) "Food machinery" means the defendant Food Machinery and Chemical Corporation, a corporation organized and existing under the laws of the State of Delaware;

(B) "Calpack" means the defendant California Packing Corporation, a corporation organized and existing under the laws of the State of New York;

(C) "Libby" means the defendant Libby, McNeill & Libby, a corporation organized and existing under the laws of the State of Maine;

(D) "Pacific" means the defendant Pacific Machinery Company, a corporation organized and existing under the laws of the State of California;

(E) "Peach pitters" means machinery designed for use in connection with the extraction of pits or stones from fresh clingstone peaches prior to their being canned;

(F) "Existing type" peach pitters means the type known in the trade as of the date of this Judgment as the "Rotary" type pitters, including any other type which has been heretofore leased by defendant Food Machinery;

(G) "Aligners" means devices and apparatus designed and intended to align or orient peaches on peach pitters or on or in a device which transports, carries or feeds peaches into peach pitters;

(H) "United States patents" means all United States Letters Patent relating to peach pitters or to methods or processes for the mechanical pitting of clingstone peaches, including renewals, extensions or reissues thereof, which:

(1) are issued and existing on the date of entry of this Judgment; and

(2) may issue after the date of entry of this Judgment pursuant to applications now on file or filed at any time prior to October 1, 1956;

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

III

[*Applicability*]

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

IV

[*Sale or Lease of Food Machinery*]

Defendants Pacific and Food Machinery are each ordered and directed:

(A) (1) To notify on or before December 31, 1954 each person leasing peach pitters for use in the United States during the 1954 season from such defendant that such lessee may at its option purchase at reasonable and nondiscriminatory prices, terms and conditions any of the machines so leased;

(2) To include an option to purchase upon reasonable and nondiscriminatory prices, terms and conditions in each lease of existing type peach pitters for use in the United States entered into subsequent to 1954. Said lease options provided for in these paragraphs (1) and (2) may be contingent upon the lessee's making his election in writing not less than Sixty days prior to the expiration of the term of the lease;

(B) To sell at reasonable and nondiscriminatory prices, terms and conditions any existing type peach pitters, to the extent they are available, to any domestic clingstone peach canner applying in writing to purchase the same.

Where any lessee or applicant under subsections (A) or (B) above is unable to agree with the defendant upon a reasonable price within sixty days from the date such request is received by Pacific or Food Machinery the lessee or applicant may forthwith apply to this Court for the determination of a reasonable price and the defendants shall upon the receipt of notice of the filing of such application promptly give notice thereof to plaintiff. In any such proceeding the burden of proof shall be on the said defendant to establish the reasonableness of the price sought to be charged, and the price determined by the Court shall apply to the lessee or applicant and to all subsequent purchasers of peach pitters of the same type and similar condition;

(C) To lease, upon written request, to any domestic manufacturer or lessor of peach pitters any aligners, which are available, without discrimination as between such manufacturers or lessors and other customers or lessees of said defendants for such aligners.

V

[*Licensing and Royalty Provisions*]

(A) Defendants Pacific and Food Machinery are each ordered and directed to grant to any applicant making written request therefor, including any other defendant, a nonexclusive license to manufacture, use and vend peach pitters under any, some or all United States patents owned or controlled by said defendant during the entire term of said United States patents. Each of said defendants is enjoined and restrained from making any disposition of any of said United States patents which deprives it of the power or authority to grant such licenses, unless it sells, transfers or assigns such patents and requires, as a condition of such sale, transfer or assignment, that the purchaser, transferee or assignee thereof shall observe the requirements of subsections (A), (B) and (C) of this Section V and the purchaser, transferee or assignee shall file with this Court, prior to consummation of said transaction, an undertaking to be bound by the said subsections of this Section V. The above reference to an "undertaking" shall not be construed as requiring the posting of a bond.

(B) Defendants Pacific and Food Machinery are each enjoined and restrained from including any restriction or condition whatsoever in any license granted pursuant to the provisions of this Section V except that (1) the license may be nontransferable; (2) a reasonable nondiscriminatory royalty may be charged; (3) reasonable provisions may be made for periodic inspection of books and records by an independent auditor, or any person acceptable to both the licensor and the licensee, who shall report to the licensor only the amount of the royalty due and payable; (4) 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 books and records as hereinabove provided; (5) the license must provide that the licensee may cancel the license at any time after one year from the initial date thereof by giving thirty days' notice in writing to the licensor.

(C) Upon receipt of a written request for a license under the provisions of this Section V, the applicant shall be advised in writing of the royalty which the said defendant deems reasonable for the United States patent or patents to which the request pertains. If the parties are unable to agree upon a reasonable royalty within sixty days from the date such request for the license was received by the defendant, the applicant therefor may forthwith apply to this Court for the determination of a reasonable royalty, and the defendant shall, upon receipt of notice of the filing of such application, promptly give notice thereof to the plaintiff. In any such proceeding, the burden of proof shall be on the defendant owning or controlling said patents to establish the reasonableness of the royalty requested, and the reasonable royalty rates, if any, determined by the Court shall apply to the applicant and prospectively to all licensees under the same patent or patents. Pending the completion of any such proceeding, the applicant shall have the right to make, use and vend peach pitters under the United States patents to which its application pertains but subject to the payment of such reasonable royalty as may be determined by the Court. Nothing herein shall be deemed to prevent the said defendant from applying to the Court for the determination of an interim royalty rate pending final determination of what constitutes a reasonable royalty. Nothing contained in this Judgment shall prevent any applicant for such patent license from attacking in the aforesaid proceedings, or in any other controversy, the validity or scope of any of said patents; nor shall this Judgment be construed as importing any validity or value to any of said patents.

(D) Defendants Pacific and Food Machinery are each ordered and directed to grant, upon written request, and without additional charge for such grant, to any licensee under this Section V, for manufacture in the United States of peach pitters for sale or lease in foreign countries, immunities under any foreign patents owned or controlled by said defendants corresponding to any patent or patents covered by such license.

VI

[*Furnishing of Information*]

Each of the defendants Pacific and Food Machinery is ordered and directed to give to each person who becomes a licensee of a defendant pursuant to the provisions of Section V of this Judgment, upon written request therefor, technical assistance and information disclosing the methods and processes used in the commercial practice of the licensed invention. Wherever practicable such technical assistance and information

shall be furnished in writing. However, where not practicable to furnish it in writing, technical personnel shall be made reasonably available to assist and advise such licensee concerning the operation of such methods and processes. Such technical assistance and information shall be charged for at no more than actual cost, without allocation of any administrative or selling expense.

VII

[*Leasing Terms Enjoined*]

(A) Defendants Pacific and Food Machinery are jointly and severally enjoined and restrained from:

(1) Conditioning, directly or indirectly, the granting of any lease for peach pitters to domestic canners upon any agreement, understanding or obligation that the lessee shall lease, purchase or use any other machine, apparatus or device;

(2) Leasing peach pitters to domestic canners for a term or period longer than one year, except that leases of any new types of peach pitters may be for a period of three years for the first leasing term;

(3) Requiring that any domestic lessee of peach pitters acknowledge, or refrain from contesting, the validity of any patent or any future patent or any defendant;

(4) Requiring that any domestic lessee of any peach pitter shall refrain from using any peach pitters other than those leased, sold or otherwise furnished by said defendant.

(B) Within thirty days after the date of entry of this judgment defendants Pacific and Food Machinery shall write to each lessee of peach pitters waiving any provisions of existing leases for peach pitters contrary to the provisions of this Judgment.

VIII

[*Discrimination Prohibited*]

(A) Each defendant is enjoined and restrained from entering into, adhering to or claiming any rights under any contract, agreement or understanding with any other defendant which has the purpose or effect ;of discriminating in favor of any defendant in the manufacture of peach pitters.

(B) The defendants are jointly and severally enjoined and restrained from either granting to, or knowingly receiving from, any person any preference in connection with the sale or leasing of peach pitters, including but not limited to preferential treatment:

(1) in the availability for sale or leasing of such peach pitters;

(2) in the prices, rentals or other terms for the sale or leasing of such peach pitters; or

(3) in the furnishing of any maintenance, repair or overhaul service for, or in the availability or prices of repair or replacement parts for, such peach pitters.

IX

[*Patent Suits Enjoined*]

Defendants are jointly and severally enjoined and restrained from instituting or maintaining any suit, counterclaim or proceeding, judicial or administrative, for infringement, or to collect charges, damages, compensation or royalties, which occurred or accrued prior to the date of entry of this Judgment under any United States patent owned or controlled by any defendant.

X

[*Acquisitions*]

Defendants are jointly and severally enjoined and restrained from:

(A) Acquiring in any manner, or owning or holding, directly or indirectly, any right, title or interest in the business, physical assets (except goods or products purchased or leased in the ordinary course of business) or capital stock of any person engaged as a competitor in the manufacture, sale or distribution of peach pitters.

(B) Acquiring in any manner, directly or indirectly, from any person any right, title or interest in any existing or future patent or patent application; provided, however that nothing shall be deemed to prevent any defendant from acquiring:

(1) Any existing or future patent or patent application by assignment from any bona fide officer, director or employee of such defendant who is the actual inventor of the subject of such patent; and

(2) Any license, exclusive or otherwise, under any existing or future patent or patent application owned by any other person, which license grants such defendant full or partial sublicensing rights in which event such defendant shall grant sublicenses to any applicants therefor on reasonable terms; and

(3) Any nonexclusive license under any existing or future patent or patent application owned by any other person in instances where such defendant, despite its bona fide efforts to do so, has been unable to secure a license granting it full or partial sublicensing rights.

For the purpose of this subsection (B) "patents or patent application" shall be limited to patents and patent applications relating to peach pitters or to methods or processes for the mechanical pitting of clingstone peaches, including renewals, extensions or reissues thereof.

(C) Authorizing or knowingly permitting any officer, director, agent or employee to serve as an officer, director, agent or employee of any other person engaged as a competitor in the manufacture, sale or distribution of peach pitters.

XI

[*Additional Restrictions*]

The defendants are jointly and severally enjoined and restrained from entering into or adhering to any contract, agreement or understanding, directly or indirectly involving peach pitters, which has the purpose or effect of restricting, allocating or dividing territories, markets or fields for manufacture, distribution, sale, lease or use; provided, however, that this Section XI shall not be deemed to prohibit the conveyance, without more, of patent rights.

XII

[*Dissolution*]

(A) Defendants are each ordered and directed to take such steps as are necessary to bring about by December 31, 1954 the final dissolution of defendant Pacific and, in connection therewith, notwithstanding the provision of subsection (A) of Section X herein, defendant Food Machinery may acquire the assets and/or outstanding capital stock of defendant Pacific. Subsequent to the final dissolution of defendant Pacific defendant Food Machinery shall be subject to and shall carry out the provisions of this Final Judgment applicable to said defendant Pacific. Notwithstanding the terms of Sections IV and :VII(A)(2) and (4) of this judgment, in connection with the dissolution of defendant Pacific, defendant Food Machinery may lease peach pitters to defendants Calpack and Libby for a term not to extend beyond October 1, 1956.

(B) Defendants are jointly and severally enjoined and restrained from organizing or attempting to organize, directly or indirectly, jointly with any other defendant, any person to engage in the manufacture, distribution, sale or use of peach pitters.

XIII

[*Inspection and Compliance*]

For the purpose of securing compliance with this 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, 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 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 Judgment any defendant upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division 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 permitted by this Section XIII shall 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 to which the United States is a party for the purpose of securing compliance with the Judgment or as otherwise required by law.

XIV

[*Retention of. Jurisdiction*]

Jurisdiction 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 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.