

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Gamewell Company, Frederick B. Philbrick, Edward J. McCarthy and Grenfell Swim., U.S. District Court, D. Massachusetts, 1948-1949 Trade Cases ¶62,236, (Mar. 22, 1948)**

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United States v. The Gamewell Company, Frederick B. Philbrick, Edward J. McCarthy and Grenfell Swim.  
1948-1949 Trade Cases ¶62,236. U.S. District Court, D. Massachusetts. Civil Action No. 6150. March 22, 1948.

**Sherman Antitrust Act**

**Consent Judgment—Public Fire Alarm Systems—Practices Enjoined—Catalogue To Be Submitted to Court.**—A consent judgment entered in an action charging a manufacturer of public fire alarm systems with using its dominant position in the industry to cause specifications for equipment to be so drawn that only its products could meet them, thus excluding competition, requires the defendant to discontinue collusive and discriminatory bidding practices, including advance framing of specifications to be issued by municipal bodies in connection with bids for fire alarm systems equipment. Defendant is required to submit for approval a catalogue describing in general terms equipment necessary for performance of particularly designated functions, but not describing the methods whereby such functions are performed. Thereafter the defendant may furnish information only in the exact language of the catalogue and only upon written request from a prospective purchaser, and must immediately transmit the same information to all competitors named in the appendix to the judgment. The defendant is further enjoined from continuing to defray entertainment costs and other expenses of persons connected with the buying of such equipment for public bodies, and is required to desist from conducting harassing litigation against competitors, to dedicate trademarks to the public, and to license its patents to all applicants on a reasonable royalty basis.

For plaintiff: John F. Sonnett, Assistant Attorney General; John Ford Baecher, First Assistant, Antitrust Division; Morton H. Steinberg, Edward R. Kenney, Donald P. McHugh, William D. Kilgore, Jr.; Sigmund Timberg, Special Assistant to the Attorney General; William T. McCarthy, United States Attorney.

For defendants: Charles B. Rugg, Ropes, Gray, Best, Coolidge & Rugg.

**Final Judgment**

Plaintiff, the United States of America, having filed its complaint in this action on the 14th day of November, 1946; and all the parties hereto by their attorneys herein 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 admission by any party hereto 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 consent of all parties hereto, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

**I**

**[ Jurisdiction ]**

The Court has jurisdiction of the subject matter herein, and of all parties to this judgment and the complaint states a cause of action against the defendants, and each of them, under Section 2 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 (15 U. S. C. sec. 2).

**II**

[ *Applicability, Definition*]

A. The provisions of this final judgment applicable to defendant, The Gamewell Company (hereinafter sometimes referred to as “defendant Gamewell”), shall apply to each of its subsidiaries, affiliates, successors, assignees, and nominees, and to each of its officers, directors, agents and employees, and to each person acting or claiming to act under, through or for such defendant, including defendants Frederick B. Philbrick, Edward J. McCarthy, and Grenfell Swim.

B. For the purposes of the complaint herein and of this final judgment, the term “public fire alarm systems” means fire alarm systems owned or operated, directly or in directly, or intended or designed to be owned or operated, directly or indirectly, by public authorities, organizations or agencies, including, but not limited to, municipalities, other governmental subdivisions or bodies or tax supported institutions.

III

[ *Acquisition of Assets*]

Defendant Gamewell is hereby enjoined and restrained from hereafter acquiring, or holding after such acquisition, any interest in the capital stock or assets (except goods or merchandise bought as incidental to the ordinary course of business) of any person engaged in manufacturing, selling, distributing or installing apparatus or equipment (a) useful only in fire alarm systems, or (b) appropriate in connection with fire alarm systems and in the manufacture, distribution or installation of which defendant Game-well is engaged.

IV

[ *Exclusive Licenses Prohibited*]

Defendant Gamewell is hereby enjoined and restrained from acquiring any license, sublicense, or grant of immunity, to make, use, vend or install, under any patents, patent rights or trademarks covering apparatus or equipment appropriate for use in connection with fire alarm systems, unless said license or sublicense or grant of immunity is non-exclusive and requires that throughout its life similar licenses, sub-licenses or grants of immunity be given to others requesting same on terms and conditions at least as favorable as those accorded defendant Gamewell.

V

[ *Practices Enjoined*]

Defendant Gamewell is hereby enjoined and restrained from:

A. Agreeing with, coercing, inducing or influencing, or attempting to coerce, induce or influence, directly or indirectly, any other manufacturer, distributor or installer of apparatus or equipment appropriate for use in connection with public fire alarm systems not to compete with defendant Gamewell generally, or with respect to any type or variety of such apparatus, or equipment, or with respect to any transaction;

B. Arranging for or causing one or more dummy or collusive bids for contracts for apparatus or equipment appropriate for use in connection with public fire alarm systems, or installation or engineering services in connection therewith, to be submitted;

C. Instigating or causing others to bring suits seeking to enjoin or otherwise interfere with the award of any contract for apparatus or equipment appropriate for use in connection with public fire alarm systems, or for installation thereof or engineering services in connection therewith, to a competitor of defendant Gamewell;

D. Threatening to bring or bringing suits to enjoin or restrain any official or agent of a governmental subdivision, authority or agency from awarding any contract for apparatus or equipment appropriate for use in connection with public fire alarm systems, or for installation thereof or engineering services in connection therewith, to a competitor of defendant Gamewell; or threatening to bring or bringing any suit in connection with the award of such contract to third persons, except suits based on fraud, bribery, or wilful negligence;

E. Threatening to bring or bringing suits based on (1) trademarks listed in Appendix A (annexed hereto and hereby made a part hereof), *provided*, however, that defendant Gamewell may, consistently with this subsection, take steps necessary to insure that other users of such trademarks indicate the source of origin of the trademarked product, or (2) any patent infringement occur prior to the date of this final judgment;

F. Offering, paying or granting, or causing to be offered, paid or granted, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, to an agent, representative, or other intermediary in the sale or purchase of apparatus or equipment appropriate for use in connection with public fire alarm systems, or for installation or engineering services in connection therewith, or who is subject to the direct or indirect control of any party to such transaction other than defendant Gamewell;

G. Offering to furnish or sell, or furnishing or selling, apparatus or equipment appropriate for use in connection with public fire alarm systems, or installation or engineering services in connection therewith, to a prospective purchaser, without cost or below the cost of doing business. However, where the prospective purchaser does not purchase from Gamewell apparatus or equipment appropriate for use in connection with public fire alarm systems, defendant Gamewell may, at its option, consistently with this subsection, furnish such engineering services on any charge or donation basis, if lawful, *provided* it makes an otherwise completely unrestricted and unconditional grant of such services to such prospective purchaser. In all bids submitted by defendant Gamewell for any contract for the furnishing or selling of apparatus or equipment appropriate for use in connection with public fire alarm systems, the cost of all relevant engineering services furnished or sold, or to be furnished or sold, shall be separately and specifically stated. No installation or engineering services furnished pursuant to the provisions of this subsection shall contain any information concerning the product of any specific manufacturer or distributor (including defendant Gamewell) of apparatus or equipment appropriate for use in connection with public fire alarm systems;

H. For the purpose of destroying a competitor in the manufacture, distribution or installation of apparatus or equipment appropriate for use in connection with public fire alarm systems, price cutting or price discrimination;

I. Engaging in any other unfair trade practice in connection with the manufacture, sale, distribution or installation of apparatus or equipment appropriate for use in connection with public fire alarm systems.

## VI

### [ *Practices Permitted* ]

Defendant Gamewell is hereby enjoined and restrained from initiating or participating in any manner in any program, plan, arrangement, understanding or undertaking with prospective purchasers of apparatus or equipment or installation or engineering services, appropriate for use in public fire alarm systems, or with their agents, employees, or representatives, regarding terms and conditions under which prospective suppliers thereof shall be awarded contracts for such apparatus, equipment or installation or engineering services, except that:

A. Defendant Gamewell may disseminate general information concerning such apparatus or equipment manufactured, sold or installed by it, in a catalogue or manual prepared by defendant Gamewell, but only in compliance with the following terms and conditions:

1. Defendant Gamewell shall submit its proposed catalogue or manual to this Court for its approval prior to use, with thirty days' notice of such submission and a copy of the proposed catalogue or manual to the Attorney General, within six months from the date of this final judgment;
2. Said catalogue or manual shall be confined to a general description of what types and arrangements of apparatus or equipment appropriate for use in connection with public fire alarm systems are necessary for the performance of particularly designated functions, but may not describe the methods whereby such functions are performed;
3. Defendant Gamewell is to furnish to prospective purchasers of such apparatus or equipment or installation or engineering services only such information concerning such apparatus or equipment as is

contained in said catalogue or manual, after approval thereof by this Court, and only in the exact language thereof;

4. Defendant Gamewell, prior to the furnishing of such information, has received written request therefor from a prospective purchaser independently initiated by that purchaser; and

5. Defendant Gamewell simultaneously address copies of all information furnished to a prospective purchaser pursuant to the provisions of subsections 3 and 4 of this Section VI-A, with respect to the request and the purchaser (except such information as relates exclusively to installation or engineering services furnished pursuant to the provisions of Section V-G of this judgment), to the persons named in Appendix B (annexed hereto and hereby made a part of this judgment), and promptly upon written or telegraphic request therefor to any other person, stating the name of the prospective purchaser to whom such information has been furnished;

and

B. Pending approval of the catalogue or manual to be submitted to this Court by defendant Gamewell as required in subsection A-I of this Section VI, defendant Gamewell may disseminate general information concerning such apparatus or equipment manufactured, sold, distributed or installed by it, upon the following terms and conditions:

1. Such general information shall be of the character described in subsection A-2 of this Section VI; and
2. Such general information may be furnished by defendant Gamewell only under the conditions prescribed in sub-sections A-3, 4 and 5 of this Section VI.

## VII

### [ Catalogue Subject to Revision]

A. The catalogue or manual provided for in subsection A of Section VI of this judgment shall be subject from time to time to such revision or revisions as may be agreed upon by the parties hereto and approved by the Court.

B. In the event defendant Gamewell upon receipt of an inquiry independently initiated by a particular prospective purchaser, determines that the descriptions contained in the catalogue or manual are not adequate to describe the types and arrangements of fire alarm apparatus or equipment necessary to meet the then requirements of that purchaser, and that the catalogue or manual cannot be revised under the provisions of subsection A of this Section VII in time to answer the inquiry, it may furnish to such purchaser general information concerning such apparatus or equipment without following the exact language of the catalogue or manual, but only after the following conditions have been satisfied:

1. Defendant Gamewell shall have furnished in writing to the Department of Justice (a) the name and address of the prospective purchaser, (b) the general information which Gamewell proposes to furnish such purchaser, and (c) an explanation why the catalogue or manual cannot adequately convey the information to the purchaser and cannot be revised in accordance with subsection A of this Section VII in time to answer the prospective purchaser;
2. The Department of Justice shall notify defendant Gamewell of its disapproval of the proposed description of such apparatus or equipment or the furnishing thereof, within ten days after receipt by the Department of all the statements referred to in the preceding sub-section B-I;
3. Defendant Gamewell shall follow as closely as possible in furnishing the information the language of the catalogue or manual;
4. The information furnished shall comply with the requirements of subsection A-2 of Section VI, and shall, except as specifically modified by this subsection B of Section VII, be supplied under the conditions set forth in subsections A-3, 4 and 5 of Section VI.

Failure of the Department of Justice to take action under subsection B-2 of this Section VII within the said ten day period shall not estop the plaintiff herein from seeking enforcement of or compliance with this final judgment, or the punishment of violations thereof, except that in such case the furnishing of such general description to the particular prospective purchaser shall not be received as evidence of violation of this final judgment.

#### VIII

Defendant Gamewell is hereby enjoined and restrained from:

A. Participating in any manner in the preparation of any part or parts of plans or specifications or any other document or documents issued or to be issued by a prospective purchaser of apparatus, equipment, or installation or engineering services appropriate for use in connection with public fire alarm systems; or

B. Influencing or inducing prospective purchasers of such apparatus, equipment, or installation or engineering services to (1) disqualify or discourage others than defendant Gamewell from bidding for award of contracts therefor, (2) limit the issuance of invitations to bid for such contracts to defendant Gamewell, or provide for the issuance of such invitations or of notices in connection therewith in a manner more favorable to defendant Gamewell than to others, or (3) reject all bids submitted for such contracts and readvertise for new bids for such contracts.

#### IX

##### [ Contributions Enjoined]

Defendant Gamewell is hereby enjoined and restrained from:

A. Making any contribution to or underwriting, in whole or in part, directly or indirectly, the expenses of any organization or association, or the officers, directors, agents or employees thereof, whose principal membership consists of individuals, business firms, or other organized groups whose principal activities are related to or concern primarily (1) fire prevention, (2) apparatus or equipment in fire alarm systems or installation or engineering services in connection therewith, or (3) purchasing or recommending the purchase of such apparatus, equipment, or services, *provided* that defendant, Gamewell may pay only regular or sustaining membership dues in, or hire space for use in exhibiting such apparatus or equipment at conventions of, such organizations or associations, and may contribute not to exceed \$250 annually for scientific research by any one such organization or association, but not to exceed an aggregate of \$1000 annually for scientific research by all such organizations or associations; or

B. Defraying in whole or in part the expenses of any persons (other than persons employed by defendant Gamewell and acting solely in the interests of defendant Gamewell) in connection with meetings or conventions of organizations or associations of the character described in subsection A of this Section IX, and paying any expenses incurred in connection with entertainment of said persons attending said meetings or conventions:

#### X

##### [ Licensing Required]

A. Defendant Gamewell is Hereby ordered and directed to grant to each applicant therefor a non-exclusive license to make, use and vend under any United States patent covering inventions used in public fire alarm systems (1) listed in Appendix C (annexed hereto and hereby made a part of this final judgment); and (2) hereafter issued to or acquired by defendant Gamewell or in which defendant Gamewell acquires any interest, except such patents hereafter issued or acquired as meet the following three criteria; (a) the patent is issued on a patent application filed subsequent to the entry of this final judgment; (b) application for the patent is made by an employee of defendant Gamewell and is based on an invention or discovery of said employee while in Gamewell's employ; and (c) the patent does not cover an improvement on an invention covered by a patent or patent application existing or pending on the date of entry of this final judgment.

B. Defendant Gamewell is hereby en joined and restrained from including any restriction or condition whatsoever in any license or sublicense granted by it pursuant to the provisions of this Section X, except that (1) a uniform reasonable royalty may be charged; (2) reasonable provisions may be made for periodic inspection of the books and records of the licensee by an independent auditor or any person acceptable to the licensee who shall report to the licensor only the amount of the royalty due and pay able, (3) 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 his books and records as hereinabove provided (4) the license must provide that the licensee may cancel the license at any time by giving thirty days' notice in writing to the licensor; and (5) the license must provide that the licensee shall immediately have the benefit of any more favorable terms granted other licensees.

C. Upon application for a license in accordance with the provisions of subsection A of this Section X, defendant Gamewell shall advise the applicant of the royalty it deems reasonable for the patents to which the application pertains. If the parties are unable to agree upon what constitutes a reasonable royalty within sixty (60) days from the date application for the license was received by defendant Gamewell, the applicant for a license may apply forthwith to this Court for a determination of a reasonable royalty, and defendant Gamewell shall, upon receipt of notice of filing such application, promptly give notice thereof to the Attorney General. In any such proceeding the burden of proof shall be upon defendant Gamewell, or its assignee, vendee, or transferee to establish the reasonableness of the royalty requested by it; and the reasonable royalty rates, if any, determined by the Court shall apply to the applicant and to the holders of all other licenses issued under the same patent or patents. Pending the completion of negotiations or of any such Court proceeding, the applicant shall have the right to make, use and vend under the patents to which its application pertains, without payment of royalty or other compensation, but subject to the following provisions: Defendant Gamewell, its assignee, vendee, or transferee may apply to the Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty, if any. If the Court fixes such interim royalty rate, a license shall then issue and defendant Gamewell shall then issue and the applicant shall accept such license providing for the periodic payment of royalties at such interim rate from the date of the making of such application. If the applicant fails to accept such license or to pay the interim royalty therein provided, such action shall be ground for the dismissal of his application. Where an interim license has been issued pursuant to these provisions, reasonable royalty rates, if any, as finally determined by the Court shall be retroactive for the applicant and all other licensees under substantially the same patents to the date the applicant filed his application with the Court for the fixing of a reasonable royalty.

## XI

Defendant Gamewell is hereby ordered and directed:

A. To instruct, in writing, within 60 days from the date of this judgment, those of its agents, solicitors, salesmen, engineers and other employees or persons engaged in the sale of apparatus or equipment or the installation or engineering services appropriate in connection with public fire alarm systems (1) that the practices described in Sections V and VIII of this final judgment are en joined 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 VI and VII hereof, and the necessity for compliance therewith; and

B. To maintain for a period of ten years complete and intact, in an orderly classification and not in storage, 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, distributing or installing, or attempts to manufacture, sell, distribute, or install apparatus and equipment appropriate for use in connection with public fire alarm systems.

## XII

Defendant Gamewell is hereby ordered and directed to furnish promptly upon written or telegraphic request:

A. A copy of this final judgment to any person, including any governmental subdivision, body or agency, making such request; and



B. The requested number of copies of this final judgment, if not unreasonable, to any association or organization (other than competitors of defendant Gamewell) whose members are interested in the purchase or installation of apparatus or equipment for use in connection with fire alarm systems.

### XIII

#### [ *Inspection for Compliance Purposes*]

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, on reasonable notice to the defendant, The Gamewell Company, made to its principal offices, 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; and (b) 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 such matters. 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 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 to which the United States is a party for the purpose of securing compliance with this judgment or as otherwise required by law.

### XIV

#### [ *Jurisdiction Retained*]

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

### APPENDIX A

Trademark	Registration Number
Dualarm .....	243,861
.....	258,008
.....	(Diagrams)
Sprinkler Watchman .....	305,390
Three-Fold .....	305,413
3-Fold .....	296,622
Vigilarm .....	404,649
Vitaguard .....	347,387
Vocalarm .....	372,004
Arrestplarm .....	338,346
Peerless .....	182,897
F. I. P. ....	326,160
Multifold .....	314,598
Vitalarm .....	311,756
White Stripe (Design) .....	294,417
White Stripe (Words) .....	292,616
Codewell .....	294,978
Herculite .....	275,605

### APPENDIX B

Acme Fire Alarm Co.; A F S Trust Company; American District Telegraph Company; Autocall Company; Auth Electric Company; Brown Bros, Mfg. Co.; Coyer Dual Signal Co.; Edwards & Co., Inc.; Faraday Electric Company; Foote-Pierson & Co., Inc.; General Signal Co.; Harrington Signal Company; J. H. Bunnell & Co.; J. H. Scharff, Inc.; Louis W. Bills Co.; Morse Signal Services; North Electric Company; Potter Electric Signal & Manufacturing Co.; S. H. Couch Co., Inc.; Southern Switch & Signal Company; Universal Tool & Mfg. Co.

There shall be added to this list from time to time the names of such other companies as the Court may so order, on motion of the plaintiff, with due notice to defendant Gamewell.

#### APPENDIX C

1,799,438 .....	2,184,163
1,825,978 .....	2,186,163
1,884,735 .....	2,199,279
1,986,026 .....	2,201,712
2,040,288 .....	2,217,797
2,050,404 .....	2,236,891
2,050,632 .....	2,250,922
2,054,827 .....	2,250,923
2,056,345 .....	2,250,924
2,056,709 .....	2,250,928
2,114,324 .....	2,264,866
2,116,372 .....	2,270,925
2,123,220 .....	2,355,934
2,128,578 .....	9,447 (Reissue)
2,137,760 .....	19,775 (Reissue)
2,159,920 .....	22,514 (Reissue)
2,165,174 .....	100,139 (Design)
2,167,964 .....	