

APPENDIX A:

FINAL JUDGMENTS

(Ordered by Year Judgment Entered)

U.S. v. NEW DEPARTURE MANUFACTURING COMPANY, ET AL.
Equity No. 48-A
Year Judgment Entered: 1913



UNITED STATES v. NEW DEPARTURE MFG. CO.

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF NEW YORK.

Equity No. 48-A

THE UNITED STATES OF AMERICA, PETITIONER,

VS.

THE NEW DEPARTURE MANUFACTURING COMPANY, THE
MIAMI CYCLE & MANUFACTURING COMPANY, THE COR-
BIN SCREW CORPORATION, AURORA AUTOMATIC MACHIN-
ERY COMPANY, ECLIPSE MACHINE COMPANY, BUFFALO
METAL GOODS COMPANY, EDWIN E. JACKSON, JR., FRED-
ERICK R. HUNTINGTON, ALBERT F. ROCKWELL, DE WITT
PAGE, CHARLES T. TREADWAY, WILLIAM A. GRAHAM,
GALES P. MOORE, CHARLES GLOVER, CLARENCE A. EARL,
DAVID L. WHITTIER, RALPH D. WEBSTER, LEONARD S.
WHITTIER, SIMON FLORSHEIM, JOHN D. HURLEY, KELLY
R. JACOBY, JAMES P. DROUILLARD, EMMETT M. JACK-
SON, AND FISHER C. ATHERTON, DEFENDANTS.

FINAL DECREE.

This cause coming on to be heard on this 27th day of
May, 1913, before the Honorable John R. Hazel, district
judge, and the petitioner having appeared by John Lord
O'Brian, its attorney in and for the Western District of

New York, and by Malcolm A. Coles, its special assistant
to the Attorney General, and having moved the court for
an injunction in accordance with the prayer of its peti-
tion, and it appearing to the court that the allegations of
the petition state a cause of action against the defend-
ants under the provisions of the act of Congress of July
2nd, 1890, commonly known as the antitrust act, that this
court has jurisdiction of the subject matter, that each of
the defendants has either been regularly served or has
accepted service of process and has appeared in open
court by Messrs. Lyman M. Bass, Daniel J. Kenefick,
William Waldo Hyde, Delevan Holmes, Alexander D.
Falck, and Louis E. Hart, their counsel, and said defend-
ants having stated in open court through their counsel
that it is not their desire or intention or the desire or
intention of any or either of them to violate the pro-
visions of the act above referred to, but have stated that
it is their desire and intention and the desire and inten-
tion of each of them to comply with each and all the pro-
visions of the statute of the United States referring to
agreements, combinations or conspiracies in restraint of
trade or attempting to create a monopoly and that their
previous action in the premises was in full belief that
such action was not in violation of law; that it is the de-
sire and intention of each of them not to operate under
or make or carry on any such contracts or practices as
are prohibited and condemned by said act of Congress,
and it appearing to the satisfaction of the court that,
notwithstanding the aforesaid answers, petitioner is en-
titled upon the pleadings to the relief prayed for herein;
and all of said defendants through their counsel here
consenting to the entering and rendition of this decree;

Now, therefore, it is accordingly by this court, ordered,
adjudged and decreed as follows:

FIRST. That the combination and association entered
into by the defendants herein in or about the month of
July, 1908, in relation to the manufacture, sale and ship-
ment in interstate and foreign commerce of bicycle and
motorcycle coaster brakes and each and all of the con-
stituent parts of the mechanism thereof, front and rear

hubs, sprockets and built-up wheels, constituted and is a combination in restraint of trade and an attempt to monopolize such trade among the several States and with foreign nations in violation of section 1 of the said act of Congress of July 2nd, 1890, commonly known as the anti-trust act, and the said combination and association is hereby declared illegal and void, and each and all of said defendants are hereby jointly and severally perpetually enjoined, restrained and forbidden from further engaging in or attempting to carry out in any respect the affairs and purposes of said combination and association.

SECOND. That all of the agreements annexed to the petition herein and therein described as Exhibits A, B, C, D, E, F, G, H, I, J and K, and all agreements uniform in terms with any of said exhibits and all other agreements of substantially the same character as any of the said exhibits made by any of said corporation defendants, constitute agreements in restraint of trade and commerce among the States and with foreign nations in violation of section 1 of the said act of Congress of July 2, 1890, commonly known as the antitrust act, and each and all of said agreements are hereby declared illegal and void and are hereby cancelled and declared to be of no effect, and each and all of said defendants are hereby jointly and severally perpetually restrained, enjoined and forbidden from further observing or attempting to carry out the provisions of said agreements.

THIRD. That each and every written and unwritten agreement or understanding existing between any of the various corporation defendants or their aforesaid officers, extending, amending or enlarging the terms of the above specified agreements is in violation of the aforesaid anti-trust act and is hereby declared to be illegal and cancelled and of no effect and each and all of said defendants are hereby jointly and severally perpetually restrained, enjoined and forbidden from further observing or attempting to carry out in any respect the provisions of such agreements or understandings.

FOURTH. That each of said individual defendants and each of said defendant corporations, together with its directors, managers, officers, agents and employees, and each of them and all persons acting or assuming to act for or under or in behalf of them, or any of them, or for or in behalf of each other, be and they hereby are perpetually restrained, enjoined and prohibited from—

(a) Carrying out said conspiracy and combination, from entering into or carrying out any other conspiracy either among themselves or in connection with other persons or corporations to restrain and monopolize the manufacture, sale and shipment of bicycle and motorcycle coaster brakes and the constituent parts of the mechanism thereof, front and rear hubs, sprockets and built-up wheels, either by themselves, or by competitors or by manufacturers, jobbers or dealers in such merchandise and commodities and from attempting to monopolize the trade and commerce therein;

(b) Establishing or fixing by combination, conspiracy, mutual agreement or understanding the sale and resale price, or prices, for any bicycle and motorcycle coaster brakes or any of the constituent parts of the mechanism thereof, front and rear hubs, sprockets or built-up wheels.

And also restraining and prohibiting said corporations and persons who may be the owners of valid patents upon bicycle and motor-cycle coaster brakes and each or any of the constituent parts of the mechanism thereof, front and rear hubs, sprockets or built-up wheels from requiring or imposing upon any purchaser, user or dealer in any of said commodities a fixed resale price, unless and until the United States Supreme Court shall decide that the owner of a valid patent may lawfully fix and impose such resale price.

(c) Holding joint meetings for the purpose of arranging for concerted action with respect to the business and trade in any and all of the aforesaid merchandise;

(d) Having a joint arbitrator, referee, commissioner or other person exercising any of the functions described in Exhibit A herein as being those of an arbitrator;

(e) Selecting, making up, ratifying or confirming by combination, conspiracy, mutual agreement or understanding by and between any of said parties, any lists of manufactures or jobbers or dealers with whom trade shall or shall not be carried on in the aforesaid merchandise by any of the corporations or persons herein enjoined;

(f) Fixing or establishing by combination, conspiracy, mutual agreement or understanding trade discounts, trade rebates, terms of credit or any other terms and conditions in connection with or relating to the sale, shipment and trade by any of said corporations and parties in any of the aforesaid merchandise;

(g) Warning, harassing or intimidating by means of personal acts, letters or advertisements any other corporations or persons in relation to the sale, shipment and trade in the aforesaid merchandise except such action as may lawfully be taken by any individual or corporation in properly protecting his or its own legal property rights.

FIFTH. None of the provisions in this decree contained shall prevent any of the defendants owning valid patents from granting licenses thereunder upon lawful terms and conditions fixed only by the licensor, but no such license shall provide for the fixing of a resale price unless and until the Supreme Court of the United States shall decide that a licensor may lawfully fix and impose such resale price.

SIXTH. That the organization and association commonly known as the "Association of Coaster Brakes Licensees," described in the petition of this cause was and now is a combination and conspiracy in direct restraint of interstate and foreign trade and commerce in violation of the provisions of the said act of Congress of July 2nd, 1890, and the defendants and each of them who have been members of or who at any time have taken part in the meetings or had a share in the business operation of said association are hereby jointly and severally perpetually enjoined, restrained and forbidden from further maintaining said association and from participating therein and from hereafter creating, maintaining or participating

in any manner whatsoever in any other association or organization of similar character; and it is hereby further

Ordered, adjudged and decreed that this court retains jurisdiction of this cause for the purpose of enforcing the decree herein.

Ordered, adjudged and decreed that the defendants be and they are hereby given a period of sixty days from and after the date of entry of this decree for compliance with the terms thereof; and it is hereby further

Ordered, adjudged and decreed that the defendants pay the costs of this suit to be taxed.

JOHN R. HAZEL,
United States Judge.

U.S. v. ABRASIVE GRAIN ASSOCIATION, ET AL.
Civil No. 3672
Year Judgment Entered: 1948



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Abrasive Grain Association, Norton Company, American Abrasive Company, The Carborundum Company, The Exolon Company, General Abrasive Company, Inc., U.S. District Court, W.D. New York, 1948-1949 Trade Cases ¶62,329, (Nov. 16, 1948)

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United States v. Abrasive Grain Association, Norton Company, American Abrasive Company, The Carborundum Company, The Exolon Company, General Abrasive Company, Inc.

1948-1949 Trade Cases ¶62,329. U.S. District Court, W.D. New York. Civil No. 3672. November 16, 1948.

Sherman Antitrust Act

Consent Judgment—Combinations in Restraint of Trade—Acts Enjoined.—A consent judgment entered in an action against an abrasive grain manufacturer and five corporate members charging a combination and conspiracy to fix prices in restraint of trade and commerce enjoins the defendants from entering into combinations or agreements with manufacturers of artificial abrasive grain to fix periods of time for which offers and obligations to buy and sell shall be made or entered into, to fix or maintain prices or other terms of sale, to establish or adhere to price lists, and to classify purchasers or distributors with the purpose or effect of affecting prices paid by them or of discrimination in respect to them. When grain is sold on a uniform delivered price basis, each defendant manufacturer is ordered to grant to the purchaser the option of taking delivery at the place either of manufacture or storage of said grain at its delivered price less the actual cost of the mode of transportation which such manufacturer would normally use from the actual shipping point if such option were not exercised. The defendant association is ordered to abolish its code of fair competition, and the manufacturer defendants are ordered to issue individual price lists on the basis of independent review of costs and prices.

For plaintiff: Herbert A. Bergson, Assistant Attorney General; George L. Grobe, United States Attorney; Sigmund Timberg, Manuel M. Gorman, Gerald J. McCarthy, Richard B. O'Donnell, Special Assistants to the Attorney General.

For defendants: Thomas Penney, Jr., Penney, Penney, Buerger & Siemer, Buffalo, N. Y.; Hale & Dorr, Lawrence E. Green, Joseph N. Webb, E. Shayn, Boston Mass.; Francis T. Findlay, Findlay, Argy & Hackett, Niagara Falls, N. Y.; Edward A. Montgomery, Niagara Falls, N. Y.; Webster, Sheffield & Horan, New York, N. Y.; Charles W. Schol, Buffalo, N. Y.; Stobbs, Stockwell & Tilton, George R. Stobbs, Worcester, Mass.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on December 15, 1947, and all the defendants having appeared and filed their answers to such complaint denying the substantive allegations thereof; and all 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 defendant in respect of any such issue;

NOW, THEREFORE, before any testimony has been taken herein, and without adjudication of any issue of fact or law herein, and upon the consent of all the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

[*Jurisdiction*]

I

The Court has jurisdiction of the parties to this judgment; and for the purposes of this judgment and proceedings for the enforcement thereof, the Court has jurisdiction of the subject matter hereof; and the complaint states a cause of action against defendants and each of them under [Section 1 of the Sherman Act](#) (15 U. S. C. § 1).

[*Terms Defined*]

II

When used in this judgment the following terms have the meaning assigned respectively to them below:

A. “Artificial abrasive grain” means grain manufactured from silicon carbide or aluminum oxide, and any variety, type, or grade of such grain.

B. “Subsidiary” means a company in excess of 50% of the voting stock of which is held by another company.

C. “Parent” means any company owning in excess of 50% of the voting stock of any other company.

[*Applicability*]

III

The provisions of this judgment applicable to the defendants apply to their successors, officers, directors, agents, employees, and to any other persons acting under, through, or for such defendants.

[*Acts Enjoined*]

IV

Each of the defendants is hereby perpetually enjoined and restricted from entering into, adhering to, maintaining, or furthering any combination, conspiracy, agreement or understanding with any manufacturer of artificial abrasive grain:

A. To fix, determine, designate, or adhere to periods of time during which or for which offers, sales, contracts for sales, and obligations to buy and sell artificial abrasive grain shall be made or entered into with, or required of, others.

B. To fix, determine, establish or maintain prices, pricing, systems, discounts, or other terms or conditions of sale for artificial abrasive grain.

C. To establish, maintain, or adhere to any price lists or price quotations, or any other means of determining or fixing price lists or price quotations, or any other terms or conditions of sale or purchase of artificial abrasive grain to be quoted to or by, or required of or by, others.

D. To circulate or exchange, directly or indirectly, any price lists, or price quotations, with or among any manufacturer of artificial abrasive grain in advance of the publication, circulation, or communication of such price lists or price quotations to its purchasers and distributors.

E. To classify purchasers or distributors with the purpose or effect of affecting prices paid by them or of discrimination in respect to them; or to maintain or adhere to any such classification of purchasers or distributors, or to any lists, formulae or other means for such classification.

V

Each defendant herein is hereby enjoined from circulating or exchanging, directly or indirectly, any price lists, or price quotations, with or among any manufacturer of artificial abrasive grain in advance of the publication, circulation, or communication of such price lists or price quotations to its purchasers and distributors.

[*Delivered Price*]

VI

Each defendant manufacturer is hereby ordered:

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Whenever such manufacturer sells artificial abrasive grain on a uniform delivered price basis, to grant the purchaser the option of taking delivery at the place either of manufacture or storage of said grain at its delivered price less the actual cost of the mode of transportation which such manufacturer would normally use from the actual shipping point if such option were not exercised.

[*Code Ordered Abolished*]

VII

The defendant Association is hereby ordered to abolish its code of fair competition at its next regular meeting which shall in no event be later than February 1, 1949; and defendant manufacturers are hereby enjoined and restrained from renewing or reviving said code of fair competition.

[*Issuance of Price Lists*]

VIII

When, for the first time following the entry of this judgment, the third printing of the Bureau of Labor Statistics Monthly Wholesale Price Index for All Commodities Other than Farm Products or Foods for a given month is lower than the corresponding index published six months preceding and there has been a decline in said Monthly Wholesale Price Index for each of three consecutive months, each defendant manufacturer shall individually review its selling prices of artificial abrasive grain on the basis of its individual cost figures and individual judgment as to profits, and issue a new price list (or, where no price list has in the past been issued, issue new prices) on the basis of such independent review.

[*Relationship Not Affected*]

IX

Nothing contained herein shall be deemed to adjudicate, determine, or affect the legality or illegality of any agreement involving solely relationships between:

- A. A defendant manufacturer and its subsidiaries.
- B. A defendant manufacturer or its subsidiaries and a parent.
- C. Subsidiaries of any such manufacturer or their subsidiaries.

X

Nothing in this judgment shall prevent any defendant from availing itself of the benefits of (a) The Act of Congress of April 10, 1918, commonly called the Webb-Pomerene Act, or (b) The Act of Congress of 1937, commonly called the Miller-Tydings proviso to Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies."

[*Inspection for Compliance Purposes*]

XI

For the purpose of securing compliance with this judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or any Assistant Attorney General, and on reasonable notice to any defendant manufacturer, be permitted, subject to any legally recognized privilege, (a) reasonable 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 matters contained in this judgment, and (b) subject to the reasonable convenience of such defendant, and without restraint or interference, to interview officers and employees of such defendant, who may have counsel present, regarding any such matters. For the purpose of securing compliance with this judgment any defendant upon the written request of the Attorney General, or an Assistant Attorney

General, shall submit such reports with respect to any of the matters contained in this judgment as from time to time may be necessary for the purpose of enforcement of this judgment. No information obtained by means permitted in this paragraph shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department except in the course of legal proceedings for the purpose of securing compliance with this judgment in which the United States is a party or as otherwise required by law.

[*Jurisdiction Retained*]

XII

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

U.S. v. SCHINE CHAIN THEATRES, INC., ET AL.
Civil No. 223
Year Judgment Entered: 1949 (Modified, 1952)



WK_Trade Regulation Reporter - Trade Cases 1932 - 1992 United States v Schine Chain Theatres Inc et al US District Court WD New York 1948-1949 Trade .pdf

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Schine Chain Theatres, Inc., et al., U.S. District Court, W.D. New York, 1948-1949 Trade Cases ¶62,447, 465 F. Supp. 1320, (Jun. 24, 1949)

United States v. Schine Chain Theatres, Inc., et al.

1948-1949 Trade Cases ¶62,447. U.S. District Court, W.D. New York. Civil Action No. 223. June 24, 1949. 465 FSupp 1320

Sherman Antitrust Act

Theatre Operation—Consent Judgment — Practices Enjoined.—In a civil antitrust suit which alleged monopolization of theatre operations, a theatre circuit, its affiliated companies and individual officers consented to a judgment which ordered disposition of forty theatres, laid down conditions under which films were to be bought and licensed, and enjoined practices and the performance of agreements which eliminated independent competition.

In order to create substantial motion picture theatre operating competition, specified properties were ordered to be conveyed to persons who would use them as motion picture theatres. Provision was made for leasing of theatres provided that no covenant based upon a share of the profits of the theatre was included in the lease. The company was enjoined from acquiring any financial or operating interest in additional theatres unless such acquisition would not unreasonably restrain competition.

When buying pictures, the theatre circuit was prohibited from combining open and closed towns to increase its buying power. The number of first-run pictures to be taken by the chain was curtailed to a stipulated percentage of all pictures released. Licenses were ordered to be taken on a single-theatre basis and free of restrictive conditions not available to competitors.

The decree enjoined the following practices: attempting to control the admission price charged by others by agreement with distributors or demands made upon distributors, demanding or receiving any clearance over theatres not in substantial competition, entering into any licensing agreement for more than one picture season and covering the exhibition of pictures released by one distributor during the entire period of agreement, measuring a license fee by a specified percentage of the feature's national gross, operating theatres normally in competition as a unit, enforcing any agreement not to compete or restrict the use of real estate to non-theatrical purposes, preventing a competitor from acquiring or operating a theatre and cutting admission prices to prevent independent competition.

For the plaintiff; Tom G. Clark, Washington, D. C., Attorney General; Herbert O. Bergson, Washington, D. C., Assistant Attorney General; George L. Grobe, Buffalo, N. Y., United States Attorney; Sigmund Timberg, Philip Marcus, Washington, D. C., Special Assistants to the Attorney General.

For the defendants: Irving R. Kaufman, New York, New York; Willard S. McKay, New York, New York; Howard M. Antevil, Gloversville, New York.

Consent Decree as to Schine Defendants

JOHN KNIGHT, District Judge: The plaintiff, the United States of America, having filed its Second Amended Complaint herein, and all the defendants having appeared and severally filed their answers to such complaint, denying the substantive allegations thereof, the Court after trial having entered a decree herein consisting of a judgment dated October 31, 1945, an Amended Judgment dated March 29, 1946, and an Order of Divestiture dated July 2, 1946; the defendants having appealed from such decree; the Supreme Court having in part affirmed and in part reversed such decree, and having remanded this cause to this Court for further proceedings in conformity with its opinion dated May 3, 1948, and this Court having, on August 13, 1948 entered an order vacating certain parts of its decree, findings of facts and conclusion of law, affirming other parts thereof, and providing for further proceedings pursuant to the Mandate and Opinion of the Supreme Court, and no further testimony or evidence having been taken after the remand of this cause; and no decision having been rendered

by this Court after said remand upon the issues to be determined upon said remand, and all parties hereto, by their respective attorneys, having severally consented to the entry of this final judgment without admission by the defendants in respect to any such issue to be determined on remand.

It is hereby Ordered, Adjudged and Decreed:

[*Previous Decree Superseded*]

I

This judgment shall supersede the provisions for relief contained in the previous decrees of this Court.

[*Practices Enjoined*]

II

The Schine defendants, their officers, agents, servants, and employees are each hereby enjoined:

1. From combining open and closed towns in buying pictures for theatres operated by them or any one or more of them.
2. Except for the towns of Amsterdam, N. Y.; Glens Falls; N. Y.; Salisbury, Md.; Buffalo, N. Y.; and Syracuse, N. Y., from licensing for a period of three years from July 1, 1949 (or, in the case of a locality where a theatre is required to be divested pursuant to the provisions of paragraph IV, for a period of three years from the date possession of a theatre in operating condition is taken):
 - a. More than 60% ¹ of the feature films released by the major distributors for first run ² exhibition in any fiscal year, except as to pictures for which competitors who have had an opportunity to request licenses have not made an offer or have made an insubstantial offer; ³ and
 - b. More than 48 ⁴ feature films from among the eighty pictures constituting the aggregate of the ten pictures released by each of the major distributors, respectively, for first run ² exhibition in any fiscal year, which are allocated by the respective distributor to its highest selling bracket or brackets, except as to pictures for which competitors who have had an opportunity to request licenses have not made an offer or have made an insubstantial offer. ³
3. From attempting to control the admission prices charged by others by agreement with distributors, demands made upon distributors, or by any means whatsoever.
4. From demanding or receiving any clearance over theatres not in substantial competition.
5. From demanding or receiving any clearance over theatres in substantial competition with the theatre receiving the license for exhibition in excess of what is reasonably necessary to protect the licensee in the run granted. Upon request or complaint made by an exhibitor to the Schine defendants, or notice received by the Schine defendants of a request or complaint made to a distributor, that the clearance held by a Schine theatre over his theatre is unreasonable, the defendants agree to procure, from each of the major distributors from whom they license film, a review of the reasonableness of such clearance. Before such review shall be undertaken, written notice shall be given to the exhibitor affected, which notice shall advise such exhibitor that he may present his views orally or in writing to the distributor as to what, if any, clearance he deems reasonable. The defendants also agree, with respect to any complaint of unreasonable clearance, to submit upon request by the complainant the same to arbitration before any impartial arbitrator for determination, and decision of such arbitrator shall be binding upon the parties. Nothing herein shall prejudice the plaintiff or the exhibitor, in any court or arbitration proceeding in which the reasonableness of any clearance is in issue.
6. From asking or knowingly receiving, in the licensing of feature films for any theatre operated by the Schine defendants, discriminatory terms or conditions not available to competitors.

7. From licensing any feature for exhibition upon any run in any theatre in any other manner than that each license shall be offered and taken theatre by theatre, solely upon the merits.
8. From making any franchise agreements. The term "franchise" as used herein means a licensing agreement or series of licensing agreements, entered into as a part of the same transaction, in effect for more than one motion picture season and covering the exhibition of pictures released by one distributor during the entire period of agreement.
9. From making any formula deal or master agreement. The term "formula deal" as used herein means a licensing agreement with a circuit of theatres in which the license fee of a given feature is measured for the theatres covered by the agreement by a specified percentage of the feature's national gross. The term "master agreement" means a licensing agreement, also known as a "blanket deal", covering the exhibition of features in a number of theatres usually comprising a circuit.
10. From conditioning the licensing of films in any competitive situation upon the licensing of films in any other situation.
11. From making or continuing to perform pooling agreements whereby given theatres of two or more exhibitors normally in competition are operated as a unit or whereby the business policies of such exhibitors are collectively determined by a joint committee or by one of the exhibitors or whereby profits of the "pooled" theatres are divided among the owners according to pre-arranged percentages.
12. From enforcing any existing agreements not to compete, or to restrict the use of any real estate to non-theatrical purposes.
13. From using any threats or deception as a means whereby a competitor is induced to sell or is prevented from acquiring or operating a theatre.
14. From buying or booking films for any theatre other than those in which the Schine defendants own a financial interest.
15. From cutting admission prices for the purpose of eliminating or preventing the competition of independent competitors.
16. From continuing any contract, conspiracy, or combination with each other or with any other person which has the purpose or effect of maintaining the exhibition or theatre monopolies of the defendants or of preventing any other theatre or exhibitor from competing with the defendants or any of them, and from entering into any similar contract, conspiracy, or combination for the purpose or with the effect of restraining or monopolizing trade and commerce between the States.

[*Pooling Arrangements Dissolved*]

III

The existing pooling arrangements at Fostoria and Medina, Ohio, and Syracuse, New York, shall be dissolved.

⁵ Such dissolution in Fostoria and Medina may be effected either by dissolution of the respective corporations through which the defendants' theatre interests in these towns are jointly held with non-defendants and return of the theatres involved to the respective stockholders who owned them prior to the formation of the corporation or by a sale of the defendants' stock in such corporations. In the event that said corporations have not been dissolved as outlined above by August 15, 1949, the defendants' stock therein shall be sold to the other parties to the pool or to a party other than a defendant or owned or controlled by or affiliated with or related to defendants.

[*Disposition of Property Ordered*]

IV

A. For the purpose of creating substantial motion picture theatre operating competition in the localities hereinafter listed where the plaintiff claims that no competition or no substantial or adequate competition now exists or did

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exist during the years covered by the evidence and findings of fact in this cause, the Schine defendants shall dispose of all of the interest of each or any of the defendants in the following properties to persons who will use them as motion picture theatres⁶ within three years from the date of the entry of this judgment, and shall entertain offers for the purchase of such theatres at any time. As to at least one-third of said properties such disposition shall be completed within one year from such date, and as to at least two-thirds of the said properties such disposition shall be completed within two years from such date. Each such disposition shall be to a party other than a defendant or owned or controlled by or affiliated with or related to a defendant, and shall be subject to the approval of this Court, upon notice to the Attorney General. The Schine defendants are also ordered and directed to comply with the other directions contained in the following tabulation:—

NEW YORK

TOWN	THEATRE
Auburn	Jefferson
Canandaigua	Lake
Carthage	Bank property and former State Theatre property
Corning	State
Cortland	Temple
Geneva	Regent
	Temple, if not in regular operation during the major part of each year.
Herkimer	Richmond
Little Falls	Hippodrome
Lockport	Palace or Rialto
Malone	Plaza
Newark	Crescent
Ogdensburg	Pontiac
Oneonta	Palace or Oneonta
Oswego	Strand
	Capitol, if not in regular operation during the major part of each year.
Perry	Vacant lot
Rochester	Madison or Monroe and Riviera or Liberty
Salamanca	Andrews
Seneca Falls	Seneca
Watertown	Palace

OHIO

Ashland	Palace
Bellefontaine	Strand
Bucyrus	Southern
Delaware	Star
Kent	Opera House
Ravenna	Ohio ⁷
Piqua	Miami or Piqua Bijou, if not re-opened by Schine defendants within three months from entry of judgment and kept in operation during the major part of each year.
Van Wert	Strand
Wooster	Opera House or Wayne or Wooster at buyer's option
Tiffin	Ritz or Tiffin unless the Schine defendants no longer have any interest in, or control over, any theatre in Fostoria.
Mt. Vernon	Vine
Norwalk	Moose

KENTUCKY

TOWN	THEATRE
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Corbin	Kentucky
Lexington	Kentucky or Strand and one other, not the Ada Meade
Maysville	Hollywood
Paris	Bourbon
	MARYLAND
Cambridge	Arcade or State
Easton	Avalon or New Easton ⁹
Cumberland	Liberty
Salisbury	In accordance with the Order of Judge Knight dated October 15, 1948.

B. As to such of the theatres required to be disposed of under this judgment as defendants have been unable to sell on reasonable terms, defendants, upon application to the Court in any such case and with the approval of the Court first obtained, may lease or sublease the same to a party not a defendant herein or owned or controlled by or related to or affiliated with a defendant herein; on condition, however, that no such lease or sublease shall contain any rental provisions based upon a share of the profits of the theatre covered by the lease or any other theatre; and further on condition that defendants shall thereafter sell their interest in any such theatre so leased or subleased as soon thereafter as they can do so upon reasonable terms and in any event prior to the expiration of such lease or sublease. Approval of the Court to lease such theatres shall not be obtained without a prior showing of due diligence on the part of the defendants to sell the theatres.

[*Further Acquisition of Financial or Operating Interest Enjoined*]

V.

A. The Schine defendants are hereby enjoined from acquiring any financial or operating interest in any additional theatres except after an affirmative showing that such acquisition will not unreasonably restrain competition. Such showing shall be made before this Court upon reasonable notice to the Attorney General at Washington, D. C.

B. Nothing herein contained shall be deemed to prevent the Schine defendants from acquiring interests in theatres (other than those required to be disposed of hereunder).

- a. As a substantially equivalent replacement for theatres held or acquired in conformity with this judgment which may be lost through physical destruction or conversion to non-theatrical purposes, or
- b. In renewing leases covering any theatres held or acquired in conformity with this judgment or in acquiring an additional interest in any such theatre under lease, or
- c. As a substantially equivalent replacement for any theatre held or acquired in conforming with this judgment which has been lost through inability to obtain a renewal of the lease thereof upon reasonable terms, if the defendants shall show to the Court and the Court shall find that such acquisition shall not unduly restrain competition.

C. The term "acquisition" or "acquiring", as used in this judgment, shall include, without limitation, construction, or completion of construction, of theatres.

[*For the Purpose of Compliance*]

VI

A. For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of antitrust matters, and on notice to any defendant, reasonable as to time and subject matter, made to such defendant at its principal office, and subject to any legally recognized privilege, (1) be permitted reasonable 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 of the matters contained in this decree, and that during the times that the plaintiff shall

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desire such access, counsel for such defendant may be present, and (2) subject to the reasonable convenience of such defendant, and without restraint or interference from it, be permitted to interview its officers or employees regarding any such matters, at which interview counsel for the officer or employee interviewed and counsel for such defendant company may be present. For the purpose of securing compliance with this judgment any defendant, upon written request of the Attorney General, or an Assistant Attorney General, shall submit such reports with respect to any of the matters contained in this decree as from time to time may be necessary for the purpose of enforcement of this decree.

B. Information obtained pursuant to the provisions of this section shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

[*Jurisdiction Retained*]

VII

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this consent decree to apply to the Court at any time for such orders or direction as may be necessary or appropriate for the construction, modification, or carrying out of the same, for the enforcement of compliance therewith, and for the punishment of violations thereof, or for other or further relief.

We hereby consent to the foregoing Judgment.

Footnotes

- 1 For towns where defendants shall have two or more theatres and there is first run competition, substitute "two thirds."
- 2 For the City of Rochester, N. Y., substitute "second run" for "first run."
- 3 As to towns where Schine has competitors who desire first run feature films and in which there is a theatre to be divested, this limitation shall take effect not later than July 1, 1952.
- 4 For towns where defendants shall have two or more theatres and there is first run competition, substitute "53."
- 2 For the City of Rochester, N. Y., substitute "second run" for "first run."
- 3 As to towns where Schine has competitors who desire first run feature films and in which there is a theatre to be divested, this limitation shall take effect not later than July 1, 1952.
- 5 The original order of the District Court directing the dissolution of the pool at Syracuse, New York, dated July 5, 1946, has been complied with in a manner approved by the District Court on August 18, 1947.
- 6 The following properties, which the Schine defendants have certified either have never been used for theatre purposes or have not been so used for a long period of time and are not equipped or adaptable for use as such, need not be subject to the requirement of disposition for use as motion picture theatres:

Carthage—Bank property, former State Theatre property

Newark, Crescent Theatre

Perry, Vacant Lot

Seneca Falls, Seneca Theatre.

Piqua, Bijou Theatre

Norwalk, Moose Theatre.



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Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Schine Chain Theatres, Inc., et al., U.S. District Court, W.D. New York, 1952-1953 Trade Cases ¶67,237, (Jan. 22, 1952)

United States v. Schine Chain Theatres, Inc., et al.

1952-1953 Trade Cases ¶67,237. U.S. District Court, W.D. New York. Civil Action No. 223. Filed January 22, 1952. Case No. 451 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decree—Modification of Prior Consent Decree—Time To Dispose of Theatres Extended—Terms and Conditions of Dispositions.—Upon the consent of the parties to an antitrust consent decree, an order is entered to extend the time in which a theatre circuit must dispose of motion picture theatres. In the disposition of the theatres, the theatre circuit is required to notify the public and real estate brokers that no reasonable offer will be refused; forbidden to change the playing policy of any theatre so as to reduce the revenues; forbidden to refuse any offer as unreasonable, if the offer, plus the profits of the particular theatre in question since a certain date would be considered a reasonable offer; forbidden to move up its playing policy of any of its theatres in certain towns, and forbidden to change its policies in such theatres where the change has the effect of adversely affecting the competition of an independent exhibitor; ordered to report in writing to the Department of Justice its progress in carrying out the product limitation provisions of the consent decree; permitted to lease a specified number of theatres in the event that it is not able to sell such theatres after first obtaining Court approval and on specified conditions; and permitted to sublet theatres which are held under a lease where it has used its best efforts to assign the lease and to secure a release from its obligation under such lease on specified conditions.

For the plaintiff: Philip Marcus, Washington, D. C., and George L. Grobe, United States Attorney, Buffalo, N. Y.

For the defendants: Howard M. Antevil, Gloversville, N. Y.

Modifying provisions of a consent decree entered in the U. S. District Court, Western District of New York, 1948-1949 Trade Cases ¶ 62,447. For prior opinions in the same case, see 1948-1949 Trade Cases ¶ 62,245, 1946-1947 Trade Cases ¶ 57,518, 57,478, and 1944-1945 Trade Cases ¶ 57,413, 57,310, 57,309.

Order

[Additional Time Needed to Dispose of Theatres]

KNIGHT, Chief Judge [*In full text*]: The defendants having represented to the plaintiff and now representing to the Court that they have not sold theatres which they were required to sell by June 24, 1951 under the judgment entered against them on June 24, 1949, as amended by subsequent order, and that they need more time to dispose of these theatres and the other theatres required to be disposed of under said judgment; it appearing that plaintiff has not made a full examination of all the circumstances with respect to alleged difficulties in disposing of said theatres, but it appearing to this Court that if the conditions hereinafter set forth are complied with, competition in Schine towns and the disposition of theatres required to be disposed of will be facilitated.

[Time To Dispose of Theatres Extended—Terms and Conditions]

It is therefore hereby ordered and the time for Schine to dispose of theatres as provided for under the judgment is extended until June 24, 1953 under the following terms and conditions:

1. Schine shall dispose of, for motion picture purposes, all of the theatres presently undisposed of (except in Van Wert) no later than June 24, 1953, and shall dispose of at least one-third of such theatres no later than June 24, 1952, and shall dispose of at least two-thirds of such theatres no later than December 24, 1952.
2. Promptly after the entry of this order, defendants shall notify the public and real estate brokers that no reasonable offer will be refused for the theatres.

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3. Schine shall not change the playing policy so as to reduce the revenues or otherwise reduce the revenue possibility of any theatre required to be disposed of.
4. Schine shall not refuse any offer as unreasonable, if the offer, plus the profits of the particular theatre in question since June 24, 1951 would be considered a reasonable offer.
5. In the following towns, Auburn, Corning, Geneva, Lockport, Oswego, Water-town, and Wooster, Schine shall not from the date of the judgment entered herein on June 24, 1949 and until June 24, 1953, or during the existence of a product limitation in any of the above towns provided for in pursuance of the judgment entered herein on June 24, 1949, whichever period shall be the longer, move up the playing policy of any of its theatres retained in said towns, and shall not change its policies in such theatres where the change has the effect of adversely affecting the competition of an independent exhibitor. In the event of a dispute as to whether a playing policy has been moved up or a change adversely affecting the competition of an independent exhibitor has taken place, the burden of proof shall be on the defendant to show the contrary.
6. The provisions of Section II.2 of the Judgment entered herein on June 24, 1949 shall continue to be applicable until December 1, 1953 to the towns where such provisions have already been made applicable.
7. Schine shall report in writing to the Department of Justice every six months from the date herein its progress in carrying out the product limitation provisions of the Judgment. The failure of plaintiff to take any action upon receiving such reports shall not be deemed to prejudice plaintiff as to any action or position it may thereafter take in this or any other action. Sections 11.2. a and b is hereby amended to add after "in any fiscal year" the phrase "and during any three months period within such year."
8. As to not exceeding one-half of the theatres presently required to be disposed of, in the event that Schine is unable to sell on reasonable terms its interest therein, Schine, upon application to the Court in any such case, and with the approval of the Court first obtained, may lease the same to a party not a defendant herein or owned or controlled by or affiliated with or related to a defendant herein; on condition, however, that no such lease shall contain any rental provision based upon a share of the profits of the theatre covered by the lease or any other theatre; and further on condition that Schine shall sell its interest in any such theatre so leased as soon thereafter as it can do so upon reasonable terms, and in any event prior to the expiration of such lease.
9. Any of the theatres which Schine is obligated to dispose of which is held under lease may be sublet by Schine in any case where Schine has used its best efforts to assign the lease and to secure a release by its landlord from its obligation under such lease in the event of an, assignment of the lease by Schine and the landlord has been unwilling to agree to such a release, on condition that:
 - (a) The subtenant is not a defendant in Equity Cause No. 223 or owned or controlled by or affiliated with or related to a defendant therein;
 - (b) The sublease shall provide for no greater rental than is provided for in the master lease;
 - (c) The sublease is for the entire remainder of the term, less one day, of the master lease;
 - (d) The sublease shall not permit Schine to participate in any way in the operation of the theatre subleased;
 - (e) The sublease may not be forfeited for nonpayment of rent unless the sub tenant is in arrears for more than a month's rent and has failed to reduce the amount of rental by which he is in arrears to a single month within 30 days after having been notified so to do by Schine;
 - (f) The sublease may not be forfeited for failure to keep the premises in repair unless the landlord of Schine has threatened to declare a forfeiture of the master lease on account of such failure and the sub tenant has not remedied the default in accordance with the requirements of the master lease after notification so to do by Schine;
 - (g) Schine shall not renew or exercise any options to renew the master lease;
 - (h) In the event of forfeiture of the sublease, Schine shall either assign the lease or again sublet the theatre within 60 days after such forfeiture;

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(i) The sublease shall provide that upon the subtenant securing a lease of the theatre property directly from the landlord of Schine and an agreement on the part of such landlord to cancel the master lease, or upon the purchase by the subtenant of the landlord's interest in the said property, the sublease and the master lease shall each automatically terminate and be of no further force or effect from the date of such automatic termination.

U.S. v. GENERAL RAILWAY SIGNAL COMPANY, ET AL.
Civil No. 5237
Year Judgment Ordered: 1955



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v General Railway Signal, Company, Westinghouse Air Brake Company, and Western Railroad Supply Company., U.S. District Court, W.D. New York, 1955 Trade Cases ¶67,992, (Mar. 15, 1955)

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United States v General Railway Signal, Company, Westinghouse Air Brake Company, and Western Railroad Supply Company.

1955 Trade Cases ¶67,992. U.S. District Court, W.D. New York. Civil Action No 5237. Filed March 15, 1955. Case No 1125 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Acquisition of Assets or Stock, Control of Business Policies, Interlocking Directors, and Organization of New Concern—Railroad-Highway Grade Crossing Protective Devices.—In a consent decree entered against three manufacturers of railroad-highway grade crossing protective devices, two of the manufacturers were prohibited from acquiring or holding any stock or other financial interest in the third manufacturer and from acquiring or holding the ownership, physical assets, or good will of the third manufacturer. Each of the manufacturers was enjoined from dominating, controlling, or exercising any power or authority with respect to the business, financial, or promotional policies' of any other defendant and from having officers, directors, or employees in common with any other defendant. The manufacturers also were prohibited from agreeing to organize any concern to engage in the manufacture, distribution, or sale of highway crossing gates or gate activating mechanisms.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Bidding Practices.

—Manufacturers of railroad-highway grade crossing protective devices were enjoined by a consent decree from entering into any understanding with any other person engaged in the manufacture of highway, crossing gates or gate activating mechanisms to refuse to submit a bid for the sale of such products, or to make a bid higher than or identical with the bid of any other person, or to submit collusively a bid.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Purchase and Sale

Restrictions.—Manufacturers of railroad-highway grade crossing protective devices were prohibited by a consent decree from entering into any understanding with any other defendant which obligates such other defendant (1) to refrain from purchasing or ordering highway crossing gates or gate activating mechanisms from a defendant or any other person, or (2) to refrain from selling or otherwise disposing of highway crossing gates or gate activating mechanisms to a defendant or any other person. The manufacturers also were enjoined from entering into any understanding with any other defendant or any other person engaged in the manufacture of highway crossing gates or gate activating mechanisms to (1) refrain from the manufacture, distribution, or sale or solicitation for sale of highway crossing gates or gate activating mechanisms, or (2) allocate or divide manufacturing or sales territories, customers, distribution channels or markets in the manufacture, distribution, or sale of highway crossing gates or gate activating mechanisms.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Licensing of Patents—Contingent Provision.—Three manufacturers of railroad-highway grade crossing protective devices were ordered by a consent decree to grant patent licenses to any applicant. A reasonable and nondiscriminatory royalty could be charged. However, the manufacturers were only required to grant licenses (1) if either of two of the manufacturers granted a license to the third manufacturer, or (2) if the third manufacturer granted a license to either or both of the other two manufacturers, under (a); patents owned or controlled by each manufacturer on the date of the entry of the decree and (b) patents which are issued to, acquired by, or applied for, by each of the manufacturers within five years from the date of the entry of the decree, except patents, which are based on inventions of a manufacturer's officers or employees made while affiliated with the manufacturer, which patents are not dominated by one or more patents owned or controlled by the manufacturer at the date of the decree.

For the plaintiff: Stanley; N Barnes, Assistant Attorney General, and Worth Rowley, Charles F. B. McAleer, W. D. Kilgore, Jr., W. Wallace Kirkpatrick; William F. Rogers, and John O. Henderson.

For the defendants: Cummings and Lockwood, by Walter B. Lockwood, for General Railway Signal Company. Raichle, Tucker and Moore, by Frank G. Raichle; and Brown, Fox, Blumberg and Markheim, by Jacob Logan Fox, for Western Railroad Supply Company. Kenefick, Bass, Letchworth, Baldy and Phillips, by Robert M Hitchcock; and Cravath Swaine and Moore, by Benjamin R. Shute, for Westinghouse Air Brake Company.

For a prior decision of the U. S. District Court, Western District of New York, see [1952-1953 Trade Cases ¶ 67,376](#).

Final Judgment

KNIGHT, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on April 9, 1952, and a stipulation herein on March 15, 1955; the defendants herein having appeared and filed their several answers to the original complaint denying any violations of law; and the plaintiff and defendants by their respective attorneys herein having severally consented to the entry of this Final Judgment and without trial or adjudication of any issue of fact or law herein and without admission in respect of any such issue,

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

[*Sherman Act*]

The Court has jurisdiction of the subject matter herein and of all the parties, hereto. The complaint states a cause of action against the defendants 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) "General" shall mean defendant General Railway Signal Company, a corporation organized and existing under the laws of the State of New York;

(B) "Westinghouse" shall mean defendant Westinghouse Air Brake Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania.

(C) "Western" shall mean defendant Western Railroad Supply Company, a corporation organized and existing under the laws of the State of Delaware;

(D) "Grade Crossing Device" shall mean any signal, gate or combination thereof, capable, when installed at a railroad-highway grade crossing and automatically controlled by other equipment responsive to the approach of a train to the crossing, of indicating to pedestrians or vehicular traffic over the crossing that a train is approaching;

(E) "Highway crossing gates" shall mean any grade crossing device having an arm operable between a lowered position in which it obstructs non-railroad traffic approaching the crossing, and a raised position in which the arm clears or does not obstruct such traffic;

(F) "Gate activating mechanism" shall mean the portion of a highway crossing gate that operates the arm, together With parts of such mechanism specifically designed and marketable as components thereof, including,

but not limited to, the gate operating mechanism covered by Part 194 of the specifications and requisites of the Signal Section of the Association of American Railroads, last officially approved in March, 1951;

(G) "Person" shall mean any individual, firm, partnership, corporation, association, trustee or any other business or legal entity;

(H) "Subsidiary" shall mean in respect of any defendant, a corporation a majority of whose outstanding voting stock is owned, or directly or indirectly controlled, by such defendant;

(I) "Patent" means Letters Patent of the United States of America, and all reissues and extensions thereof, relating to the manufacture, use or sale of highway crossing gates or gate activating mechanisms, or both (exclusive of "other equipment" referred to in (D) above).

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its subsidiaries, successors and assigns and to each of their officers, directors, agents and employees, and to all other persons acting under, through or for such defendant but shall not apply to (a) transactions or operations solely between such defendant and a subsidiary or subsidiaries thereof or (b) transactions or operations outside the United States which do not affect the foreign or domestic commerce of the United States. Each defendant is hereby ordered and directed to take such steps as are necessary to secure compliance by its officials, subsidiaries and such other persons, described above, with the terms of this Final Judgment.

IV

[*Acquisitions of Assets or Stock*]

(A) Defendant Westinghouse is enjoined and restrained, from acquiring or holding, directly, or indirectly, legal title to or any beneficial interest in any shares of capital stock of, or any bonds, debentures or other evidence of indebtedness (except those evidences issued to cover credit purchases in or incident to the ordinary course of business) issued by, defendant Western;

(B) Defendant General is enjoined and restrained from acquiring or holding, directly or indirectly, legal title to or any beneficial interest in any shares, of capital stock of, or any bonds, debentures, or other evidence of indebtedness (except those evidences issued to cover credit purchases in or incident to the ordinary course of business) issued by, defendant Western;

(C) Each of the defendants Westinghouse and General is enjoined and restrained from acquiring, directly or indirectly, by purchase, merger, consolidation or otherwise, and from holding or exercising after such acquisition, ownership or control of the business, physical assets (except goods or products bought in or incident to the ordinary course of business) or good will, or any; part thereof, of defendant Western.

V

[*Control of Business Policy— Interlocking Directors*]

(A) Each of the defendants is enjoined and restrained from dominating, controlling or exercising any power or authority with respect to, or attempting to dominate, control or exercise any power or authority with respect to, the business, financial or promotional policies, practices, operations, management, expansion or other business policy or act of any other defendant, provided, however, that nothing contained in this subsection (A) shall be construed to prohibit or restrain transactions between the defendants in the ordinary course of business;

(B) Each of the defendants is enjoined and restrained from causing, authorizing or knowingly permitting any of its officers, directors or employees to serve as an officer, director or employee of any other defendant, provided, however that this subsection (B) shall not prevent Western from utilizing the services of a sales agent who is also a sales agent of one but not both of the other defendants.

VI

[Agreements Terminated— Patent Licensing Permitted]

The following agreements, and any agreements or arrangements amendatory thereof or supplemental thereto, having been terminated:

(1) Agreement between Western and General, dated June 22, 1932,

(2) Agreement between Western and Union Switch & Signal Company (now Westinghouse), dated June 22, 1932; defendants are jointly and severally enjoined and restrained from entering into or adhering to, directly or indirectly or claiming any rights under, any contract, agreement or understanding, that has as its purpose or effect the continuing or renewing of any of the agreements, contracts or understandings above listed, provided, however, that nothing contained in this Section VI shall prevent a defendant from granting licenses under any of its patents to any other defendant.

VII

[Purchasing and Selling]

Each of the defendants is enjoined and restrained from combining or conspiring or, directly or indirectly, entering into, adhering to or claiming any rights under any contract, agreement or understanding with any other defendant which obligates or commits such other defendant (a) to refrain from purchasing; or ordering highway crossing gates or gate activating mechanisms from a defendant or any other person, or (b) to refrain from selling or otherwise disposing of highway crossing gates or gate activating mechanisms to a defendant of any other person, provided, however, that this Section VII shall not apply to highway crossing gates or gate activating mechanisms (1) of special design which another defendant has developed or prepared to manufacture for Western, or (2) covered by patents or patent rights owned or controlled by Western and not acquired from any other defendant.

VIII

[Bidding, Manufacturing, and distribution Practices]

(A) Defendants are jointly and severally enjoined and restrained from combining or conspiring, or from entering into or adhering to, directly or indirectly, any contract, agreement or understanding with any other defendant or any other person engaged in the manufacture of highway crossing gates or gate activating mechanisms in the United States of America, its territories or possessions to:

(1) Refuse to submit a bid for the sale of highway crossing gates or gate activating mechanisms, or to make a bid therefor higher than, or identical with the bid of any other person, or to submit collusively a bid therefor;

(2) Grant, allocate, designate or divide manufacturing or sales territories, customers, distribution channels or markets in the manufacture, distribution or sale of highway crossing gates or gate activating mechanisms;

(3) Refrain from the manufacture, distribution or sale or solicitation for sale of highway crossing gates or gate activating mechanisms; provided, however, that nothing contained in these subsections (1), (2) and (3).shall prohibit arrangements by defendant Western with any such other persons other than another defendant, whereby such other persons shall be the sole representatives of the defendant in a specified territory or territories for the sale of such of defendant's products as are not manufactured or otherwise sold by such other person, and provided further that subsections (1), (2) and (3) of this Section VIII shall not apply to contracts, agreements or understandings expressly excepted from the provisions of Section VII hereof.

(B) Each defendant is enjoined and restrained from entering into any contract, agreement or understanding with any other defendant to form or organize, or assist in the formation or organization of, directly or indirectly, any third person to engage in the manufacture, distribution or sale of highway crossing gates or gate activating mechanisms.

IX

[Licensing of Patents— Contingent Provision]

(A) The provisions of this Section IX shall be applicable to (a) Westinghouse if it Should grant a license to Western, (b) General if it should grant a license to Western and (c) Western if it should grant a license to Westinghouse and/or General, under (1) any, some or all patents owned or controlled by it on the date of entry of this Final Judgment; and (2) any, some or all patents which are issued to, acquired by or applied for by it within five (5) years from the date of entry of this Final Judgment, except patents which are based on inventions or discoveries of its officers or employees made while affiliated with or employed by it, which patents are not dominated by one or more patents owned or controlled by it at the date of this Final Judgment;

(B) Each defendant to which the provisions of this Section are applicable as aforesaid is ordered and directed, in respect of any of its patents as to which it has granted a license falling under the provisions of subsection (A) hereof, to grant a license to any applicant making written request therefor;

(C) Each of the defendants is enjoined and restrained from including any restriction or condition whatsoever in any license or sublicense granted by it pursuant to the provisions of subsection (B) of this Section IX except that

(1) The license may be non-transferable;

(2) A reasonable and nondiscriminatory royalty may be charged and collected;

(3) Reasonable provision may be made for periodic inspection of the books and records of the licensee by an independent auditor or any other person acceptable to the licensee who shall report to the licensor only the amount of the royalty due and payable;

(4) The license may require the licensee to affix the statutory patent notices to all devices manufactured thereunder;

(5) Reasonable provision may be made for the licensor to cancel the license upon bankruptcy or insolvency of the licensee, or upon failure of the licensee (a) to pay royalties, (b) to permit the inspection of his books and records, or (c) to affix the statutory patent notices;

(6) The license must provide that the licensee may cancel the license at any time after one (1) year from the initial date thereof by giving 30 days' written notice to the licensor, but any such cancellation shall not abrogate the obligation of the licensee to pay royalties accrued to the date of such cancellation;

(D) Upon receipt of a written request for a license under the provisions of this Section IX, the defendant to whom such request is addressed shall advise the applicant in writing within thirty (30) days of receipt of such request, of the royalty it deems reasonable for the patent or patents to which the application pertains. If the defendant and the applicant are unable to agree upon what constitutes a reasonable royalty, within sixty (60) days from the date such application for the license was received by the defendant, the defendant or the applicant may apply to this Court for a determination of a reasonable royalty, giving notice thereof to the defendant or applicant as may be appropriate and the Attorney General, and the defendant shall make such application forthwith upon request of the applicant. In any such proceeding the burden of proof shall be upon the defendant to whom application is made to establish a reasonable royalty. Pending the completion of any such court proceeding, the applicant shall have the right to make, use and vend under the patent or patents to which its application pertains, without the payment of royalty or other compensation, but subject to the following provisions: Such defendant or the applicant may, with notice to the Attorney General, apply to the Court to fix an interim royalty rate pending final determination of what constitutes a reasonable [reasonable] royalty. If the Court fixes such interim royalty rate, the defendant patent owner shall then issue and the applicant shall accept a license providing for the periodic payment of royalties at such interim rate from the date of the filing of such application to the Court. If the applicant fails to execute a license for the payment of royalties determined by the Court or fails to pay any interim or other royalty or to perform any other condition stipulated by the Court, in accordance therewith, such action shall be ground for the dismissal and denial of his application. Where an interim license or sublicense has been issued pursuant to this subsection or where the applicant has exercised any right under the patent, reasonable

royalty rates, if any, as finally determined by the Court, shall be retroactive for the applicant and for all other licensees under this judgments at the option of such licensees: to the date of the application to the Court to fix such reasonable royalty rate;

(E) Nothing herein contained shall prevent any applicant or licensee from attacking in any manner the validity or scope of any of the aforesaid patents nor shall this Final Judgment be construed as importing any validity or value to any of the said patents;

(F) Each of the defendants is enjoined and restrained from making any sale or other disposition of any of the patents covered by subsection (A) of this Section which deprives the defendant of the power or authority to license such patents unless it sells, transfers or assigns such patents upon the condition that the purchaser, transferee or assignee shall observe the requirements of this Section IX regarding the patents so acquired and the purchaser, transferee or assignee who is not otherwise bound by this Final Judgment shall file with this Court, prior to the consummation of said transaction, an undertaking to be bound by the provisions of this Section IX with respect to the patents so acquired.

X

[Inspection and Compliance]

For the purpose of securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Anti-trust Division, and on reasonable notice to any defendant made to its principal office, shall be permitted, subject to any legally recognized privilege,

(a) access, during the office hours of the defendant 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 matters contained in this Final Judgment; and

(b) subject to the reasonable convenience of the 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.

For the purpose of securing compliance with this Final Judgment, any defendant, upon the written request of, the Attorney General or the Assistant Attorney General in charge of the Anti-trust Division, made to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment.

No information obtained by the means provided in this Section X 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.

XI

[Jurisdiction Retained]

Jurisdiction 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 or for the modification, amendment or cancellation of any of the provisions thereof, the enforcement of compliance therewith and the punishment of violations thereof.

U.S. v. THE RUDOLPH WURLITZER COMPANY
Civil No. 7337
Year Judgment Entered: 1958



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Rudolph Wurlitzer Company., U.S. District Court, W.D. New York, 1958 Trade Cases ¶69,011, (Apr. 15, 1958)

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United States v. The Rudolph Wurlitzer Company.

1958 Trade Cases ¶69,011. U.S. District Court, W.D. New York. Civil Action No. 7337. Filed April 15, 1958. Case No. 1321 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decrees—Practices Prohibited—Allocation of Markets and Customers—Refusal to Sell—Coin-Operated Phonographs.—A manufacturer of coin-operated phonographs was prohibited by a consent decree from (1) limiting or restricting the persons to whom or the territory within which any distributor or operator may choose to sell such phonographs, (2) requiring any distributor to advise it of the name and address of any purchaser or the serial numbers of such phonographs, or (3) limiting or restricting the right of any purchaser from any distributor to resell such phonographs after they have been paid for in full. Also, the manufacturer was prohibited from refusing to enter into or canceling any contract with a distributor because of such distributor's refusal to do any of the above acts and from maintaining any index, catalog, or record of the names or addresses of any purchasers from distributors or the serial numbers of such phonographs. Subject to the prohibitions of the decree, the manufacturer was permitted to exercise the right to select its customers.

Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions—Right to Choose Customers.—A consent decree entered against a manufacturer of coin-operated phonographs provided that, subject to the prohibitions of the decree, the manufacturer may exercise its right to choose and select its distributors and customers, to designate geographical areas within which a distributor may agree to devote his best efforts to the sale of coin-operated phonographs, and to terminate the contract of any distributor who does not adequately represent the manufacturer and promote the sale of all coin-operated phonographs manufactured by the manufacturer in the area so designated.

For the plaintiff: Victor R. Hansen, Assistant Attorney General, and William D. Kilgore, Jr., Earl A. Jinkinson, Harold E. Baily, and James E. Mann, Attorneys, Department of Justice.

For the defendants: Kenefick, Letchworth, Baldy, Phillips & Emblidge; Mayer, Friedlich, Spiess, Tierney, Brown & Platt; Robert M. Hitchcock; and Miles G. Seeley.

Final Judgment

JUSTIN C. MORGAN, District Judge [*In full text:*] The plaintiff, United States of America, having filed its complaint herein on February 28, 1957, the defendant, The Wurlitzer Company (formerly known and sued herein as "The Rudolph Wurlitzer Company" and hereinafter called "Wurlitzer") having filed its answer denying the substantive allegations thereof and the United States of America and Wurlitzer, 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 an admission by any party signatory hereto 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 herein, and upon consent of the parties signatory hereto, it is hereby ordered, adjudged and decreed as follows:

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter of this action and of the parties signatory hereto. The complaint states claims for relief against Wurlitzer under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce from unlawful restraints and monopolies", commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

- (A) "Person" shall mean an individual, partnership, firm, corporation, or any other legal entity;
- (B) "Distributor" shall mean any person engaged in the purchase from Wurlitzer, for resale, of coin-operated phonographs manufactured by it;
- (C) "Operator" shall mean any person who owns coin-operated phonographs and leases said machines to location owners;
- (D) "Location owner" shall mean any person owning or operating a restaurant, tavern or other place of business in the Continental United States where coin-operated phonographs are placed for use by the public;
- (E) "Coin-operated phonographs" shall mean new and used coin-operated phonographs manufactured originally by Wurlitzer.

III

[*Applicability of Decree*]

The provisions of this Final Judgment shall apply to Wurlitzer and to its successors, assigns, officers, directors, servants, employees and agents, and to any corporate subsidiaries of Wurlitzer, and to all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

This Final Judgment is not to be construed as relating to commerce outside the United States.

IV

[*Practices Prohibited*]

Wurlitzer is enjoined and restrained from directly or indirectly:

- (A) (1) Limiting or restricting, the persons to whom or the territory within which any distributor or operator may sell coin-operated phonographs;
- (2) Requiring any distributor to advise Wurlitzer of the name or address of any purchaser from such distributor of any coin-operated phonographs or the serial number or numbers of such phonographs, except (a) where such name, address and serial number or numbers are necessary to fill an order for repair or maintenance parts, or for service, or for possible attendance at service schools, for maintenance or replacement of parts or components, or to resolve a complaint or inquiry involving loss or theft or the fulfillment or breach of a conditional sales agreement or other credit or collateral agreement and (b) except where such names and addresses are obtained by Wurlitzer for the purpose of evaluating the performance of any distributor or evaluating its sales coverage in any area, provided, however, that names and addresses so obtained from any distributor shall be limited to those of purchasers located in a geographical area designated for such distributor in conformity with Section IV (E) of this Final Judgment and provided, further, that names and addresses of purchasers so obtained shall not be divulged by Wurlitzer to any other distributor or other person;
- (3) Limiting or restricting the right of any purchaser from any distributor of coin-operated phonographs to resell such phonograph or phonographs after they have been paid for in full.

(B) Entering into, adhering to or enforcing any contract, agreement, or understanding with any distributor, directly or indirectly:

(1) Limiting or restricting the persons to whom or the territory within which any distributor or operator may sell a coin-operated phonograph or phonographs;

(2) Limiting or restricting the right of any purchaser from any distributor of coin-operated phonographs to resell such phonograph or phonographs after they have been paid for in full.

(C) Refusing to enter into or canceling any contract with a distributor for the distribution of coin-operated phonographs because of such distributor's refusal to do any of the following acts:

(1) Limit or restrict, directly or indirectly, the persons to whom or the territory within which he sells coin-operated phonographs;

(2) Advise Wurlitzer of the name or address of any purchaser from such distributor of any coin-operated phonographs or the serial number or numbers of such phonographs, except (a) where such name, address and serial number or numbers are necessary to fill an order for repair or maintenance parts, or for service or for possible attendance at service schools, for maintenance or replacement of parts or components, or to resolve a complaint or inquiry involving loss or theft, or the fulfillment or breach of a conditional sales agreement or other credit or collateral agreement held by Wurlitzer and except (b) where such names and addresses are obtained by Wurlitzer for the purpose of evaluating the performance of any distributor or evaluating its sales coverage in any area, provided, however, that names and addresses so obtained from any distributor shall be limited to those of purchasers located in a geographical area designated for such distributor in conformity with Section IV (E) of this Final Judgment and provided, further, that names and addresses of purchasers so obtained shall not be divulged by Wurlitzer to any other distributor or other person;

(3) Limit or restrict, directly or indirectly, the right of any purchaser of coin-operated phonographs to resell such phonographs after Wurlitzer shall have been paid in full therefor.

(D) (1) Maintaining any index, catalog or record of the names or addresses of any purchasers from distributors of coin-operated phonographs or the serial numbers of such phonographs; provided, however, that any distributor may advise Wurlitzer and Wurlitzer may keep an alphabetical record of the names or addresses of any such purchasers of such phonographs and the serial numbers thereof in connection with an order for repair or maintenance parts, or for services, or in connection with a complaint or inquiry involving loss or theft or fulfillment or breach of a conditional sales agreement or other credit or collateral agreement involving such phonographs, and provided, further, that Wurlitzer may keep a record of the names and addresses of such purchasers for the purpose of evaluating the performance of any distributor or evaluating its sales coverage in any area;

(2) Using any Wurlitzer file or record for any purpose contrary to any of the provisions of this Final Judgment.

(E) Subject to the above subsections of this section IV, Wurlitzer may exercise its right from time to time to choose and select its distributors and customers and to designate geographical areas within which a distributor may agree to devote his best efforts to the sale of coin-operated phonographs and may terminate the contract of any distributor who may fail to devote his best efforts to the sale in the area so designated of coin-operated phonographs manufactured by Wurlitzer or to represent Wurlitzer adequately in said area, and the designation of geographical areas for such specified purposes only shall not be considered a violation of this section IV.

V

[*Notice of Judgment*]

Wurlitzer is directed, within sixty (60) days after the entry of this Final Judgment, to serve a copy thereof by registered mail upon each of its distributors located within the Continental limits of the United States.

VI

[*Inspection and Compliance*]

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For the purpose of securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Wurlitzer, made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during regular office hours, to those parts of the books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Wurlitzer which relate to any matters contained in this Final Judgment;

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

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

No information obtained by the means permitted 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 Department of Justice except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VII

[*Jurisdiction Retained*]

Jurisdiction is retained by this 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 and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

VIII

[*Effective Date*]

This Final Judgment shall become effective ninety (90) days after entry herein.

U.S. v. SCOTT AVIATION CORPORATION
Civil No. 84-32
Year Judgment Entered: 1961 (Modified, 1981)



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Scott Aviation Corp., U.S. District Court, W.D. New York, 1961 Trade Cases ¶70,148, (Nov. 8, 1961)

[Click to open document in a browser](#)

United States v. Scott Aviation Corp.

1961 Trade Cases ¶70,148. U.S. District Court, W.D. New York. Civil Action No. 84-32. Filed November 8, 1961. Case No. 1476 in the Antitrust Division of the Department of Justice.

Sherman Act

Restrictions on Distributors' Markets and Customers—Consent Judgment.—A manufacturer of artificial breathing devices was prohibited by a consent judgment from restricting the customers to whom, or the territories in which, its distributors could sell. Similarly, agreements with its distributors allocating or restricting customers, territories, or markets were prohibited.

Resale Price Fixing—Permissive Provisions—Fair Trade.—A manufacturer of artificial breathing devices was prohibited by a consent judgment from restricting the price at which its distributors could sell. Similarly, the manufacturer was prohibited from agreeing with its distributors to fix the resale prices. However, the manufacturer was permitted to fair trade the items, but only if its distributors were notified of the fair trade states and of any abrogation or impairment of its right to fair trade.

Import and Export Restrictions—Consent Judgment.—A manufacturer of artificial breathing devices was prohibited by a consent judgment from entering into any agreement with its distributors restricting imports or exports.

For the plaintiff: Lee Loevinger, Assistant Attorney General, W. D. Kilgore, Jr., Lewis Bernstein, Joseph F. Tubridy, Charles F. B. McAleer, and John J. Galgay, Attorneys, Department of Justice.

For the defendant: Dudley, Stowe & Sawyer, by Roy P. Ohlin.

Final Judgment

HENDERSON, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on September 14, 1959, the defendant having filed its answer denying the substantive allegations thereof, and the parties hereto 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 an admission by any party hereto 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 herein, and upon the 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 parties hereto. The complaint states claims for relief against the defendant under Section 1 of the Act of Congress of July 2, 1890 as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Act.

II

[Definitions]

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As used in this Final Judgment:

- (A) “Defendant” shall mean the defendant, Scott Aviation Corporation, a corporation organized and existing under the laws of the State of New York;
- (B) “Person” shall mean an individual, partnership, firm, corporation, association or other business or legal entity;
- (C) “Distributor” shall mean any person who purchases artificial breathing devices from defendant for resale to dealers or users thereof;
- (D) “Dealer” shall mean any person who purchases artificial breathing devices from distributors for resale to users;
- (E) “User” shall mean any person who purchases artificial breathing devices for the use thereof and not for resale;
- (F) “Artificial breathing devices” are apparatus manufactured by defendant, its subsidiaries, successors or assigns and which are used to sustain life or provide comfort when the surrounding atmosphere is insufficient or toxic by supplying either pure oxygen or compressed air directly to the person using the apparatus.

III

[*Application*]

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

IV

[*Distribution Agreements*]

The defendant is enjoined and restrained from entering into, adhering to, maintaining, enforcing or claiming any rights under, any combination, contract, agreement, understanding, plan or program with any distributor, dealer or other person to:

- (A) Limit, allocate, assign or restrict customers, territories or markets for the sale of artificial breathing devices;
- (B) Fix, establish, maintain or adhere to prices, discounts, or other terms or conditions for the sale of artificial breathing devices to any third person;
- (C) Limit or restrict the resale of artificial breathing devices after sale thereof;
- (D) Limit, restrict or prevent the exportation from or the importation into the United States, its territories and possessions, of artificial breathing devices.

V

[*Individual Prohibitions*]

The defendant is enjoined and restrained from:

- (A) Imposing or attempting to impose any limitation or restriction upon the persons to whom, the territories in which, or the prices at which, its dealers or distributors may sell artificial breathing devices;
- (B) Imposing or attempting to impose any restriction on the resale of artificial breathing devices after sale thereof.

VI

[*Fair Trade*]

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Nothing contained in this Final Judgment shall prevent the defendant from availing itself of such rights, if any, as it may have pursuant to the Miller-Tydings Act as amended by the Maguire Act; provided, however, that before the defendant may fair trade artificial breathing devices in any state or territory it shall first identify each such state or territory in writing to each of its dealers and distributors. In the event that the defendant's right to fair trade artificial breathing devices in any state or territory should be abrogated or impaired, defendant is ordered and directed to notify forthwith each of its dealers and distributors of that fact, together with all information pertinent thereto as will adequately advise each dealer and distributor of the extent of such abrogation or impairment.

VII

[Compliance]

Defendant is ordered and directed:

(A) Within ninety (90) days after the date of entry of this Final Judgment to take all necessary action to effect the cancellation of each provision of every contract or agreement between and among the defendant and its dealers and distributors which is contrary to or inconsistent with any provision of this Final Judgment;

(B) Subject to the provisions of Section VI of this Final Judgment to advise each of its dealers and distributors, within ninety (90) days after the date of entry of this Final Judgment that he may sell defendant's artificial breathing devices at such prices as, and to whomever and wherever, he pleases;

(C) Within ninety (90) days after the date of entry of this Final Judgment to mail a copy of said judgment to each of its dealers and distributors;

(D) To file with this Court, and serve upon the plaintiff, within One hundred and five (105) days after the date of the entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subsections (A), (B) and (C) of this Section VII.

VIII

For the purpose of securing or determining compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted, subject to any legally recognized privilege:

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

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

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

No information obtained by the means permitted 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 plaintiff except in the course of legal proceedings in 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 is retained by this 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 and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions thereof for the enforcement of compliance therewith, and for the punishment of violations thereof.



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Scott Aviation Division, A-T-O Inc. (Successor to Scott Aviation Corp.), U.S. District Court, W.D. New York, 1982-83 Trade Cases ¶64,998, (Jul. 23, 1981)

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United States v. Scott Aviation Division, A-T-O Inc. (Successor to Scott Aviation Corp.).

1982-83 Trade Cases ¶64,998. U.S. District Court, W.D. New York, Civil No. 8432 E, Dated July 23, 1981.

Case No. 1476, Antitrust Division, Department of Justice.

Sherman Act

Department of Justice Enforcement: Modification of Consent Decree: Removal of Bans on Customer and Territorial Restrictions: Retention of Resale Price Fixing Prohibition.— A 1961 consent decree against a manufacturer of artificial breathing devices was modified to remove prohibitions against (1) customer, territorial, or other resale restrictions upon its distributors and (2) agreements with its dealers to limit exports or imports of such devices. Bans against restricting the resale prices of its dealers and agreeing with distributors to fix resale prices were retained. A provision permitting the manufacturer to fair trade the items was deleted.

Modifying and replacing 1961 Trade Cases ¶70,148.

For plaintiff: C. Donald O'Connor, U. S. Atty., Buffalo, N. Y., Sanford Litvack, Asst. Atty. Gen., Antitrust Div., Dept. of Justice, Washington, D. C. **For defendant:** David K. Floyd, of Phillip, Lytle, Hitchcock, Blaine & Huber, Buffalo, N. Y.

Modified Final Judgment

ELFUIN, D. J.: Defendant having made application for the modification for the Final Judgment entered herein on November 8, 1961, the parties having consented to the entry of this Modified Final Judgment; and the Court having considered the matter and being duly advised, it is hereby

Ordered that the title to this action shall be amended as in the caption of this Modified Final Judgment; and it is hereby further

Ordered that the decretal paragraphs of the original Final Judgment herein of November 8, 1961, be and hereby are modified to read in full as follows:

Ordered, Adjudged and Decreed as follows:

I

[Continued Jurisdiction]

This Court has continued jurisdiction of the subject matter of this action and of the parties hereto. The original complaint stated claims for relief against the defendant under Section 1 of the Act of Congress of July 2, 1890 as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Act.

II

[Definitions]

As used in this Modified Final Judgment:

(A) "Defendant" shall mean the Scott Aviation Division of A-T-O Inc., an Ohio corporation, successor to Scott Aviation Corporation;

(B) "Person" shall mean an individual, partnership, firm, corporation, association or other business or legal entity;

(C) "Distributor" shall mean any person who purchases artificial breathing devices from defendant for resale to users thereof;

(D) "Dealer" shall mean any person who purchases artificial breathing devices from distributors for resale to users;

(E) "User" shall mean any person who purchases artificial breathing devices for the use thereof and not for resale;

(F) "Artificial breathing devices" are apparatus manufactured by defendant, its subsidiaries, successors or assigns, used to sustain life or provide comfort when the surrounding atmosphere is insufficient or toxic by supplying either pure oxygen or compressed air directly to the person using the apparatus.

III

[Applicability]

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

IV

[Distribution Agreements]

The defendant is enjoined and restrained from entering into, adhering to, maintaining, enforcing or claiming any rights under, any combination, contract, agreement, understanding, plan or program with any distributor, dealer or other person to fix, establish, maintain or adhere to prices or discounts for the sale of artificial breathing devices to any third person.

V

[Resale Prices]

The defendant is enjoined and restrained from imposing or attempting to impose any limitation or restriction on the prices at which its dealers or distributors may sell artificial breathing devices.

VI

[Compliance]

The defendant is ordered and directed within ninety (90) days after the date of entry of this Modified Final Judgment to mail a copy of said judgment to each of its distributors; and to file with this Court, and serve upon the plaintiff, within one hundred and five (105) days after the day of the entry of this Modified Final Judgment, an affidavit of such mailing.

VII

[Inspections]

For the purpose of securing or determining compliance with this Modified Final Judgment, any duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant

Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during the office hours of the defendant, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant which relate to any matters contained in this Modified Final Judgment; and

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

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

No information or documents obtained by the means provided 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 in which the United States is a party for the purpose of securing compliance with this Modified Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 25(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

VIII

[Retention of Jurisdiction]

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

U.S. v. THE GENERAL FIREPROOFING COMPANY, ET AL.
Civil No. 8994
Year Judgment Entered: 1962



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The General Fireproofing Company; The Globe-Wernicke Co.; The Shaw-Walker Company; Yawman and Erbe Manufacturing Company, Inc.; Art Metal, Incorporated; Steelcase, Inc.; Sperry Rand Corporation; and All-Steel Equipment, Inc., U.S. District Court, W.D. New York, 1962 Trade Cases ¶70,489, (Nov. 9, 1962)

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United States v. The General Fireproofing Company; The Globe-Wernicke Co.; The Shaw-Walker Company; Yawman and Erbe Manufacturing Company, Inc.; Art Metal, Incorporated; Steelcase, Inc.; Sperry Rand Corporation; and All-Steel Equipment, Inc.

1962 Trade Cases ¶70,489. U.S. District Court, W.D. New York. Civil Action No. 8994. Entered November 9, 1962. Case No. 1577 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Metal Office Furniture—Consent Judgment.—Manufacturers were prohibited by a consent judgment from entering into any agreement to fix prices, differentials discounts, or extras for the sale of metal office furniture.

Price Fixing—New Price Schedules—Zone Pricing—Consent Judgment.—Manufacturers were individually required by a consent judgment to independently review and establish new list prices and conditions for the sale of metal office furniture, abandon a three zone system and zone price differentials for a period of not less than five years, and withdraw current price lists.

Allocation of Markets-Sales—Consent Judgment.—Manufacturers were prohibited by a consent judgment from entering into any agreement to divide, allocate, or apportion customers, territories, or markets for the sale of metal office furniture.

Resale Price Fixing—Manufacturer-Distributor Agreement—Consent Judgment.—Manufacturers were individually prohibited by a consent judgment from entering into any agreement with any dealer or distributor fixing the price at which metal office furniture is sold, except as authorized under fair trade laws.

Trade Association Participation—Consent Judgment.—Manufacturers were prohibited by a consent judgment from participating in activities of trade associations, industry groups, or other organizations, with knowledge that such activity would violate any provision of the judgment, if-such organizations were consenting defendants to the judgment.

For the plaintiff: Lee Loevinger, Assistant Attorney General, W. D. Kilgore, Jr., Lewis Bernstein, Charles R. Esherick, Gerald E. Kandler, and Charles F. B. McAleer, Attorneys, Department of Justice.

For the defendants: Donovan, Leisure, Newton & Irvine, by J. R. Withrow, Jr., William F. Rogers, and James Clabault, of counsel, for The Shaw-Walker Company; Bergson & Borklaud, by Herbert A. Bergson and Daniel H. Margolis, for Sperry Rand Corporation; Hellings, Ulsh, Morey & Stewart, by William P. Stewart, for Art Metal, Incorporated; Howrey, Simon, Baker & Murchison, by William Simon and John S. Voorhees, for The General Fireproofing Company; Eastman, Stichter & Smith, by Wayne E. Stichter, for the Globe-Wernicke Co.; Raichle, Moore, Banning & Weiss, by James C. Moore, Jr., and Frank G. Raichle, for Yawman and Erbe Manufacturing Company; McDermott, Will & Emery, by Theodore roenke, for Ail-Steel Equipment, Inc.; Warner, Norcross, & Judd, by Leonard D. Verdier, Jr., for Steelcase, Inc.

Final Judgment

HENDERSON, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on December 28, 1960 and the defendants, by their respective 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, this Final Judgment constituting evidence or an admission by any party with respect to any such issue, and the Court having considered the matter and being duly advised.

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 all parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows :

I

[Sherman Act]

This Court has jurisdiction of the subject matter hereof and the parties hereto. The complaint states a claim against the defendants under Section 1 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) "Metal office furniture" shall mean metal desks, metal filing cabinets (except fire resisting filing cabinets) and metal tables, and each of them;

(B) "Person" shall mean any individual, partnership, firm, corporation, association or other business or legal entity.

III

[Applicability]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, and to each of its successors, assignees, officers, directors, agents, employees and subsidiaries, and to those persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise, but shall not apply to transactions solely between such defendant and its said officers, directors, agents, employees, parent company and subsidiaries, or any of them.

IV

[Price Fixing—Allocation of Markets]

Defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding, plan or program among themselves or with any person engaged in the manufacture of metal office furniture to:

(A) Fix, establish or maintain prices, differentials, discounts, extras or any other term or element of prices, differentials, discounts or extras for the sale of metal office furniture to any third person;

(B) Divide, allocate or apportion customers, territories or markets for the sale of metal office furniture;

(C) Exchange any information concerning prices or other terms or conditions for the sale of metal office furniture except in connection with bona fide purchase or sales transactions.

V

[Resale Price Fixing]

(A) Each defendant is enjoined and restrained from entering into, adhering to, maintaining or claiming any rights under any contract, agreement or understanding with any dealer or distributor to fix, establish, maintain or adhere to any prices, discounts, terms or other elements of price for the sale of metal office furniture to any third person.

(B) Nothing in this Final Judgment shall prohibit any defendant, acting independently, from exercising such lawful rights as it may have under the Miller-Tydings Act, as amended, the McGuire Act, or any other similar legislation, with respect to any metal office furniture manufactured, distributed or sold by it.

VI

[*New Price Schedules—Zone Pricing*]

(A) Each defendant is ordered and directed individually and independently, within six (6) months of the date of entry of this Final Judgment, to:

(1) Review, determine and establish its domestic list prices and other terms and conditions of sale for metal office furniture on the basis of its individual costs, profits, and other lawful considerations, and as a part of such independent review to consider the competitive advantages and disadvantages of the geographic location of its factories, the availability and cost of transportation from such point or points and its freight and other shipping cost experience;

(2) Abandon, with respect to the sale of metal office furniture, for a period of not less than five (5) years from the date of entry of this Final Judgment the three (3) zone system and the zone price differentials employed by it on December 28, 1960; and

(3) Withdraw its then current domestic price lists for metal office furniture and to adopt and publish the list prices arrived at pursuant to subparagraphs (1) and (2) of this Subsection (A).

(B) In the event any defendant changes its list prices published pursuant to subsection (A) of this Section VI within the period of six (6) months following the effective date of their adoption, said defendant shall, upon motion duly filed by plaintiff, have the burden of going forward with the evidence to show that such changes were made unilaterally and in good faith and were not made to match systematically the pricing system of another defendant. For a period of four (4) years following the adoption of the list prices established pursuant to subsection (A) of this Section VI, any defendant who has changed any such prices during the above-noted six-month period shall retain its records relied upon in making such change.

(C) In addition to the period of time prescribed in subsection (A) hereof, any defendant may, at its option, take an additional period of time not to exceed two (2) months to publish its new domestic list prices and other terms and conditions of sale for metal office furniture. In the event that any defendant shall elect to exercise said option, the time period in subsection (B), as to such defendant, shall be extended for a time equal to such additional period; provided, however, that if no defendant publishes its price list pursuant to subsection (A) within a period of two (2) months from the effective date of this Final Judgment then there shall be no extension of the time period prescribed in subsection (B).

VII

[*Distribution of Order*]

Each defendant is ordered and directed, on or before the withdrawal of its current domestic price lists as provided for in Section VI, to serve by mail upon each of its branch offices and its metal office furniture distributors and dealers, current as of the date of the entry of this Final judgment, a conformed copy of this Final Judgment, and, to file an affidavit with the Clerk of this Court that it has done so, with a copy to the Department of Justice.

VIII

[Trade Associations]

Each defendant is enjoined and restrained from participating in any formal or informal activity of any trade association, industry group or other organization, with knowledge that any such activity or purpose of such trade association, industry group or Other organization would violate any provision of this Final Judgment, if such trade association, industry group, or other organization were a consenting defendant to this Final Judgment.

IX

[Inspection and Compliance]

For the purpose of securing compliance with this Final Judgment, and for no other purposes, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted subject to any legally recognized privilege:

(A) Access, during the office hours of said defendant, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant regarding any subject matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of said 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.

Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, said defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment. No information obtained by the means provided for in this Section shall be divulged by any representative of the Department of Justice to any person except 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 for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

X

[Jurisdiction Retained]

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

U.S. v. SPERRY RAND CORPORATION, ET AL.
(Diebold, Inc.)
Civil No. 8995
Year Judgment Entered: 1962



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Sperry Rand Corporation; The General Fireproofing Company; Steelcase, Inc.; Diebold, Incorporated; and Art Metal, Incorporated., U.S. District Court, W.D. New York, 1962 Trade Cases ¶70,490, (Nov. 9, 1962)

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United States v. Sperry Rand Corporation; The General Fireproofing Company; Steelcase, Inc.; Diebold, Incorporated; and Art Metal, Incorporated.

1962 Trade Cases ¶70,490. U.S. District Court, W.D. New York. Civil No. 8995. Entered November 9, 1962. Case No. 1578 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Fire Resisting Filing Cabinets—Consent Judgment.—A manufacturer was prohibited by a consent judgment from entering into any agreement with any other manufacturer or wholesaler-distributors (selling products under their trade names) to fix the prices, differentials, discounts, or extras for the sale of fire resisting filing cabinets.

Resale Price Fixing—Fair Trade Prohibition—Consent Judgment.—A manufacturer was prohibited by a consent judgment from fixing or establishing, through agreements with any person, resale prices for fire resisting filing cabinets, and from fair trading its products under federal and state laws for a period of 18 months.

Trade Association Participation—Consent Judgment.—A manufacturer was prohibited by a consent judgment from participating in activities of trade associations, industry groups, or other organizations, with knowledge that such activity would violate any provision of the judgment, if such organizations were consenting defendants to the judgment.

For the plaintiff: Lee Loevinger, Assistant Attorney General, W. D. Kilgore, Jr., Lewis Bernstein, Charles R. Esherick, Charles F. B. McAleer, and Gerald E. Kandler, Attorneys, Department of Justice.

For the defendant: Arnold, Portas & Porter, by William F. McGovern, for Diebold, Incorporated.

Final Judgment

HENDERSON, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on December 28, 1960, and the consenting defendant, Diebold, Incorporated, having heretofore on October 27, 1960, canceled, effective December 1, 1960, its agreement of November 19, 1954, to purchase fire resisting filing cabinets from Sperry Rand Corporation formerly known as Remington Rand, Inc., and canceled, effective December 1, 1960, all Fair Trade Agreements with its dealers relating to fire resisting filing cabinets, both parties by their respective attorneys, having each 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 an admission by either party with respect to any such issue, and the Court having considered the matter and being duly advised,

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 both 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 complaint states a claim against the defendant under Section 1 of the Act of Congress of July 2, 1890, entitled "An act to protect trade

and commerce against unlawful restraints and monopolies” (15 U. S. C. § 1, 26 Stat. 209), commonly known as the Sherman Act, as amended.

II

[Definitions]

As used in this Final Judgment:

(A) “Fire resisting filing cabinet” shall mean a storage cabinet consisting of an outside metallic shell lined with a fire-resistant material and provided with an interior compartment or compartments used for receiving a storage drawer or drawers, and any metal accessories customarily sold on an optional basis in conjunction therewith;

(B) “Wholesale-distributor” shall mean any person which distributes, under its own trade name, fire resisting filing cabinets manufactured by some other person;

(C) “Person” shall mean any individual, partnership, corporation, association, firm or other business or legal entity.

III

[Applicability]

The provisions of this Final Judgment shall apply to defendant Diebold, and to each of its successors, assignees, officers, directors, agents, employees and subsidiaries, and to those persons in active concert or participation with such defendant who receives actual notice of this Final Judgment by personal service or otherwise, but shall not apply to transactions solely between such defendant and its said officers, directors, agents, employees, parent company and subsidiaries or any of them.

IV

[Price Fixing]

Defendant Diebold is enjoined and restrained from entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding, plan or program with any other manufacturer or wholesaler-distributor of fire resisting filing cabinets to fix, establish or maintain prices, differentials, discounts, extras or any other term or element of prices, differentials, discounts or extras for the sale of fire resisting filing cabinets to any third person.

V

[Resale Price Fixing]

(A) Defendant Diebold is enjoined and restrained from entering into, adhering to, maintaining or claiming any rights under any contract, agreement or understanding with any person to fix, establish, maintain or adhere to any prices, discounts, terms or other elements of price for the sale of fire resisting filing cabinets to any third person; and

(B) Nothing in this Final Judgment shall prohibit defendant Diebold, acting independently, from exercising such lawful rights as it may have under the Miller-Tydings Act, as amended, the McGuire Act, or any other similar legislation, with respect to any fire resisting filing cabinet manufactured, distributed or sold by it, after a period of eighteen (18) months from the date of entry of this Final Judgment.

VI

[Trade Association Participation]

Defendant Diebold is enjoined and restrained from participating in any formal or informal activity of any trade association, industry group or other organization, with knowledge that any such activity or purpose of such trade association, industry group or other organization would violate any provision of this Final Judgment, if such trade association, industry group, or other organization, were consenting defendant to this Final Judgment.

VII

[*Inspection and Compliance*]

For the purposes of securing compliance with this Final Judgment, and for no other purposes, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant Diebold made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during the office hours of said defendant, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant regarding any subject matter contained in this Final Judgment; and

(B) Subject to the reasonable convenience of said 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.

Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, said defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment. No information obtained by the means provided 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 the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII

[*Jurisdiction Retained*]

Jurisdiction 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 or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.

U.S. v. SPERRY RAND CORPORATION, ET AL.
(Sperry Rand Corporation, The General Fireproofing Company, Steelcase, Inc., and Art Metal, Inc.)
Civil No. 8995
Year Judgment Entered: 1962



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Sperry Rand Corporation; The General Fireproofing Company; Steelcase, Inc.; Diebold, Incorporated; and Art Metal, Incorporated., U.S. District Court, W.D. New York, 1962 Trade Cases ¶70,495, (Nov. 9, 1962)

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United States v. Sperry Rand Corporation; The General Fireproofing Company; Steelcase, Inc.; Diebold, Incorporated; and Art Metal, Incorporated.

1962 Trade Cases ¶70,495. U.S. District Court, W.D. New York. Civil No. 8995. Entered November 9, 1962. Case No. 1578 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Fire Resisting Filing Cabinets—Consent Judgment.—Manufacturers were prohibited by a consent judgment from entering into any agreement with any other manufacturers or wholesaler-distributors to fix the prices, differentials, discounts, or extras for the sale of fire resisting filing cabinets.

Allocation of Markets—Sales—Consent Judgment.—Manufacturers were prohibited by a consent judgment from entering into any agreement to allocate, divide, or apportion customers, territories, or markets for the sale of fire resisting filing cabinets.

Resale Price Fixing—Fair Trade Prohibition—Consent Judgment.—Manufacturers were prohibited by a consent judgment from entering into any agreement fixing resale prices for fire resisting filing cabinets, required to cancel each of their fair trade agreements, and prohibited from fair trading their products under federal and state laws for a period of three years.

Price Fixing—New Price Schedules—Consent Judgment.—Manufacturers were individually required by a consent judgment to independently review and establish new price schedules for fire resisting filing cabinets and abandon their then current domestic price lists.

Trade Association Participation—Consent Judgment.—Manufacturers were prohibited by a consent judgment from participating in activities of trade associations, industry groups, or other organizations, with knowledge that such activity would violate any provision of the judgment, if such organizations were consenting defendants to the judgment.

Cancellation of Contracts—Consent Judgment.—A manufacturer was required by a consent judgment to cancel contracts pursuant to which it manufactures and supplies fire resisting filing cabinets to other defendants for resale, but was permitted to enter into new, lawful contracts for the manufacture of its products for resale.

Resale Price Fixing—Wholesaler-Distributors—Consent Judgment.—A manufacturer was prohibited by a consent judgment from requiring any wholesaler-distributor to use a price list or suggested price in selling fire resisting filing cabinets not sold under the manufacturer's brand name, or restricting a wholesaler-distributor from selling its products to any purchaser.

For the plaintiff: Lee Loevinger, Assistant Attorney General, W. D. Kilgore, Jr., Lewis Bernstein, Charles R. Esherick, Gerald E. Kandler, and Charles F. B. McAleer, Attorneys, Department of Justice.

For the defendants: Bergson & Borkland, by Herbert A. Bergson and Daniel H. Margolis, for Sperry Rand Corporation; Warner, Norcross & Judd, by Leonard W. Verdier, Jr., for Steelcase, Inc.; Hellings, Ulsh, Morey & Stewart, by William P. Stewart, for Art Metal, Incorporated; Hovvrey, Simon, Baker & Murchison, by William Simon and John S. Voorhees, for The General Fireproofing Company.

Final Judgment

HENDERSON, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on December 28, 1960, and the defendants Sperry Rand Corporation, The General Fireproofing Company, Steelcase, Inc. and Art Metal, Incorporated, by their respective 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 this Final Judgment constituting evidence or an admission by any party with respect to any such issue, and the Court having considered the matter and being duly advised,

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 all 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 complaint states a claim against the defendants under Section 1 of the Act of Congress of July 2, 1890, entitled, "An act to protect trade and commerce against unlawful restraints and monopolies," (15 U. S. C. § 1, 26 Stat. 209), commonly known as the Sherman Act, as amended.

II

[Definitions]

As used in this Final Judgment:

(A) "Fire resisting filing cabinet" shall mean a storage cabinet consisting of an outside metallic shell lined with a fire-resistant material and provided with an interior compartment or compartments used for receiving a. storage drawer or drawers, and any metal accessories customarily sold on an optional basis in conjunction therewith;

(B) "Wholesale-distributor" shall mean any person which distributes, under its own trade name, fire resisting filing cabinets manufactured by some other person;

(C) "Person" shall mean any individual, partnership, firm, corporation, association or other business or legal entity.

III

[Applicability]

The provisions of this Final Judgment applicable to any defendant consenting hereto shall apply to such defendant, and to each of its successors, assignees, officers, directors, agents, employees and subsidiaries, and to those persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise, but shall not apply to transactions solely between such defendant and its said officers, directors, agents, employees, parent company and subsidiaries, or any of them.

IV

[Price Fixing—Market Allocation]

The consenting defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding, plan or program among themselves or with any other manufacturer or wholesale-distributor of fire resisting filing cabinets to:

(A) Fix, establish or maintain prices, differentials, discounts, extras or any other term or element of prices, differentials, discounts or extras for the sale of fire resisting filing cabinets to any third person; or

(B) Divide, allocate or apportion customers, territories or markets for the sale of fire resisting filing cabinets.

V

[Fair Trade—Resale Price Fixing]

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(A) Each of the consenting defendants is ordered and directed to terminate and cancel each of its existing Fair Trade Agreements or any other agreement which prescribes or maintains or purports to prescribe or maintain the price at which any person shall resell fire resisting filing cabinets;

(B) Each of the consenting defendants is enjoined and restrained from entering into, adhering to, maintaining or claiming any rights under any contract, agreement or understanding with any person to fix, establish, maintain or adhere to any prices, discounts, terms or other elements of price for the sale of fire resisting filing cabinets to any third person;

(C) Each of the consenting defendants is ordered and directed to mail, within thirty (30) days from the date of entry hereof, a letter to each of its current domestic fire resisting" filing cabinet distributors and dealers current as of the date of entry of this Final Judgment setting forth subsections (A) and (B) above; and

(D) Nothing in this Final Judgment shall prohibit any defendant, acting independently, from exercising such lawful rights as it may have under the Miller-Tydings Act, as amended, the McGuire Act, or any other similar legislation, with respect to any fire resisting filing cabinet manufactured, distributed or sold by it, after a period of three (3) years from the date of entry of this Final Judgment.

VI

[New Price Lists]

Defendants The General Fireproofing Company, Steelcase, Inc. and Art Metal, Incorporated, are ordered and directed individually and independently within eleven (11) months of the effective date of this Final Judgment, to:

(A) Review, determine and establish its domestic list prices and other terms and conditions of sale for fire resisting filing cabinets on the basis of its individual costs, profits and other lawful considerations; provided, however, that such established prices shall not be computed or based upon the zones or zone differentials employed by it on December 28, 1960; and

(B) Withdraw its then current domestic price lists for fire resisting filing cabinets and to adopt and publish the price lists arrived at pursuant to subsection (A) of this Section VI.

VII

[Cancellation of Contracts]

Not later than 120 days after the date of entry of this Final Judgment, defendant Sperry Rand Corporation is ordered and directed to terminate and cancel its contracts or agreements pursuant to which it manufactures and supplies to defendants The General Fireproofing Company, Steel-case, Inc. and Art Metal, Incorporated, fire resisting filing cabinets for resale. Nothing in this Final Judgment, however, shall be deemed to prohibit any consenting defendant from entering into new, lawful contracts or agreements for the manufacture or sale of fire resisting filing cabinets for resale; provided, however, that in any such sales made by Sperry Rand Corporation, the prices charged shall not be stated in terms of a discount from resale prices.

VIII

[Resale Price Fixing]

Defendant Sperry Rand Corporation is enjoined and restrained from entering into, adhering to, maintaining, or claiming any right under any contract, agreement or understanding with any wholesale-distributor, including each of the other defendants herein,

(A) Requiring any wholesale-distributor to employ in selling fire resisting filing cabinets not sold under a brand name of defendant Sperry Rand Corporation, any price list, price or term or condition of sale fixed, specified or suggested by defendant Sperry Rand Corporation;

(B) Precluding or restricting such wholesale-distributors, or any of them, from selling or offering to sell fire resisting filing cabinets to any purchaser or class of purchasers.

IX

[Trade Association Participation]

Each of the consenting defendants is enjoined and restrained from participating in any formal or informal activity of any trade association, industry group or other organization, with knowledge that any such activity or purpose of such trade association, industry group or other organization would violate any provision of this Final Judgment, if such trade association, industry group, or other organization, were a consenting defendant to this Final Judgment.

X

[Inspection and Compliance]

For the purposes of securing compliance with this Final Judgment, and for no other purposes, duly authorized representatives of the Department of Justice, shall, on written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any consenting defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during the office hours of said consenting defendant, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant regarding any subject matter contained in this Final Judgment; and

(B) Subject to the reasonable convenience of said consenting 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.

Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, said consenting defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section X 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 for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XI

[Jurisdiction Retained]

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

U.S. v. THE SHAW-WALKER COMPANY, ET AL.
Civil No. 8996
Year Judgment Entered: 1962



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Shaw-Walker Co. and Sperry Rand Corp., U.S. District Court, W.D. New York, 1962 Trade Cases ¶70,491, (Nov. 9, 1962)

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United States v. The Shaw-Walker Co. and Sperry Rand Corp.

1962 Trade Cases ¶70,491. U.S. District Court, W.D. New York. Civil No. 8996. Entered November 9, 1962. Case No. 1579 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Fire Resisting Filing Cabinets—Consent Judgment.—Manufacturers were prohibited by a consent judgment from entering into any agreement to fix prices, differentials, discounts, or extras for the sale of fire resisting filing cabinets.

Allocation of Markets—Sales—Consent Judgment.—Manufacturers were prohibited by a consent judgment from entering into any agreement to allocate, divide, or apportion customers, territories, or markets for the sale of fire resisting filing cabinets.

Production Restrictions—Number or Types of Colors—Consent Judgment.—Manufacturers were prohibited by a consent judgment from entering into any agreement to fix or limit the number or types of colors for fire resisting filing cabinets.

Resale Price Fixing—Fair Trade Prohibition—Consent Judgment.—Manufacturers were prohibited by a consent judgment from entering into any agreement fixing resale prices for fire resisting filing cabinets, required to cancel each of their fair trade agreements, and prohibited from fair trading their products under federal and state laws for a period of three years.

Rigged Bidding—Paid Information—Non-Collusion Affidavit—Consent Judgment.—Manufacturers were prohibited by a consent judgment from entering into any agreement to submit noncompetitive, collusive, or rigged bids to any governmental agency or other purchaser of fire resisting filing cabinets, and from communicating any bid information or an intention to bid or not to bid prior to the official opening of a bid. The manufacturers also were required, for a period of five years, to submit with each sealed bid submitted to any central purchasing agency of the United States an affidavit that the bid has been arrived at without collusion and that bid information has not been given to anyone.

Price Fixing—New Price Schedules—Consent Judgment.—Manufacturers were individually required by a consent judgment to independently review and establish new price schedules for fire resisting filing cabinets and abandon their then current domestic price lists.

For the plaintiff: Lee Loevinger, Assistant Attorney General, W. D. Kilgore, Jr., Lewis Bernstein, Charles R. Esherick, Gerald E. Kandler and Charles F. B. McAleer, Attorneys, Department of Justice.

For the defendants: Donovan, Leisure, Newton & Irvine, by J. R. Withrow, Jr., William F. Rogers and James Clabault, of counsel, for The Shaw-Walker Company; and Bergson & Borkland, by Herbert A. Bergson and Daniel H. Margolis, for Sperry Rand Corporation.

Final Judgment

HENDERSON, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on December 28, 1960 and the defendants, by their respective 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 this Final Judgment constituting evidence or an admission by any party with respect to any such issue, and the Court having considered the matter and being duly advised,

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

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Ordered, adjudged and decreed as follows:

I

[Sherman Act]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states a claim against the defendants under Section 1 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) "Fire resisting filing cabinet" shall mean a storage cabinet consisting of an outside metallic shell lined with a fire-resistant material and provided with an interior compartment or compartments used for receiving a storage drawer or drawers, and any metal accessories customarily sold on an optional basis in conjunction therewith;

(B) "Person" shall mean any individual, partnership, corporation, association, firm, or other business or legal entity.

III

[Applicability]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, and to each of its successors, assignees, officers, directors, agents, employees and subsidiaries, and to those persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise, but shall not apply to transactions solely between such defendant and its said officers, directors, agents, employees, parent company and subsidiaries, or any of them.

IV

[Price Fixing]

Defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding, plan or program among themselves or with any person engaged in the manufacture or wholesale distribution of fire resisting filing cabinets to:

(A) Fix, establish, or maintain prices, differentials, discounts, extras or any other term or element of prices, differentials, discounts or extras for the sale of fire resisting filing cabinets to any third person;

(B) Divide, allocate, or apportion customers, territories or markets for the sale of fire resisting filing cabinets;

(C) Fix, establish or limit the number or types of colors for fire resisting filing cabinets to be manufactured or sold;

(D) Submit noncompetitive, collusive or rigged bids or quotations for fire resisting filing cabinets to any governmental body or agency thereof, or to any other purchaser of fire resisting filing cabinets; or

(E) Exchange any information except in connection with bona fide purchase or sales transactions:

(1) concerning bids for the sale of fire resisting filing cabinets, prior to the opening thereof; and

(2) concerning prices, terms or conditions for the sale of fire resisting filing cabinets.

V

[Fair Trade Contracts]

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(A) Each defendant is ordered and directed to terminate and cancel each of its existing Fair Trade Agreements or any other agreement which prescribes or maintains or purports to prescribe or maintain the price at which any person shall resell fire resisting filing cabinets;

(B) Each defendant is enjoined and restrained from entering into, adhering to, maintaining or claiming any rights under any contract, agreement or understanding with any person to fix, establish, maintain, or adhere to any prices, discounts, terms or other elements of price for the sale of fire resisting filing cabinets to any third person;

(C) Each defendant is ordered and directed to mail, within thirty (30) days from the date of entry hereof, a letter to each of its domestic fire resisting filing cabinet distributors and dealers current as of the date of entry of this Final Judgment setting forth subsections (A) and (B) above; and

(D) Nothing in this Final Judgment shall prohibit any defendant, acting independently, from exercising such lawful rights as it may have under the Miller-Tydings Act, as amended, the McGuire Act, or any other similar legislation, with respect to any fire resisting filing cabinet manufactured, distributed, or sold by it, after a period of three (3) years from the date of entry of this Final Judgment.

VI

[Bid Information]

Each defendant is enjoined and restrained from communicating to any manufacturer or wholesale distributor of fire resisting filing cabinets prior to the official opening of a bid submitted to plaintiff or any agency thereof;

(A) The intention to submit or the intention not to submit a bid for the sale of fire resisting filing cabinets to such plaintiff or agency;

(B) The fact that such a bid for the sale of fire resisting filing cabinets has or has not been submitted; or

(C) Any price, term, or condition of sale quoted, or to be quoted, in any such bid.

VII

[Affidavit]

Each defendant is ordered and directed for a period of five (5) years from the date of entry of this Final Judgment to submit a sworn statement, in the form set forth in the Appendix hereto, with each sealed bid for fire resisting filing cabinets submitted to any central purchasing agency of plaintiff.

VIII

[New Price Lists]

Each defendant is ordered and directed individually and independently within eight (8) months from the effective date of entry of this Final Judgment to:

(A) Review, determine and establish its domestic list prices and other terms and conditions of sale for fire resisting filing cabinets on the basis of its individual costs, profits, and other lawful considerations, and as a part of such independent review to consider the competitive advantages and disadvantages of the geographic location of its factories, the availability and cost of transportation from such point or points and its freight and other shipping cost experience; provided, however, that such established prices shall not be computed or based upon the zones or zone differentials employed by it on December 28, 1960; and

(B) Withdraw its then current domestic price lists for fire resisting filing cabinets and to adopt and publish the price lists arrived at pursuant to subsection (A) of this Section VIII.

IX

[Trade Association Participation]

Each defendant is enjoined and restrained from participating in any formal or informal activity of any trade association, industry group or other organization, with knowledge that any such activity or purpose of such trade association, industry group or other organization would violate any provision of this Final Judgment, if such trade association, industry group or other organization were a consenting defendant to this Final Judgment.

X

[*Inspection and Compliance*]

For the purposes of securing compliance with this Final Judgment, and for no other purposes, duly authorized representatives of the Department of Justice shall, on 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, subject to any legally recognized privilege:

(A) Access, during the office hours of said defendant, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant regarding any subject matter contained in this Final Judgment; and

(B) Subject to the reasonable convenience of said 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.

Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, said defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section X 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 for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XI

[*Jurisdiction Retained*]

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

Appendix

Affidavit

STATE OF COUNTY OF }ss.:

..... > being duly sworn, deposes and says that to the best of his knowledge and belief:

1. The attached bid to> (name of recipient of bid) dated> has been arrived at by> (name of defendant) unilaterally and without collusion with any other manufacturer or wholesale distributor of fire resisting filing cabinets;
2. No information concerning the attached bid or its invitation has been communicated by the affiant, nor by any employee or agent of> (name of defendant), to any person not an employee or agent of> (name of defendant); and
3. On .> instructions were given to all employees concerned with bidding that information concerning such bids may not be communicated to any other potential bidder or their employees.

Dated:>

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Signature of Person Who Signed Bid Sworn to before me this> day of> 1962.
Notary Public

U.S. v. GREATER BUFFALO PRESS, INC., ET AL.
(The Hearst Corporation)
Civil No. 9004
Year Judgment Entered: 1965



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Greater Buffalo Press, Inc. (The Hearst Corp.); Newspaper Enterprise Assn., Inc.; The International Color Printing Co.; Southwest Color Printing Corp.; and Dixie Color Printing Corp., U.S. District Court, W.D. New York, 1965 Trade Cases ¶71,479, (Aug. 31, 1965)

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United States v. Greater Buffalo Press, Inc. (The Hearst Corp.); Newspaper Enterprise Assn., Inc.; The International Color Printing Co.; Southwest Color Printing Corp.; and Dixie Color Printing Corp.

1965 Trade Cases ¶71,479. U.S. District Court, W.D. New York. Civil Action No. 9004. Entered August 31, 1965. Case No. 1582 in the Antitrust Division of the Department of Justice.

Sherman Act

Tying Arrangements—Newspaper Comics—Consent Judgment.—A newspaper publisher was prohibited by a consent judgment from entering into any contract with persons selling color comic, supplements which would restrict the business of printing or selling color comic supplements, allocate markets or customers, or fix the terms for sale to third persons. The judgment also prohibited entering into a license agreement which would restrict the licensee's choice of printers to one designated by the publisher.

For the plaintiff; William Orrick, Assistant Attorney General, Lewis Bernstein, William D. Kilgore, Jr., John T. Curtin and Elliott H. Feldman, Attorneys, Department of Justice.

For the defendants: Herbert Brownell and Jesse Climenko for the Hearst Corp.

Final Judgment

[Final judgment:] Plaintiff, United States of America, having filed its complaint herein on January 6, 1961, the defendant, The Hearst Corporation, having appeared and filed its answer to the complaint denying the substantive allegations thereof, and the plaintiff and said defendant, by their respective attorneys, having consented to the entry of this Final Judgment before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and without any admission by or estoppel of either party as to any such issue; and this Court having determined that there is no just reason, for delay in entering a Final Judgment, except as otherwise provided herein, as to all of plaintiff's claims asserted in said complaint against the said defendant; it is hereby

Ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto. The complaint states claims for relief against the consenting 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, and under Section 3 of the Act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, as amended, commonly known as the Clayton Act.

II

As used in this Final Judgment:

(A) "Hearst" shall mean the defendant The Hearst Corporation with its principal place of business at New York City, New York, and as used herein shall include King;

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- (B) "King" shall mean the King Features Syndicate Division of Hearst, with its principal place of business at New York City, New York;
- (C) "Consenting defendant" shall mean the defendant Hearst;
- (D) "Person" shall mean any individual, partnership, firm, corporation, association, trustee or other business or legal entity;
- (E) "Color comic supplements" shall mean supplements for inclusion in Sunday or Saturday newspapers, printed in color, and usually containing, among other things, copyrighted comic features; and
- (F) "Features" shall mean material, whether copyrighted or not, including but not limited to comic strips, which appear in newspaper color supplements.

III

- (A) The provisions of this Final Judgment applicable to the consenting defendant shall apply also to its officers, directors, servants, employees, agents, successors and assigns, and to all other persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.
- (B) The consenting defendant is ordered and directed to take such steps as are necessary to secure compliance by its officials and such other persons, described above, with the terms of this Final Judgment.

IV

The consenting defendant is enjoined and restrained from, directly or indirectly:

- (A) Entering into, adhering to, maintaining, or claiming any right under any contract, agreement, arrangement, understanding or plan with any person engaged in the printing, distribution or sale of color comic supplements for the purpose or with the effect of:
- (1) Hindering, restricting, limiting or preventing any person from engaging in the business of printing color comic supplements;
 - (2) Hindering, restricting, limiting or preventing any person from selling color comic supplements;
 - (3) Allocating or dividing customers, territories or markets for the printing or sale of color comic supplements;
 - (4) Fixing, determining or maintaining prices or any other terms or conditions for the sale of color comic supplements to any third person,
- (B) Entering into any license for any individual feature or grouping of features, or fixing a fee charged therefor, or discounting from, or giving rebate upon, such fee, on the condition, agreement or understanding that the licensee shall not purchase color comic supplements from a printer other than one selected, designated or represented by the consenting defendant; provided, however, that combining a fee for the license and a price for printing shall not be deemed to be a violation of this subsection (B), but shall be subject to subsection (C) following:
- (C) Entering into or renewing, adhering to, maintaining or claiming any right under any arrangement with any newspaper, for the sale of color comic supplements which include any feature licensed by such consenting defendant, unless such arrangement is reduced to writing and (a) separately provides for or lists the fee for licensing such feature and the price for the printing of the supplements, and (b) provides that such license may at the option of the newspaper remain in effect at the same price for at least three (3) months following the expiration of the contract for the sale of the supplements. Provided, however, that this subsection (C) shall become effective only if, as and when a plant for printing purposes may have been divested pursuant to a Final Judgment entered in this action.

V

(A) Upon entry of this Final Judgment the plaintiff shall be permitted to use such discovery procedures with respect to the consenting defendant as it is entitled to use under Rules 26 through 37 of the Federal Rules of Civil Procedure as to the non-consenting defendants.

(B) Notwithstanding the making and entry of this Final Judgment the plaintiff may, if the Court adjudicates that the defendant Greater Buffalo Press has violated any of the antitrust laws as charged in the complaint filed herein, seek and the Court may order such other relief as to the consenting defendant as the Court may deem necessary and appropriate to dissipate the effects of the unlawful activities that may be found by the Court and to permit and restore competition in interstate trade and commerce in the printing and sale of color comic supplements; provided, however, that the plaintiff in said application for such further relief does not seek an adjudication that the consenting defendant has violated any of the antitrust laws as charged in the said complaint. On any hearing with respect to such other relief the consenting defendant shall have the right to be heard on any issues relevant to a fair judicial inquiry.

(C) The plaintiff will not seek any divestiture relief in this action in the event a Final Judgment may have been entered in its favor, unless it has given notice of such application to the consenting defendant and all other parties to this action, and has afforded them the opportunity to be heard by the Court.

VI

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, 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 the consenting defendant, made to its principal office, be permitted, subject to any legally recognized privilege:

(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 which relate to any matters contained in this Final Judgment;

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

Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the consenting defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as may from time to time be necessary for determining or securing compliance with this Final Judgment,

No information obtained by the means permitted in this Section VI shall be divulged by any employee of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff 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.

VII

Jurisdiction is retained by this 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 and directions as may be necessary or appropriate for the amendment modification or termination of any of the provisions thereof for the enforcement of compliance therewith, and for the punishment of violations thereof.

U.S. v. GREATER BUFFALO PRESS, INC., ET AL.
(Greater Buffalo Press, Inc., International Color Printing Company,
Southwest Color Printing Corporation, & Dixie Color Printing Corporation)
Civil No. 9004
Year Judgment Entered: 1973 (modified 1975)



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Greater Buffalo Press, Inc., et al., U.S. District Court, W.D. New York, 1973-2 Trade Cases ¶74,602, (Jul. 2, 1973)

[Click to open document in a browser](#)

United States v. Greater Buffalo Press, Inc., et al.

1973-2 Trade Cases ¶74,602. U.S. District Court, W.D. New York. Civil No. 9004. Dated July 2, 1973. Case No. 1582, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions—Divestiture—After-Acquired Property—Acquired Plant's Plans to Build New Facility.—

Although at the time one printing company unlawfully acquired another the latter's erection of a new plant was still in the planning stage, the subsequently constructed plant had to be divested along with the acquired business. It appeared that the new plant's proposed existence was the motivating force behind the acquisition. Even aside from this fact, the need to reestablish competitive conditions within the market required the divestiture of the new facility. The divestiture was placed in the hands of a Special Master-Trustee, who was also directed to determine what restrictions, if any, should be placed on the divesting firm against printing or soliciting the accounts of newspapers then being printed at the plants to be divested, or what other prohibitions might be appropriate to allow the proposed purchaser to commence operations profitably and become a viable competitor.

For plaintiff: Lewis Bernstein and Elliott H. Feldman, Attys., Dept. of Justice, Antitrust Div., Washington, D. C.

For defendants: Raichle, Banning, Weiss & Halpern, Buffalo, N. Y., for Greater Buffalo Press, Inc., International Color Printing Corp., Southwest Color Printing Corp., and Dixie Color Printing Corp.; Baker, Hostetler & Patterson (Richard F. Stevens and Sargent Karch, of counsel), Cleveland, Ohio, for Newspaper Enterprise Assn., Inc.

[Opinion]

HENDERSON, D. J.: By previous order of this court, plaintiff's complaint, which included an allegation that Greater Buffalo Press, Inc. violated [Section 7 of the Clayton Act](#) by the acquisition of International Color Printing Co. in 1955, was dismissed after full trial. The United States Supreme Court reversed that order and remanded the action to this court for additional findings of fact and to fashion an appropriate and effective remedy. *United States v. Greater Buffalo Press, Inc., et al.* [[1971 TRADE CASES ¶ 73,591](#)], 402 U. S. 549 (1971). In doing so, that Court found that Greater Buffalo violated [Section 7 of the Clayton Act](#) by its 1955 acquisition. It also found that the area of effective competition prior to that time consisted of the business of Greater Buffalo, International and King Features Syndicate, a division of Hearst Corporation, all of which engaged in a single line of commerce consisting of the printing and distribution of color comic supplements.

The action was remanded to this court for additional findings concerning the consent decree entered with the Hearst Corporation and also with regard to the facility constructed at Sylacauga, Alabama, after the 1955 acquisition. Plaintiff now moves for entry of supplemental findings and judgment.

In accordance with the Supreme Court opinion in this action and based upon the evidence of record herein, this court enters the following Supplemental Findings of Fact:

1. When Greater Buffalo Press acquired International's stock in 1955 it gained control of approximately 75% of the printing volume done by independent color comic supplement printers.
2. As a result of this acquisition, Greater Buffalo and International ceased to be in competition.
3. Furthermore, as a result of this acquisition, King has depended upon Greater Buffalo for most of the printing which it sells in competition with Greater Buffalo.

4. Since King must now sell to newspapers at a higher price than Greater Buffalo charges King for printing, the competition between King and Greater Buffalo is restricted.
5. A further result of the 1955 acquisition by Greater Buffalo is that the difficulties of new entrants in the relevant market becoming real competition of Greater Buffalo have been greatly increased.
6. In 1950 Greater Buffalo made a moral commitment to certain newspapers to build a printing plant in the Deep South.
7. When Greater Buffalo acquired International in 1955, International was actively pursuing expansion plans in order to prevent the competitive loss of printing business through the erection of Greater Buffalo's printing plant in Lufkin, Texas. International implemented these plans by taking what it deemed necessary steps toward building a printing plant in Sylacauga, Alabama. These included: obtaining a commitment from the inhabitants of Sylacauga to convey a site to International, gratis, and directing them to complete the acquisition of the site, making plans for the construction of the proposed plant; commencing the readying of presses and equipment for use in the proposed plant; and obtaining a contract to supply newsprint to the proposed plant.
8. Greater Buffalo's acquisition of International eliminated potential competition between Greater Buffalo and the International-King combination for the printing and selling of supplements for newspapers which International and King proposed to print in International's proposed Sylacauga, Alabama plant.
9. After the acquisition of International, Greater Buffalo utilized International's equipment, funds and manpower to construct, equip and generally prepare the Sylacauga plant. When printing operations at the Sylacauga plant were commenced in 1963, substantial color comic supplement runs were transferred from International's Wilkes-Barre plant to meet Greater Buffalo's minimum estimates for a profitable operation.
10. The Sylacauga plant is owned and operated by Dixie Color Printing Corp., a wholly owned subsidiary of Greater Buffalo, under Greater Buffalo's management and control.

In view of the above findings, it is apparent that any effective remedy for this Section 7 violation must accomplish a dual objective. It must not only eliminate the illegally acquired market power but also restore competitive conditions which were for all practical purposes destroyed by the 1955 acquisition. The only remedy capable of accomplishing this result is divestiture. Although severe, it is effective. It is also well recognized as the natural and appropriate remedy for the type of violation involved herein. *Ford Motor Co. v. United States* [[1972 TRADE CASES ¶ 73,905](#)], 405 U. S. 562 (March 1972); *United States v. E. I. du Pont de Nemours Co.* [[1961 TRADE CASES ¶ 70,017](#)], 366 U. S. 316 (1961).

[*After-Acquired Plant*]

Consistent with the objectives to be accomplished, divestiture must include not only the stock of International but also the stock of Dixie Color. Although in point of time the Sylacauga plant was acquired after the acquisition of International, its proposed existence was the motivating force behind Greater Buffalo's acquisition of International.

Even aside from the findings entered above with respect to the Sylacauga plant, the need to re-establish competitive conditions within the market require the divestiture of that facility. It is difficult to imagine how any new entrant into the market could hope to compete successfully with one facility in Wilkes-Barre against a competitor with facilities in Lufkin, Sylacauga and Dunkirk.

Accordingly, any remedy, in order to be appropriate and effective, must include divestiture of the stock of Dixie Color. *United States v. Aluminum Company of America* [[1964 TRADE CASES ¶ 71,243](#)], 233 F. Supp. 718, 247 F. Supp. 308 (E. D. Mo. 1964), *aff'd* [[1965 TRADE CASES ¶ 71,567](#)], 382 U. S. 12 (1965); *Utah Public Service Commission v. El Paso Natural Gas Co.* [[1969 TRADE CASES ¶ 72,824](#)], 395 U. S. 464 (1969).

[*Additional Prohibitions*]

Finally plaintiff seeks certain ancillary relief in the form of an injunction against Greater Buffalo printing for King for a certain period of time. While such relief may be "necessary and appropriate" under controlling precedents,

it may also be anticompetitive if, as advanced by the Hearst Corporation, such relief would eliminate King as a competitor altogether.

The question of whether such relief is appropriate and if so, under what conditions, is more appropriate for resolution following report of the Special Master-Trustee pursuant to the terms of the judgment entered herewith.

In accordance with the foregoing, it is hereby ordered and adjudged that:

- (1) This court makes the supplemental findings of fact which are set forth above and made a part of the record herein;
- (2) Greater Buffalo violated section 7 of the Clayton Act on or about June 25, 1955, by its acquisition of the outstanding stock of International;
- (3) Greater Buffalo is directed to divest itself of the outstanding stock of International and Dixie and all rights and assets under Greater Buffalo's possession or control, directly or indirectly, concerning the business conducted by the said subsidiary-companies at their respective plants in Wilkes-Barre, Pennsylvania, and Sylacauga, Alabama, in accordance with the procedure set forth below;
- (4) A Special Master-Trustee shall be designated by this court for the purpose of effectuating the sale of the businesses of International and Dixie within one year;
- (5) Upon the designation by this court of the Special Master-Trustee, Greater Buffalo will immediately deliver to such Special Master-Trustee all of its outstanding stock in International and Dixie and will cause to be assigned to said Special Master-Trustee all assets and rights under its possession and control, directly and indirectly, concerning the businesses conducted by International and Dixie at their respective plants located in Wilkes-Barre, Pennsylvania, and Sylacauga, Alabama;
- (6) The Special Master-Trustee to be appointed by this court shall hold said stock, assets and rights until further order of this court for the purpose of offering for sale a single viable business entity capable of providing effective competition in the printing and sale of color comic supplements;
- (7) Until the Special Master-Trustee has sold the stock, assets and rights transferred to him pursuant to paragraph 5 hereof, Greater Buffalo shall be entitled to all the proceeds and profits from the operations of the businesses to be divested and will assume all the liabilities thereof; and Greater Buffalo will have the unrestricted right to control all of the operations of the businesses to be conveyed, but shall not take any action without the approval of the Special Master-Trustee which would frustrate or impair the ability of the said Special Master-Trustee to accomplish the divestiture as provided for in this judgment;
- (8) The Special Master-Trustee to be appointed by this court shall as trustee be charged with the responsibility of offering for sale such stock, assets and rights of the companies to be conveyed so as to create a single viable business entity capable of providing effective competition in the printing and sale of color comic supplements. In addition, such trustee as special master shall ascertain all pertinent facts, as may be necessary, through communications with industry personnel, examination of the physical assets and records of the companies to be conveyed or the taking of testimony under oath in order:
 - (a) that the sale of such assets and rights to be divested shall be at a nonconfiscatory price by taking into account the investment of Greater Buffalo and the fair market value of the companies to be conveyed as color comic supplement printers; and
 - (b) to determine what restrictions, if any, should be imposed upon Greater Buffalo for a reasonable period of time relating to prohibitions against printing or soliciting the accounts of newspapers now being printed at the plants to be divested, or any other prohibitions so as to permit the proposed purchaser, or purchasers, to commence operations profitably and become a viable competitor in the printing and sale of color comic supplements;
- (9) Greater Buffalo, International, Dixie and the plaintiff shall permit upon the request of the Special Master-Trustee, subject to any legally recognized privilege:

(a) access, during the office hours of said parties to all books, ledgers, accounts, correspondence, memoranda and other records and documents, in the possession or under the control of said persons, which relate to the nature and scope of competition or potential competition in the printing and sale of color comic supplements or to Greater Buffalo's investment in the assets to be divested; and

(b) interviews with any of the officers and employees of Greater Buffalo, International and Dixie, who may have counsel present, or the taking of their testimony under oath regarding such matters;

(10) The Special Master-Trustee shall offer the businesses to be divested for sale and shall execute a written contract, containing the prohibitions, if any, against Greater Buffalo attached thereto or incorporated in the contract, with a proposed purchaser, or purchasers, subject to the approval of this court;

(11) No later than thirty days after the Special Master-Trustee has executed a contract for the sale of the businesses involved, the Special Master-Trustee shall submit to this court, upon notice to counsel for each of the parties to this action, a written motion for approval of the proposed transaction. Such moving papers shall contain a copy of the executed contract, any proposed restrictions which should be imposed upon Greater Buffalo in the printing and sale of color comic supplements if not made part of the contract, and shall set forth by affidavit, or affidavits, the facts relied upon to indicate that there is a reasonable probability that the business entity to be purchased will be a viable competitor and that the price is nonconfiscatory as to Greater Buffalo by taking into account the investment of Greater Buffalo and the fair market value of the companies to be divested as color comic supplement printers;

(12) Upon the return date of the motion by the Special Master-Trustee requesting approval of the proposed sale, counsel for the plaintiff, after notice to counsel for each of the parties to this action, shall submit the specific terms and conditions under which it has moved this court for an order prohibiting Greater Buffalo from printing for the King Features Syndicate Division of The Hearst Corporation for a period of ten years following the divestiture from Greater Buffalo of International and Dixie; and

(13) No later than thirty days following the entry of this judgment, counsel for the plaintiff shall submit to this court a proposed order of reference to the master upon notice to all other counsel. Such order shall specify the duties necessary to implement paragraphs (5) through (13) of this judgment and further detail the manner of compensation of such master and reimbursement for necessary expenses.

It is so ordered.



At Buffalo, New York, in the
said District on the 23rd day
of June, 1975.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

-vs-

GREATER BUFFALO PRESS, INC., et al.,

Defendants

ORDER

Civil No. 9004

The Special Master, MANLY FLEISCHMANN, having moved by Notice of Motion dated June 13, 1975, that this Court receive and approve the Final Report of the Special Master; fix the compensation of the Special Master and the accountant for the Special Master and order that such compensation be paid by the defendant Greater Buffalo Press, Inc.; order the reimbursement to the Special Master and the accountant for the Special Master by International Color Printing Corporation and Dixie Color Printing Corporation for all expenses and disbursements incurred by the Special Master and the accountant for the Special Master; approve the conveyance by the Special Master to Greater Buffalo Press, Inc. of the stock of International Color Printing Corporation and Dixie Color Printing Corporation now held by the Special Master; and discharge the Special Master from his duties and obligations under the Order of Reference to Master granted by this Court on November 9, 1973, and extended by order of this Court dated November 7, 1974;

NOW, upon the Notice of Motion dated June 13, 1975, the Affidavit of Manly Fleischmann, sworn to June 13, 1975, and the exhibits thereto, and the Final Report of the Special Master filed with the said Notice of Motion, in support of the Special Master's motion, and upon all of the orders, papers and proceedings heretofore had herein, and after hearing Manly Fleischmann, Special Master, in support of the Special Master's motion, and Raichle, Banning, Weiss & Halpern, Frank G. Raichle, Esq., of counsel, attorneys for defendants Greater Buffalo Press, Inc., et al., and the United States Department of Justice, Elliott H. Feldman, Esq., of counsel, having appeared, but not in opposition to the Special Master's motion, and no one having appeared in opposition to the Special Master's motion, and due deliberation having been had, it is hereby

ORDERED, that the Final Report of the Special Master, dated June 13, 1975, is hereby received and approved by this Court; and it is further

ORDERED, that the compensation of the Special Master is fixed in the amount of \$25,000, and the compensation of Peat, Marwick, Mitchell & Co., accountants for the Special Master, is fixed in the amount of \$4,685; and it is further

ORDERED, that the expenses and disbursements incurred by the Special Master in the amount of \$1,263.04, and the expenses incurred by Peat, Marwick, Mitchell & Co., accountants for the Special Master, in the amount of \$79.07, are hereby approved; and it is further

ORDERED, that defendant Greater Buffalo Press, Inc. pay the compensation of the Special Master, and Peat, Marwick, Mitchell & Co., accountants for the Special Master; and it is further

ORDERED, that defendants International Color Printing Corporation and Dixie Color Printing Corporation jointly reimburse the Special Master, and Peat, Marwick, Mitchell & Co., accountants for the Special Master, for their expenses and disbursements, and it is further

ORDERED, that the Special Master convey to Greater Buffalo Press, Inc. the stock of International Color Printing Corporation and Dixie Color Printing Corporation now held by him; and it is further

ORDERED, that the Special Master be and he hereby is discharged from his duties and obligations under the Order of Reference to Master granted by this Court on November 9, 1973, and extended by order of this Court dated November 7, 1974.

John T. Curtin

John T. Curtin, U.S.D.J.

U.S. v. AMERICAN STEAMSHIP COMPANY, ET AL.
Civil No. 1970-283
Year Judgment Entered: 1970



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Steamship Co. and Oswego Shipping Corp., U.S. District Court, W.D. New York, 1970 Trade Cases ¶73,233, (Jul. 29, 1970)

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United States v. American Steamship Co. and Oswego Shipping Corp.

1970 Trade Cases ¶73,233. U.S. District Court, W.D. New York. Civil No. 1970-283. Entered July 29, 1970. Case No. 2110 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquisitions—Steamship Companies—Divestiture—Merger Ban—Consent Decree.—A steamship company and its controlling corporation, alleged to have violated the Clayton Act by acquiring two competing steamship companies operating on the Great Lakes, was required by a consent decree to divest themselves of the largest of the two acquired companies within two years. The decree also enjoined the defendants for a period of five years from acquiring any interest in any self-propelled dry bulk cargo ship then or theretofore operated between U. S. Great Lakes ports, or from acquiring the stock of any company owning any such ship, without prior approval of the government or the court.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen.; Baddia J. Rashid, Joseph J. Saunders, William D. Kilgore, Jr., Keith I. Clearwaters, Harry N. Burgess and Matthew Miller, Attys., Dept. of Justice; Kenneth Schroeder, Jr., U. S. Atty.

For the defendants: George Reycraft.

Final Judgment

CURTIN, D. J.: Plaintiff, United States of America, having filed its complaint herein on June 22, 1970, and the defendants having appeared, and plaintiff and defendants, 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 any evidence or admission by any party hereto 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 herein and without this Final Judgment constituting any evidence or admission by any party hereto with respect to any such issue, and upon consent of the parties aforementioned, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

This Court has jurisdiction over the subject matter hereof and of the parties consenting hereto. The Complaint states claims upon which relief may be granted against defendants under Section 7 of the Act of Congress of October 15, 1914 (15 U. S. C. 18), commonly known as the Clayton Act, as amended.

II

[Definitions]

As used in this Final Judgment:

- (A) "Person" shall mean an individual, partnership, corporation or any other business or legal entity;
- (B) "Oswego" shall mean Oswego Shipping Corporation, and any of its subsidiaries;
- (C) "American" shall mean American Steamship Company, and any of its subsidiaries;

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(D) "Reiss" shall mean The Reiss Steamship Company, and any of its subsidiaries.

III

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall apply also to each of its subsidiaries, successors and assigns, and their officers, directors, agents and employees, and to those persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise. Any person not a party hereto who acquires any securities or assets by means of a divestiture pursuant to this Final Judgment shall not be considered to be a successor or an assign of a defendant and shall not thereby be bound by the terms hereof.

IV

[*Divestiture*]

Defendants Oswego and American are ordered and directed as follows:

1. Within two years from the date of entry of this Final Judgment to divest themselves of all of their interest in Reiss as a going, viable concern engaged in the transportation of bulk commodities on the Great Lakes coupled with such improvements, betterments, replacements and all other assets which have been added by Reiss and defendants since such acquisition up to the date of the divestiture.
2. The divestiture required by the foregoing paragraph 1 shall be absolute and unconditional.
3. This divestiture shall be accomplished by offering to sell all of the assets or stock of Reiss owned by defendants, provided that, with the prior approval of the plaintiff or the court as set forth in Section VIII hereof, Reiss may dispose of any ship or ships and defendants may comply with the requirement that they dispose of the Reiss fleet by the sale by American of the substantial equivalent in type and tonnage of the ships owned by Reiss.

V

[*Maintenance of Acquired Finn*]

Defendants shall use their best efforts to maintain Reiss until the time of divestiture thereof, as a going, viable concern, at standards of operating performance, including personnel, applicable to Reiss at the time of entry of this Final Judgment.

VI

[*Terms of Sale*]

Neither sale of the assets nor sale of stock under Section IV thereof shall be made knowingly, directly or indirectly, to any person who is at the time of divestiture (a) an officer, director, employee, or agent of defendants, or (b) who beneficially owns, or has power to vote, or controls, or has rights to own or control, more than one (1) percent of the outstanding share of common stock of defendants, or (c) in whom defendants have a financial interest whether by any equity interest or otherwise.

VII

[*Periodic Reports*]

Defendants are ordered and directed to file with the plaintiff periodic reports each six months after the effective date of this Final Judgment setting forth in reasonable detail the steps then taken by them to comply with this Final Judgment.

VIII

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[Notification of Sale]

(A) Upon defendants proceeding with divestiture in whole or in part under Section IV of this Final Judgment, not less than forty-five (45) days prior to the closing date designated in any contract for the sale of the assets or stock of Reiss, defendants shall advise plaintiff in writing of the name and address of the proposed purchaser together with the terms and conditions of the proposed sale, and such other information concerning the transaction as plaintiff may request within fifteen (15) days from the receipt of the aforesaid advice. At the same time, defendants shall also make known to plaintiff in writing the names and addresses of any other person or persons who have made an offer in writing, or expressed a desire, to purchase such assets or stock together with the terms and conditions thereof.

(B) Not more than twenty-one (21) days after the receipt of the information required by this Section VIII, plaintiff shall advise defendants in writing whether it objects to the proposed sale. If plaintiff does not object to the proposed sale, it may be consummated, but if objection is made, then the proposed sale shall not be consummated until defendants obtain approval by the Court, or unless plaintiff's objection is withdrawn.

The time period set forth in Section IV shall be tolled during the pendency of any proceeding in this Court under this Final Judgment relating to approval of a proposed sale which delays the consummation of the divestiture transaction proposed by defendants.

IX*[Future Acquisitions]*

For a period of five (5) years following the effective date of this Final Judgment, defendants are enjoined and restrained from acquiring any interest in any self-propelled dry bulk cargo ship then or theretofore operated between United States Great Lakes ports, or from acquiring the stock of any company owning any such ship, without the prior approval of the plaintiff or this Court. Plaintiff will notify defendants of its approval or disapproval in writing within thirty days of written notice by defendants.

X*[Compliance and Inspection]*

For the purpose of securing or determining compliance with this Final Judgment, and not for any 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 defendants made to their principal offices, be permitted, subject to any legally recognized privilege:

(1) Access during the office hours of defendants, which may have counsel present, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants which relate to any matters contained in this Final Judgment;

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

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

(C) No information obtained by the means provided for in this Section X 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.

XI

[*Retention of Jurisdiction*]

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

U.S. v. GREATER BUFFALO ROOFING & SHEET METAL CONTRACTORS' ASSOCIATION, INC.
Civil No. 75-334
Year Judgment Entered: 1977



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

Plaintiff, :

v. :

GREATER BUFFALO ROOFING AND : Civil No. Civ. 75-334

SHEET METAL CONTRACTORS' :

ASSOCIATION, INC., :

Defendant. :

Filed: January 6, 1977

Entered: April 27, 1977

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FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on August 8, 1975; Defendant, Greater Buffalo Roofing and Sheet Metal Contractors' Association, Inc., having appeared and filed its Answer to the Complaint denying the material allegations thereof and raising certain affirmative defenses; 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 any evidence or 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 herein and without this Final Judgment constituting any evidence or admission by either party with respect to any such issue and upon the consent of the parties, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction over the subject matter of this action and of the parties hereto. The Complaint states claims upon which relief may be granted against the Defendant under Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. §1), commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Person" means any individual, individual proprietorship, partnership, firm, corporation or any other legal entity; and

(B) "Installation of roofs" means the construction of new and replacement roofs and the fabrication of sheet metal in conjunction with such construction, and includes such other related services as waterproofing, dampproofing, repairing of roofs, inspecting of roofs, and estimating the cost of repair or installation of roofs.

III

The provisions of this Final Judgment applicable to the Defendant shall also apply to its successors and assigns; to its directors, officers, agents, and employees; and to all persons, including members, in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

The Defendant is enjoined and restrained from, unilaterally or in concert with any person:

(A) Fixing, establishing, stabilizing or maintaining the terms or length of any guarantee, or any price, or any other term or condition of sale, in connection with the installation of roofs;

(B) Urging, recommending, or suggesting that any of its members or any other person adopt or adhere to the terms or length of any guarantee, or any price, in connection with the installation of roofs;

(C) Advertising, publishing or distributing information relating to the terms or length of any guarantee, or any price, in connection with the installation of roofs;

(D) Adopting, publishing, distributing or recommending any printed form of contract or guarantee containing provisions relating

to the terms or length of any guarantee, or any price, for use in connection with the installation of roofs, provided, however, that neither Defendant nor any of its members shall be prohibited from recommending any bonds which are sold by national roofing manufacturers in connection with the installation of roofs purchased from them;

(E) Adopting, adhering to, maintaining, enforcing or claiming any rights under any bylaw, rule, regulation, plan or program which restricts or limits the right of any member to give or offer, in accordance with his own business judgment, any terms or length of guarantee, or any price, or any other term or condition of sale, in connection with the installation of roofs; and

(F) Taking any punitive action against any of its members for such member's failure or refusal to adhere to any agreements with any other member or other competitor concerning the terms or length of guarantee, the price, or any other term or condition of sale, in connection with the installation of roofs.

V

The Defendant is ordered and directed within ninety (90) days after the entry of this Final Judgment to eliminate from its charter, constitution and bylaws, code of ethics, rules and regulations, and other documents governing its operations, any provision which is contrary to or inconsistent with any of the provisions of this Final Judgment.

VI

The Defendant is ordered and directed to mail, within ninety (90) days after the date of entry of this Final Judgment, a letter in the form attached hereto as Exhibit A, addressed to each person who was notified of the adoption of Defendant's guarantee program in form letters mailed on or about September 1, 1970 and February 3, 1973.

VII

The Defendant is ordered and directed:

(A) To mail, within ninety (90) days after the date of entry of this Final Judgment, a copy of this Final Judgment to each of its members and to each person who was a member at any time from January 1, 1970 to the date of entry of this Final Judgment; and

(B) To furnish a copy of this Final Judgment to each person who becomes a member of Defendant within five years after the date of the entry of this Final Judgment.

VIII

Within one hundred and twenty (120) days from the date of the entry of this Final Judgment, the Defendant is ordered and directed to file with the Clerk of this Court an affidavit setting forth the fact and manner of compliance with Sections V, VI and VII (A) of this Decree.

IX

For a period of ten (10) years from the date of entry to this Final Judgment the Defendant is ordered to file with the Plaintiff, on each anniversary date of such entry, a report setting forth the steps which it has taken during the prior year to advise the Defendant's directors, officers, agents, members, and employees of its and their obligations under this Final Judgment.

X

(A) For the purpose of determining or securing compliance with this Final Judgment, 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 the Defendant made to its principal office, be permitted, subject to any legally recognized privilege, and subject to the right of Defendant, if it so desires, to have counsel present:

1. Access during its 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 matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of the Defendant, and without restraint or interference from it, to interview directors, officers, agents or employees of the Defendant, which persons if they wish may have counsel of their choosing present, relating to any matters contained in this Final Judgment.

(B) Upon such written request, the Defendant shall submit such reports in writing, under oath if so requested, to the plaintiff, with respect to any of the matters contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided in this Section X 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 or for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XI

Jurisdiction is retained by this Court 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 of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

XII

Entry of this Final Judgment is in the public interest.

Date: *April 27, 1977*

/s/ John J. Egan
UNITED STATES DISTRICT JUDGE

EXHIBIT A

GREATER BUFFALO

ROOFING & SHEET METAL CONTRACTORS' ASSOCIATION, INC.

President

EDWARD R. ZETTEL
West Roofing Co., Inc.
1122 Whitney Avenue
Niagara Falls, N. Y. 14302

First Vice-President

ARTHUR H. HILGER
McGonigle & Hilger Roofing, Inc.
401 Locust Street
Lockport, N. Y. 14094

Second Vice-President

CLARENCE J. STIGLMEIER
Weaver Metal & Roofing Co., Inc.
535 Duke Road
Cheektowaga, N. Y. 14225

Office of the Secretary-Treasurer

PAUL H. GILBERT
H. C. & E. F. Gilbert, Inc.
11 Red Oak Drive
Williamsville, New York 14221
716-689-8538

TO: ARCHITECTS, ENGINEERS, GENERAL CONTRACTORS,
COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL USERS

Gentlemen:

On August 8, 1975, the Department of Justice filed a civil antitrust action under Section 1 of the Sherman Act, United States v. Greater Buffalo Roofing & Sheet Metal Contractors Association, Inc., alleging that the Association had entered into an agreement to eliminate competition in the offer of guarantees on roofing installations. Prior to the taking of any testimony and without admission by any party in respect to any issue, the Association consented to the entry of a Final Judgment terminating the lawsuit. The Court found that the settlement was in the public interest and entered a Final Judgment on 1976. A copy of that Final Judgment is available for inspection at the offices of the Association.

In accordance with the provisions of the Final Judgment, we are informing all interested parties that any previous announcements made by the undersigned respecting the duration or terms of roofing and sheet metal guarantees are hereby rescinded. Each of our members may give or offer guarantees of whatever length of time or upon such terms as he may wish. He is free to charge, give or offer whatever

***GREATER BUFFALO
ROOFING & SHEET METAL CONTRACTORS' ASSOCIATION, INC.***

President	First Vice-President	Second Vice-President	Office of the Secretary-Treasurer
EDWARD R. ZETTEL West Roofing Co., Inc. 1122 Whitney Avenue Niagara Falls, N. Y. 14302	ARTHUR H. HILGER McGonigle & Hilger Roofing, Inc. 401 Locust Street Lockport, N. Y. 14094	CLARENCE J. STIGLMEIER Weaver Metal & Roofing Co., Inc. 535 Duke Road Cheektowaga, N. Y. 14225	PAUL H. GILBERT H. C. & E. F. Gilbert, Inc. 11 Red Oak Drive Williamsville, New York 14221 716-689-8538

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prices and other terms and conditions of sale for his services he may wish, in accordance with his own business judgment and which may be acceptable to his customers.

(Names of members as of date of Final Judgment who are engaged in roofing installation.)