

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 vs.)
)
 EVANS PRODUCTS COMPANY,)
)
 Defendant.)
_____)

Civil Action No. 70C 540

Entered: February 25, 1971

FINAL JUDGMENT

The complaint having been filed herein on March 6, 1970, and plaintiff and defendant, by their respective attorneys, 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 evidence or admission by any party with respect to any issue of fact or law herein:

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states claims upon which relief may be granted against the defendant under Sections 1 and 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.

II.

For purposes of this Final Judgment:

(A) "Defendant" means Evans Products Company and any domestic company which it in fact controls, irrespective of the degree of stock ownership;

(B) "Supplier" shall include actual and potential suppliers, bidders, firms invited or solicited to bid, contractors and subcontractors, including contractors and subcontractors for the construction, maintenance, repair or remodeling of structures, equipment or facilities and suppliers of suppliers.

III.

The provisions of this Final Judgment shall apply to defendant, and its officers, directors, agents, employees, successors and assigns, and to all other persons in active

concert or participation with defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

Defendant is enjoined and restrained from:

(A) Purchasing products, goods or services from, or entering into or adhering to any contract, agreement or understanding with, any supplier on the condition or understanding that purchases by defendant from such supplier will be based or conditioned upon defendant's sales to such supplier;

(B) Selling products, goods or services to, or entering into or adhering to any contract, agreement or understanding with, any actual or potential customer on the condition or understanding that defendant's purchases of products, goods or services from such customer will be based or conditioned upon defendant's sales to such customer;

(C) Communicating to any of defendant's suppliers that:

(1) In purchasing products, goods or services or in qualifying or selecting contractors, preference will be given to any supplier based or conditioned upon defendant's sales to any supplier;

(2) Defendant is entitled to participate in the purchases by any supplier of products or goods sold or

services provided by defendant based or conditioned upon defendant's purchases from any supplier.

(D) Comparing or exchanging statistical data with any supplier or customer to ascertain, facilitate or further any relationship between purchases by defendant from such supplier or customer and sales by defendant to such supplier or customer;

(E) Engaging in the practice of discussing with any supplier or customer the relationship between purchases by defendant from such supplier or customer and sales by defendant to such supplier or customer;

(F) Communicating, in its dealings with any of its customers or suppliers, the fact of purchases by defendant or any business entity in which defendant has an ownership interest, in order to promote sales to such customers or suppliers;

(G) Directing, recommending or suggesting that any business entity in which defendant has an ownership interest (but not constituting control as described in II(A)) purchase from any of the defendant's customers or potential customers, in order to reciprocate for purchases made by, or promote sales by defendant to such customers or potential customers;

(H) Agreeing with particular suppliers that such suppliers shall attempt to persuade other companies to buy from the defendant in order to reciprocate for purchases made by the defendant from such suppliers;

(I) Requiring of any of its suppliers that in manufacturing a product or performing work for defendant's use, it shall buy from defendant amounts of any products equivalent to the amount of products used in manufacturing the product or performing the work if such supplier finds that he cannot use the product supplied by defendant to manufacture the requested product or to perform the agreed-upon work;

(J) Agreeing with particular suppliers that such suppliers will purchase from defendant or any of defendant's customers in order to reciprocate for purchases made by the defendant from such suppliers.

V.

Defendant is enjoined and restrained from:

(A) Preparing or maintaining statistical compilations for any supplier or any class or grouping of suppliers which compare contract payments to, or purchases from, suppliers who supply products, goods or services to defendant with sales by defendant to such suppliers;

(B) Engaging in the practice of issuing to personnel with primary purchasing responsibilities, or issuing to such personnel for their use in their purchasing activities, any lists, notices or other modes of specification which identify

customers and their purchases from defendant, or which identify persons as customers and specify or recommend that purchases be made from any of such customers;

(C) Engaging in the practice of issuing to personnel with primary sales responsibilities, or issuing to such personnel for their use in their sales activities, any lists, notices or other modes of specification which identify suppliers and their sales to defendant.

VI.

Defendant is ordered and directed to:

(A) Refrain from establishing or maintaining any office or position which has any relation to activities, programs or objectives to promote reciprocal purchasing policies, arrangements or practices;

(B) Withdraw from all personnel with sales or purchasing responsibilities any lists, notices or compilations described in Section V above as currently may be in their possession;

(C) Refrain from being a member of and prohibit its officers and employees from belonging to or participating in the activities of, or contributing anything of value to, any association whose activities, programs, policies or objectives

are known to the defendant to include the promoting of reciprocal purchasing policies, arrangements or practices;

(D) Issue, within sixty (60) days after the entry of this Final Judgment, to each of its officers and employees having sales or purchasing responsibilities (other than sales clerks in retail stores) a policy directive stating that:

(1) all officers and employees are prohibited from purchasing products, goods or services from, or entering into or adhering to any contract, agreement or understanding with, any supplier on the condition or understanding that purchases by defendant from such supplier will be based or conditioned upon defendant's sales to any supplier;

(2) all officers and employees are prohibited from selling products, goods or services to, or entering into or adhering to any contract, agreement or understanding with, any actual or potential customer on the condition or understanding that purchases by defendant of products, goods or services from such customer will be based or conditioned upon defendant's sales to such customer;

(3) all officers and employees having sales responsibilities are prohibited from utilizing the

purchases of defendant in any communication or conversation with any customer or prospective customer for the purpose of promoting the sale of defendant's products or services or the products or services of any company affiliated with defendant;

(4) violation of this policy directive may subject any offending officer or employee to punishment by the Court for violation of this Final Judgment.

(E) Furnish, within sixty (60) days after the entry hereof, a copy of this Final Judgment to each customer concerning which defendant has a record of having sold or furnished more than \$50,000 of products, goods or services during any of its fiscal years 1967 through 1969, and to each supplier concerning which defendant has a record of having purchased therefrom more than \$50,000 of products, goods or services during any of such years. The copy of this Final Judgment shall be accompanied by a written notice (in form and content satisfactory to plaintiff or to the Court) advising such customer or supplier that:

(1) defendant will refrain from establishing or maintaining offices or positions which relate to activities, programs or objectives to promote reciprocal purchasing arrangements;

(2) all officers and employees are prohibited from purchasing products, goods or services from, or entering into or adhering to any contract, agreement or understanding with, any actual or potential supplier on the condition or understanding that purchases by defendant from such supplier will be based or conditioned upon defendant's sales to such supplier;

(3) all officers and employees are prohibited from selling products, goods or services to, or entering into or adhering to any contract, agreement or understanding with, any actual or potential customer on the condition or understanding that purchases by defendant of products, goods or services from such customer will be based or conditioned upon defendant's sales to such customer.

VII.

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose:

(A) Any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to

defendant, made to its principal office, be permitted subject to any legally recognized privilege:

(1) access during the office hours of defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody or under the control of defendant relating to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers or employees of defendant, who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as from time to time may be requested.

No information obtained by the means provided for in this Section VII 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 plaintiff

is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII.

Nothing contained in this Final Judgment shall:

(A) Prohibit defendant from entering into arrangements for the conversion of its products or goods into other forms thereof for its own use or resale or from converting products or goods for others;

(B) Prohibit defendant, in contracting for construction work or for the manufacture or installation of equipment and facilities for its own use, from specifying that products or goods of defendant's own manufacture are to be used in such construction, manufacture or installation.

IX.

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

X.

This Final Judgment shall terminate and cease to be effective ten (10) years from the date of the entry of this Final Judgment.

Dated: **February 25, 1971**

/s/ J. SAM PERRY
United States District Judge