

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The White Motor Company., U.S. District Court, N.D. Ohio, 1964 Trade Cases ¶71,195, (Sept. 8, 1964)

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United States v. The White Motor Company.

1964 Trade Cases ¶71,195. U.S. District Court, N.D. Ohio, Eastern Division. Civil No. 34593. Entered September 8, 1964. Case No. 1399 in the Antitrust Division of the Department of Justice.

Sherman Act

Exclusive Dealing—Vertical Territorial Limitations and Customer Restrictions—* Trucks and Truck Parts—Consent Judgment.—A manufacturer of trucks was required under the terms of a consent judgment to cancel its dealer and distributor contracts containing vertical territorial limitations and customer restrictions and prevented from enforcing or claiming any rights under such contracts.

For the plaintiff: William H. Orrick, Jr., Assistant Attorney General, William D. Kilgore, Jr., Harry G. Sklarsky, Norman H. Seidler, Frank B. Moore, and Paul Y. Shapiro, Attorneys, Department of Justice.

For the defendant: Rufus S. Day, Jr., McAfee, Hanning, Newcomer, Hazlett & Wheeler, Cleveland, Ohio, and Gerhard A. Gesell, by N. S. Foley, Covington & Burling, Washington, D. C.

Supplemental Final Judgment

KALBFLEISCH, District Judge: Plaintiff, United States of America, having filed its amended complaint herein on March 28, 1960; defendant The White Motor Company, having appeared and filed its answer denying the substantive allegations thereof; a Final Judgment herein, having been filed on September 5, 1961, and the defendant having appealed from Sections IV(A) and VI(A) and certain related portions of said Judgment, and the Supreme Court having remanded for further proceedings as to issues raised by the aforesaid provisions, and this Court, by Order dated June 4, 1963, having delayed compliance as to certain provisions of said Judgment;

Now the plaintiff and the defendant, by their attorneys, having consented to the entry of this Supplemental Final Judgment without trial or adjudication of any issue of fact or law to which this Supplemental Final Judgment is directed, and without admission by either party with respect to any such issue:

Now Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law to which this Supplemental Final Judgment is directed, and upon the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The Amended Complaint having been found to state claims against the defendant upon which relief was granted under Sections 1 and 3 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, this Supplemental Final Judgment is entered to terminate remaining issues in the litigation.

II

[*Definitions*]

As used in this Supplemental Final Judgment:

(A) "Defendant" means The White Motor Company, a corporation organized and existing under the laws of the State of Ohio, with its principal place of business at Cleveland, Ohio;

(B) "Person" means any individual, partnership, firm, association, corporation or other business or legal entity;

(C) "Distributor" means any person engaged, in whole or in part, in the purchase from the defendant of trucks and parts and in the sale thereof at wholesale, or at wholesale and at retail, in the United States of America, including those persons heretofore designated by the defendant as "distributor" or "franchised distributor";

(D) "Dealer" means any person engaged, in whole or in part, in the purchase from the defendant, or from any of the defendant's distributors, of trucks and parts and the sale thereof at retail in the United States of America, including those persons heretofore designated by the defendant as "key dealer," "dealer," "direct key dealer," "direct metropolitan dealer," and "direct dealer."

III

[*Applicability*]

The provisions of this Supplemental Final Judgment applicable to the defendant shall also apply to each of its subsidiaries, successors, assigns, officers, directors, agents, and employees, and to all persons in active concert or participation with the defendant who receive actual notice of this Supplemental Final Judgment by personal service or otherwise.

IV

[*Territorial and Customer Restrictions*]

The defendant is enjoined and restrained from entering into, adhering to, maintaining, enforcing or claiming any rights under any contract, combination, agreement or understanding, with any distributor, dealer, or any other person to limit, allocate or restrict the territories in which, or the persons or classes of persons to whom, any distributor, dealer or other person may sell trucks.

V

[*Cancellation of Contracts*]

(A) Defendant is ordered and directed, before January 1, 1965, to take all necessary action to effect the cancellation of each provision of every contract between and among the defendant and its distributors and dealers which is contrary to or inconsistent with any provision of this Supplemental Final Judgment.

(B) Defendant is ordered and directed, before January 1, 1965, to mail a copy of this Supplemental Final Judgment to each of its distributors and dealers.

(C) Defendant is ordered and directed to file with this Court, and serve upon the plaintiff, before January 15, 1965, an affidavit as to the fact and manner of its compliance with subsections (A) and (B) of this Section V.

VI

[*Inspection and Compliance*]

For the purpose of securing compliance with this Supplemental Final Judgment, 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 defendant, made to its principal office, be permitted (1) access during reasonable office hours to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant relating to any of the subject matters contained in this Supplemental Final Judgment, and (2) subject to the reasonable convenience of defendant, and without restraint or interference from it, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters. No information obtained by the means provided in this Section VI 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 plaintiff, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Supplemental Final Judgment or as otherwise required by law.

VII

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any of the parties to this Supplemental 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 Supplemental Final Judgment or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.