

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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UNITED STATES OF AMERICA, :
 :
 Plaintiff, :

CASE NO. 96-08426
CIV- HURLEY
MAGISTRATE JUDGE LYNCH

v. :

Entered: October 8, 1996

ANCHORSHADE, INC., :
 :
 Defendant. :

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FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on June 20, 1996, and plaintiff and defendant, AnchorShade, Inc., having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

Now, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I

JURISDICTION

This Court has jurisdiction of the subject matter of this action and of the party consenting hereto. The complaint states a claim upon which relief may be granted against defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

DEFINITIONS

As used in this Final Judgment:

A. "Person" means any individual, corporation, partnership, company, sole proprietorship, firm or other legal entity.

B. "Dealer" means any person, not wholly owned by AnchorShade, Inc., who purchases or acquires outdoor umbrellas manufactured or sold by AnchorShade, Inc. for resale.

C. "Outdoor umbrellas" means collapsible devices that provide shade for protection against sun or weather.

D. "Resale price" means any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit relating to outdoor umbrellas sold by dealers.

III

APPLICABILITY

A. This Final Judgment applies to defendant and to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendant shall require, as a condition of the sale of all or substantially all of its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV

PROHIBITED CONDUCT

A. Defendant is hereby enjoined and restrained from directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any dealer to fix, stabilize or maintain the resale prices at which outdoor umbrellas sold or distributed by the defendant may be sold or offered for sale in the United States by any dealer.

B. Defendant is further enjoined and restrained for a period of five years from the date of entry of this Final Judgment from directly or indirectly announcing to the public or to any present or potential dealer of its outdoor umbrellas that defendant has or is adopting, promulgating, suggesting, announcing or establishing any resale pricing policy for outdoor umbrellas that provides that: (1) defendant

will sell only to a dealer that prices at or above defendant's suggested resale price, and/or (2) defendant will terminate any dealer for pricing below defendant's suggested resale price.

C. Defendant is further enjoined and restrained for a period of five years from the date of entry of this Final Judgment from (1) threatening any dealer with termination or terminating any dealer for pricing below the defendant's suggested resale price, and (2) discussing with any present or potential dealer any decision regarding termination of any other dealer for any reason directly or indirectly related to the latter dealer's pricing below defendant's suggested resale price; provided, however, that nothing herein shall prohibit the defendant during this five-year period from terminating a dealer for using any of defendant's products to promote the sale of products manufactured by other companies, or any other reasons other than pricing below defendant's suggested resale price. Furthermore, nothing in this paragraph shall be deemed to prohibit the defendant from adopting suggested resale prices and communicating such resale prices to dealers.

V

NOTIFICATION PROVISIONS

Defendant is hereby ordered and directed:

A. To send a written notice, in the form attached as Appendix A to this Final Judgment, and a copy of this Final Judgment, within sixty days of the entry of this Final Judgment, to each dealer who purchased outdoor umbrellas from defendant from January 1, 1992 to the date of entry of this Final Judgment.

B. To send a written notice, in the form attached as Appendix A to this Final Judgment, and a copy of this Final Judgment, to each dealer who purchases outdoor umbrellas from defendant within ten years of entry of this Final Judgment and who was not previously given such notice. Such notice shall be sent within thirty days after the shipment of outdoor umbrellas is made to such dealer by defendant.

VI

COMPLIANCE PROGRAM

Defendant is ordered to establish and maintain an antitrust compliance program which shall include designating, within thirty days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of his or her company to assure that it complies with this Final Judgment. The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

A. Furnishing a copy of this Final Judgment within thirty days of entry of this Final Judgment to each of AnchorShade, Inc.'s officers and directors and each of its employees, representatives or agents whose duties include supervisory or direct responsibility for the sale or advertising of outdoor umbrellas in the United States, except those employees whose functions are purely clerical or manual.

B. Distributing in a timely manner a copy of this Final Judgment to any owner, officer or employee who succeeds to a position described in Section VI A.

C. Briefing annually those persons designated in Sections VI A and B on the meaning and requirements of this Final Judgment and the antitrust laws.

D. Obtaining from each owner, officer or employee designated in Section VI A and B certification that he or she (1) has read, understands and agrees to abide by the terms of this Final Judgment; (2) understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court; and (3) is not aware of any violation of the Final Judgment that has not been reported to the Antitrust Compliance Officer.

E. Maintaining a record of recipients from whom the certification in Section VI D has been obtained.

VII

CERTIFICATION

A. Within seventy-five days of this Final Judgment, defendant shall certify to plaintiff whether the defendant has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with Section VI A above.

B. For ten years after the entry of this Final Judgment, on or before its anniversary date, the defendant shall file with the plaintiff an annual statement as to the fact of its compliance with the provisions of Sections V and VI.

C. If defendant's Antitrust Compliance Officer learns of any violations of any of the terms and conditions contained in this Final Judgment, defendant shall

immediately notify the plaintiff and forthwith take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

VIII

PLAINTIFF ACCESS

A. For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of plaintiff shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant, be permitted, subject to any legally recognized privilege:

1. Access during defendant's office hours to inspect and copy all records and documents in the possession or under the control of defendant, which may have counsel present, relating to any matters contained in this Final Judgment.
2. To interview defendant's officers, employees and agents, who may have counsel present, regarding any such matters. The interviews shall be subject to the defendant's reasonable convenience.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to defendant at its principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested, subject to any legally recognized privilege.

C. No information or documents obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such materials, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding), so that defendant shall have an opportunity to apply to this Court for protection pursuant to Rule 26(c)(7) of the Federal Rules of Civil Procedure.

E. Within ten days after receiving any request under Sections VIII A or VIII B, defendant may apply to this Court for an order to quash or limit the scope of the request, and after providing plaintiff with an opportunity to respond to such application, this Court shall enter such order or directions as may be necessary or appropriate for carrying out and ensuring compliance with this Final Judgment.

IX

DURATION OF FINAL JUDGMENT

Except as otherwise provided hereinabove, this Final Judgment shall remain in effect until ten (10) years from the date of entry.

X

CONSTRUCTION, ENFORCEMENT, MODIFICATION AND COMPLIANCE

Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

XI

PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: _____

SIGNED AND DATED

OCT 08 1996

JUDGE DANIEL T.K. HURLEY

UNITED STATES DISTRICT COURT JUDGE

APPENDIX A

Dear AnchorShade Dealer:

The Antitrust Division of the United States Department of Justice filed a civil suit alleging that from at least as early as December 1992 through at least February 1995, AnchorShade, Inc. (AnchorShade) entered into and maintained agreements with certain dealers to fix and maintain the resale prices of AnchorShade products. AnchorShade has agreed, without admitting any violation of the law and without being subject to any monetary penalties, to the entry of a civil Consent Order prohibiting certain pricing practices in the United States, including for a period of five years prohibiting AnchorShade from announcing to the public or to any dealer that AnchorShade has a resale pricing policy that contains any provision that provides that (a) AnchorShade will sell only to a dealer that prices at or above AnchorShade's suggested resale price, and/or (b) AnchorShade will terminate any dealer for pricing below AnchorShade's suggested resale price. A copy of the Order is enclosed.

Should you have any questions concerning this letter, please feel free to contact me.

Sincerely,
