

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Robertshaw-Fulton Controls Company and Wilcolator Co., U.S. District Court, W.D. Pennsylvania, 1957 Trade Cases ¶68,592, (Jan. 8, 1957)

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United States v. Robertshaw-Fulton Controls Company and Wilcolator Co.

1957 Trade Cases ¶68,592. U.S. District Court, W.D. Pennsylvania. Civil Action No. 14745. Dated January 8, 1957. Case No. 1286 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Price Fixing.—Manufacturers of temperature controls for gas cooking ranges were prohibited by a consent decree from entering into any understanding with any other manufacturer of temperature controls (1) to fix or maintain prices or other terms or conditions for the sale of temperature controls to third persons, (2) to advise or suggest prices or other terms or conditions for the sale of temperature controls to third persons, or (3) to sell or offer to sell temperature controls only at prices quoted in published price lists or announcements.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Exchange of Information or Price Lists.—Manufacturers of temperature controls for gas cooking ranges were prohibited by a consent decree from entering into any understanding with any other manufacturer of temperature controls to exchange or communicate any information concerning (1) costs relating to the manufacture of temperature controls, or (2) prices or other terms or conditions relating to the sale or distribution of temperature controls, except in connection with a bona fide negotiation or quotation concerning the purchase or sale of temperature controls.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Allocation of Customers.—Manufacturers of temperature controls for gas cooking ranges were prohibited by a consent decree from entering into any understanding with any other manufacturer of temperature controls to allocate customers for the sale of temperature controls.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Acquisitions.—A manufacturer of temperature controls for gas cooking ranges was prohibited by a consent decree (1) for a period of five years, from acquiring ownership or control of the business, physical assets, or good will, or any capital stock or securities, of any person engaged in the manufacture of temperature controls, and (2) thereafter, for an additional ten years, from acquiring such ownership or control except after an affirmative showing to the satisfaction of the court that such ownership or control would not substantially lessen competition or tend to create a monopoly in the manufacture, distribution, or sale of temperature controls. However, the manufacturer was not prohibited from acquiring all or part of the securities or assets of any of its subsidiaries, or from forming subsidiaries and transferring to such subsidiaries its assets or assets of its subsidiaries.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Patent Licensing Agreements—Agreement Not To License Patents.—Manufacturers of temperature controls for gas cooking ranges, which were ordered by a consent decree to license their patents, were each prohibited from entering into any agreement with any person from whom it acquires, on a nonexclusive basis, any license, grant of immunity, or similar right under any existing patent, or under any patent issued or applied for within the five years after the entry of the decree, that such person will not grant similar rights to other applicants.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Patents—Institution of Patent Infringement Suits.—Manufacturers of temperature controls for gas cooking ranges, which were ordered by a consent decree to license their patents, were each prohibited from instituting or threatening to institute any suit or proceeding against any person for acts of infringement of patents alleged to have occurred prior to the entry of the decree.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Licensing of Patents.—Two manufacturers of temperature controls for gas cooking ranges were each ordered to grant a

nonexclusive license to manufacture, use, and sell temperature controls under any or all of the patents owned or controlled by the manufacturer at the time of the entry of the decree, or which are owned by the manufacturer within five years from the date of entry. The defendants could charge a reasonable nondiscriminatory royalty.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; William D. Kil-gore, Jr., Baddia J. Rashid, William L. Maher, Donald G. Balthis, John E. Sarbaugh, and Walter L. Devany, III, Attorneys, Department of Justice.

For the defendants: Reed, Smith, Shaw & McClay by H. E. Hackney, Paul J. Win-schel, and J. Tomlinson Fort, Jr., for Robertshaw-Fulton Controls Company. Breed, Abbott & Morgan, by William C. Breed, for Wilcolator Co.

Final Judgment

JOHN L. MILLER, District Judge [*In full text except for Appendix A*]: Plaintiff, United States of America, having filed its Complaint herein on June 21, 1956, and defendants Robertshaw-Fulton Controls Company (hereinafter sometimes referred to as "RFCCo."), and Wilcolator Co. (hereinafter sometimes referred to as "Wilcolator"), having appeared and filed their answer to the Complaint denying violations of law and the substantive allegations thereof, and plaintiff and defendants by their attorneys having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without the Final Judgment constituting any evidence or admission by any party in respect of any such issues;

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

Ordered, adjudged and decreed as follows:

I

[*Sherman Act*]

The Court has jurisdiction of the subject matter hereof and of each party hereto. The complaint states a claim upon which relief may be granted against RFCCo. and Wilcolator 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," commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

- (A) "Temperature Controls" means oven thermostatic regulator units for regulating the temperature in the oven of a gas range, and parts of such units when manufactured for and used therein;
- (B) "Person" means any individual, partnership, corporation (including any defendant), association, firm, trustee or other business or legal entity;
- (C) "Patents" means United States Letters Patent and all reissues and extensions thereof, relating to the manufacture, use or sale of temperature controls.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment shall apply to the defendants RFCCo. and Wilcolator, their officers, directors, agents, employees, successors and assigns, and to all other persons in active concert or participation with a defendant who receives actual notice of this Final Judgment by personal service or otherwise; provided that the said provisions shall not apply to the foreign activities and operations of the defendants unless such activities and operations unreasonably restrain domestic trade and commerce of the United States.

IV

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[*Termination of Agreements*]

(A) Defendants RFCCo. and Wilcolator are each ordered and directed to terminate and cancel, within sixty (60) days from the date of entry of this Final Judgment, each of the following agreements which shall not theretofore have been terminated or cancelled:

- (1) Agreement dated February 28, 1949, between RFCCo. and Wilcolator;
- (2) Agreement dated April 1, 1949, between Wilcolator and Penn Controls, Inc.;
- (3) Agreement dated February 13, 1936 between Wilcolator and Magic Chef, Inc.

(B) Defendants RFCCo. and Wilcolator are each enjoined and restrained from entering into, adopting, performing, adhering to, maintaining, or furthering, directly or indirectly, or claiming any rights under any contract, agreement, understanding, plan or program in relation to temperature controls which (1) is inconsistent with any provision of this Final Judgment, or (2) has as its purpose or effect the continuing or renewing of any provision of any of the agreements listed in subsection (A) of this Section IV which is inconsistent with any provision of this Final Judgment;

(C) Defendants RFCCo. and Wilcolator are each ordered and directed to file with the Court within three (3) months following the date of entry of this Final Judgment, an affidavit that the aforesaid written agreements have been terminated and that they are not parties to any agreement or arrangement, plan or program, which is inconsistent with any provision of this Final Judgment.

V

[*Licensing of Patents*]

(A) Defendant RFCCo. is ordered and directed, and, except as to RFCCo., defendant Wilcolator is ordered and directed, in so far as each has or may acquire the power to do so, to grant to any applicant making written application therefor a nonexclusive license to manufacture, use, and sell temperature controls under any, some, or all of the patents owned or controlled by such defendant at the time of entry of this Final Judgment (including those listed on Appendix A [not reproduced] hereto) or which are applied for or issued to or owned by such defendant within five (5) years from such date of entry. Defendants are each enjoined and restrained from making any sale or other disposition of any of the aforesaid patents which deprives such defendant of the power or authority to grant such licenses, unless such defendant sells, transfers, or assigns such patents and requires as a condition of such sale, transfer, or assignment that the purchaser, transferee, or assignee shall observe the requirements of Section V of this Final Judgment with respect to the patents so acquired and the purchaser, transferee, or assignee shall file with this Court, prior to the consummation of said transaction, an undertaking to be bound by the provisions of said section with respect to the patents acquired;

(B) Each defendant is enjoined and restrained from acquiring, on an exclusive basis, any license, sublicense, grant of immunity, or similar right under any existing patent or any patent issued or applied for within the five years after the entry of this Final Judgment, unless such license, sublicense, grant of immunity, or similar right grants to the defendant a full and unrestricted power to sublicense, pursuant to the provisions of this Section V. Each defendant is enjoined and restrained from entering into any agreement or understanding, either direct or implied, with any person from whom it acquires, on a nonexclusive basis, any license, sublicense, grant of immunity, or similar right under any existing patent or under any patent issued or applied for within the five years after the entry of this Final Judgment, that such person will not grant similar or at least as favorable rights to other applicants therefor;

(C) Each defendant is enjoined and restrained from including any restriction or condition whatsoever in any license or sublicense, as the case may be, granted by it pursuant to the provisions of subsection (A) of this Section V, except that:

- (1) The license may be nontransferable;
- (2) A reasonable nondiscriminatory royalty may be charged;

(3) Reasonable provision 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 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 its books and records as hereinabove provided;

(5) The license shall provide that the licensee may cancel the license by giving thirty (30) days' notice in writing to the licensor; and

(6) The license must refer to and identify this Final Judgment;

(D) Upon receipt of a written request for a license or a sublicense, as the case may be, under the provisions of this Section V, each such defendant shall advise the applicant in writing of the royalty 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 within sixty (60) days from the date such request for the license was received by such defendant, the applicant or such defendant may forthwith apply to this Court for the determination of reasonable royalties, and the defendant shall, upon receipt of notice of the filing, or upon the filing of such application, promptly give notice thereof to the Attorney General. In any such proceeding, the burden of proof shall be on the defendant to establish the reasonableness of the royalty requested, and the reasonable royalty rates, if any, determined by this Court shall apply to the applicant and all other licensees under the same patent or patents. Pending the completion of negotiations or any such proceedings, the applicant shall have the right to make, use, and vend temperature controls under the patent or patents to which its application pertains without payment of royalty or other compensation as above provided, but subject to the provisions of subsection (E) of this Section V;

(E) Where the applicant has the right to make, use, and vend temperature controls under any patents pursuant to subsection (D) of this Section V, said applicant or the defendant may apply to this Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty. If this Court fixes such interim royalty rate, the 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 a license or fails to pay the interim royalty in accordance therewith, such action shall be ground for the dismissal of his application and his rights under subsection (D) shall terminate. Where an interim license or sublicense has been issued pursuant to this subsection, reasonable royalty rates, if any, as finally determined by this Court shall be retroactive for the applicant and other licensees under the same patents to the date the applicant files his application with this Court;

(F) Each defendant is enjoined and restrained from instituting or threatening to institute, or maintaining or continuing any action, suit, or proceedings against any person for acts of infringement of patents alleged to have occurred prior to the entry of this Final Judgment; and

(G) Nothing herein shall prevent any applicant for a license or sublicense from attacking in the aforesaid proceedings or in any other proceeding or controversy, the validity or scope of any of the patents nor shall this Final Judgment be construed as importing any validity or value to any of the said patents.

VI

[*Price Fixing and Allocation of Customers*]

Defendants RFCCo. and Wilcolator are jointly and severally enjoined and restrained from combining or conspiring or from entering into, adhering to, performing, maintaining, furthering, directly or indirectly, or claiming any rights under any contract, agreement, understanding, plan or program, with any other manufacturer of temperature controls to:

(A) Fix, maintain, determine, control, stabilize or adhere to prices, discounts, allowances or other terms or conditions for the sale of temperature controls to third persons;

- (B) Urge, advise or suggest prices, discounts, allowances or other terms or conditions for the sale of temperature controls to third persons;
- (C) Circulate, exchange, disclose or communicate any information concerning costs relating to the manufacture of temperature controls, or, prices, discounts, allowances or other terms or conditions relating to the sale or distribution of temperature controls, except in connection with a bona fide negotiation, inquiry, or quotation concerning the purchase or sale of temperature controls;
- (D) Sell or offer to sell temperature controls only at prices quoted in published price lists or announcements; and
- (E) Allocate customers for the sale of temperature controls.

VII

[*Acquisitions*]

(A) Defendant RFCCo. is enjoined and restrained:

- (1) For a period of five years from the date of entry of this Final Judgment, from acquiring, directly or indirectly, by purchase, merger, consolidation or otherwise, ownership or control of the business, physical assets or good will, or any part thereof, or any capital stock or securities of any person engaged in the manufacture of temperature controls in the United States, its territories or possessions; and
- (2) Thereafter, for an additional ten years, from directly or indirectly acquiring such ownership or control except after an affirmative showing to the satisfaction of this Court, upon 30 days' notice to plaintiff, that such ownership or control would not substantially lessen competition or tend to create a monopoly in the manufacture, distribution or sale of temperature controls.

(B) Nothing in this Section VII, however, shall be construed to prohibit

- (1) Acquisition by RFCCo. of all or part of the securities or assets of any of its subsidiaries;
- (2) Formation of subsidiaries by RFCCo. and the transfer thereto of assets of RFCCo. or of its subsidiaries.

VIII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, and for no other purpose, and subject to any legally recognized privilege, 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 made to its principal office, be permitted (1) access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matter contained in this Final Judgment, and (2) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding any such matter. Upon such request the defendants shall submit such reports in writing to the Department of Justice with respect to any of the matters contained in this Final Judgment as from time to time may be necessary to the enforcement of this Final Judgment. No information 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 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 Final Judgment or as otherwise required by law.

IX

[*Jurisdiction Retained*]

Jurisdiction of this cause is retained 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 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 thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.