UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)	Civil No. 8541
v.	)	Entered: November 9, 1964
THE A P PARTS CORPORATION and GOERLICH'S, INC., Defendants.	)	

FINAL JUDGMENT

The plaintiff, United States of America, having filed its Complaint herein on November 10, 1960, and defendants, The A P Parts Corp., and Goerlich's, Inc., having appeared herein and having filed their answers to said Complaint denying the substantive allegations thereof, and the plaintiff 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 admission by defendants in respect of any such issue;

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

ORDERED, ADJUDGED and DECREED as follows:

I

This Court has jurisdiction of the subject matter herein and of the parties hereto. The Complaint states a claim for relief 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 monoplies," commonly known as the Sherman

Act, as amended, and Section 3 of the Act of Congress of October 15, 1914, as amended, entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act.

II

As used in this Final Judgment:

(A) "Automotive exhaust systems and parts" means automotive exhaust systems used on passenger automobiles and light trucks and the principal parts of such systems: mufflers, exhaust pipes, and tail pipes;

(B) "Distributor" means a wholesaler engaged in the business of purchasing automotive parts from manufacturers for resale to jobbers, and, in some instances, also to retailers;

(C) "Jobber" means a wholesaler engaged in the business of purchasing automotive parts from distributors, and, in some instances, from manufacturers, for resale to retailers.

III

The provisions of this Final Judgment shall apply to the defendants and to each of their subsidiaries, successors, officers, directors, employees, and agents, and to those persons in active concert or participation with either defendant who receive actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment are not applicable to the foreign commerce of the United States.

IV

The defendants are each enjoined and restrained from selling or contracting to sell any automotive exhaust system parts to any distributor or jobber upon the condition, agreement, or understanding that the purchaser shall not deal in automotive exhaust system parts

manufactured by any person other than the defendants.

V

(A) The defendants are directed within forty-five (45) days after the entry of this Final Judgment, to mail a copy thereof to each of their direct customers and to each of the franchised jobbers located within the United States.

(B) The defendants are ordered and directed to file with this Court, and to serve upon the plaintiff, within sixty (60) days after the entry of this Final Judgment, a report of their compliance with subsection (A) of this Section V.

VI

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

(1) 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 the defendant which relate to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such 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 for the enforcement of this Final Judgment.

No information obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person, other than a duly authorized representative of the Executive Branch of plaintiff, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this 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 construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions thereof, the enforcement of compliance therewith and for the punishment of violations thereof.

Dated: November 9, 1964

Frank J. Battisti
United States District Judge

United States v. Lima News

Civil Action No. 64-178

Year Judgment Entered: 1965

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Lima News, Freedom Newspapers, Inc., Raymond C. Holies, Clarence H. Hoiles, and E. Roy Smith., U.S. District Court, N.D. Ohio, 1965 Trade Cases ¶71,609, (Nov. 30, 1965)

United States v. The Lima News, Freedom Newspapers, Inc., Raymond C. Holies, Clarence H. Hoiles, and E. Roy Smith.

1965 Trade Cases ¶71,609. U.S. District Court, N.D. Ohio, Western Division. Civil No. 64-178. Entered November 30, 1965. Case No. 1827 in the Antitrust Division of the Department of Justice.

Sherman and Clayton Acts

Monopoly—Newspaper Advertising and Circulation Rates—Consent Decree.—A newspaper would be prohibited by a consent judgment from reducing circulation or advertising rates or offering any substantially greater premiums for of one year following publication of a competing newspaper or until any competing newspaper reaches a paid circulation of 10,000 for a three-month period, whichever even occurs first.
Monopoly—Newspaper Business—Operating at a Loss—Consent Decree.—A newspaper would be prohibited by a consent judgment from operating at a loss for the purpose of eliminating a competing newspaper, and in any suit brought to enforce the judgment, if it is established that the newspaper has operated at a loss, a prima facie case of a violation shall be established.
Monopoly—Newspaper Business—Exclusive Dealing and Price Discrimination—Consent Decree.—A newspaper would be prohibited by a consent judgment from conditioning the acceptance of advertising on not advertising in a competing newspaper or from discriminating against advertisers which use a competing newspaper.
Monopoly—Newspaper Business—Enforcement of Covenant Not to Compete—Consent Decree.—A newspaper would be prohibited by a consent judgment from claiming any rights under covenants not to compete received from another newspaper and the individuals which operated it.
Acquisitions—Newspaper Business—Consent Decree.—A newspaper would be prohibited by a consent judgment from acquiring, directly or indirectly, any assets of or interest in a competing newspaper or other newspaper published and circulated in the town in which it operated.

For the plaintiff: Donald F. Turner, Assistant Attorney General, William D. Kilgore, Jr., Gordon B. Spivack, Norman H. Seidler, Frank B. Moore, and Paul Y. Shapiro, Attorneys, Department of Justice

For the defendants: Latham & Watkins, by Max L. Gillam, Los Angeles, Calif., Fuller, Seney, Henry & Hodge, by Thomas L. Dalrymple, Toledo, Ohio.

Before Schnackenberg, Kiley, and Swygert, Circuit Judges.

Final Judgment

YOUNG, District Judge: Plaintiff, United States of America, having filed its complaint herein on November 19, 1964; the defendants having appeared and filed their answer denying the substantive allegations thereof; and the plaintiff and said 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 evidence or any admission by any 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 upon consent of all of the parties hereto,

It is hereby ordered, adjudged and decreed as follows:

I.

[*Sherman and Clayton Acts*]

This Court has jurisdiction of the subject matter hereof, and of all parties hereto. The complaint states claims upon which relief may be granted against said defendants under Sections 1 and 2 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; and under Section 7 of the Act of Congress of October 15, 1914, as amended, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act.

II.

[*Definitions*]

As used in this Final Judgment:

(a) "The News" refers to the newspaper published in Lima, Ohio, by the defendant partnership;

(b) "Milline rate" is the price charged, less discounts, for a line of local display, classified, or national advertising per one million papers of paid circulation;

(c) "Circulation rates" refers to the price paid by the reader for the newspaper either by subscription, for home or mail delivery, or for single copies; and

(d) "Competing newspaper" refers to any daily newspaper of general circulation pub lished and circulated in Lima, Ohio, other than the News.

III.

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its subsidiaries, directors, agents, employees, successors and assigns, and to all persons in active concert or participation with a defendant who receive actual notice of this Final Judgment by personal service or otherwise. Paragraph IV of this Final Judgment shall cease to have any force or effect whatsoever on January 1, 1986.

IV.

[*Practices Prohibited*]

For a period of one year after the date of first publication of any existing or new competing newspaper, or until any such competing newspaper reaches a paid circulation of 10,000 for a three-month period, whichever event first occurs, each of the defendants is enjoined and restrained from directly or indirectly:

(a) Reducing the circulation rates of the News which are or were in force on the date defendants first learn or learned that publication of a competing newspaper is or was planned;

(b) Offering any substantially greater quantity of premiums, combinations, special offers, or other forms of circulation rates' discounts than were offered by the News in the one year preceding any such date of first publication; and

(c) Reducing milline rates of the News below the milline rates charged by such competing newspaper.

V.

[*Operating at Loss*]

Each of the defendants is enjoined and restrained from participating in any plan, scheme, arrangement, or course of conduct to operate the News, directly or indirectly, at a loss with the purpose of eliminating a competing newspaper. In any suit brought before January 1, 1976 to enforce the provisions of this Paragraph V, if it is established that the News has operated at a loss a *prima facie* case of violation shall be established. However, it shall be a complete defense to the charge of violating this Section that such loss or losses resulted

from forces or conditions beyond the control of the defendants. Examples of forces or conditions beyond defendants' control include, but are not limited to, the following:

(a) Losses caused, after the expiration of the injunctive period specified in Para graph IV above, by the reduction in good faith of News advertising and/or subscription rates to meet the rates charged by a competing newspaper.

(b) Losses resulting from increased operating costs incurred in good faith to meet competitive forces or conditions.

VI.

[*Exclusive Dealing*]

Each of the defendants is enjoined and restrained from:

(a) Selling or accepting advertisements for publication on the express or implied condition that the advertiser refrain from advertising in a competing newspaper or any other newspaper published and circulated in Lima, Ohio; and

(b) Discriminating against or refusing to accept the advertisements of any person or company because said person or company has advertised, advertises, or proposes to advertise in a competing newspaper or any other newspaper published and circulated in Lima, Ohio.

VII.

[*Enforcement of Negative Covenant*]

Defendants are enjoined and restrained from claiming any rights under the following agreements:

(a) The agreement entitled "Covenant Not to Compete" executed by defendant Free dom Newspapers, Inc., on behalf of the defendant Lima News partnership and by the Lima Citizen Publishing Company, and nine individuals, dated January 3, 1964; and

(b) The agreement entitled "Covenants Against Competition" executed by defend ant Freedom Newspapers, Inc., and E. R. McDowell, dated September 3, 1963.

VIII.

[*Acquisitions*]

Defendants are enjoined and restrained from directly or indirectly acquiring any assets of or interest in a competing newspaper or any other newspaper published and circulated in Lima, Ohio.

IX.

[*Notification*]

The defendants are ordered upon entry of this Final Judgment to:

(a) Mail a copy of this Final Judgment within sixty (60) days to each person who has placed advertising (other than transient, classified or legal) with the News in the year preceding the date of entry of this Final Judgment, and to each natural person who is a party to the agreements referred to in Paragraph VII of this Final Judgment;

(b) File with this Court, with a copy to the plaintiff herein, a report of compliance with this Paragraph IX thirty (30) days following completion of the requirements of (a) above.

X.

[*Inspection and Compliance*]

For the purpose of securing 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 any defendant at its or his principal office, be permitted:

(a) Access during the office hours of said defendant to all books, ledgers, ac counts, correspondence, memoranda, and other records and documents in the pos session or under the control of any defend ant relating to any matters contained in this Judgment; and

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

Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, said defendants shall submit such records or reports 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 Paragraph 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 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.

XI.

[*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 or for the punishment of violations thereof.

United States v. Thomson-Brush-Moore Newspapers, Inc.

Civil Action No. C 67-904

Year Judgment Entered: 1968

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Thomson-Brush-Moore Newspapers, Inc., U.S. District Court, N.D. Ohio, 1967 Trade Cases ¶72,295, (Jan. 10, 1968)

United States v. Thomson-Brush-Moore Newspapers, Inc.

1967 Trade Cases ¶72,295. U.S. District Court, N.D. Ohio, Eastern Division. Civil Action No. C 67-904. Entered January 10, 1968. Case No. 1979 in the Antitrust Division of the Department of Justice.

Clayton Act

Mergers—Injunctive Relief—Divestiture of Prior-owned Newspaper as Condition to Acquiring Chain.— A newspaper chain, in order to acquire another chain, was required by a consent judgment to divest itself of a newspaper which it already owned. If the acquiring chain is unable to carry out divestiture, the government will be entitled to an appropriate order to remove the alleged anticompetitive effect of the acquisition, without opposition by the chain.

For the plaintiff: Ramsey Clark, Atty. Gen.; Donald. F. Turner, Asst. Atty. Gen.; Baddia J. Rashid, Charles D. Mahaffie, Jr., Carl L. Steinhouse and Robert N. Kaplan, Dept. of Justice, Washington, D. C.; Merle M. McCurdy and Bernard J. Stuplinski, Cleveland, Ohio.

For the defendant: John A. Tory of Tory, Tory, Des Laurics and Binnington, Toronto, Canada.

Final Judgment

KALBFLEISCH, D. J.: Plaintiff, United States of America, having filed its complaint herein, the defendant having appeared, and plaintiff and defendant by their respective attorneys, having each consented simultaneously with the filing of the complaint to the making and 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 an admission by any party hereto 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

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 a claim upon which relief may be granted against the defendant under Section 7 of the Act of Congress of October 14, 1914 (15 U. S. C. Section 18), commonly known as the Clayton Act, as amended.

II

[*Applicability*]

The provisions of this Final Judgment shall apply to defendant and shall also apply to its directors, officers, agents and employees, and to its affiliates, subsidiaries, successors and assigns, and to all other persons in active concert or participation with it who have received actual notice of this Final Judgment by personal service or otherwise. The term "affiliates" as used above includes, but is not limited to Thomson Newspapers, Inc., a Delaware corporation, which has specifically consented to be bound by this Final Judgment.

III

[*Divestiture*]

Thomson Newspapers, Inc., is ordered and directed to divest or cause to be divested within twelve (12) months from the date of entry of this Final Judgment all of its right, title and interest in Alliance Publishing Company, Inc., Alliance, Ohio. Divestiture shall be accomplished in such a manner as will enable the purchaser to continue the operation of Alliance Publishing Company, Inc., as a publisher of a daily newspaper in substantially the same manner it has heretofore been operating. Divestiture shall be to a person or persons and on terms and conditions first approved by the plaintiff or by the Court if plaintiff objects. The defendant and Thomson Newspapers, Inc., are ordered to take such reasonable steps as are necessary and appropriate in making known the availability for sale of the interest in Alliance Publishing Company, Inc., and shall render to plaintiff on a monthly basis reports in reasonable detail as to the efforts which they have taken to accomplish the required divestiture.

IV

[*Anticompetitive Effect—Removal*]

In the event Thomson Newspapers, Inc., is unable to carry out the requirements of Section III, plaintiff shall upon application to this Court be entitled to an appropriate order to remove the alleged anticompetitive effect of the acquisition referred to in paragraph 10(a) of the complaint; defendant having agreed that it will not oppose the entry of such an order.

V

[*Inspection and Compliance*]

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

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

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

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

No information obtained by the means permitted in this Section 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.

VI

[*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 modification of any of the provisions contained herein, for the enforcement of compliance therewith and for the punishment of violations thereof.

United States v. Bowling Proprietors' Ass'n of N. Ohio

Civil Action No. 66-649

Year Judgment Entered: 1968

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Bowling Proprietors' Assn. of Northern Ohio, Inc., U.S. District Court, N.D. Ohio, 1968 Trade Cases ¶72,474, (Jun. 21, 1968)

United States v. Bowling Proprietors' Assn. of Northern Ohio, Inc.

1968 Trade Cases ¶72,474. U.S. District Court, N.D. Ohio, Eastern Division. Civil No. 66-649. Entered June 21, 1968. Case No. 1912 in the Antitrust Division of the Department of Justice.

Sherman Act

Conspiracy—Bowling Proprietors' Association—Restraints on Bowling—Consent Decree.—An association of bowling proprietors was prohibited by a consent decree from fixing prices of open, league, and tournament bowling or restricting members in their promotions and solicitation of customers or nonmember bowling establishments, and from disciplining members for these activities. Included in the decree is a provision enjoining the association from denying any person the right to participate in bowling because of nonmembership or other affiliations.

For the plaintiff: Donald F. Turner, Asst. Atty. Gen., Baddia J. Rashid, William D. Kilgore, Jr., Norman H. Seidler, Carl L. Steinhouse, Lester P. Kautfmann, Paul Y. Shapiro and Merle M. McCurdy, Attys., Dept. of Justice.

For the defendants: Mandel, Chitlik, Simon and Goldsmith, by Fred H. Mandel and Harold Kahn, Cleveland, Ohio.

Final Judgment

THOMAS, D. J.: Plaintiff, United States of America, having filed its complaint herein on September 14, 1966, and plaintiff and defendant by their respective attorneys having consented to the making and entry of this Final Judgment without admission by either party in respect to any issue;

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

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter hereof, and of all parties hereto. The complaint states claims upon which relief may be granted against said 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 Final Judgment:

(A) "Person" refers to any individual, association, firm, corporation, or other legal entity;

(B) "Open bowling" refers to the unscheduled occasional bowling done by the individual bowler who is charged on a per game basis;

(C) "League bowling" refers to organized competitive bowling done by leagues, consisting of several teams, which contract with a particular bowling establishment to bowl for a certain number of consecutive weeks (called a "season") at a particular day and hour each week for a fixed fee per three games bowled per individual;

(D) "Tournament bowling" refers to prearranged contests in which participants or teams compete against each other in a series of elimination contests for cash, trophies or other prizes.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to the defendant, its successors and assigns; and, when acting on behalf of defendant, to its members, officers, agents, employees, and members of its Board of Governors; and to all persons in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Prices, Promotions, Tournaments*]

The defendant is enjoined and restrained from doing or attempting to do the following by itself or in combination with others:

(A) Fixing, establishing, maintaining, or stabilizing any or all prices charged for open, league and tournament bowling;

(B) Prohibiting or preventing members from offering special price inducements, and from giving prizes, awards, trophies, or any similar means of promoting business;

(C) Requiring members to obtain the approval or to notify its Board of Governors or any of its officers, committees, or members prior to conducting tournaments or promotions;

(D) Requiring members to refrain from supporting or cooperating with non-member bowling establishments in any tournament, sweepstakes, promotion, or league;

(E) Requiring its members to refrain from soliciting any leagues bowling in other members' houses prior to the end of the league's season, from signing league contracts prior to the end of the league season, and from taking leagues away from other members without approval of or notification to its Board of Governors or any of its officers, committees, or members.

V

[*Membership*]

The defendant is enjoined and restrained from disciplining, fining, suspending or expelling any member for:

(A) Offering low or reduced prices, special price inducements, and giving prizes, awards, trophies or any similar means of promoting business;

(B) Engaging in any promotional activity with or without the approval of the defendant or any of its members;

(C) Supporting or cooperating with non-member bowling establishments in any tournaments, sweepstakes, promotion, or league;

(D) Soliciting any leagues bowling in other members' houses prior to the end of the league's season, signing league contracts prior to the end of the league season, and taking leagues away from other members without approval or notification of the Board of Governors of the defendant or any of its officers, committees, or members.

VI

[*Other Affiliations*]

The defendant is enjoined and restrained from denying any person the right to participate in league, tournament, or other types of bowling because such person has bowled in or is otherwise connected with a bowling establishment which is not a member of defendant or other associations of bowling proprietors. However, the provisions of this Section VI shall not prevent unilateral action by an individual bowling proprietor with respect to tournaments organized by such proprietor and held in his establishment.

VII

[*Notification*]

The defendant is ordered and directed upon entry of this Final Judgment to:

(A) Distribute a copy of this Final Judgment to each of its members within sixty (60) days;

(B) Notify each member within sixty (60) days that such member is free to establish his own prices, terms, and conditions for open, league, and tournament bowling in his establishment;

(C) Amend its By-Laws, Code of Ethics, Supplementary Code of Ethics, and Constitution, within sixty (60) days to in corporate therein the substance of Sections IV, V, and VI of this Final Judgment; and

(D) File with this Court, with a copy to the plaintiff herein, a report of compliance with this Section VII within thirty (30) days following completion of the requirements of (A), (B), and (C) above.

VIII

[*Inspection and Compliance*]

For the purpose of securing 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 be permitted:

(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;

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

Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, said defendant shall submit such records or reports with respect to 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 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 or for the punishment of violations thereof.

United States v. Gould Inc.

Civil Action No. C 69-590

Year Judgment Entered: 1969

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Gould Inc., U.S. District Court, N.D. Ohio, 1969 Trade Cases ¶72,863, (Sept. 3, 1969)

United States v. Gould Inc.

1969 Trade Cases ¶72,863. U.S. District Court, N.D. Ohio. Civil Action No. C 69-590. Entered September 3, 1969. Case No. 2069 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquisition of Assets—Promissory Notes of Competitor—Battery Manufacturers— Divestiture-Consent Decree.—A battery manufacturer charged with violating Sec. 7 of the Clayton Act by acquiring promissory notes issued by a competitor was required by a consent decree to sell the notes within a year of their receipt and to refrain from acquiring any other promissory notes or other deferred obligations from the firm.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen., Baddia J. Rashid, Robert B. Hummel, Carl L. Steinhouse, Robert M. Dixon, Robert S. Zukerman, and Lester P. Kauffmann, Attys., Dept. of Justice.

For the defendant: Lloyd N. Cutler, of Wilmer, Cutler & Pickering, Washington, D. C, Allen C. Holmes, of Jones, Day, Cockley & Reavis, Cleveland, Ohio.

Final Judgment

BATTISTI, D. J.: Plaintiff, United States of America, having filed its complaint herein on .....1969, and plaintiff and defendant by their respective attorneys, having each consented to the making and 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 an admission by any party hereto 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

Order, 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 a claim upon which relief may be granted against the defendant under Section 7 of the Act of Congress of October 14, 1914 (IS U. S. C. Section 18), commonly known as the Clayton Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

(A) "Gould" means defendant Gould Inc., a corporation organized and existing under the laws of the State of Delaware, which corporation is the surviving corporation pursuant to the terms of a merger agreement with Clevite Corporation, dated as of March 26, 1969 and consummated on or about July 31, 1969;

(B) "Clevite" means Clevite Corporation, a corporation organized and existing under the laws of the State of Ohio, which was merged into Gould on or about July 31, 1969, pursuant to the above-described merger agreement;

(C) "BFI" means Business Funds, Inc., a corporation organized and existing under the laws of the State of Delaware.

III

[*Applicability*]

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

IV

[*Promissory Notes and Other Deferred Obligations*]

Defendant is ordered and directed to sell, within twelve months after the date of receipt thereof, any promissory note or other deferred obligation received from BFI in payment for assets transferred to BFI pursuant to the contract dated July, 1969 between defendant and BFI, and thereafter to refrain from acquiring or holding any debt or other obligations of BFI, except that nothing herein shall prevent the defendant in the ordinary course of business from acquiring in good faith promissory notes or other deferred obligations of BFI.

V

[*Inspection and Compliance*]

(A) For the purpose of securing or determining 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, made to the principal office of the defendant, be permitted, subject to any legally recognized privilege:

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

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

(B) Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, for the purpose of securing compliance with this Final Judgment and for no other purpose, defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time reasonably be requested.

(C) No information obtained by the means permitted in this Section V 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.

VI

[*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 modification of any of the provisions contained therein, for the enforcement of compliance therewith and for the punishment of violations thereof.

United States v. Laub Baking Co.

Civil Action No. C-67-850

Year Judgment Entered: 1969

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Laub Baking Co., et al., U.S. District Court, N.D. Ohio, 1969 Trade Cases ¶72,874, (Sept. 8, 1969)

United States v. Laub Baking Co., et al.

1969 Trade Cases ¶72,874. U.S. District Court, N.D. Ohio, Eastern Division. Civil Action No. C-67-850. Entered September 8, 1969. Case No. 1971 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Exchange of Information—Bakeries—Consent Decree.—Bakeries were prohibited by a consent decree from entering agreements fixing prices, submitting collusive bids and communicating or exchanging price information with other bakeries concerning the sale of bakery products. A prohibition against exchanging information does not apply to the communication of such information in the course of negotiating or carrying out *bona fide* purchase or sale transactions, subject to the ban against agreements. The decree prohibits joining trade associations with the knowledge that their activities are inconsistent with the decree. Affidavits of noncollusion are required for bids and quotations required to be sealed when submitted for sales in a designated market. Prices must be reviewed and set independently. Fair trade activities are permitted.
Consent Judgments—Government's Election Regarding Contempt Proceedings.—A consent decree provides that if the government should institute contempt proceedings against defendants with respect to a set of facts that it believes constitutes a violation of the terms of both the decree and a judgment of any other court, then the government will elect the court in which to institute the action and, upon such election, will not institute another contempt action based upon substantially the same set of facts in any other court.

For the plaintiff: Baddia J. Rashid, Director of Operations, Antitrust Div., Dept. of Justice, Harry N. Burgess, Carl L. Steinhouse, Dwight B. Moore, Robert J. Ludwig, and William F. Costigan, Attys., Dept. of Justice.

For the defendants: Walter A. Bates, for American Bakeries Co.; John H. Schafer, for Continental Baking Co.; Richard J. Cusick, for Laub Baking Co.; Tom Ford, for Alfred Nickles Bakery, Inc.; and David L. Foster, for Ward Foods, Inc.

Final Judgment

BATTISTI, D. J.: Plaintiff, United States of America, having filed its Complaint herein on November 14, 1967, and defendants Laub Baking Company; American Bakeries Company; Continental Baking Company; Alfred Nickles Bakery, Inc.; and Ward Foods, Inc., by their respective attorneys, having consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, without admission by any party in respect to any such issue, and without this Final Judgment constituting evidence with respect to any such issue;

Now, Therefore, before the taking of any testimony and upon said consent of the parties hereto the Court hereby determines that the proceeding herein is terminated as to the aforesaid consenting defendants and directs entry of Final Judgment as to all of plaintiff's claims herein against said consenting defendants and as to said consenting defendants, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and the parties consenting hereto. The Complaint states claims against the defendants upon which relief may be granted 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) "Person" means any individual, corporation, partnership, firm, association or other business or legal entity.

(B) "Bakery product" means any type of bread or bread type buns or rolls.

(C) "Akron-Canton-Cleveland-Mansfield market" means the territory encompassed by the Counties of Cuyahoga, Lorain, Medina, Summit, Wayne, Stark, Ashland, Richland, Lake, Geauga, and Portage in the State of Ohio.

III

[*Applicability*]

The provisions of this Final Judgment applicable to each of the defendants shall also apply to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise, but shall not apply to activities between a defendant, its officers, directors, agents or employees and its parent or subsidiary companies, or affiliated corporations in which 50% or more of the voting stock is owned by a defendant's parent or subsidiary companies or which is in fact controlled by the defendant or such defendant's parent or subsidiary companies.

IV

[*Prices, Bids, Exchange of Information*]

Each defendant is enjoined and restrained from entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program with any other person, directly or indirectly, to:

(A) Fix, determine, maintain or stabilize prices, discounts or other terms or conditions for the sale of any bakery product to any third person;

(B) Submit collusive or rigged bids or quotations or to allocate any such bids or quotations for the sale of any bakery product;

(C) Communicate to or exchange with any other person selling any bakery product any actual or proposed price, price change, discount, or other term or condition of sale at or upon which any bakery product is to be, or has been, sold to any third person prior to the communication of such information to the public or trade generally (except in the course of negotiating for, entering into, maintaining, or carrying out bona fide purchase or sale transactions, subject to the prohibitions of Section IV(A) and (B) above).

V

[*Information— Trade Associations*]

Each defendant is enjoined and restrained, directly or indirectly:

(A) For a period of ten (10) years from communicating to any other person selling any bakery product, any actual or proposed price, price change, discount, or other term or condition of sale at or upon which any bakery product is to be sold by the defendant, or such other person to any third person, prior to the communication of such information to the public or trade generally;

(B) Subparagraph (A) hereof shall not apply to the communication of such information in the course of negotiating for, entering into, maintaining or carrying out bona fide purchase or sale transactions, subject to the prohibitions of Section IV above;

(C) Joining, participating in, or belonging to any trade association, organization, or other group with knowledge that any of the activities thereof are inconsistent with any term of this Final Judgment.

VI

[*Certificate of Noncollusion—Independent Prices*]

Each defendant is ordered and directed:

(A) For a period of five (5) years from and after the date of entry of this Final Judgment to furnish simultaneously with each bid or quotation required to be sealed which is submitted by it for the sale of any bakery product in the Akron-Canton-Cleveland-Mansfield market, a certification, in substantially the form set forth in the Appendix hereto, by an official of such defendant knowledgeable about and having authority to determine the price or prices bid or quoted, that said bid or quotation was not the result, directly or indirectly, of any agreement, understanding, plan or program between such defendant and any other person selling any bakery product. Provided, however, that such certification would not be violated solely because the defendant has negotiated for, entered into, maintained, or carried out bona fide purchase or sale transactions with any other person, with respect to said bid or quotation, whereby the defendant would purchase bakery products from or supply bakery products to such person or whereby the defendant would submit a joint bid or quotation with such other person.

(B) Within thirty (30) days after the date of entry of this Final Judgment, independently and individually, to review and determine its prices, discounts, terms and conditions for the sale of each bakery product in the Akron-Canton-Cleveland-Mansfield market based upon lawful considerations, unless such review and determination shall have been made voluntarily within six (6) months prior to the entry of this Final Judgment; and within forty-five (45) days after the date of entry of this Final Judgment, to file with this Court and serve upon the plaintiff an Affidavit as to the fact and manner of compliance with this Section VI(B) including a statement setting forth the method used to review and determine such prices, discounts, terms and conditions for sale of each such bakery product.

(C) Within ninety (90) days after the date of entry of this Final Judgment, to furnish a copy thereof to each of its officers and directors and to each of its plant managers, and to file with this Court and serve upon the plaintiff an affidavit as to the fact and manner of its compliance with this Section (C).

VII

[*Fair Trade*]

Nothing in this Final Judgment shall be deemed to prohibit the lawful exercise by any defendant of such legal rights, if any, which a defendant may have under the Miller-Tydings Act, 50 Stat. 693 (1937), and the McGuire Act, 66 Stat. 632 (1952).

VIII

[*Contempt— Government Election*]

If the plaintiff should institute contempt proceedings against defendants American Bakeries Company; Continental Baking Company or Ward Foods, Inc., with respect to a set of facts which it believes to constitute a violation of the terms of both this Final Judgment and a Final Judgment of any other court, then the plaintiff shall elect the court in which it shall institute such contempt action and, upon such election, shall not institute another contempt action based upon substantially the same set of facts in any other court.

IX

[*Inspection and Compliance*]

For the purpose of determining or securing the compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, upon 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 through its principal office:

(A) Duly authorized representative of the Department of Justice shall be permitted:

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

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

(B) Defendant shall submit such reports in writing, under oath if so requested, to the Department of Justice 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 IX 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 to which the United States of America is a party for the purpose of determining or 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 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 or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Appendix

The undersigned hereby certifies that, 1o his best knowledge and belief, the annexed bid has not been prepared in collusion with any other producer or seller of bakery products and that the prices, discounts, terms and conditions thereof have not been communicated by or on behalf of the bidder to any such person other than the recipient of such bid and will not be communicated to any such person prior to the official opening of said bid. This certification may be treated for all purposes as if it were a sworn statement made under oath, and is made subject to the provisions of 18 U. S. C. 1001 relating to the making of false statements.

United States v. Standard Oil Co.

Civil Action No. C 69-954

Year Judgment Entered: 1970

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Standard Oil Co., et al., U.S. District Court, N.D. Ohio, 1970 Trade Cases ¶72,988, (Jan. 1, 1970)

United States v. The Standard Oil Co., et al.

1970 Trade Cases ¶72,988. U.S. District Court, N.D. Ohio, Eastern Division. No. C 69-954, Entered January 1, 1970. Case No. 2076 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquisitions—Gasoline Marketers—Elimination of Probable Anticompetitive Effect of Merger—Sale of Retail Outlets after Merger—Consent Decree.—In settlement of a merger between integrated oil companies, the acquiring firm was required by the terms of a consent decree to divest itself of retail outlets in Ohio representing an annual sales volume of 400 million gallons in three specified stages over a period of four years. Both firms are required to dispose of retail outlets that compete with one another in the western part of Pennsylvania. The decree prohibits the companies from acquiring in the future more than one percent of the stock of any company that retails gasoline in Ohio or western Pennsylvania except upon 60 days' prior written notice to the Justice Department.

For the plaintiff: John N. Mitchell, Atty. Gen., Walker B. Comegys, Deputy Asst. Atty. Gen., Baddia J. Rashid, Carl L. Steinhouse, W. D. Kilgore, Jr., David R. Melincoff, Harry N. Burgess and John A. Weedon, Attys., Dept. of Justice; Richard W. McLaren, Asst. Atty. Gen.; Allen A. Dobey, George H. Hempstead, III and Gregory R. McClintock; Robert B. Krupansky, U. S. Atty.

For the defendants: John Lansdale, of Squire, Sanders & Dempsey, Cleveland, Ohio, for Standard Oil Co.; Stuart W. Thayer, of Sullivan & Cromwell, New York, N. Y., for British Petroleum Co., Ltd., British Petroleum (Overzee) N. V., British Petroleum (Holdings) Inc., and BP Oil Corp.

Final Judgment [*]

BATTISTI, D. J.: Plaintiff, United States of America, having filed its complaint herein on November 26, 1969, and the defendants by their respective attorneys, having appeared and consented to the entry of this Final Judgment:

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 all parties hereto, it is hereby,

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action. This Court has jurisdiction over the defendants The Standard Oil Company, British Petroleum (Holdings) Inc. and BP Oil Corporation. Defendants The British Petroleum Company Limited and British Petroleum (Overzee) N. V., while denying that this Court would have jurisdiction over them in the absence of their voluntary submission to its jurisdiction, appear generally and, solely for all purposes of this case, voluntarily submit to the jurisdiction of this Court and consent to the entry of this Final Judgment. The Complaint states claims under which relief may be granted under Section 7 of the Act of Congress of October 15, 1914 as amended (15 U. S. C., Paragraph 18) commonly known as the Clayton Act.

II

[*Definitions*]

As used in this Final Judgment:

(A) "Person" shall mean an individual, partnership, firm, corporation or any other legal entity;

(B) "Sohio" shall mean the defendant, The Standard Oil Company, an Ohio corporation;

(C) "BP" shall mean the defendants, The British Petroleum Company Limited, British Petroleum (Overzee) N. V., British Petroleum (Holdings) Inc. and BP Oil Corporation, and each of them;

(D) "Western Pennsylvania" shall mean that portion of the State of Pennsylvania composed of the fourteen counties of Allegheny, Armstrong, Beaver, Butler, Crawford, Erie, Fayette, Greene, Indiana, Lawrence, Mercer, Venango, Washington and Westmoreland ;

(E) "Retail Outlet" shall mean an installation engaged in the sale of motor fuel to the consuming public and may include the business of the Fleetwing Corporation as an entity;

(F) "BP State" shall mean Connecticut, Delaware, the District of Columbia, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont and Virginia.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to a defendant, its officers, directors, agents, employees, subsidiaries, successors and assigns, 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 defendant herein who acquires by purchase or exchange any assets pursuant to this Final Judgment shall not be considered to be a successor bound by this Final Judgment.

IV

[*Divestiture of Ohio Stations*]

(A) Defendant Sohio is ordered and directed as follows:

(1) Within four (4) years from the effective date of this Final Judgment, to divest itself of retail outlets accounting for taxable motor fuel volume in the State of Ohio of not less than Four Hundred Million (400,000,000) gallons per annum during the twelve (12) months period immediately preceding the respective dates of such divestiture;

(2) The divestiture required by the foregoing paragraph (1) shall be absolute and unconditional, upon terms and conditions and to a person or persons first approved by the plaintiff or this Court, and shall be accomplished as follows:

(a) Retail outlets having an annual volume of not less than approximately One Hundred Thirty-three Million (133,000,000) gallons and not more than approximately Two Hundred Million (200,000,000) gallons of taxable motor fuel during the immediately preceding twelve (12) month period shall be divested by defendant Sohio to a single person who, at the time of such divestiture, is not then engaged, in the State of Ohio, in the retail sale of motor fuel;

(b) In addition to the divestiture hereinabove required by the preceding subparagraph (a) hereof, retail outlets having an annual volume of taxable motor fuel during the immediately preceding twelve (12) month period equal to approximately one half of the amount by which Four Hundred Million (400,000,000) gallons exceeds the volume divested or to be divested pursuant to the preceding subparagraph (a) hereof, shall be divested by defendant Sohio to a separate and different single person; Provided, however, that such person shall not, during the immediately preceding twelve (12) month period have sold more than two (2) percent of the total of all taxable motor fuel sold in the State of Ohio;

(c) In addition to the divestiture hereinabove required by the preceding subparagraphs (a) and (b) hereof, retail outlets having an annual volume of taxable motor fuel during the immediately preceding twelve (12) month

period equal to approximately one-half of the amount by which Four Hundred Million (400,000,000) gallons exceeds the volume divested or to be divested pursuant to subparagraph (a) hereof, shall be divested by defendant Sohio to not less than two (2) nor more than three (3) additional separate and different persons; Provided, however, that such persons shall not, during the immediately preceding twelve (12) month period have individually sold more than two (2) percent of the total of all taxable motor fuel sold in the State of Ohio;

(d) Of the total divestiture of retail outlets having an annual volume of Four Hundred Million (400,000,000) gallons of taxable motor fuel required by the foregoing provisions of this Subsection (A) of this Section IV, not less than one-third (1/3) thereof shall be accomplished within a period of two (2) years following the effective date of this Final Judgment, and an additional one-third (1/3) thereof shall be accomplished within a period of three (3) years following the effective date of this Final Judgment.

(B) The divestiture required by the foregoing Subsection (A) hereof may be accomplished by defendant Sohio, in whole or in part, or in combination, by (1) sales for cash or other assets, or (2) exchanges of retail outlets; Provided, however, that:

(i) In accomplishing the divestiture required under subparagraph (2)(a) of the foregoing Subsection (A) hereof, defendant Sohio is enjoined and restrained from acquiring, in any manner, any retail outlets in any BP State; and

(ii) In accomplishing the divestiture required under subparagraphs (2)(b) and (2)(c) of the foregoing Subsection (A) hereof, defendant Sohio is enjoined and restrained from acquiring, in any manner, any retail outlets for the sale of motor fuel in any state in which, in the twelve (12) month period immeditely preceding such divestiture, retail outlets owned or controlled by defendant BP shall, in the aggregate, have sold more than two (2) percent of the total taxable motor fuel sold in such state.

(c) Not less than thirty-five (35) days prior to the closing date in any contract for sale or exchange made pursuant to this Section IV, defendant Sohio shall advise plaintiff in writing by letter directed to the Assistant Attorney General in charge of the Antitrust Division, United States Department of Justice, of the name and address of the proposed purchaser together with the terms and conditions of the proposed sale or exchange and other pertinent information (including information as to the taxable motor fuel market shares in the state or states involved of the party or parties to the transaction). Not more than thirty (30) days after its receipt of such information, plaintiff shall advise defendant Sohio in writing of any objection it may have to the consummation of the proposed sale or exchange. If no such objection is made known to defendant Sohio within such period, plaintiff shall be deemed to have approved such sale or exchange. If such an objection is made by plaintiff, then the proposed sale or exchange shall not be consummated unless approved by this Court or unless plaintiff's objection is withdrawn. The respective time periods set forth in this 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 or exchange which delays the consummation of the divestiture transaction proposed by defendant Sohio.

(D) Upon the written request to Sohio of any person acquiring any of the motor fuel volume required to be divested by defendant Sohio pursuant to this Final Judgment, defendant Sohio is ordered and directed to enter into a contract with such person to supply such person, upon reasonable terms and conditions, with such quantities of motor fuel as such person may require for sale through the retail outlets acquired by such person from defendant Sohio. In the event of the failure or inability of defendant Sohio and any such person making such written request to reach agreement, within sixty (60) days, either as to the quantities of motor fuel to be supplied by defendant Sohio or the terms and conditions thereof, either of such persons may apply to this Court for its determination of the issues in disagreement between the parties. In no event shall defendant Sohio be required under this Subsection (D) to enter into a contract for a term exceeding three (3) years.

V

[*Divestiture of Pennsylvania Stations*]

(A) Defendant BP, or in the alternative defendant Sohio, is ordered and directed, within four (4) years following the effective date of this Final Judgment, to divest itself of all retail outlets owned or controlled by it in Western Pennsylvania for the sale of motor fuel.

(B) The divestiture required by the foregoing Subsection (A) of this Section V shall be absolute and unconditional and shall be upon terms and conditions first approved by the plaintiff or by this Court.

(C) Not less than thirty-five (35) days prior to the effective date of any divestiture made pursuant to this Section V, defendant BP or Sohio, whichever is complying with Subsection (A) hereof, shall advise plaintiff in writing by letter directed to the Assistant Attorney General in charge of the Antitrust Division, United States Department of Justice, of the name and address of the proposed purchaser, if any, together with the terms and conditions of the divestiture and other pertinent information. Not more than thirty (30) days after its receipt of such information, plaintiff shall advise defendant BP or Sohio in writing of any objection it may have to the consummation of the proposed divestiture. If no such objection is made known to said defendant within such period, plaintiff shall be deemed to have approved such divestiture. If such an objection is made by plaintiff, then the proposed divestiture shall not be consummated unless approved by this Court or unless plaintiff's objection is withdrawn. The time period set forth in this Section V shall be tolled during the pendency of any proceeding in this Court under this Final Judgment relating to approval of a proposed divestiture which delays the consummation of such divestiture proposed by defendant BP, or in the alternative defendant Sohio.

VI

[*Periodic Reports*]

Defendant Sohio is ordered and directed to file with the plaintiff periodic reports each six (6) months after the effective date of this Final Judgment setting forth in reasonable detail the steps then taken by it to comply with Sections IV and V of this Final Judgment.

VII

[*Future Acquisitions*]

For a period of ten (10) years following the effective date of this Final Judgment defendants Sohio and BP are enjoined and restrained from acquiring (i) more than an aggregate of 1% of the stock of, or any other financial interest in, any person engaged in either the State of Ohio or Western Pennsylvania in the retail sale of motor fuel, or (ii) any retail outlets or any other assets (other than those acquired in the ordinary course of business) located in the State of Ohio and Western Pennsylvania, except upon sixty (60) days prior written notice to the plaintiff of such proposed acquisition. For purposes of this Section VII, any indebtedness owed by any person to Sohio or BP, as the case may be, shall not be deemed to constitute a financial interest on the part of Sohio or BP in such person.

VIII

[*Inspection and Compliance*]

(A) For the purpose of securing compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Department of Justiec 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's principal office, be permitted, subject to any legally recognized privilege:

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

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

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

(C) No information obtained by the means provided in this Section VIII or Section VI of this Final Judgment 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 to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

IX

[*Jurisdiction Retained*]

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

John Lansdale, Esquire

Squire, Sanders & Dempsey

1800 Union Commerce Building

Cleveland, Ohio 44115

Dear Mr. Lansdale:

This is to confirm our understanding of Section IV, Paragraph (A)(I) of the consent decree entered in *United States v. The Standard Oil Company, an Ohio corporation, et al.*, which provides that within a four year period Sohio will divest itself of retail outlets accounting for motor fuel volume in the State of Ohio of not less than 400 million gallons per year.

It is our understanding that a substantial portion of Sohio's retail motor fuel sales in Ohio are made through contract sales, i.e., sales to commercial consumers for their own use as distinguished from sales to the motoring public through retail outlets. It is also our understanding that Sohio makes retail motor fuel sales outside the State of Ohio under the "Fleetwing" brand in volume approximating 56 million gallons per year. Consequently, to the extent that Sohio divests itself of retail outlets selling "Fleetwing" brand motor fuel outside Ohio, which would be in addition to the divestiture required in Paragraph (A)(I), it may divest an equivalent volume of motor fuel disposed of under contract sales in Ohio and include said gallonage as part of the 400 million gallons to be divested in Ohio. To illustrate, if "Fleetwing" outlets accounting for 50 million gallons outside Ohio are divested by Sohio, 50 million of the 400 million gallons required to be" divested in Ohio may be accounted for by the divestiture of contract sales.

It is also our understanding that, at the time of the divestiture ordered under Section IV, Paragraph (A)(2)(b) and (c), there may be franchised retail outlets of which Sohio may divest itself, but which refuse to enter into franchise agreements with the purchaser of the divested assets (such outlets being referred to hereinafter as "non-transferred outlets"). In the event that Sohio divests itself of retail outlets selling "Fleetwing" brand motor fuel outside Ohio, thus making operable the provisions of the preceding paragraph of this letter, gallonage represented by non-transferred outlets may be included in the 400 million gallons required to be divested in Ohio subject to the following conditions:

(1) the amount of contract sale gallonage which may be included, under the preceding paragraph of this letter, in the 400 million gallons required to be divested in Ohio shall be reduced by an amount equal to the gallonage represented by such non-transferred outlets; and

(2) in no event shall the non-transferred outlet gallonage included in said 400 million gallons exceed 10% of the total gallonage to be divested under Section IV, Paragraph (A)(2Mb) and (c).

This paragraph shall have no application to the divestiture ordered under Section IV, Paragraph (A)(2)(a).

For purposes of initial compliance with the timing provisions of Paragraph IV(A)(2)(d) of the Final Judgment, you may proceed on the assumption that the "Fleetwing" outlets outside Ohio will ultimately be sold and thus include contract sales and gallonage represented by non-transferred outlets in your divestiture under Section IV. However, in the event there are no sales of "Fleetwing" outlets outside Ohio the full divestiture of 400 million gallons must ultimately be accomplished by the divestiture and transfer of retail outlets in Ohio as provided in Section IV, Paragraph (A) (I).

Divestiture of contract sale gallonage is, of course, subject to the approval requirements of Section IV, Paragraph (c) of the Decree.

Sincerely yours,

Walker B. Comegys

Acting Assistant Attorney General

Antitrust Division

Footnotes

* Letter confirming parties' understanding follows decree.—CCH.

United States v. Viking Carpets, Inc.

Civil Action No. C 70-160

Year Judgment Entered: 1970

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Viking Carpets, Inc., U.S. District Court, N.D. Ohio, 1970 Trade Cases ¶73,096, (Mar. 23, 1970)

United States v. Viking Carpets, Inc.

1970 Trade Cases ¶73,096. U.S. District Court, N.D. Ohio, Eastern Division. Civil No. C 70, 160. Entered March 23, 1970. Case No. 2084 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Customers and Territories—Carpeting—Consent Decree.—The marketing subsidiary of a carpet manufacturer was prohibited by a consent decree from fixing its distributors' prices or restricting the customers to whom and territories in which they may sell. Disciplinary activity and, for three years, suggesting resale prices are prohibited.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen. Antitrust Div., Baddia J. Rashid, William D. Kilgore, Jr., Carl L. Steinhouse and Norah C. Taranto, Attys. Dept. of Justice.

For the defendant: Malcolm A. Hoffman, New York, N. Y.

Final Judgment

KALBFLEISCH, D. J.: Plaintiff, United States of America, having filed its complaint on February 19, 1970, and defendant having appeared herein and plaintiff and defendant by their respective attorneys having consented to the making and entry of this Final Judgment without trial or adjudication of any fact or law herein, and without admission by either party in respect to any issue:

Now, Therefore, before any testimony has been taken herein, and upon consent of the parties hereto, it is hereby;

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and of the 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, 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) "Defendant" shall mean the defendant Viking Carpets, Inc., a corporation organized and existing under the laws of the State of New York;

(B) "Viking carpets" shall mean any of the floor covering materials sold by defendant;

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

(D) "Distributor" shall mean any person engaged in the purchase for resale of Viking carpets from defendants; and

(E) "Dealer" shall mean any person engaged in the purchase of Viking carpets for resale primarily to consumers.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to the defendant, its successors, subsidiaries, assigns, officers, directors, agents and its employees, and to all other persons in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise. For the purposes of this Final Judgment, defendant Viking Carpets, Inc., its officers, directors, servants and employees when acting as such, shall be deemed to be one person.

IV

[*Price Fixing Activities*]

Defendant is enjoined and restrained from:

(A) Entering into, adhering to, maintaining or enforcing, or claiming any rights under any combination, contract, agreement, understanding, plan or program with any distributor or dealer to fix, establish, limit or restrict:

(1) The prices at which Viking carpets may be sold by any distributor or dealer;

(2) The persons or classes of persons to whom, or the territories in which Viking carpets may be sold or distributed by any distributor or dealer;

(B) Requiring any distributor or dealer to adhere to any fixed, suggested or specified prices at which Viking carpets may be sold to third persons;

(C) Taking or threatening to take any disciplinary action against any distributor or dealer because of the prices at which, the persons or classes of persons to whom, or the territories in which such distributor or dealer has sold or distributed or intends to sell or distribute Viking carpets;

(D) For a period of three years from the date of entry of this Final Judgment, suggesting to its distributors resale prices at which Viking carpets shall be sold to other persons.

V

[*Notification*]

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 distributors and its dealers which is contrary to or inconsistent with any provision of this Final Judgment;

(B) Within sixty (60) days after the entry of this Final Judgment, to serve a copy of it upon each of its distributors;

(C) For a period of five (5) years from the date of this Final Judgment to notify plaintiff within thirty (30) days after any cancellations of distributorships together with the reasons therefor;

(D) Notify in writing (1) each of its present distributors within sixty (60) days from the date of the entry of this Final Judgment, and (2) for a period of three (3) years from the date of entry of this Final Judgment, notify each of its newly appointed distributors on or before the date of such appointment, that each distributor may sell the defendant's carpets at such prices as and to whomever and wherever he chooses;

(E) Defendant is ordered and directed to file with this Court and serve upon the plaintiff, within one hundred and fifty (150) days from the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with Sections (A), (B) and (D) of this Section V.

VI

[*Inspection and Compliance*]

(A) 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 of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to defendant's principal office, be permitted, subject to any legally recognized privilege:

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

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

(B) Defendant, on the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing, under oath if requested, with respect to any matters contained in this Final Judgment as may from time to time be requested for the purpose of determining or securing compliance with this Final Judgment.

(C) No such information obtained by the means provided for in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States of America except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this 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 the Court at any time for such further orders or directions as may be necessary or appropriate for the construction of, or carrying out of this Final Judgment, or for the amendment or modification of any of the provisions contained herein, for the enforcement of compliance therewith and for the punishment of the violation of any of the provisions contained herein.

United States v. Indep. Towel Supply Co.

Civil Action No. 68-935

Year Judgment Entered: 1970

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Independent Towel Supply Co., Morgan Linen Service, Inc., Pioneer Linen Supply Co., Union Towel Supply & Laundry Co. and The Cleveland Linen and Towel Service Institute, Inc., U.S. District Court, N.D. Ohio, 1970 Trade Cases ¶73,281, (Sept. 23, 1970)

United States v. Independent Towel Supply Co., Morgan Linen Service, Inc., Pioneer Linen Supply Co., Union Towel Supply & Laundry Co. and The Cleveland Linen and Towel Service Institute, Inc.

1970 Trade Cases ¶73,281. U.S. District Court, N.D. Ohio, Eastern Division. Civil Action No. 68-935. Filed July 29, 1970. Entered September 23, 1970. "(Judge Battisti suspended subsections VI(B) and (C) until terms of treble damage action are complete.)" Case No. 2031 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Linen Supplies—Dissolution of Trade Association—Consent Decree.—Under the terms of a consent decree, a linen supply association was required to dissolve itself, and its four member companies were prohibited from stabilizing prices or allocating markets and customers. The companies also were barred from communicating to or exchanging with any other linen supplier any price or term or condition of furnishing linen supply service prior to communication of such information to the public or trade generally, or any lists of names or locations of linen supply customers. Prior to dissolution, the association was required to destroy its existing file of price lists, customer registrations and all books and records relating to arbitration of disputes over customers.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen., Baddia J. Rashid, William D. Kilgore, Carl L. Steinhouse, Frank B. Moore, Joseph J. Calvert, Robert S. Zuckerman and John L. Wilson, Attys., Dept. of Justice.

For the defendants: David L. Foster, Cleveland, Ohio.

Final Judgment

BATTISTI, D. J.: Plaintiff, United States of America, having filed its complaint herein on December 11, 1968, and plaintiff and defendants, Independent Towel Supply Company, Morgan Linen Service, Inc., Pioneer Linen Supply Company, Union Towel Supply & Laundry Company and The Cleveland Linen and Towel Service Institute, Inc. either personally or by their respective attorneys, having respectively consented to the entry of this Final Judgment pursuant to a stipulation entered into....., 1970 without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence against or admission by any 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 upon consent of the parties hereto, it is hereby,

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and of the parties consenting hereto. The complaint herein states claims against defendants, Independent Towel Supply Company, Morgan Linen Service, Inc., Pioneer Linen Supply Company, Union Towel Supply & Laundry Company and The Cleveland Linen and Towel Service Institute, Inc., upon which relief may be granted 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, 15 U. S. C. § 1, as amended.

II

[*Definitions*]

As used in this Final Judgment:

(A) "Defendants" shall mean Independent Towel Supply Company, Morgan Linen Service, Inc., Pioneer Linen Supply Company, Union Towel Supply & Laundry Company and The Cleveland Linen and Towel Service Institute, Inc., or each of them;

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

(C) "Linen Supply" or "Linen Supplies" shall mean any linen or other washable cloth products such as towels, toweling, aprons, coats, dresses, frocks, smocks, gowns, hair cloths, headbands, jackets, blouses, sheets, pillowcases, shirts, slips, vests, tablecloths, napkins, uniforms, trousers, jumpers, caps, coveralls, and overalls used in the course of their employment by personnel of professional, commercial, industrial or governmental customers of a linen supply service company, or used by patrons of such customers;

(D) "Linen Supply Service" shall mean the furnishing and delivery of clean Linen Supplies, the pick-up of soiled Linen Supplies, the laundering of soiled Linen Supplies and the redelivery of clean Linen Supplies by the operator of such a service to customers thereof at stipulated intervals of time for a price paid by the respective customers;

(E) "Subsidiary" shall mean any Person, engaged in a Linen Supply Service business owned or controlled by a Defendant or any such Person under common control and management with a Defendant;

(F) "Cleveland Area" shall mean Cleveland, Ohio, all of Cuyahoga County, and the adjoining suburbs which are west of Ashtabula, north of Cuyahoga Falls and east of Lorain, all in the State of Ohio;

(G) "Linen Supplier" shall mean any Person engaged in the Linen Supply Service business; and

(H) "The Association" shall mean The Cleveland Linen and Towel Service Institute, Inc.

III

[*Applicability*]

The provisions of this Final Judgment applicable to any 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 any such Defendant who receive actual notice of this Final Judgment by personal service or otherwise. For purposes of this Final Judgment, each Defendant and its parents, officers, directors, employees, Subsidiaries, successors and assigns shall be deemed to be one person when acting in such capacity; provided, however, that if the plaintiff should institute contempt proceedings against Defendant Morgan Linen Service, Inc., its officers, directors, agents, employees, parent or Subsidiaries with respect to a set of facts which it believes to constitute a violation of the terms of both this Final Judgment and a final judgment of any other court, then the plaintiff shall elect the court in which it shall institute such contempt action and, upon such election, shall not institute another contempt action based upon substantially the same set of facts in any other court.

IV

[*Prices, Markets, Customers*]

The Defendants are each enjoined and restrained from directly or indirectly entering into, adhering to, enforcing, or claiming any rights under any agreement, understanding, plan or program with any other Linen Supplier or with any central agency or association of or for Linen Suppliers to:

(A) Establish, maintain, stabilize or adhere to prices, discounts or other terms or conditions for the furnishing of Linen Supply Service to customers;

(B) Divide or allocate market, territories or customers for the furnishing of Linen Supply Service; or

(C) Refrain from soliciting any customers of another Linen Supplier.

V

[*Communication of Information*]

Defendants are each enjoined from:

(A) Joining, participating in, or belonging to any trade association with knowledge that any of the activities of such association are inconsistent with any term of this Final Judgment;

(B) Communicating to or exchanging with any other Linen Supplier any price, discount, term or condition of furnishing Linen Supply Service to be charged or granted by the Defendant or by such other Linen Supplier to any third Person prior to the communication of such price, discount, term or condition to the public or trade generally;

(C) Communicating to or exchanging with any other Linen Supplier lists of names or locations of Linen Supply Service customers;

(D) Reporting to any other Linen Supplier individually or to any association, group or central agency of or for Linen Suppliers, formal or informal, the acquisition or loss of Linen Supply Service customers;

(E) Formulating, communicating or maintaining a policy of not soliciting Linen Supply Service customers being supplied by another Linen Supplier; provided, however, that nothing herein shall be construed to require any Defendant to interfere tortiously in a legally recognizable contractual relationship between another Linen Supplier and its customer; and

(F) For ten (10) years from the date of entry of this Final Judgment, submitting to or participating in grievance procedures conducted by any association, group or central agency of or for Linen Suppliers, formal or informal, relating to the acquisition or loss of Linen Supply Service customers in the State of Ohio; provided, however, that nothing herein shall be construed to prohibit any Defendant from participating in lawful arbitration of bona fide disputes (which may include, but need not be limited to, arbitration of such disputes arising out of claims for alleged inducement of breach of contracts for Linen Supply Service) upon the following terms and conditions;

(1) Notice of each such arbitration (including the identity of the arbitrator) shall be given to the Attorney General, the Assistant Attorney General in charge of the Antitrust Division or the Chief of the Great Lakes Field Office of such Division ten (10) days prior to the commencement of the arbitration hearing and notice of the completion of such hearing shall be given in the same manner within ten (10) days thereafter;

(2) A duly authorized representative of the Department of Justice may attend such hearing;

(3) A stenographic transoript of such hearing shall be prepared by a court reporter in the normal manner of court hearings and depositions in civil cases; and

(4) A copy of such transcript shall be kept in the files of a Defendant participating in such arbitration for a period of one (1) year from the conclusion of such hearing, and shall be available for the inspection of duly authorized representatives of the Department of Justice pursuant to the provisions of section IX hereof.

Provided, however, that nothing contained in this Section V shall be deemed to be applicable to any Subsidiary of Defendant Morgan Linen Service, Inc. other than those corporations directly owned or controlled by it.

VI

[*Dissolution of Association—Document Destruction*]

(A) The Defendants and *each of them* are ordered and directed, within sixty (60) days after the entry of this Final Judgment, to institute and to prosecute with due diligence appropriate proceedings to wind up the affairs of and to terminate the existence of the Defendant Association; provided, however, that subject to the other provisions of this Final Judgment, nothing contained in this section VI shall prohibit the Defendants, or any of them, from organizing or joining any lawful association.

(B) The Defendant Association is ordered and directed within sixty (60) days after the entry of this Final Judgment, to destroy any existing file of price lists, customer registrations, complaints, investigations, awards, and any other existing books and records which refer to the arbitration of disputes over customers for furnishing Linen Supply Service and to file with this Court (with a copy to the Assistant Attorney General in charge of the Antitrust Division) an affidavit of such destruction.

(C) Each of the Defendants except Defendant Association is ordered and directed, within sixty (60) days after the entry of this Final Judgment, to destroy any existing books and records of price lists, customer registrations, complaints, investigations, awards and arbitration disputes, any of which refer or relate to the activities of the Defendant Association.

VII

[*Awarded Bids*]

For a period of three (3) years from and after the date of entry of this Final Judgment, when any Defendant has received a bid award from any federal, state or municipal government or agency thereof in the State of Ohio as a result of the fact that said Defendant was the only bidder, such Defendant is enjoined from submitting a bid to that government agency on the occasion of the next bid invitation thereof, where the invitation pursuant to which such Defendant received the award:

(A) Related to a dollar volume of business less than twenty-five hundred dollars ($2,500) per year; or

(B) Specified that certain components of the Linen Supply Service which was the subject of such invitation might be bid upon in addition to or in lieu of the whole thereof and such Defendant submitted a bid as to the whole but refused to submit any bid as to less than the whole thereof.

VIII

[*Statements of Submitted Bids*]

Defendants, excluding Defendant Association are each directed and ordered for a period of three (3) years after the date of entry of this Final Judgment to prepare quarterly, a certified statement in which they shall list each bid for Linen Supply Service submitted by them to any federal, state or municipal government or any agency thereof on the Cleveland Area during the past quarter. The certified statement shall also identify the instances in which the Defendant has received an invitation to submit a bid to any federal, state or municipal government or any agency thereof in the Cleveland Area and did not submit a bid, together with an explanation of its reasons for not submitting a bid. The foregoing statement together with the work papers used in the preparation of such bids, shall be kept in the files of each of the Defendants preparing same for a period of four (4) years from the date of entry of this Final Judgment.

IX

[*Compliance and Inspection*]

For the purpose of determining or securing the compliance with this Final Judgment and for no other purpose, the subject to any legally recognizable privilege, upon 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 through its principal office;

(A) Duly authorized representatives of the Department of Justice shall be permitted:

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

(2) Subject to the reasonable convenience of such Defendant, and without restraint or interference from it, to interview officers, directors, employees or agents of Defendant, who may have counsel present, regarding any such matters; and

(B) Defendants shall submit such reports in writing, under oath if so requested, to the Department of Justice 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 IX 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 to which the United States of America is a party for the purpose of determining or securing compliance with this Final Judgment or as otherwise required by law.

X

[*Retention of Jurisdiction*]

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 or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

United States v. Work Wear Corp.

Civil Action No. C 68-467

Year Judgment Entered: 1971

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Work Wear Corp., U.S. District Court, N.D. Ohio, 1971 Trade Cases ¶73,681, (Sept. 27, 1971)

United States v. Work Wear Corp.

1971 Trade Cases ¶73,681. U.S. District Court, N.D. Ohio, Eastern Division. Civil No. C 68-467. Entered September 27, 1971. Case No. 2004, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions—Industrial Laundries and Work Clothes Manufacturers—Divestiture—Merger Ban—Consent Decree.—A manufacturer of rental-type work clothes was required by a consent decree to divest itself within three years of either certain specified work clothes manufacturing facilities or certain specified industrial laundries. If the company elected to divest itself of the work clothes manufacturing facilities, it was enjoined from acquiring any manufacturer, seller, or distributor of work clothing for a period of five years, and for an additional ten years thereafter without the consent of the government or approval of the court. In addition, the company was enjoined for five years from manufacturing work clothes for sale to, or distributing or selling work clothes to any domestic industrial laundry, and for an additional ten years thereafter without the consent of the government or approval of the court. If the company elected to divest itself of the industrial laundries, it was enjoined from acquiring any industrial laundry for a period of ten years.

For plaintiff: Richard W. McLaren, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, Robert J. Ludwig, Carl L. Steinhouse, Robert M. Dixon, Charles E. Hamilton, III, Richard I. Fine, Robert A. McNew, and Jerome C. Finefrock.

For defendant: Hahn, Loeser, Freedheim, Dean & Wellman, by Albert I. Borowitz (Simpson Thacher & Bartlett, by Albert Bickford, and Pollak, Swartz, Bendes, Stark & Amron, by Mervin C. Pollak and John D. Swartz, of counsel).

Final Judgment

KRUPANSKY, D. J.: Plaintiff, United States of America, having filed its complaint herein on June 28, 1968, and defendant having appeared by its attorneys and having filed its answer to such complaint denying the substantive allegations thereof; and the plaintiff and the defendant, by their respective attorneys, having severally consented to the entry of this Final Judgment without this Final Judgment constituting any evidence against or any admission by any party hereto with respect to any such issue of fact or law;

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

Ordered, Adjudged and Decreed as follows :

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims upon which relief may be granted against the defendant 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)"Work Wear" means the defendant, Work Wear Corporation, an Ohio corporation, and its subsidiaries or divisions, or any of them;

(B)"Work clothes" means work shirts, work pants, work jackets,* coveralls, shop coats, and executive slacks which are designed to withstand numerous launderings and which are made for and are sold to industrial laundries. Such garments are designed primarily for wear by men. The term does not include (1) garments designed primarily for wear by women; (2) uniforms and other garments commonly recognized in the laundry trade as garments for the linen supply trade, which garments are designed primarily for use by personnel working in hospitals, laboratories, doctors' offices, hotels, motels, bakeries, restaurants, bars, barber shops, drugstores, beauty shops, food stores, and supermarkets; (3) those work style clothes made for the retail trade or uniforms made for such occupations as firemen, policemen, security forces, mail carriers or military personnel; (4) those garments sold directly to individuals or industrial or commercial concerns or governmental agencies; (5) those garments having special characteristics such as fire resistance, chemical resistance, or other safety type garments and so-called clean room garments; (6) socalled casual wear, western gear, sports wear garments, business suits or formal wear; and (7) dress shirts, dress pants, blazers, or other wearing apparel of the type normally worn by office workers or primarily sold to the retail trade;

(C)"Industrial laundry" means a domestic laundry and garment rental business, which, pursuant to rental agreements, furnishes owned clean work clothes to individual industrial and commercial accounts for their employees;

(D)"Affiliated industrial laundries" means the industrial laundries located in the United States owned, whether in whole or in part, by Work Wear on the date of this Final Judgment;

(E)"Manufacturing facility" means a domestic facility producing work clothes;

(F)"Affiliated manufacturing facilities" means the manufacturing facilities located in the United States and owned, whether in whole or in part, by Work Wear on the date of this Final Judgment; and

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

III

[*Applicability*]

The provisions of this Final Judgment shall apply to the defendant, its officers, directors, agents and employees, and to its successors and assigns, and to all other persons in active concert or participation with defendant who receive actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall not apply or relate to activities or operations outside the continental limits of the United States except insofar as those activities or operations relate to the distribution or sale of work clothes to domestic industrial laundries.

IV

[*Alternative Divestiture Option*]

(A)Within three (3) years from the date of entry of this Final Judgment, defendant shall divest, at defendant's option, either (1) each of the affiliated manufacturing facilities listed in Exhibit A hereto annexed as a going and viable business or (2) each of the affiliated industrial laundries listed in Exhibit B hereto annexed as a going and viable business.

Divestiture of the affiliated manufacturing facilities or affiliated industrial laundries required by this subsection may be made separately, in combinations each consisting of less than the whole, or as a whole.

(B)Unless otherwise agreed by and between the parties hereto:

(1) Sixty (60) days prior to the closing of any sale hereunder, defendant shall furnish in writing to plaintiff complete details of the proposed transaction. Within thirty (30) days of the receipt of these details, the plaintiff may request supplementary information concerning the transaction, which shall also be furnished in writing.

(2) If plaintiff objects either to the purchaser or the terms and conditions of the proposed sale, it shall notify defendant in writing within thirty (30) days of receipt of the supplementary information submitted pursuant to plaintiff's last request for such information made pursuant to Section IV (B)(1) of this Final Judgment or within thirty (30) days after the receipt of a statement from defendant, if applicable, that it does not have the requested supplementary information. If no request for supplementary information is made, said notice of objection shall be given within thirty (30) days of receipt of the originally submitted details concerning the transaction. In the event of such notice, the sale shall not be closed unless approved by the Court or unless plaintiff's objection is withdrawn.

(C)Following the entry of this Final Judgment, defendant shall submit written reports every six (6) months to the Assistant Attorney General in charge of the Antitrust Division describing the efforts made by it to divest the affiliated manufacturing facilities or affiliated industrial laundries required to be divested pursuant to Section IV(A) of this Final Judgment.

(D) The divestiture ordered and directed by this Final Judgment, when made, shall be made in good faith, and shall be absolute and unqualified and none of the divested affiliated manufacturing facilities or affiliated industrial laundries shall be reacquired by defendant; provided, however, that defendant may acquire and enforce any bona fide lien, mortgage, deed of trust, or other form of security on all or any of the affiliated manufacturing facilities or affiliated industrial laundries divested, which may be given for the purpose of securing to defendant payment of any unpaid portion of the purchase price thereof or performance of the, sale transaction, and may also enforce any other terms and conditions of the sale transaction as therein provided or as provided by law. If defendant regains ownership or control of any such assets by enforcement or settlement of a bona fide lien, mortgage, deed of trust, or other form of security before selling or otherwise disposing of same, defendant shall, subject to the provisions of this Final Judgment, dispose of any such assets thus regained within eighteen (18) months from the time of reacquisition as a going and viable business.

V

[*Injunctive Relief]*

In the event defendant elects, under the option granted in Section IV(A) of this Final Judgment, to divest the affiliated manufacturing facilities, then the injunction in Section V(A) will apply. In the event defendant elects under the option granted in Section IV(A) of this Final Judgment, to divest the affiliated industrial laundries, then the injunction in Section V(B) will apply.

(A) Manufacturing Facilities

(1) Defendant is enjoined and restrained, for a period of five (5) years from the date of entry of this Final Judgment, from acquiring, directly or indirectly, any assets (except products purchased in the normal course of business), business, goodwill, or capital stock of any person operating a manufacturing facility; defendant is enjoined and restrained for an additional period of ten (10) years thereafter from acquiring, directly or indirectly, without the consent of the Assistant Attorney General in charge of the Antitrust Division, or failing such consent, the approval of the Court upon defendant giving plaintiff thirty (30) days notice, any assets (except products purchased in the normal course of business), business, goodwill, or capital stock of any person operating a manufacturing facility.

(2) Defendant is enjoined and restrained for a period of five (5) years from the date of entry of this Final Judgment from manufacturing work clothes for sale, to, or distributing or selling work clothes to any domestic industrial laundry, either for its own account or by reason of a contractual relationship with another company; defendant is enjoined and restrained for an additional period of ten (10) years thereafter from manufacturing work clothes for sale to, or distributing or selling work clothes to any domestic industrial laundry, either for its own account or by reason of a contractual relationship with another company, without the consent of the Assistant

Attorney General in charge of the Antitrust Division, or failing such consent, the approval of the Court upon defendant giving plaintiff thirty (30) days notice; provided that nothing contained herein shall prevent defendant from disposing of excess, damaged, or discontinued inventory by sale or otherwise.

(3) The provisions of subsection (2) of this section shall not apply (a) to manufacture, distribution or sale of any products by any affiliated manufacturing facility listed in Exhibit A hereto annexed; or (b) for a period of three (3) years from the date of entry of this Final Judgment to manufacture, distribution or sale of any products manufactured at the headquarters building of defendant located at 1768 East 25th Street, Cleveland, Ohio; or (c) to the defendant's activities or operations outside of the United States except insofar as those activities or operations relate to the distribution or sale of work clothes to domestic industrial laundries.

(B)Industrial Laundries

Defendant is enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from acquiring directly or indirectly, any assets (except products sold in the normal course of business), business, goodwill, or capital stock of any person operating an industrial laundry.

(C)Pending the defendant's notification to the Government and the Court of its election as provided in Section IV(A) of this Final Judgment, the defendant is enjoined and restrained from acquiring directly or indirectly the assets (except products purchased or sold in the normal course of business), business, goodwill, or capital stock of any person operating a manufacturing facility or an industrial laundry.

VI

[*Inspection and Compliance*]

(A) For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office, be permitted (1) reasonable access, during the office hours of defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant relating to any of the matters contained in this Final Judgment, and (2) subject to the reasonable convenience of defendant and without restraint or interference from defendant to interview officers or employees of defendant, who may have counsel present regarding any such matter.

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

No information obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings to which the United States of America is a party for the purpose of determining or 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 modification or termination of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Exhibit A

Affiliated Manufacturing Facilities To Be Divested by Work Wear Pursuant to Section IV(A) of Final Judgment

Alexandria Industrial Garment Mfg. Co.,

Inc. Alexandria, Tennessee
Granby Manufacturing Company Granby, Missouri
Industrial Garment Mfg. Co., Inc. Palestine, Texas
Industrial Garment Mfg. of Tennessee, Inc.
Erwin, Tennessee
Laurel Industrial Garment Manufacturing
Co. Laurel, Mississippi
Louisiana Industrial Garment Mfg. Corp. Gonzales, Louisiana
Mid-South Manufacturing Company, Inc. Richton, Mississippi
Miller Manufacturing Company, Inc. Joplin, Missouri

Exhibit B

Affiliated Industrial Laundries to be Divested by Work Wear Pursuant to Section IV(A)(2) of Final Judgment

Arrow Uniform Service Philadelphia, Pennsylvania
Blue Grass Uniform Supply Company Owensboro, Kentucky
Dixie Uniform & Linen Supply Tampa, Florida
Dixie Uniform. Supply
Jacksonville, Florida
Industrial Uniform & Towel Service, Inc.
Tyler, Texas
Mechanics Laundry Company Detroit, Michigan
Mechanics Laundry Supply, Inc. Indianapolis, Indiana
Progressive Uniform Service, Inc. Detroit, Michigan
Red Star Industrial Service Fresno, California
Rental Uniform Service New Orleans, Louisiana
Star Uniform Rental Brooklyn, New York

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, -v- WORK WEAR CORPORATION, Defendant.	CIVIL NO. C 68-467 JUDGE ROBERT B. KRUPANSKY

STIPULATION AND ORDER

IT IS HEREBY STIPULATED by and between the United States and Work Wear Corporation, through their respective attorneys, as follows:

1. The United States, under Section IV(B) of the Final Judgment, raises no objection to the plan of divestiture set forth in the letters from defendant's attorneys to United States, dated December 22 and 29, 1976, January 13 and 28, 1977, February 9, 1977 and June 9, 1977, supplemented by this Stipulation and Order and the Order described in Paragraph 5 hereof. Such plan contemplates the transfer of defendant's United States rental service business to ARA Services, Inc. ("ARA"), through the following steps: (a) the spin-off to common shareholders of Work Wear Corporation ("Work Wear") of all the common stock of Work Wear Distribution Corp. ("New Work Wear"), a wholly owned Ohio subsidiary of Work Wear, to which Work Wear will have transferred its name and its domestic and foreign manufacturing operations and Canadian rental service business and (b) the acquisition by ARA of Work Wear's United States industrial laundry operations by means of the merger of Work Wear into ARA. At the time of such merger, Work Wear's only asset will be the stock of its United States industrial laundry subsidiary, Imatex Services, Inc. ("Imatex"), which, upon the merger, will become a subsidiary of ARA.

2. Upon consummation of said merger of Work Wear with and into ARA, New Work Wear will remain subject, for a period expiring September 27, 1981, to the injunction against acquisition of industrial laundries pursuant to the provisions of Section V(B) of the Final Judgment, but shall not be subject to any of the provisions set forth in Section V(A) (1) and (2) of the Final Judgment.

IT IS FURTHER STIPULATED by the United States of America and ARA Services, Inc., by their respective attorneys, that:

3. ARA voluntarily submits to the jurisdiction of the Court solely for the purpose of permitting the entry of the Order attached hereto.

4. Neither ARA nor Imatex shall be subject to any provision set forth in Section V(A) or (B) of the Final Judgment, or to any of the other terms of the Final Judgment.

5. An Order in the form of the one attached hereto may be filed with and entered by the Court.

Dated: JUNE 17, 1977

FOR PLAINTIFF, UNITED STATES OF AMERICA

Robert W. Tolan

Attorney, Department of Justice

OF COUNSEL:

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& HABERMAN

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FOR ARA SERVICES, INC.:

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SO ORDERED:

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	CIVIL ACTION NO. C 68-467
WORK WEAR CORPORATION, Defendant.	)	JUDGE ROBERT B. KRUPANSKY

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. ARA Services, Inc. ("ARA") is made a party to this action for the sole purpose of permitting the entry of this Order. ARA has no obligations pursuant to the original judgment.

2. Following the transfer of the domestic industrial laundry business from Work Wear Corporation, for each calendar year commencing January 1, 1978, ARA shall not purchase from Work Wear Distribution Corp. ("New Work Wear") for any industri laundry listed on Schedule A, work clothes in a dollar amount greater than 15% of the total dollar amount of work clothes purchased for such industrial laundry in the preceding calendar year. In addition, ARA shall purchase from sources other than New Work Wear for industrial laundries not listed on work clothes in an amount which exceeds:

(i) For each calendar year commencing on or after January 1, 1980, the aggregate dollar amount of work clothes purchased

from New Work Wear for Schedule A laundries in the preceding calendar year.

(ii) For the calendar year 1979, two-thirds of the aggregate dollar amount of work clothes purchased from New Work Wear for Schedule A laundries in the calendar year 1978.

(iii) For the calendar year 1978, $250,000.

3. Upon a finding by the Court that ARA's work clothes purchases do not conform to the provisions of Paragraph 2 above, ARA shall separate Joseph and Ira Kirshbaum from all work clothes purchase decisions or terminate their employment. In addition, the Court may order such other and further relief as may be appropriate for the enforcement of this Order.

4. ARA shall not transfer or refer any business from the industrial laundries listed in Schedule A to other industrial laundries operated by ARA for the purpose of avoiding or circumventing the provisions of Paragraph 2 above.

5. This Order and any further order hereunder shall expire whenever Joseph and Ira Kirshbaum each cease either (a) to hold more than 2% of the stock of New Work Wear or any successor thereof or (b) to be employed by ARA.

6. For the purposes of this Order, the term "work clothes" shall have the same meaning as in the Final Judgment.

7. ARA shall submit a certified statement to the Assistant Attorney General in charge of the Antitrust Division every six (6) months showing what ARA has done in order to comply with paragraphs 2 and 4 above and showing ARA's purchases of work clothes from New Work Wear and other sources for each

laundry listed in Schedule A and affirming that the provisions of paragraphs 2 and 4 above have been complied with. Such statements shall be submitted by January 1, 1978 and every six (6) months thereafter. If ARA certifies to the Assistant Attorney General in charge of the Antitrust Division that neither Joseph nor Ira Kirshbaum will thereafter, while holding more than 2% of the stock of New Work Wear, serve in any capacity in which he may influence ARA purchasing decisions for work clothes, the provisions of paragraphs 2 and 4 hereof shall be suspended and ARA shall thereafter be bound by the certification.

8. A. For the purpose of determining or securing compliance with this Order and subject to any legally recognized privilege, from time to time:

(1) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to ARA made to its principal office, be permitted:

(a) Access during office hours of ARA to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of ARA, who may have counsel present, relating to any of the matters contained in this Order; and

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

(2) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to ARA's principal office, ARA shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Order as may be requested.

8. B. No information or documents obtained by the means provided in this Order 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, or for the purpose of securing compliance with this Order, or as otherwise required by law.

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

Dated: 6-22-77

SO ORDERED:

UNITED STATES JUDGE

- 4 -

SCHEDULE A

Lompoc, California

Redding, California

Orlando, Florida

Scranton, Pennsylvania

Reading, Pennsylvania

Newark, New Jersey

Camden, New Jersey

Philadelphia, Pennsylvania

Detroit, Michigan

Tampa, Florida

Jacksonville, Florida

New Orleans, Louisiana

United States v. Am. Ship Bldg. Co.

Civil Action No. C72-859

Year Judgment Entered: 1972

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. AMERICAN SHIP BUILDING COMPANY and LITTON SYSTEMS, INC., Defendants.	Civil Action No. C72-859 Judge Ben C. Green Filed: December 4, 1972 Entered: January 8, 1972

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on August 16, 1972, seeking to enjoin an alleged violation of Section 7 of the Clayton Act (15 U.S.C. § 18); and defendants, American Ship Building Company and Litton Systems, Inc., having appeared, and the plaintiff and the defendants, by their respective attorneys, having each consented to the making and entry of this Final Judgment;

NOW, THEREFORE, without trial or adjudication of any issue of law or fact herein, and without constituting any evidence or any admission by any party with respect to any such issue and upon the consent of plaintiff and defendants, the Court being advised and having considered the matter, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction over the subject matter and the parties consenting hereto. The complaint states a claim 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

As used in this Final Judgment:

(A) "Person" shall mean an individual, partnership, corporation or any other business or legal entity;

(B) "American" shall mean The American Ship Building Company, a New Jersey corporation, and any of its subsidiaries;

(C) "Kinsman" shall mean The Kinsman Marine Transit Company, a Delaware corporation, a subsidiary of American;

(D) "LSI" shall mean Litton Systems, Inc., a Delaware corporation, and any of its subsidiaries;

(E) "Litton" shall mean Litton Industries, Inc., a Delaware corporation, and any of its subsidiaries;

(F) "Wilson" shall mean the Wilson Marine Division of LSI;

(G) "Acquired Vessels" shall mean the Str. Thomas Wilson, Str. Ben Moreell, Str. A. T. Lawson, Str. J. Burton Ayers, Str. J. H. Hillman, Jr., and Str. Frank R. Denton;

(H) "Bulk Cargo Vessel" shall mean a self-propelled boat of United States Registry engaged in, or capable of being engaged in, the transportation of dry bulk cargoes such as iron ore, grain, coal, stone, cement, etc., between United States Great Lakes ports;

(I) "Non-Captive Fleet" shall mean one or more bulk cargo vessels owned or operated by any person except United States Steel Corporation, Bethlehem Steel Corporation, Inland Steel Company and Ford Motor Company;

(J) "Vessel Trip Capacity" shall mean the tonnage carrying capacity of any bulk cargo vessel as disclosed in Greenwood's Guide to Great Lakes Shipping or, if Greenwood's Guide to Great Lakes Shipping shall at such time not be published, by any other recognized reporting agency, at such time as such tonnage carrying capacity shall be determinable;

(K) "Fleet Trip Capacity" shall mean the sum of the Vessel Trip Capacity of each bulk cargo vessel owned and/or operated by a particular person.

III

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

IV

(A) American and Kinsman shall sell, by December 15, 1975, any three of the Acquired Vessels as they may select (i) to such persons not presently owning or operating bulk cargo vessels on the Great Lakes or (ii) to persons owning or operating Non-Captive Fleets in the manner hereinafter provided, who will acquire them for purposes of operating the same on the Great Lakes between United States ports. Such divestiture shall be accomplished as follows:

(1) Such sale may be made by American or Kinsman to any such person then owning and/or operating bulk cargo vessel(s) with a Fleet Trip Capacity less than the Fleet Trip Capacity of Kinsman without the consent of plaintiff or this Court. Such sale may also be made to any such

person owning and/or operating bulk cargo vessel(s) with a Fleet Trip Capacity greater than the Fleet Trip Capacity of Kinsman only with the consent of the plaintiff. Any person(s) qualified to purchase pursuant to this Section shall herein be referred to in this Section IV as "eligible purchaser(s)".

(2) During the period from the date of entry of this Final Judgment through December 15, 1973, American and Kinsman, in furtherance of their divestiture obligations hereinbefore provided, shall actively and in good faith attempt to sell such three of the acquired Vessels as they may select to any eligible purchaser(s).

(3) If, after December 15, 1973, American and Kinsman shall not have divested themselves of three of the Acquired Vessels, as hereinbefore provided, the United States Maritime Administration ("MARAD") shall be requested to determine the fair market value of each of the Acquired Vessels which have not been sold and to furnish in writing to American, Kinsman and the United States Assistant Attorney General in charge of the Antitrust Division its determination of such fair market values. Thereafter, and until December 15, 1974, American and Kinsman, in furtherance of their divestiture obligations as hereinbefore provided, and in good faith, shall attempt to sell such of the Acquired Vessels as they may select to any eligible purchaser(s) at a price not to exceed the fair market value of such vessel(s) as shall have been determined by MARAD.

(4) If, after December 15, 1974, American and Kinsman shall not have divested themselves of three of the Acquired Vessels as hereinbefore provided, they shall thereafter and until December 15, 1975, actively and in good faith, in furtherance of their divestiture obligations as hereinbefore provided, attempt to sell such of the Acquired Vessels as they may select to any eligible purchaser(s) for the best price obtainable.

(5) If, after December 15, 1975, American and Kinsman shall not have divested themselves of three of the Acquired Vessels, as hereinbefore provided, a recognized ship's broker shall be selected by mutual agreement between American, Kinsman and the United States Assistant Attorney General in charge of the Antitrust Division. In the event the parties cannot agree upon such ship's broker, the selection of the same will be made by this Court. Such ship's broker shall thereafter and until December 15, 1976, actively and in good faith, attempt to sell to any eligible purchaser(s) any of the Acquired Vessels not then sold at any price obtainable until such time as there shall have been sold a total of three of the Acquired Vessels from and after the date of entry of this Final Judgment.

(B) For a period of five (5) years following the date of entry of this Final Judgment, American and Kinsman shall:

(1) Report to the United States Assistant Attorney General in charge of the Antitrust Division every six (6) months as to the status of the Kinsman Fleet disclosing, with pertinent identification, the bulk cargo vessels in that fleet acquired, disposed of or scrapped.

(2) Promptly advise the United States Assistant Attorney General in charge of the Antitrust Division of any proposed sale or offer to purchase of an Acquired Vessel. As to any disposal for which the consent of the plaintiff shall be required, as hereinbefore provided, the United States Assistant Attorney General in charge of the Antitrust Division shall advise American or Kinsman in writing that he objects to such sale within thirty (30) days after the giving of such notice, or he will be deemed to have consented to such sale.

V

For a period of five (5) years following the date of entry of this Final Judgment, American and Kinsman shall not acquire any interest in any bulk cargo vessel then or theretofore operated between United States Great Lakes ports, or acquire the stock of any person owning any such bulk cargo vessel, without the prior approval of the plaintiff, except as hereinafter specifically provided.

Notwithstanding the foregoing:

(a) During such five (5) year period American or Kinsman may acquire any bulk cargo vessel then or theretofore operated between Great Lakes ports for purposes solely of replacement of bulk cargo vessel(s) owned by Kinsman. Such acquisition may be made by American or Kinsman from any person then owning and/or operating bulk cargo vessel(s) with a Fleet Trip Capacity greater than the Fleet Trip Capacity of Kinsman without the consent of plaintiff or this Court. Such acquisition may also be made from a person owning and/or operating bulk cargo vessel(s) with a Fleet Trip Capacity less than the Fleet Trip Capacity of Kinsman only with the consent of the plaintiff. In the event of such acquisition, American and Kinsman shall, within a reasonable period of time after such acquisition, dispose of a bulk cargo vessel or vessels with a Vessel

Trip Capacity approximately equivalent to the Vessel Trip Capacity of the vessel or vessels so acquired.

(b) In the event that, during such five (5) year period, American or Kinsman shall dispose of a bulk cargo vessel or vessels, it may acquire a bulk cargo vessel or vessels of approximately equivalent Vessel Trip Capacity from such persons and subject to the same limitations as are provided in Subsection (a) of this Section V for the acquisition of replacement bulk cargo vessels.

(c) In the event that, during such five (5) year period, American or Kinsman shall lose a bulk cargo vessel or vessels through actual or constructive loss, it may acquire a bulk cargo vessel or vessels of approximately equivalent Vessel Trip Capacity from such persons and subject to the same limitations as are provided in Subsection (a) of this Section V for the acquisition of replacement bulk cargo vessels; provided, however, that in the event such acquisition, under such circumstances, shall be made from a person owning and/or operating bulk cargo vessel(s) with a Fleet Trip Capacity less than the Fleet Trip Capacity of Kinsman, such acquisition shall be made only with the consent of the plaintiff.

(d) Nothing in this Final Judgment shall be deemed to permit American or Kinsman to replace, by acquisition, the Str. B. F. Jones and Str. Edward S. Kendrick and those three (3) vessels which are to be sold pursuant to Section IV above.

(e) Within one (1) year following the date of entry of this Final Judgment, American and Kinsman shall dispose of the Str. B. F. Jones and Str. Edward S. Kendrick.

VI

(A) For three (3) years from the date of entry of this Final Judgment, LSI will make a good-faith effort to utilize Hull 102 in the transportation of bulk commodities on the Great Lakes; provided, however, that during this three-year period LSI may bare boat charter Hull 102 for a term of no more than five (5) years.

(B) LSI retains the right to petition the Court, for good cause, for relief from this provision.

VII

(A) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, American, Kinsman, LSI, Litton and Wilson shall permit duly authorized representatives of the Department of Justice, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to American, Kinsman, LSI, Litton and Wilson at their respective principal offices subject to any legally recognized privilege:

(1) Access during the office hours of American, Kinsman, LSI, Litton and Wilson, 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 American, Kinsman, LSI, Litton and Wilson, respectively, which relate to any matters which are provided for in this Final Judgment;

(2) Subject to the reasonable convenience of American, Kinsman, LSI, Litton and Wilson and without restraint or interference from it, to interview officers or employees of American, Kinsman, LSI, Litton and Wilson, respectively, who may have counsel present, regarding such matters.

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

(C) No information obtained by the means provided in this Section VII of this Final Judgment 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 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 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 modification of any of the applicable provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

/s/ BEN. C. GREEN
UNITED STATES DISTRICT JUDGE

Dated: January 8, 1972

United States v. Yoder Bros.

Civil Action No. C-70-931

Year Judgment Entered: 1972

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA, Plaintiff, v. YODER BROTHERS, INC.; YODER BROTHERS OF CALIFORNIA, INC.; and BGA INTERNATIONAL, INC., Defendants.	Civil No. C-70-931 Antitrust Entered: March 15, 1972

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on April 20, 1970, the defendants having filed their respective answers thereto denying the substantive allegations thereof; and the parties hereto, by their respective attorneys, having appeared and consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or admission by any party hereto with respect to any such issue:

NOW, THEREFORE, before the taking of any testimony and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

The Court has jurisdiction of the subject matter herein and all parties hereto. The Complaint states claims upon which relief may be granted 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 (15 U.S.C. §§ 1 and 2).

II

As used in this Final Judgment:

(A) "Person" means an individual, partnership, corporation, association or other legal entity.

(B) "Cuttings" means sections or parts of chrysanthemum plants which may be grown into mature plants from which blossoms or additional cuttings are harvested.

(C) "Distributor" means any person who sells cuttings propagated by Yoder or Yoder-California, other than employees of Yoder or Yoder-California.

(D) "Propagator-Distributor" means any person who is engaged in the business of reproducing cuttings for the purpose of selling cuttings.

(E) "Yoder" means defendant Yoder Brothers, Inc.

(F) "Yoder-California" means defendant Yoder Brothers of California,Inc.

(G) "BGA" means defendant BGA International, Inc.

(H) "BGA agreements" means any agreements so entitled applicable to cuttings which were in effect as of December 1, 1969.

(I) "YGA agreements" means any agreements so entitled applicable to cuttings which were in effect as of December 1, 1969.

(J) "GRA agreements" means any agreements so entitled applicable to cuttings which were in effect as of December 1, 1969.

(K) "Breeder" means any person engaged in the business of breeding new varieties of chrysanthemums.

(L) "Subsidiary" means a corporation which a defendant controls, or has power to control, or in which fifty percent (50%) or more of the voting securities is beneficially owned by said defendant.

III

(A) The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its subsidiaries, successors and assigns and to their respective officers, directors, agents and employees 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.

(B) This Final Judgment shall not apply to transactions or activities solely between a defendant and its directors, officers, employees and subsidiaries, or any of them, when acting in such capacity, or to transactions or activities outside the United States.

IV

(A) Each of the defendants is enjoined and restrained from directly or indirectly entering into, adhering to, maintaining or engaging in any contract, agreement, understanding, plan, program or concert of action with any other breeder or with any other propagator-distributor to:

(1) Fix, establish, determine or suggest royalties, or other terms and conditions of sale, at or upon which breeders license the use of or sell cuttings to any third person;

(2) Fix, establish, determine or suggest prices, discounts, or other terms and conditions for the sale of cuttings to any third person;

(3) Refuse to solicit or refrain from soliciting the cuttings customers of any person;

(4) Allocate or divide sales territories or customers with respect to the sale of cuttings;

(5) Refuse to sell, give away or loan purchased cuttings or cuttings propagated therefrom, to any third person;.

(6) Require purchasers of cuttings to report mutations on said purchased cuttings to sellers thereof or to agree that mutations found on purchased cuttings or on plants propagated therefrom shall belong to any persons other than finders thereof;

(7) Boycott or threaten to boycott any person who breeds, propagates, or sells cuttings or who has manifested an intent to do so;

(8) Hinder, restrict, limit, or prevent any third person from breeding, propagating, purchasing or selling cuttings; provided however, that the provisions of this subsection (A)(8) shall not apply to any bona fide contract between a defendant and a breeder granting such defendant the option to purchase a claimed new variety of chrysanthemum, or to acquire patent rights thereto, under the terms of which the parties thereto agree not to disclose said claimed new variety to others and not to market cuttings therefrom for such a period of time as reasonably may be necessary for the evaluation of said new variety for the purposes of said option;

(B) Each defendant is enjoined and restrained from directly or indirectly entering into, adhering to, maintaining or engaging in any contract, agreement, arrangement, understanding, plan, program or concert of action with any other person to prohibit, restrain, or limit the right of any person either to export or to import unpatented cuttings from or into the United States, its territories and possessions.

V

Each defendant herein is enjoined and restrained from directly or indirectly requiring any purchaser of cuttings:

(A) Not to sell, give away or loan purchased cuttings, or cuttings propagated therefrom, to any third person;

(B) To limit or confine resale of purchased cuttings to any designated third person or group or class of persons or to any designated territory or geographical area;

(C) To report to seller mutations found by any said purchaser on purchased cuttings or on plants propagated therefrom or to agree that said mutations so found by any said purchaser become the property of any person other than the finder thereof.

VI

Each defendant herein is ordered and directed:

(A) Within thirty (30) days after the entry of this Final Judgment, to amend each BGA agreement, each YGA agreement, each GRA agreement, and each other agreement containing provisions prohibited by this Final Judgment to which each defendant respectively is a contracting party by eliminating therefrom all such prohibited provisions and to furnish a letter of amendment to each person signatory thereto and to furnish a copy of this Final Judgment to each such person

requesting same, which letter of amendment shall be substantially identical to the language of Exhibit A which is attached hereto and made a part hereof; and, for the purpose of compliance with this subsection insofar as it relates to signatories whose names are unknown to such defendant, to utilize in good faith its best efforts to obtain the names and addresses of said signatories unknown to such defendant,

(B) Within sixty (60) days after the entry of this Final Judgment, to file with this Court and to serve upon the plaintiff affidavits concerning the fact and manner of compliance with subsection (A) of this section VI, including the method and effort utilized by such defendant in compiling the list of signatories receiving said letter of amendment.

VII

(A) Defendant BGA is ordered and directed, within thirty (30) days after the entry of this Final Judgment, to serve by mail upon each of its members, except Yoder and Yoder-California, a conformed copy of this Final Judgment and, within sixty (60) days after the entry of this Final Judgment, to file with this Court and to serve upon the plaintiff affidavits as to the fact and manner of compliance with subsection (A) of this section VII.

(B) Defendant BGA is ordered and directed to furnish a copy of this Final Judgment to each new member at the time of acceptance of such membership and to obtain from each such member, and keep for a period of ten years in its files, a receipt therefor signed by each such new member.

VIII

Effective July 1, 1972, each defendant herein is enjoined and restrained from requiring any purchaser of unpatented cuttings to pay a royalty or other similar charge

for additional unpatented cuttings propagated on and after July 1, 1972 by said purchaser from said unpatented cuttings. Nothing in this Final Judgment shall be deemed to be an adjudication concerning the legality of the payment, receipt or collection of such a royalty or charge prior to July 1, 1972.

IX

Nothing in this Final Judgment shall be deemed or construed to affect whatever rights Yoder and Yoder-California may have lawfully to obtain, protect and exploit any right or rights existing under the patent laws of the United States of America or of any foreign country.

X

Defendants Yoder and Yoder-California and each of them are ordered and directed:

(A) Within sixty (60) days of the entry of this Final Judgment, to furnish each of their respective distributors a copy of this Final Judgment and a letter notifying each of said distributors that he may sell cuttings purchased from Yoder or Yoder-California at whatever prices, discounts or other terms or conditions of sale as each of them may independently choose and need not abide by prices, discounts, terms or conditions of sale fixed or suggested by Yoder or Yoder-California, which letter shall be substantially identical to the language of Exhibit B which is attached hereto and made a part hereof; and

(B) Within ninety (90) days of the entry of this Final Judgment, to file with this Court and to serve upon the plaintiff affidavits concerning the fact and manner of compliance with subsection (A) of this section X.

XI

(A) Defendants Yoder, Yoder-California and each of them are enjoined and restrained from directly or indirectly:

(1) Suggesting, urging or requiring any distributor to adopt or abide by prices, discounts or other terms and conditions for the sale of cuttings established or suggested by Yoder or Yoder-California;

(2) Terminating, or threatening to terminate, the distributorship of any distributor for the reason, in whole or in part, that such distributor has not adopted or adhered to prices, terms and conditions of sale suggested by Yoder or Yoder-California;

(3) Refusing to sell, or threatening to refuse to sell, cuttings to any distributor for the reason, in whole or in part, that such distributor has not adopted or adhered to prices, terms and conditions of sale suggested by Yoder or Yoder-California;

(4) Printing or distributing price lists purporting to contain prices, discounts and other terms and conditions at and upon which distributors sell cuttings to any third person; and

(5) With the exception of C.O.D. shipments ordered by any distributor, transmitting invoices or bills directly to the customers of distributors for cuttings sold by said distributors, and, from and after forty-five (45) days after the entry of this Final Judgment or January 1, 1972, whichever date is later, transmitting to said distributors invoices or bills

containing the prices to be paid by said distributors' customers.

(B) Defendants Yoder, Yoder-California and each of them shall not be deemed to have established or suggested prices, discounts, terms and conditions of sale, or otherwise to have violated the provisions of this section XI, by publishing or transmitting in the normal course of business any list or schedule indicating prices, discounts and other terms and conditions at which such defendants offer to sell cuttings to end users, provided that each such list or schedule shall contain, in easily legible type, the statement that "The prices, discounts, terms and conditions listed herein are applicable only to sales of cuttings by Yoder Brothers, Inc. (or the appropriate Yoder subsidiary). Each distributor of Yoder cuttings is free to set whatever prices, discounts, terms and conditions of sale it may choose for its sales."

XII

For a period of five (5) years after the entry of this Final Judgment, defendants Yoder and Yoder-California are each enjoined and restrained from purchasing or acquiring the capital stock or assets of any breeder or propagator-distributor without notice given to the plaintiff at least ninety (90) days prior to the consummation of the merger or acquisition.

XIII

(A) For the purpose of determining or securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon the written

request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon 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, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of said defendant relating to any of the 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 the officers and employees of defendant, who may have counsel present, regarding any such matters.

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

(C) No information obtained by the means provided in this section XIII 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 to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XIV

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

Dated: March 15, 1972

/s/ WILLIAM K. THOMAS
United States District Judge

EXHIBIT A

(To be sent to each signatory of a BGA, YGA, GRA or similar agreement)

Dear _____:

In accordance with the terms of a decree entered by the United States District Court in Cleveland, Ohio, with the consent of the parties, terminating the Government's antitrust lawsuit, we are sending this notice to you and all others who have signed BGA, YGA, GRA or similar agreements.

The decree orders us to amend all BGA, YGA, GRA and similar agreements and we hereby do so. You are no longer bound by any provisions of such agreements which prohibit you from propagating, selling, loaning, or giving away unpatented cuttings or which require you to report to us mutations or sports found on purchased cuttings and to agree that Yoder Brothers, Inc., or anyone other than the finder is the owner of the mutation or sport. The decree also provides that after July 1, 1972 we will be prohibited from receiving royalties for additional cuttings propagated by you from unpatented cuttings of varieties presently included within the coverage of these agreements. The decree does not determine the legality of such royalty collection prior to July 1, 1972, and we are not prohibited by the decree from receiving royalties during that period. A copy of the Court's decree is available upon request to us or to the Antitrust Division, United States Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California.

i

EXHIBIT B

(To be sent to each "distributor" of Yoder and Yoder-California)

Dear _____:

In accordance with the terms of a decree entered by the United States District Court in Cleveland, Ohio, with the consent of the parties, terminating the Government's antitrust lawsuit, we are sending this notice to you and all other Yoder representatives.

A copy of the Court's decree is enclosed. In accordance with the decree, you may sell cuttings purchased from Yoder or Yoder-California at whatever prices, discounts or other terms or conditions of sale you may independently choose, billing such customers in whatever form you may choose, and you are free to sell cuttings to any customer you may choose, and in any geographic area.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

UNITED STATES OF AMERICA	)	C70-931
	)	
Plaintiff	)	
	)	
v.	)	
	)	
YODER BROTHERS, INC., et al.	)	
	)	
Defendnts	)	

MEMORANDUM AND ORDER

THOMAS, Senior Judge

Defendant Yoder Brothers, Inc. on September 17, 1985 moved this court to modify its final judgment of March 15, 1972, entered by consent. The court is asked to modify section II(C)'s definition of "Distributor." Pursuant to the court's order, defendant Yoder Brothers published a notice of its motion to modify the final judgment in the "Wall Street Journal" and in "Florist's Review Magazine." In addition, the government published a notice of the "Proposed Modification of Final Judgment: Yoder Brothers, Inc." Comment from interested persons was invited. The government has received two comments, both in opposition to the proposed change.

The government has consented to the modification. By the filed "Notice" of April 2, 1986, the court requested the government to file evidentiary proof in support of

its conclusion that "the proposed modifications would not harm competition in the chrysanthemum industry." In the "Notice" the court also extended to the writer of one of the letters of comment an opportunity to document a statement in his letter. In response to the court's notice, Frank Seales, Jr., attorney in the Antitrust Division of the U.S. Department of Justice, has submitted a full affidavit. No other person has responded.

With the record now complete, the court proceeds to consider and rule upon the requested modification.

I.

This court on March 15, 1972, entered a "Final Judgment" consented to by the parties. Defendants Yoder Brothers, Inc. (Yoder), Yoder-California, Inc. and BGA (Breeders Growers Association) International, Inc. were enjoined and restrained from: (1) fixing royalties with other breeders on licensing the use of or sale of chrysanthemum cuttings, and (2) from requiring a purchaser of unpatented cuttings to pay a royalty for them.[1]

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1. The United States states that it recognized that "Yoder could obtain patent rights on new varieties of chrysanthemums by compliance with the Plant Patent Act (35 U.S.C. §161, et seq.) [but] objected to the company's attempt to gain monopoly benefits by extra-patent means."

The government notes that BGA was "terminated on July 1, 1972, in accordance with Paragraph VI of the Judgment which required each defendant to eliminate from its agreements all provisions prohibited by the Judgment." Also, "Paragraph VIII enjoined the defendants from collecting royalties on unpatented cuttings, the job BGA was set up to do."

While other acts of the defendants were prohibited by the final judgment, it is pertinent to additionally refer to only the following judgment paragraphs.[2] Paragraph XI enjoined and restrained Yoder Brothers and the other defendants from directly or indirectly:

> (1) Suggesting, urging or requiring any distributor to adopt or abide by prices, discounts or other terms and conditions for the sale of cuttings established or suggested by Yoder or Yoder-California;
>
> *****
>
> (4) Printing or distributing price lists purporting to contain prices, discounts and other terms and conditions at and upon which distributors sell cuttings to any third person.

---

2. Paraphrasing the prohibitions in various paragraphs of the final judgment, the government states:

> Section IV of the Judgment enjoins defendants from entering into or maintaining any agreements with another breeder or propagator-distributor of chrysanthemum cuttings to fix royalties or other terms or conditions of sale of cuttings, refuse to solicit customers or allocate sales territories, boycott actual or potential competitors, or hinder third parties from engaging in the business of breeding or propagating cuttings. Defendants are prohibited by this section from agreeing with competitors that purchasers of cuttings must report mutations on purchased cuttings to the seller. It also forbids agreements which would restrain the export from or import into the United States of unpatented cuttings.
>
> Section V enjoins each defendant from unilaterally placing customer or territorial restrictions upon purchasers of cuttings, from refusing to deal with indirect purchasers and from requiring indirect purchasers to report mutations.
>
> Section VIII enjoins defendants from requiring any purchaser of unpatented cuttings to pay a royalty or other charge for additional unpatented cuttings propagated by the purchaser from unpatented cuttings.

Paragraph II(C) defined a "distributor" as "any person who sells cuttings propagated by Yoder of Yoder-California, other than employees of Yoder or Yoder-California."

Yoder moves to modify the final judgment pursuant to Fed.R.Civ.P. 60(b)(5) and (6) and section XIV of the final judgment.[3] Defendant seeks to modify section II(C)'s definition of "Distributor" to read:

> "Distributor" means any person who purchases and resells cuttings propagated by Yoder or Yoder-California.

Affiant Yoder states in his affidavit, and the record does not controvert, the following facts: Yoder's past and present relationships with distributors have been such that the "distributor's primary function is obtaining orders." Yoder delivers "cuttings" directly to the growers, guaranteeing that the cuttings are live on delivery, and Yoder, in detailed ways, services the growers with respect to the cuttings. Distinguishing "the traditional distributor," affiant Yoder states that the "distributor never takes possession of the cuttings, has nothing to do with their delivery to the grower and has no inventory of cuttings from which to sell." While distributors

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3. Section XIV of the final judgment provides in relevant part:

> 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 the modification...of any of the provisions thereof....

now purchase the cuttings and resell the cuttings to its own customers, Yoder asserts that its distributors "have no need to take title to the product because they only submit orders to Yoder Brothers in response to specific orders which they receive from their own customers." Each order placed by a distributor is "specific to a particular grower customer." Moreover, "[t]he distributor has no risk of loss whatever in the transaction, save the credit risk, and that risk is voluntarily sought by the distributor to use as a selling device."

Declaring that the distributor's primary function of obtaining orders is the same as "the function served by a classic sales agent," Yoder states that these "essentially independent salesmen" are treated "like distributors as a legal matter because of the constraints placed on Yoder Brothers by the Final Judgment."

Under the modified definition of distributor, Yoder Brothers states that it will be able to consult with these intermediaries and develop pricing strategies for large accounts. The modified definition of "distributor" would not alter or relax the paragraph XI prohibitions against resale price maintenance. Yet, the modified definition would permit Yoder to become more competitive, it is asserted.

In its memorandum in response to the motion to modify the final judgment, the United States tentatively consented

to the entry of an order modifying the final judgment pursuant to public notice of the proposed modification followed by an opportunity for comment. On September 23, 1985, this court ordered publication of notice of the motion to modify final judgment and further ordered that copies of all comments received by plaintiff be filed with the court.

The Department of Justice received and filed with the court comments from California-Florida Plant Corporation and California Plant Corporation (successor in interest to California-Florida Plant Corporation) objecting to defendant's motion for a modification of the final judgment. The government concluded after its review of these comments that the modification "is in the public interest" and reaffirmed its consent to Yoder's motion.

II.

The court first considers the standards which apply to control a trial judge's consideration of an antitrust consent judgment modification motion where, as here, the government approves the requested modification.

In United States v. Swift & Co., 286 U.S. 106, 114 (1932), a case in which the government contested a motion for modification of a consent decree, the Court recognized that a court of equity may modify an injunction "in adaptation to changed conditions though it was entered by consent." As Justice Cardozo aptly worded the principle, a continuing decree of injunction "directed to events to come is subject

always to adaptation as events may shape the need." Id. Neither the defendant Yoder Brothers or the United States expressly rely on a claim of "changed conditions." However, Yoder Brothers does say that because "Yoder Brothers cannot safely consult with its distributors on price concessions for specific customers without running a risk of violating the Final Judgment's prohibition on 'suggesting' retail resale prices, the distributors are unable to remain price competitive for the largest, most lucrative accounts."

While referring to the 1932 teaching of Swift, supra, the parties emphasize more recent pronouncements in that case at the district court level. In 1960, Judge Hoffman declared that the underlying policy of equity jurisdiction in antitrust enforcement is "protection of the public interest in competitive economic activity," United States v. Swift & Co., 189 F.Supp. 885, 905 (N.D.Ill. 1960), aff'd., 367 U.S. 909 (1961).[4] In 1975, Judge Hoffman considered the court's role when "confronted with a stipulation entered into by that department of the Executive Branch charged with protecting the public interest in free competition." United States v. Swift & Co., 1975-1 Trade Cas. (CCH) ¶60,201 at 65,702 (N.D.Ill. 1975).

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4. See also United States v. Western Electric Co., Inc. and American Telephone and Telegraph Co., 552 F.Supp. 131, 149-51, and n.77 (D.C.D.C. 1982), aff'd, 460 U.S. 1001 (1983).

Judge Hoffman concluded that at the very least, the court is

> obligated to insure that the public and all interested parties have received adequate notice of the proposed modification, and to require that the parties place on the record reasons in support of the modification. Courts have gone further, requiring "proper supports either by way of evidence, affidavits or stipulation... that the proposed decree is in accord with the dictates of Congress...and in the public interest."

Id. at 65,703 (citations omitted).

Courts have recognized that the Attorney General is the representative of the public interest in antitrust cases brought by the government, Control Data Corp. v. International Business Machines Corp., 306 F.Supp. 839, 845 (D.Minn. 1969), aff'd, 430 F.2d 1277 (8th Cir. 1970), and that the "government is in a better position to determine what serves the public interest best." United States v. Shubert, 305 F.Supp. 1288, 1292 (S.D.N.Y. 1969). For example, in United States v. Mid-America Dairymen, Inc., 1977-1 Trade Cas. (CCH) ¶61,508 at 71,980 (W.D.Mo. 1977), the court described its deference to the Justice Department's public interest determination as follows:

> Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should...carefully consider the explanations of the government...and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[5]

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5. The court in Mid-America acknowledged that the Department of Justice:

III.

The court now turns to the several issues raised in the submissions.

A.

In his affidavit G. Ramsey Yoder, the president and chief executive officer of Yoder Brothers, states that "to save large accounts which cannot be retained by Yoder Brothers' distributors, Yoder Brothers has been forced to utilize an internal sales force, which is not hampered by the restrictions of the Final Judgment." Through its internal sales force, Yoder Brothers "is able to offer prices which are competitive to its largest customers." However, it is pointed out that the loss

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5. Continued.

> has an appropriate range of discretion in prosecuting alleged violations of the antitrust laws and determining appropriate injunctive relief...[t]his Court may not substitute its opinion on views concerning the prosecution of alleged violations of the antitrust laws or the determination of appropriate injunctive relief for the settlement of such cases absent proof of an abuse of discretion.
>
> The court concluded:
>
> under all the factual data before the Court the proposed consent judgment is within the appropriate range of discretion of the Department of Justice.

1977-1 Trade Cas. (CCH) ¶61,508 at 71,980. See also United States v. National Finance Adjusters, Inc., 1985-2 Trade Cas. (CCH) ¶66,856 at 64,248 (E.D. Mich. 1985) (government did not abuse its discretion in determining a proposed modification in the public interest).

of distributors' "most valued large customers to Yoder Brothers' internal sales force over the years" has resulted in "a deterioration in Yoder Brothers' relationships with its distributors." As of today, Mr. Yoder states that distributors "account for approximately 40 percent of Yoder Brothers' chyrsanthemum revenues in the United States." Because "distributors typically attract small, new customers and develop them over the years into substantial purchasers," affiant Yoder states that

> [a]ny substantial reduction in the distributors' incentives to continue to attract and develop new customers for Yoder Brothers could have a significant, detrimental long-term impact on Yoder Brothers' prospects for future growth.

Hence, Yoder Brothers seeks the modification of the definition of "distributors" in order "to change its relationship with a distributor to a pure form of sales agency."

The United States, after examining the proposed modification in the definition of "distributor," declares:

> This change would neither permit nor facilitate anticompetitive behavior. Sales through agents generally have not been held to be resales and, therefore, urging, suggesting or requiring agents to adopt or abide by prices established by the manufacturer has not been held to constitute illegal resale price maintenance. See, e.g., Marty's Floor Covering Co. v. GAF Corp., 604 F.2d 266 (4th Cir. 1979), cert. denied, 444 U.S. 1017 (1980); Fagan v. Sunbeam Lighting Co., 303 F.Supp. 356, reconsideration denied, 1969 Trade Cas. (CCH) ¶72,978 (S.D.Ill. 1969).

In United States v. General Electric Co., 272 U.S. 476, 488 (1926), the Court reaffirmed its holding in

Dr. Miles Medical Co. v. John D. Park & Sons Co., 220 U.S. 373 (1911), that the antitrust laws prohibit any attempt "to control the trade in the articles sold and fasten upon purchasers, who had bought at full price and were complete owners, an obligation to maintain prices." Thereupon, the Court added:

> We are of opinion, therefore, that there is nothing as a matter of principle, or in the authorities, which requires us to hold that genuine contracts of agency like those before us, however comprehensive as a mass or whole in their effect, are violations of the Anti-Trust Act. The owner of an article, patented or otherwise, is not violating the common law, or the Anti-Trust law, by seeking to dispose of his article directly to the consumer and fixing the price by which his agents transfer the title from him directly to such consumer.

Simpson v. Union Oil Co., 377 U.S. 13 (1964), distinguished but did not overrule United States v. General Electric Co. The Court held that a Union Oil Co. "consignment device" was "an agreement for resale price maintenance, coercively employed" and therefore illegal. As Justice Douglas observed:

> When...a consignment device is used to cover a vast gasoline distribution system, fixing prices through many retail outlets, the antitrust laws prevent calling the consignment an agency....

Id. at 21. Use of a bona fide agency system, then, remains a lawful and well-accepted means of distribution. Newberry v. Washington Post Co., 438 F.Supp. 470 (D.C.D.C. 1977).[6]

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6. Consistent with General Electric, supra, the Court later declared:

The objectors to the proposed modification contend that the agency system Yoder will employ is "in reality a method for sanctioning verticle price restraints." Upon full analysis of the record, it is concluded that the use of Yoder Brothers' distributors as sales agents, as proposed by Yoder Brothers, does not create a resale price maintenance problem. The sales agents will not assume title, dominion, or risk of loss with respect to the Yoder Brothers' plant cuttings. At all times under these indicia, ownership of the cuttings will remain with defendant Yoder Brothers.[7] Hence, as the United States says:

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6. Continued.

> Where the manufacturer retains title, dominion and risk with respect to the product and the position and function of the dealer in question are, in fact, indistinguishable from those of an agent or salesman of the manufacturer, it is only if the impact of the confinement is "unreasonably" restrictive of competition that a violation of §1 results from such confinement, unencumbered by culpable price fixing. Simpson v. Union Oil Co., 377 U.S. 13 (1964).

United States v. Arnold Schwinn & Co., 388 U.S. 365, 380 (1967), overruled on other grounds, Continental T.V., Inc. v. G.T.E. Sylvania, Inc., 433 U.S. 36 (1977). For an application of the quoted Schwinn statement, see Fagan v. Sunbeam Lighting Co., 303 F.Supp. 356, 361 (S.D.Ill. 1969).

7. This court's April 2, 1986 notice acknowledged the statement made in the comment of John H. Boone, counsel for California-Florida Plant Corporation (CFPC), that "Yoder never had 'broker-agents who do not take possession

> Where the manufacturer does not part with title, dominion or risk with respect to the product, there is no sale to the agent and hence no resale when the agent takes a customer's order. Price control by a manufacturer in the first sale of his product is not the kind that the antitrust laws seek to prohibit.

The United States declares "[w]hen a manufacturer seeks to employ a sales agency arrangement, the real issue is whether the arrangement is a sham or a vast consignment system of the sort declared unlawful in Simpson v. Union Oil Co.," supra. This court accepts the statement of the United States that "[w]e have no facts or evidence, nor has counsel proffered any to suggest that what Yoder purports to do is a sham."[8]

Of course, should a "distributor," under the modified definition, purchase and resell cuttings propagated by

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7. Continued.

or title,'" and offered counsel for CFPC the opportunity to "suppl[y] the court with discovery disclosures" to support this statement.

Counsel for CFPC did not respond to this invitation by filing the materials referred to in its comment. The court accepts the explanation of Yoder's "role in the distribution process" contained in the Yoder affidavit.

8. As the government further observes, if Yoder's agency arrangement is a sham, see Simpson v. Union, supra at 21 (1964), such conduct would continue to be prohibited by section XI of the final judgment. Such conduct would then be subject to a contempt proceeding. Moreover, any conduct that would constitute retail price maintenance would "continue to be per se unlawful under the Sherman Act regardless of the scope of the remaining judgment provisions."

Yoder or Yoder of California, then Yoder Brothers would be barred by paragraph XI of the final judgment from suggesting or in any other way affecting the resale price of the cuttings.

B.

The court now considers Yoder Brothers' avowed objective of large volume price reductions likely to result from the use of sales agents and its foreseeable competitive impact. As seen, to take advantage of the "substantial cost efficiencies" obtained by offering large volume purchasers discount prices, Yoder needs to consult with its "distributors" on these price concessions. Such discount price programs geared to large volume retailers, however, are not considered coercive price fixing arrangements when their purpose is to promote sales and not to "cripple small retailers as competitors." AAA Liquors, Inc. v. Joseph H. Seagram & Sons, Inc., 705 F.2d 1203, 1207-8 (10th Cir. 1982), cert. denied, 461 U.S. 919, (1983), followed in Lewis Service Center, Inc. v. Mack Trucks, Inc., 1983-2 Trade Cas. (CCH) ¶65,554 at 68,762-764 (8th Cir. 1983), (a sales assistance program held to have a pro-competitive effect).

In concluding his letter of objection to the proposed modification, counsel for California Florida Plant Corporation (CFPC) observes:

> Certainly if Yoder is again to be allowed to impose a vertical price fixing scheme on the industry that it has dominated for years, it should not be through clever draftsmanship. On the contrary such a clear change in antitrust enforcement should be made only after an exhaustive analysis of this industry and only with an honest admission that price fixing will now be allowed despite its clear condemnation by the courts.[9]

Noting the "concerns raised in counsel's letter," the United States reports that it has conducted a two-year investigation of the chrysanthemum industry in which it "interviewed officials of CFPC and of other major and small firms operating at each level of the chrysanthemum industry, namely, breeding, propagating, distributing

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9. Counsel for CFPC argued in his comment that "given Yoder's monopoly share of the market," the rule of reason analysis discussed in the 1985 "Department of Justice Guidelines - Vertical Distribution Restraints," 5 Trade Reg. Rep. (CCH) ¶50,473 (January 23, 1985), should be undertaken to assess the proposed modification's competitive impact.

The court notes first that in Yoder Bros., Inc. v. California-Florida Plant Corp., 537 F.2d 1347 (5th Cir. 1976), Judge Goldberg found that Yoder's market share of the relevant product market, ornamental plants, was 20 percent and that Yoder as a matter of law was not guilty of monopolization. Id. at 1368. (The judge also found that barriers to entry in the ornamental plant industry were low and conditions were highly competitive, id. at 1369).

Also, CFPC's counsel's suggestion that the Department of Justice's Vertical Restraint Guidelines are implicated by the proposed modification appears unfounded. The Guidelines address only non-price vertical restraints, and the court does not comprehend that Yoder's proposed agency arrangement creates a vertical distribution restraint.

and growing." It was "[o]nly after considering the concerns raised by CFPC and others in the industry did we conclude that the proposed modifications would not harm competition in the chrysanthemum industry."

Based on the Department's investigation set forth in the margin,[10] and upon the entire record, the court

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10. The April 11, 1986 affidavit of Department of Justice attorney Frank Seales, Jr. describes the investigation the Antitrust Division conducted "to determine if termination or modification of the Judgment would be in the public interest." Mr. Seales explains that during the course of the investigation, the Antitrust Division interviewed officials at the following:

> the United States Department of Agriculture; the United States Plant Patent Office; six firms that compete with or have competed with Yoder Brothers at the propagating level of the chrysanthemum industry; four firms that distribute or have distributed chrysanthemum cuttings bred or propagated by Yoder Brothers; and 18 firms that are present or past growers/customers of Yoder chrysanthemum cuttings.

The affidavit states that of those officials interviewed,

> only one competitor of Yoder Brothers at the propagating level, California-Florida Plant Corporation ("CFPC"), expressed opposition to termination or modification of the Judgment.... Essentially, counsel complained about the trend in the chrysanthemum industry from cut varieties toward potted varieties and Yoder Brothers' growing dominance of the potted market. Counsel cited Yoder Brothers' plant patent program as the source of concern. Counsel did not accuse Yoder Brothers of any wrongdoing involving its plant patent program, but stated that the Judgment did not go far enough in the first place to create structural changes in the chrysanthemum industry. Counsel further stated that "the consent decree had stopped BGA [but] it did little to correct the monopoly power that Yoder had been able to accumulate through the BGA system. In fact, Yoder was allowed to merely

determines that the statements and conclusions of the Department of Justice, approving the modification of the final judgment, are within its discretion. In sum, the court finds that entry of the proposed modification is consistent with the purposes of the antitrust laws

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10. Continued.

> switch its new varieties into plant patents without any period of adjustment." Counsel concluded that, "in large part [CFPC] efforts to stay competitive through lower prices have been because of the terms of the consent decree restraining the ability of Yoder to control the resale prices of the Yoder distributors. [The Yoder "monopoly power" claim is considered and rejected in n.9, supra.]

The affidavit outlines the Justice Department's "position concerning the points raised in counsel's letter":

> (1) we could not, 12 years later, renegotiate the terms of the consent decree; (2) one of the primary objectives of the action against Yoder Brothers and the dismantling of the BGA Program was to force Yoder Brothers to use the plant patent system to protect its varieties of chrysanthemum cuttings (to the extent that Yoder Brothers is now making full use of the system, an important goal of the Judgment has been accomplished); (3) substantially all of the officials we interviewed, at each level of the chrysanthemum industry, complained primarily about the impact foreign competition has had on the industry, particularly on cut varieties. We were told by one propagator that approximately 50 percent of all cut chrysanthemums consumed in this country are imports. Growers told us that the impact on the potted market is less because of U.S. Department of Agriculture restrictions on the importation of soil into this country and that shipping potted plants would be cost prohibitive; and (4) if, as a result of using an agency arrangement, Yoder derives certain efficiencies and can price its products lower than CFPC, the harm is to a competitor, not competition, which the federal antitrust laws seek to protect.

and thus is in the public interest. The motion to modify the final judgment, consented to by plaintiff United States, is therefore granted.

The following definition of distributor is substituted in II(C):

> "Distributor" means any person who purchases and resells cuttings propagated by Yoder or Yoder California.

IT IS SO ORDERED.

William K. Thomas
U.S. DISTRICT SENIOR JUDGE

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10. Continued.

Finally, the affidavit contains the Department's assessment of the responses from other officials contacted during the investigation:

> The positions of other industry firms we interviewed concerning modifications of the Judgment fell into these categories: some support modification; some think the proposal is competitively neutral; and others have no opinion one way or the other.

United States v. Standard Oil Co.

Civil Action No. C 70-895

Year Judgment Entered: 1973

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	
v.	:	CIVIL ACTION
THE STANDARD OIL COMPANY (an Ohio corporation),	:	NO. C 70-895
Defendant.	:	Entered: Sept. 10, 1973

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on September 18, 1970, the defendant, The Standard Oil Company, an Ohio corporation, having filed its answer on November 23, 1970, and plaintiff and defendant, 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 of the parties with respect to any such issue:

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

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states claims upon which relief may be granted against the defendant under Section I 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 Antitrust Act, as amended.

II

As used in this Final Judgment:

(A) "Defendant" shall mean The Standard Oil Company, a corporation organized and existing under the laws of the State of Ohio with its principal place of business in Cleveland, Ohio.

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

(C) "Service station" shall mean a business establishment that sells motor fuels, motor oils, lubricants, tires, batteries and automotive accessories to consumers, and usually performs maintenance and minor repair services on motor vehicles for consumers.

(D) "Company station" shall mean a service station for which defendant bears substantially all the financial risk of operation of the service station business. Defendant shall be deemed to bear such financial risk (1) if the service station, including its equipment and inventories, is either owned, leased, possessed or otherwise controlled by defendant, (2) if the service station is managed and staffed by employees of the defendant, and (3) if the manager of the service station is compensated by defendant for the performance of all of his duties in a total amount each calendar year which on an annual rate basis is not less than the minimum amount hereinafter defined. The term "minimum amount" as used herein shall mean $5000 per year,

escalated upwards or downwards, as the case may be, each calendar year beginning with 1974 in direct proportion to any percentage of change in the U.S. Consumer Price Index of the Bureau of Labor Statistics of the U. S. Department of Labor between January of such calendar year and January of the preceding calendar year. The defendant may compensate such manager by salary, commission, bonus, or otherwise, or any combination thereof.

(E) "Products" shall mean motor oil, tires, batteries and automotive accessories and each of them.

III

The provisions of this Final Judgment shall be binding upon defendant and upon each of its officers, directors, personnel, agents, subsidiaries, successors and assigns, and to all those persons in active concert or participation with any of the above who shall have received actual notice of this Final Judgment by personal service or otherwise. None of the provisions of this Final Judgment shall apply outside of the United States of America, its territories and possessions, to activities which do not affect the foreign or domestic commerce of the United States.

IV

(A) Defendant is ordered to terminate and cancel within ten (10) months from the date of entry of this Final Judgment all of its Commission Manager Agreements under its present standard form, whether now existing or entered into prior to the expiration of such ten (10) months, with persons engaged in managing service stations.

(B) Defendant is enjoined from entering into any agreement, combination or understanding with any person to fix or stabilize the prices of motor fuels, motor oils, lubricants,

tires, batteries, automotive accessories or maintenance or repair services offered at service stations other than company stations.

(C) Defendant is enjoined from entering into any contract, agreement or understanding with any person operating a service station other than a company station that such person shall not deal in the products of a competitor or competitors of defendant.

V

(A) For a period of five (5) years, defendant shall file with the Department of Justice copies of all forms of agreement used by defendant with employees at company stations.

(B) For a period of five (5) years, defendant shall file with the Department of Justice on each anniversary date of the entry of this Final Judgment a report setting forth the steps which it has taken during the prior year to advise defendant's appropriate officers, directors and management personnel of its and their obligations under this Final Judgment.

VI

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

(A) Any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant, made to its principal office, be permitted, subject to any legally recognized privilege:

(1) access during the office hours of defendant

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

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

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

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

VII

Jurisdiction is retained for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or

carrying out of this Final Judgment, for the modification of any of the provisions contained herein, for the enforcement of compliance therewith, and the punishment of the violation of any of the provisions contained herein.

September 10, 1973
Dated

/s/ THOMAS D. LAMBROS
UNITED STATES DISTRICT JUDGE

United States v. Cleveland Trust Co.

Civil Action No. C 70-301

Year Judgment Entered: 1975

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Cleveland Trust Co., U.S. District Court, N.D. Ohio, 1975-2 Trade Cases ¶60,611, (Nov. 14, 1975)

United States v. The Cleveland Trust Co.

1975-2 Trade Cases ¶60,611. U.S. District Court, N.D. Ohio, Eastern Division. Civil Action No. C 70-301. Entered November 14, 1975. (Competitive impact statement and other matters filed with settlement: 40 *Federal Register* 40864, 53047). Case No. 2089, Antitrust Division, Department of Justice.

Clayton Act

Interlocking Directorates—Bank Officers—Competing Manufacturers—Consent Decree.—A bank was prohibited by a consent decree from permitting any of its officials to serve simultaneously as a director of any two companies manufacturing certain machine tools.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, John A. Weedon, Jill Nickerson, Frank B. Moore, Robert S. Zuckerman, David F. Hils, Robert A. McNew, Gerald H. Rubin, and Susan B. Cyphert, Attys., Dept. of Justice. **For defendant:** Richard W. Pogue, of Jones, Day, Reavis & Pogue, Cleveland, Ohio.

Final Judgment

BATTISTI, D. J.: Plaintiff, United States of America, having filed its Amended Complaint on October 4, 1972, and defendant having filed its Answer thereto denying the material allegations of the Amended Complaint, and defendant having consented to jurisdiction over its person, and the Court on July 31, 1974, having dismissed the Amended Complaint as to Section 7 of the Act of Congress of October 15, 1914, commonly known as the Clayton Act, as amended, 15 U. S. C. § 18 ("Section 7") and (as to Pneumo-Dynamics Corporation) Section 8 of the Act of Congress of October 15, 1914, commonly known as the Clayton Act, as amended, 15 U. S. C. § 19 ("Section 8"), and plaintiff and defendant, 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 any evidence or admission by any party hereto with respect to any such issue;

Now, Therefore, before the taking of any testimony, without trial or adjudication of any issue of fact or law herein, and upon consent of the parties as aforesaid, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the Clayton Act Section 8 claims of plaintiff now pending in this action and of the parties hereto. With respect to such still pending claims the Amended Complaint states a claim against defendant upon which relief may be granted under Section 8.

II

[*Definitions*]

As used in this Final Judgment:

(A) "MSA business" shall mean the manufacture and sale, in the United States, of new multiple spindle automatic bar and chucking machines, which are non-portable, power-driven, metal-cutting machine tools which have a completely self-acting or self-regulated mechanism which controls the movement of a cutting tool, movement of a spindle and indexing of a spindle carriage and have, in a spindle carriage which indexes from position to

position, more than one rotating spindle to each of which a work-piece to be cut may be attached and each of which turns the work-piece in relationship to a cutting tool.

(B) "SSA business" shall mean the manufacture and sale, in the United States, of new single spindle automatic bar and chucking machines, which are non-portable, power-driven, metal-cutting machine tools which have a completely self-acting or self-regulated mechanism which controls the movement of a cutting tool and of the spindle in a pre-set manner, and have only one rotating spindle to which a work-piece to be cut may be attached and which turns the work-piece in relationship to a cutting tool.

(C) "VBM business" shall mean the manufacture and sale, in the United States, of new vertical boring mills, which are non-portable, power-driven, self-regulated metal-cutting machine tools which operate by turning about a vertical axis a work-piece in contact with a cutting tool for the purpose of removing metal from either the interior or the exterior of a work-piece which is fixed by a chucking device to a horizontal bed which is at least 26 inches in diameter.

(D) "Defendant" shall mean The Cleveland Trust Company, its parent, subsidiaries, successors and assigns.

(E) "Executive Officer" shall mean the Chairman of the Board, President, any Executive Vice President, Secretary, Treasurer, any other officer designated as an Executive Officer by The Cleveland Trust Company and, for the purpose of this Final Judgment only, the officer in charge of the trust department.

(F) "Sale" shall mean regular commercial sale in the ordinary course of business.

(G) "W&S" shall mean The Warner & Swasey Company, an Ohio corporation, and its subsidiaries, successors and assigns.

(H) "White" shall mean White Consolidated Industries, Inc., a Delaware corporation, and its subsidiaries, successors and assigns.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to defendant and each of its present and future officers and employees, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. None of the provisions of this Final Judgment shall be applicable to the foreign commerce of the United States.

IV

[*Interlocking Directorates*]

From and after the date of entry of this Final Judgment, defendant shall:

(A) Refuse to hire or cease to employ, as an officer or employee of defendant, any individual who is or becomes a Director of W&S or White if, at the same time, an officer or employee of defendant is a Director of the other of those two corporations, so long as both corporations engage (i) in the MSA business or SSA business, or (ii) in the VBM business.

(B) Refuse to hire or cease to employ, as an officer or employee of defendant, any individual who is or becomes a Director of one of the following corporations if, at the same time, an officer or employee of defendant is a Director of another of the following corporations, so long as both corporations themselves or through their subsidiaries are engaged in the MSA business or the SSA business:

(1) Any corporation (or unit of it, as indicated in parentheses) among the following:

Acme Cleveland Corporation (National Acme Division)

Bardons & Oliver, Inc.

Browne & Sharpe Mfg. Co.

Cincinnati Milacron Inc.

Colt Industries, Inc. (Pratt & Whitney Machine Tool Division)

Cone-Blanchard Machine Company

The Cross Company

Davenport Machine Tool Co., Inc.

The Economy Machine Tool Corporation

Esterline Corporation (Boyar-Schultz unit)

Ex-Cell-O Corporation (Greenlee Brothers & Co. unit)

Giddings & Lewis, Inc.

Hardinge Brothers, Inc. The Leavitt Machine Co.

LeBlond Incorporated

Litton Industries, Inc. (New Britain Machine Division)

The Motch & Merryweather Machinery Co.

MPB Corporation (Kinefac subsidiary)

The Olofsson Corporation

Sheldon Machine Co.

Sundstrand Corporation

Textron Company (Jones & Lamson Division of Waterbury Farrell Company)

The U. S. Baird Corporation

Waddell Equipment Co., Inc.

W&S (Cleveland Turning Machine Division)

White (The Bullard Company subsidiary)

(2) Any corporation (having capital, surplus and undivided profits in excess of $1,000,000) which, or a subsidiary of which, to the actual knowledge of an Executive Officer, becomes a successor to the MSA business or SSA business of any of the corporations listed in Section IV(B)(1).

(3) Such other corporation (having capital, surplus and undivided profits in excess of $1,000,000), if any, which, or a subsidiary of which, to the actual knowledge of an Executive Officer becomes a new entrant into the MSA business or the SSA business, and has domestic sales of such business which are not de minimus.

(C) Refuse to hire or cease to employ, as an officer or employee of defendant, any individual who is or becomes a Director of any one of the following corporations if, at the same time, an officer or employee of defendant is a Director of another of the following corporations, so long as both corporations themselves or through their subsidiaries are engaged in the VBM business:

(1) Any corporation (or unit of it, as indicated in parentheses) among the following:

American Machine & Science, Inc. (Johnson Drill Head Company Division and Master Machine Tools, Inc. subsidiary)

Ex-Cell-O Corporation

Giddings & Lewis, Inc.

Litton Industries, Inc. (New Britain Machine Division)

The Motch & Merryweather Machinery Co.

Snyder Corporation

Sundstrand Corporation

USM Corporation (Farrel Company Division)

W&S (The G. A. Gray Company subsidiary)

White (The Bullard Company subsidiary)

(2) Any corporation (having capital, surplus and undivided profits in excess of $1,000,000) which, or a subsidiary of which, to the actual knowledge of an Executive Officer becomes a successor to the VBM business of any of the corporations listed in Section IV(C)(1).

(3) Such other corporation (having capital, surplus and undivided profits in excess of $1,000,000), if any, which, or a subsidiary of which, to the actual knowledge of an Executive Officer becomes a new entrant into the VBM business, and has domestic sales of such business which are not de minimus.

V

[*Notice*]

Defendant shall give personal notice of the prohibitions contained in this Final Judgment to all of its officers, by incorporating the text of Section IV hereof in its Personnel Policy Manual and its successor personnel policy manuals; provided, however, that the lists of named companies in Section IV hereof may be omitted from said Manuals if reference is made to a specific office in The Cleveland Trust Company where such lists may be obtained upon request. A copy of such personal notice shall be filed with the plaintiff upon publication.

VI

[*Compliance*]

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

(1) Access during the business hours of 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 defendant which relate to any matters contained in this Final Judgment;

(2) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview individuals who are officers or employees of defendant, any of whom may have counsel present, regarding any matters contained in this Final Judgment.

(B) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, upon written request of the Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such reports in writing, with respect to the matters contained in this Final Judgment as may from time to time be requested.

(C) No information obtained by the means provided in this Section VI of this Final Judgment shall be divulged by a 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 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

[*Retention of Jurisdiction*]

Jurisdiction is retained by this Court for the purpose of enabling 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 (i) for construction

or modification (other than Section VIII(B)), (ii) for the enforcement of compliance therewith, and (iii) for the punishment of violations thereof.

VIII

[*Termination of Decree*]

Unless earlier terminated pursuant to an Order of this Court:

(A) Section IV(A) hereof (and to the extent necessary to implement Section IV(A) after January 1, 1985, Sections I, II, III, VII (ii) and (iii) and VIII(A)) shall remain in effect in perpetuity;

(B) In all other respects, this Final Judgment shall remain in full force and effect until January 1, 1985, and no longer.

Entry of this Final Judgment is in the public interest.

United States v. Atomic Fire Equip. Co.

Civil Action No. C72-1185

Year Judgment Entered: 1976

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ATOMIC FIRE EQUIPMENT COMPANY; FIRE EQUIPMENT ASSOCIATES, INC.; FIRE SAFETY COMPANY, INC.; L & L FIRE FIGHTING EQUIPMENT CO.; S. R. SMITH COMPANY, INC.; JOSEPH V. RATTAY dba CLEVELAND FIRE EQUIPMENT COMPANY; and MAXINE S. SIEBERT dba FIRE EQUIPMENT SERVICE AND SALES, Defendants.	Civil No. C72-1185 Judge Frank J. Battisti Filed: November 26, 1975 Entered: February 26, 1976

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on November 2, 1972, and plaintiff and defendants, by their respective attorneys, having each consented to the entry of this Final Judgment without trial or adjudication of or finding on any issues of fact or law herein and without this Final Judgment constituting evidence or admission by plaintiff or defendants, or any of them, in respect to any such issue;

NOW, THEREFORE, before any testimony has been taken and without trial or adjudication of or finding on any issue of fact or law herein, and upon consent of the parties as aforesaid, it is hereby

ORDERED, ADJUDGED, and DECREED as follows:

I

This Court has jurisdiction of the subject matter herein and of the parties hereto, and the Complaint states claims upon which relief may be granted against the defendants under

Section 1 of the Act of Congress of July 2, 1890 (15 U.S.C. § 1), commonly known as the Sherman Act, as amended. Entry of this Judgment is in the public interest.

II

As used in this Final Judgment:

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

(B) "Fire extinguishers" shall mean portable, hand-operated fire extinguishing equipment.

(C) "Service" shall mean installation, inspection, testing, maintenance or recharging of fire extinguishers.

(D) "Distributors" shall mean those persons engaged in the business of selling and servicing fire extinguishers manufactured by others.

III

The provisions of this Final Judgment applicable to any defendant shall apply also to its subsidiaries, successors, assigns, directors, officers, agents, servants and employees, and to all persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise; provided, however, that this Final Judgment shall not apply to transactions or activity solely between a defendant and its directors, officers, agents, servants, employees, parent company, subsidiaries, or any of them, when acting in such capacity.

IV

Each defendant is enjoined and restrained, individually and collectively, from entering into, adhering to, maintaining,

furthering, enforcing or claiming any rights under any contract, agreement, understanding, plan or program with any other person, directly or indirectly, to:

(A) Fix, determine, establish, maintain, stabilize, increase or adhere to prices, discounts or other terms or conditions for the sale or service of fire extinguishers to any third person;

(B) Eliminate or suppress price competition in the sale or service of fire extinguishers;

(C) Communicate to or exchange with any other person selling or servicing fire extinguishers, or any trade group or association whose members include persons engaged in the sale or servicing of fire extinguishers, any information concerning any actual or proposed price, price change, discount, or other term or condition of sale at or upon which fire extinguishers are to be, or have been, sold or serviced to or for any third person prior to the communication of such information to the public or trade generally;

(D) Allocate customers for the sale or service of fire extinguishers.

V

Each defendant is enjoined and restrained, individually and collectively, from directly or indirectly: (a) urging, influencing or suggesting to any other fire extinguisher distributor the prices or other terms or conditions of sale or service for fire extinguishers to any third person; and (b) advising or informing any other defendant of the identity of any of its customers.

VI

Nothing herein shall be deemed to prohibit:

(A) Any bona fide arm's length purchase, sale or service negotiations between any defendant and any supplier or distributor of fire extinguishers or fire extinguisher parts, components or supplies.

(B) The affixing to fire extinguishers of tags or labels which identify a defendant as the seller or servicer of said extinguisher.

(C) Any advertisement or article which discloses the identity of a customer of a defendant, provided, however, that no defendant shall advertise or disclose the name of any of its retail customers for sale or service of fire extinguishers in a trade journal for distributors of fire extinguishers.

(D) The mere suggestion by any defendant fire extinguisher manufacturer to its distributors of suggested resale prices for fire extinguishers manufactured by or for it.

VII

Within sixty (60) days of the entry of this Final Judgment, each defendant is ordered and directed, individually and independently:

(A) To review, determine and establish its prices and other terms and conditions of sale and service of fire extinguishers, on the basis of its independent judgment; provided, however, that compliance with the provisions of this Section VII (A) and (B) shall not be required if within such sixty (60) day period an affidavit signed by the officer or officers responsible for the determination of such prices, terms and conditions is filed with this

Court (with a copy to the Assistant Attorney General in charge of the Antitrust Division) stating that such defendant, prior to the effective date of this Final Judgment and subsequent to November 2, 1972, reviewed, determined and announced the prices, discounts, or terms and conditions of sale and service of fire extinguishers in accordance with the requirements of this Section.

(B) To withdraw its then current price lists, if any, and adopt and publish price lists, if any are used, arrived at pursuant to subparagraph (A) above.

VIII

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

IX

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 any defendant made to its principal office, be permitted, subject to any legally recognized privilege (a) 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 Final Judgment, and (b) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, directors, agents, servants or employees of such defendant, who may have counsel present, regarding any such matters. Any defendant, upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal office, shall submit such reports in writing 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 IX shall be divulged by any representatives 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.

X

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 of or the 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.

/s/ FRANK J. BATTISTI
United States District Judge

Dated: February 26, 1976

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ATOMIC FIRE EQUIPMENT COMPANY; FIRE EQUIPMENT ASSOCIATES, INC.; FIRE SAFETY COMPANY, INC.; L & L FIRE FIGHTING EQUIPMENT CO.; S. R. SMITH COMPANY, INC.; JOSEPH V. RATTAY dba CLEVELAND FIRE EQUIPMENT CO.; and MAXINE S. SIEBERT dba FIRE EQUIPMENT SERVICES AND SALES, Defendants.	Civil No. C72-1185 Chief Judge Battisti Filed: NOV 26 1975 Entered: February 26, 1976

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. Joseph V. Rattay is no longer doing business as Cleveland Fire Equipment Company; and

2. Joseph V. Rattay is released from compliance with Sections VII and VIII of the Final Judgment in this matter, provided that this defendant does not become an owner, partner, or majority or controlling stockholder in any business

concerning the distribution of fire extinguishers at any time during the ten (10) year period set forth in Section VIII of the Final Judgment.

Dated: NOV [illegible] 1974

THOMAS E. KAUPER
Assistant Attorney General

WILLIAM T. PLESEC

BADDIA J. RASHID

SUSAN B. CYPHERT

CHARLES F. B. McALEER

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JOHN A. WEEDON

Attorneys
Department of Justice

FOR THE DEFENDANT:

DALE D. POWERS
Attorney for Joseph V. Rattay
dba Cleveland Fire Equipment Co.

United States v. Guardian Indus. Corp.

Civil Action No. C73-383

Year Judgment Entered: 1976

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Guardian Industries Corp., U.S. District Court, N.D. Ohio, 1976-1 Trade Cases ¶60,932, (May 27, 1976)

United States v. Guardian Industries Corp.

1976-1 Trade Cases ¶60,932. U.S. District Court, N.D. Ohio, Eastern Division. Civil Action No. C73-383. Entered May 27, 1976 (Competitive impact statement and other matters filed with settlement: 41 *Federal Register* 9398). Case No. 2314, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions—Automotive Glass Replacement Shops—Divestiture—Restrictions on Opening New Shops—Consent Decree.—A producer of glass products was required by a consent decree to sell to one purchaser five automotive glass shops that the firm had acquired in alleged violation of Sec. 7 of the Clayton Act. Furthermore, a ten-year acquisitions ban, as well as restrictions on opening new replacement shops for three years after divestiture was completed, were imposed.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, John A. Weedon, Robert J. Ludwig, Attys., Dept. of Justice, Frederick M. Coleman, U. S. Atty., David F. Hils, Joan Farragher Sullivan, Susan B. Cyphert, and Dale F. Shapiro, Attys., Antitrust Div., Dept. of Justice, Cleveland, Ohio.

For defendant: Sheldon Berns, of Kahn, Kleinman, Yanowitz & Arnson, Cleveland, Ohio.

Final Judgment

THOMAS, D. J.: Plaintiff, United States of America, having filed its Complaint herein on April 16, 1973, and defendant having appeared and filed its Answer to the Complaint denying the substantive allegations thereof, and the plaintiff and the defendant, 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 against or an admission by any party hereto with respect to any such issue of fact or law;

Now, therefore, before the taking of any testimony, without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby Ordered, Adjudged and Decreed as follows:

I.

[*Jurisdiction*],

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant 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. Entry of this Final Judgment is in the public interest.

II.

[*Definitions*]

As used in this Final Judgment:

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

(B) "Guardian" means the defendant Guardian Industries Corp.;

(C) "Replacement auto glass" means windshields, backlites, sidelites, vents, quarterlies, and all other types of glass, other than headlights or taillights, used in passenger and truck automotive vehicles, in place of broken, defective or otherwise unsatisfactory auto glass;

(D) "The replacement of auto glass" means the business of installing replacement auto glass and includes the combined operation of (1) providing replacement auto glass and all other materials, e. g., the installation kit, and (2) installing replacement glass;

(E) "Glass shop" means the location where any person is engaged in the replacement of auto glass, and includes the goodwill, business location, vehicles, customer lists, and all other assets used in the operation thereof;

(F) "Affiliate" means any person that controls or has power to control Guardian or is controlled by or is under common control with Guardian;

(G) "Purchaser" means any person who acquires the glass shops pursuant to this Final Judgment

III.

[*Applicability*]

The provisions of this Final Judgment applicable to Guardian shall also apply to each of its officers, directors, agents, employees, affiliates, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall not apply to any purchaser as denned in Section II(G) of this Final Judgment.

IV.

[*Divestiture*]

(A) Guardian shall divest, with the prior approval of the plaintiff, as viable, going concerns, the following Guardian glass shops:

(1) 5220 Warrensville Center Road, Maple Heights, Ohio;

(2) 1379 W. 117th Street, Cleveland, Ohio;

(3) 1622 Broadway, Lorain, Ohio;

(4) 7591 Mentor Avenue, Mentor, Ohio; and

(5) 464 West Avenue, Tallmadge, Ohio. The divestiture shall be absolute and unconditional.

(B) Within eighteen (18) months from the date of entry of this Final Judgment, Guardian shall make the divestiture ordered by this Final Judgment to a single purchaser.

(C) If the divestiture ordered in this Final Judgment has not been accomplished by Guardian within eighteen (18) months from the date of entry of this Final Judgment, the Court shall appoint a trustee who shall accomplish the divestiture ordered by this Final Judgment. Plaintiff may apply to the Court for the appointment of a trustee at any time following fifteen (15) months after the date of entry of this Final Judgment. The trustee shall be ordered to sell as a going business the glass shops and other assets to be divested to a person or persons satisfactory to the Plaintiff. Such sale shall be subject to confirmation by the Court after thirty (30) days' notice in writing by the trustee to the parties of the complete details of the proposed sale. Within such thirty (30) day period the parties shall have the right to object to such sale and shall have the right to be heard thereon.

In the event that the trustee is unable to sell the glass shops and other assets to be divested as a going business within eighteen (18) months after his appointment, the trustee shall apply to the Court for additional instructions and/or authority, which may include, if the Court deems appropriate, but shall not be limited to (a) to manage the business of said glass shops; (b) to receive a conveyance of Guardian's interest in said glass shops and other assets to be divested; and/or (c) to sell the assets of said glass shops individually or in groups. All of said fees and expenses of the trusteeship, including reasonable attorneys' fees, shall be paid by Guardian. Nothing in this Section IV(C) shall preclude the Court from finding Guardian in contempt of this Final Judgment.

(D) The divestiture ordered by this Final Judgment shall include all trade names and trademarks associated with any of the names:

(1) Acme Glass;

(2) Acme Glass Co,;

(3) B & B;

(4) B & B Acme Glass;

(5) B & B Acme Glass Co.;

(6) B & B & Acme Glass Co.;

(7) B & B Auto Glass Co.;

(8) B & B Bruening Auto Glass;

(9) B & B Bruening Auto Glass Co.;

(10) B & B Glass Co.;

(11) Beachland;

(12) Beachland Glass;

(13) Beachland Glass Co.;

(14) Beachland Glass of Lake County, Inc.

Guardian shall not adopt or use any such trade name or trademark or trade name or trademark similar thereto.

(E) Guardian shall abandon the use of the telephone number 216-431-3400 upon divestiture of the Guardian glass shops listed in Section IV(A.) hereof or upon publication and distribution of the Cleveland Metropolitan Area Yellow Pages 1977-1978 ("1977 Yellow Pages"), whichever shall first occur. Until such abandonment, telephone calls to 216-431-3400 shall be answered "B & B-Guardian" or "Guardian-B & B". Said telephone number shall not be published in the Cleveland Metropolitan Area Yellow Pages 1976-1977 ("1976 Yellow Pages") and after publication and distribution of said 1976 Yellow Pages, said telephone number shall not be used in any advertising or other written material published or distributed by Guardian. Guardian shall cause an advertisement under the name "B & B" to be placed in the 1976 Yellow Pages under the heading "Glass-Automobile" for the Guardian glass shops to be divested pursuant to Section IV(A) hereof located within the area covered by said 1976 Yellow Pages, which advertisement shall contain a new telephone number or new telephone numbers applicable to said glass shops. Telephone calls to such number or numbers shall be answered "B & B." Guardian shall place an advertisement under the name "Guardian" in said 1976 Yellow Pages under the headings "Glass" and "Glass-Automobile" for the glass shops to be retained by it located in the area covered by said 1976 Yellow Pages, which advertisement shall contain no mention of any of the names listed in Section IV(D) hereof nor any of the telephone numbers referred to in this Section IV(E). Prior to divestiture of the Guardian glass shops listed in Section IV(A) hereof, no advertising, other than that contained in the 1976 Yellow Pages, and no other written material shall be "published or distributed by Guardian to publicize Guardian glass shops unless advertisements and written material equal thereto are distributed to the same recipients by Guardian to publicize B & B glass shops. Until divestiture has been completed, Guardian shall continue to insert advertisements of equal size under the heading "Glass-Automobile" in the Cleveland Metropolitan Area Yellow Pages for such of the glass shops to be divested and such of the Guardian glass shops to be retained as are located within the area covered by said Cleveland Metropolitan Area Yellow Pages. Except for advertising in the Yellow Pages, the inclusion by Guardian of Guardian's name as parent corporation of B & B, Guardian's logo and/or Guardian's name in relation to products offered for sale by B & B in advertising and written material published and distributed to publicize B & B shall not be deemed a violation of this provision. All replacement auto glass jobs called in to the telephone number 216-431-3400 will be assigned by Guardian to the location nearest to the job site, regardless of whether the location is to be divested or retained. Telephone callers to

216-431-3400 or to any new numbers listed in the 1976 Yellow Pages shall not be advised of any change in telephone numbers except by referral to the 1976 Yellow Pages. The divestiture ordered by this Final Judgment shall include the following telephone numbers:

Lorain 216-244-3229

Elyria 216-323-7198

Mentor 216-946-0400

Akron 216-633-6744

Guardian shall not adopt or use any telephone numbers similar to those contained in this Section IV(E). Until divestiture has been completed, Guardian shall continue to insert advertisements for the glass shops to be divested located outside of Cuyahoga County in the Yellow Pages covering such areas under such headings as advertisements are presently contained employing such of the trade names listed in Section IV(D) hereof as have heretofore been used in such Yellow Pages.

(F) No divestiture of Guardian glass shops listed in paragraph (A) above shall be made to any person who is at the time of the divestiture, an officer, director, agent, employee, affiliate or subsidiary of Guardian without prior approval by the plaintiff. Nor may Guardian employ any person who owns or operates all or any portion of the divested glass shops.

(G) Guardian shall for a period of one (1) year from the completion of this divestiture pursuant to this Final Judgement, refrain from urging, suggesting, coercing or attempting to persuade any personnel of the glass shops divested, to terminate his employment with the purchaser of such glass shops sq as to accept employment with Guardian or otherwise, and Guardian shall release, free and clear from any employment contract, any Guardian personnel who request such a release in order to become associated with the purchaser.

(H) Guardian is enjoined and restrained from knowingly taking any action, directly or indirectly, which will impair or impede, prior to its divestiture, the viability of any of the glass shops being divested under this Final Judgment, but nothing contained in this Section IV(H) shall prevent Guardian from competing with any of said glass shops after divestiture of same.

(I) Guardian shall make known the availability of the glass shops to be divested by ordinary and usual means for the sale of a business, and shall furnish to all *bona fide* prospective purchasers on an equal and nondiscriminatory basis all necessary information, including business records, regarding the said glass shops, and shall permit such prospective purchasers to have access to and to make such inspections thereof as are reasonably necessary for the above purpose, provided, however, that in the event that any business record contains information regarding glass shops to be retained by Guardian and information regarding glass shops to be divested, then, in lieu of furnishing such record, Guardian may extract therefrom the information contained therein relating to the glass shops to be divested and furnish an extract of the same to *bona fide* prospective purchasers.

(J) In the event that Guardian is unable to maintain its tenancy of the premises of any glass shop to be divested by Guardian pursuant to Section IV(A) hereof, Guardian shall acquire a comparable location, considering size, facilities, traffic flow, parking and storage areas, rental, and availability of other locations, within the same area as that served by the premises as to which its tenancy is to be terminated, and divest such new location in lieu thereof. Guardian shall furnish the plaintiff ten (10) days' prior notice in writing of its acquisition of such comparable location.

V

[*Notice to Government*]

Not less than sixty (60) days prior to the closing of any divestiture pursuant to this Final Judgment, Guardian shall furnish in writing to the plaintiff the complete details of the proposed transaction. Within thirty (30) days after the receipt of such information, plaintiff may request in writing additional information concerning the proposed

transaction which shall be promptly furnished in writing by Guardian. If no request for additional information is made, plaintiff shall advise Guardian in writing no later than thirty (30) days prior to the scheduled closing date whether it has any objection to the proposed divestiture. If plaintiff requests additional information, it shall advise Guardian in writing within thirty (30) days after receipt of such additional information, or within thirty (30) days of receipt of a written statement from Guardian that it does not have the requested information, whether plaintiff has any objection to the proposed divestiture. If plaintiff objects, the proposed divestiture shall not be consummated unless Guardian obtains the approval of the Court or the plaintiff's objection is withdrawn.

VI

[*Divestiture/New Shops*]

(A) All mobile units and other vehicles of whatever type, and all other equipment, which Guardian uses in the normal and usual day-to-day operation of the glass shops to be divested, shall be specifically included in and be a part of the divestiture ordered by this Final Judgment. The vehicles and other equipment listed in Appendices A and B [*not reproduced*.—CCH], respectively (or replacements of the same made in the ordinary course of business) shall be deemed to be included in, without necessarily constituting the total of, the vehicles and other equipment which Guardian uses in the normal and usual day-to-day operation of the glass shops to be divested.

(B) Guardian shall provide each *bona fide* prospective purchaser with a list of Guardian's employees at the glass shops to be divested, as of November 20, 1975 and as of the date of the prospective purchaser's request for such a list, and such purchaser shall be permitted, subject to the reasonable convenience of Guardian and without restraint or interference from Guardian, to interview these employees and to offer employment to as many of these employees as such prospective purchaser desires.

(C) Guardian is enjoined and restrained for three (3) years from the completion of the divestiture ordered by this Final Judgment from opening or acquiring any glass shop within a three (3) mile radius of any glass shop divested pursuant to this Final Judgment so long as the purchaser thereof under this Final Judgment operates such glass shop or any replacement for such glass shop located within a three (3) mile radius of such divested shop.

(D) Guardian is enjoined and restrained for a period of three (3) years from the completion of the divestiture ordered by this Final Judgment from owning or leasing more than fifty (50) vehicles for the conduct of its glass business in the area within the counties of Cuyahoga, Lake, Geauga, Summit, Medina and Lorain. No other vehicles shall regularly be used by Guardian or by Guardian's employees on behalf of Guardian to service this area.

(E) Guardian shall open no new glass shop in the area within the counties of Cuyahoga, Lake, Geauga, Summit, Medina and Lorain until the divestiture ordered by this Final Judgment has been completed.

VII

[*Reacquisition*]

None of the glass shops divested pursuant to this Final Judgment shall be reacquired by Guardian provided, however, that Guardian may acquire and enforce any *bona fide* lien, mortgage, deed of trust or other form of security on all or any of the glass shops divested given for the purpose of securing to Guardian payment of any unpaid portion of the purchase price or performance of the divestiture transaction. In the event Guardian as a result of the enforcement of any such *bona fide* lien, mortgage, deed of trust or other form of security, reacquires possession of any of the divested glass shops, Guardian shall so notify plaintiff within thirty (30) days of such repossession, and shall within one (1) year thereafter divest the reacquired glass shops as a viable, going business in accordance with the provisions of this Final Judgment.

VIII

[*Acquisition Ban*]

Guardian is enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from acquiring, directly or indirectly, any of the capital stock, assets, or goodwill of any person engaged in the replacement of auto glass in Cuyahoga, Lake, Geauga, Summit, Medina and Lorain Counties, Ohio. Guardian is further enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from acquiring, directly or indirectly, any of the capital stock, assets, or goodwill of any person engaged in the replacement of auto glass anywhere else in the United States except upon sixty (60) days' notice to the plaintiff.

IX

[*Reports*]

Following the entry of this Final Judgment and continuing until the divestiture required by this Final Judgment has been completed, Guardian shall submit written reports to the plaintiff every three (3) months describing in detail the efforts made by Guardian to comply with the provisions of this Final Judgment.

X

[*Inspection*]

(A) For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office, be permitted (1) access, during the office hours of defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant relating to any of the matters contained in this Final Judgment, and (2) subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers and employees of defendant, who may have counsel present, regarding any such matters.

(B) Defendant, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit reports in writing to the Department of Justice with respect to any 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 duly authorized representatives 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

[*Retention of Jurisdiction*]

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 modification of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

United States v. Air Conditioning and Refrigeration Wholesalers

Civil Action No. C-70-829

Year Judgment Entered: 1976

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Air Conditioning and Refrigeration Wholesalers, et al., U.S. District Court, N.D. Ohio, 1976-2 Trade Cases ¶61,160, (Oct. 8, 1976)

United States v. Air Conditioning and Refrigeration Wholesalers, et al.

1976-2 Trade Cases ¶61,160. U.S. District Court, N.D. Ohio, Eastern Division. Civil No. C-70-829. Entered October 8, 1976. (Competitive impact statement and other matters filed with settlement: 41 *Federal Register* 19134, 35866). Case No. 2127, Antitrust Division, Department of Justice.

Sherman Act

Refusal To Deal—Refrigerant Gas Manufacturers—Agreements Not To Sell—Exchange of Information on Distribution—Association. Membership—Consent Decree.—Manufacturers of refrigerant gas and a trade association were barred by a consent decree from agreeing with any manufacturer, or group of purchasers, of refrigerant gas to refuse to sell such gas to any group or class of customers. Additionally, for a five-year period, the decree enjoined discussions among manufacturers regarding distribution policies; prohibited the trade association from permitting any such discussions at its meetings or in its publications; and required the manufacturers to sell refrigerant gas to any reseller under terms and conditions set out in the consent decree. The trade association also was required to create a new class of membership open to any reseller of refrigerant gas.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., and Baddia J. Rashid, Charles F. B. McAleer, Robert S. Zuckerman, and John L. Wilson, Attys., Dept. of Justice.

For defendants: William T. Lifland, of Cahill Gordon & Reindel, New York, N. Y., for Allied Chemical Corp.; Daniel M. Gribbon, of Covington & Burling, Washington, D. C., for E. I. du Pont de Nemours and Co.; Robert L. Price, of Kaiser Aluminum and Chemical Corp., Oakland, Cal., for Kaiser Aluminum & Chemical Corp. and Kaiser Aluminum & Chemical Sales, Inc.; Henry Kolowrat, of Dechert Price & Rhoads, Philadelphia, Pa., for Pennwalt Corp.; J. L. Weigand, Jr., of Wiegand, Curfman, Brainerd, Harris & Kaufman, Wichita, Kans., for Racon Inc.; George Meisel, of Squire, Sanders & Dempsey, Cleveland, Ohio, for Union Carbide Corp.; and John D. Leech, for Air Conditioning and Refrigeration Wholesalers.

Final Judgment

THOMAS, D. J.: Plaintiff, United States of America, having filed its complaint herein on August 28, 1970, and defendants having filed their answers thereto denying the material allegations of the complaint, and plaintiff and defendants Air Conditioning and Refrigeration Wholesalers ("ARW"), Allied Chemical Corportion, E. I. du Pont de Nemours & Company, Kaiser Aluminum & Chemical Corporation, Kaiser Aluminum & Chemical Sales, Inc., Pennwalt Corporation, Racon Incorporated, and Union Carbide Corporation, 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 upon consent of the parties hereto:

It is Hereby Ordered, Adjudged and Decreed, as follows:

[*Jurisdiction*]

This Court has jurisdiction over the subject matter and the parties consenting hereto. The complaint states claims upon which relief may be granted against defendants under Sections 1 and 2 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 (15 U. S. C. A. §§ 1 and 2).

II.

[*Definitions*]

As used in this Final Judgment:

(A) "Refrigerant gas" or "gas" means gas created by various combinations of carbon, chlorine, fluorine, and in some instances hydrogen, which is sold for use in air-conditioning and refrigeration equipment.

(B) "Defendant manufacturers" means the defendants Allied Chemical Corporation, E. I. du Pont de Nemours & Company, Pennwalt Corporation, Racon Incorporated, Union Carbide Corporation, Kaiser Aluminum & Chemical Corporation, and Kaiser Aluminum & Chemical Sales, Inc. (said Kaiser defendants being considered one entity for purposes of the Final Judgment).

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

(D) "Reseller" means any person, other than a manufacturer of refrigerant gas, which is engaged in the United States in the business of purchasing refrigerant gas for resale to contractors, dealers, installers, servicemen, or other resellers.

III.

[*Applicability*]

The provisions of this Final Judgment shall apply to all the defendants, the officers, agents, servants, employees, successors and assigns of each and all defendants, 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 shall not apply to transactions or activities solely between a defendant manufacturer and its directors, officers, agents, servants, employees, and subsidiaries, or any of them, when acting in such capacity. This Final Judgment shall apply only to acts that affect the foreign or domestic commerce of the United States.

IV.

[*Boycott; Exchange of Information*]

(A) Defendants and each of them are enjoined and restrained from combining or conspiring or entering into, enforcing, or claiming any rights under any agreement, arrangement, or understanding with any manufacturer of or association or group of purchasers of refrigerant gas to refuse to sell refrigerant gas to any customer or class or group of customers.

(B) For a period of five years each defendant manufacturer is enjoined from communicating to, or discussing with, any other defendant or refrigerant gas manufacturer, the refrigerant gas distribution policies or practices of any refrigerant gas manufacturer.

(C) For a period of five years defendant ARW is enjoined from permitting or countenancing at its meetings or in its publications any discussion regarding the distribution practices and policies of any manufacturer of refrigerant gas.

V.

[*Safety Discussions*]

Nothing herein shall prevent a defendant manufacturer from (1) announcing to the trade its own policies or practices and its terms for shipment and sale of refrigerant gas, (2) negotiating, executing, and enforcing contracts for the sale and purchase of refrigerant gas with any person, or (3) discussing with any person and implementing bona fide safety measures or standards of identification relating to refrigerant gas.

VI.

[*Required Sales/Limitations*]

(A) For a period of five years from the date of this Final Judgment each defendant manufacturer is ordered and directed to the extent it has gas and containers available to sell refrigerant gas on such defendant manufacturer's regular terms and conditions of sale, including minimum quantity requirements, to any reseller who pays cash or meets its customary credit requirements in containers of any size which it ships to any customer, provided, however, that a defendant manufacturer shall not be required to sell refrigerant gas in containers larger than 145 pounds to any reseller which is not technically qualified to use such gas to fill smaller containers. Each defendant manufacturer shall afford all resellers a fair opportunity to place orders and shall ship to any bona fide branch or warehouse of a reseller purchasing gas from it.

(B) Nothing herein shall obligate a defendant manufacturer to sell or ship refrigerant gas other than to a reseller for resale to contractors, dealers, other resellers, servicemen, and installers which are not affiliated with such reseller, and a defendant manufacturer may (1) require, as a condition of any sale or shipment, a certification from any reseller that gas that it desires to purchase will be so resold, and (2) cease selling and shipping to any reseller which deliberately or repeatedly, fails to comply with its certification.

(C) In recognition of the likelihood that a defendant manufacturer will not be in a position at all times to supply all resellers who may seek to purchase refrigerant gas, each defendant manufacturer, in carrying out its obligations under Paragraph VI of this Final Judgment, shall, in such circumstances, determine, unilaterally and without consultation with any other defendant manufacturer or any group of purchasers of refrigerant gas, the manner in which demand or anticipated demand shall be met on the basis of any allocation, reasonable and equitable under all the circumstances, which may take into account its objectives with respect to container mix. It shall be unreasonable for any such allocation plan to give preference to past or present ARW members on account of such membership. Each defendant shall maintain for three years complete records concerning sales and orders under any such allocation plan.

VII.

[*Notice; Bylaws]*

Defendant ARW is ordered and directed:

(A) Within thirty (30) days after the entry hereof, to serve by mail upon each of its present members a conformed copy of this Final Judgment;

(B) To institute forthwith and to complete within three (3) months from the date of entry of this Final Judgment such proceedings as may be appropriate and necessary to adopt Regulations or Bylaws incorporating therein the terms and requirements of Sections IV and VII of this Final Judgment and to require as a condition of membership in ARW that all present and future members be bound by said amendments hereof in the same way that the defendants are now bound;

(C) To amend its rules and regulations to create a classification of membership to include any person which regularly purchases refrigerant gas for resale and does not install or service air-conditioning or refrigeration equipment or perform air-conditioning or refrigeration repair service;

(D) To furnish to each of its present and future members a copy of its Regulations or Bylaws adopted in accordance with this Section VII;

(E) To expel promptly from its membership any present or future member who shall violate any of the provisions of this Final Judgment, when ARW shall have knowledge of such violation; and

(F) Within four (4) months after the entry hereof, to file an Affidavit with this Court and send a copy thereof to the plaintiff herein, setting forth the steps taken to comply with this Section VII.

VIII.

[*Inspections*]

(A) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, defendants shall permit duly authorized representatives of the Department of Justice, on written request of the Attorney General or, the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants at their respective principal offices subject to any legally recognized privilege:

1. To have access during the office hours of defendants 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 defendants which relate to any matters which are provided for in this Final Judgment; and

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

(B) Upon 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 the matters contained in this Final Judgment, as may from time to time be requested;

(C) No information obtained by the means provided in this Section of this Final Judgment 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 to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

IX.

[*Retention of Jurisdiction*]

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 modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

X.

[*Public Interest*]

Entry of this Judgment is in the public interest.

United States v. Parker-Hannifin Corp.

Civil Action No. C72-493

Year Judgment Entered: 1977

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Parker-Hannifin Corp., U.S. District Court, N.D. Ohio, 1977-2 Trade Cases ¶61,737, (Nov. 1, 1977)

United States v. Parker-Hannifin Corp.

1977-2 Trade Cases ¶61,737. U.S. District Court, N.D. Ohio, Eastern Division, Civil No. C72-493, Entered November 1, 1977, (Competitive impact statement and other matters filed with settlement: 42 *Federal Register* 37874).

Case No. 2240, Antitrust Division, Department of Justice.

Sherman Act

Acquisitions: Automotive Aftermarket: Replacement Parts: Consent Decree.– A manufacturer and seller of automotive replacement parts was barred by a consent decree, for a period of ten years, from acquiring any manufacturer of related products, such as tire hardware or worm drive clamps. The manufacturer was also barred from making certain combination of products manufactured by it and by a competitor, with the result that a customer may obtain pooled quantity discounts or meet minimum freight requirements.

Acquisitions: Divestiture: Automotive Replacement Parts: Consent Decree.– A manufacturer and seller of automotive replacement parts was required by a consent decree to divest all of its interest, direct and indirect, in a competitor's subsidiary which shall be an ongoing entity competing in the market. The manufacturer was ordered not to encumber for its own benefit any asset of the company to be divested and not to dispose of any asset other than in the ordinary course of business. If within two years divestiture was not accomplished, a trustee should be appointed, with full authority to dispose of, and eventually to manage, the company to be divested.

Acquisitions: Divestiture: Competitive Viability: Consent Decree.– Among the provisions concerning divestiture under a consent decree, a manufacturer of automotive replacement parts was ordered to maintain the company to be divested as a separate and viable entity, until divestiture was accomplished. It was ordered not to make changes in its recordkeeping hindering divestiture; to maintain existing production and distribution facilities of the company; to maintain a separate sales organization and separate, sufficient and adequate personnel capable of managing the company after divestiture; to preserve all existing competition between the company and other subsidiaries and divisions of the manufacturer; to direct the company to continue its distinct advertising; and to deny a defendant's division and the company to be divested access to their trade secrets, customer lists, supplier lists and prices.

Acquisitions: Divestiture: Potential Buyers' Report: Consent Decree.– A manufacturer of automotive replacement parts that was ordered to divest itself of a competitor's subsidiary under a consent decree was also required to keep a detailed record of potential buyers and to report to the government every 90 days as to those potential buyers and as to the status of all ongoing negotiations for divestiture unless a trustee had been appointed.

For plaintiff: John H. Shenefield, Acting Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, John A. Weedon, Kenneth L. Jost, Gerald H. Rubin, Joan Farragher, Saundra B. Wallack, and William J. Oberdick, Attys., Antitrust Div., Dept. of Justice. **For defendant:** Thompson, Hine and Flory, by John F. McClatchey, Cleveland, Ohio.

Final Judgment

Manos, D. J.: Plaintiff, United States of America, having filed its Complaint herein on May 15, 1972, and Defendant, Parker-Hannifin Corporation, having appeared by its attorney and filed its Answer denying the substantive allegations of the Complaint; and the Plaintiff and Defendant, by their respective attorneys, having

consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or an admission by any party with respect to any such issue;

Now, Therefore, before the taking of any testimony and upon the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The Complaint states a claim upon which relief may be granted against the Defendant under Section 7 of the Clayton Act, 15 U. S. C. §18.

II

[*Definitions*]

As used in this Final Judgment:

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

(B) "Defendant" means Parker-Hannifin Corporation and all its subsidiaries and divisions, including Ideal Corporation;

(C) "Parker" means Parker-Hannifin Corporation and all its subsidiaries and divisions. other than Ideal Corporation, but including persons acquired by Defendant after the entry of this Final Judgment;

(D) "Ideal" means Ideal Corporation, a wholly-owned subsidiary of Parker, at is existed on May 15, 1972;

(E) "Acme" means Acme Air Appliance Co., Inc. a subsidiary of Ideal;

(F) "Tire valve" means snap-in type or clamp-in type tubeless valves for use with pneumatic tires or tube type valves for attachment to tire tubes;

(G) "Tire hardware" means tire valves, tire valve extensions, tire valve core housings, tire valve cores, air pressure gauges, air line gauge assemblies, air line gauges, tire pressure gauges, service gauges, air chucks, blow guns, automatic quick change couplers and nipples, and tire valve service and repair tools;

(H) "Worm-drive hose clamp" means a device consisting of a serrated steel band with a threaded worm-drive screw which fits into an attached housing and which can be turned in the band's serration;

(I) "Pooled quantity discounts" means any reduction in purchase price due to the quantity of products purchased from Defendant;

(J) "Minimum freight requirements" means the price or poundage which a purchaser must exceed for Defendant to pay freight costs or any part thereof.

III

[*Applicability*]

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

IV

[*Divestiture*]

(A) Within two years of the date of entry of this Final Judgment, Defendant shall divest all of its interest, direct and indirect, in Acme, which shall be an ongoing entity competing in the automotive aftermarket and capable of continuing so to compete as of the date of divestiture. Pending divestiture of Acme, Defendant shall not dispose of any asset of Acme other than in the ordinary course of business, and shall not for its own benefit encumber any asset of Acme.

(B) If two years after the date of entry of this Final Judgment, Defendant has not divested itself of Acme as provided in Paragraph (A) of this Section, then, in addition to any other remedy the Plaintiff may seek from the Court, the Court, upon application of Plaintiff and notice to the Defendant, shall appoint a Trustee. For a period of 18 months from his appointment, the Trustee shall have full authority to dispose of Acme, subject to the supervision of this Court. Defendant shall continue to manage Acme subject to Plaintiff's right to seek from the Court an order giving the Trustee managerial authority. Defendant, upon the expiration of 18 months from the appointment of the Trustee, and in the event he has not disposed of Acme, shall, upon application of Plaintiff, immediately convey to the Trustee all of its interest in Acme. The Trustee shall thereafter have full authority to manage and dispose of Acme, subject to the supervision of this Court. The Trustee shall, as expeditiously as possible after his appointment, subject to the supervision of this Court after hearing the parties on any issue presented, dispose of Acme as an ongoing entity competing in the automotive aftermarket and capable of continuing so to compete. The fees and expenses of the Trustee shall be submitted to this Court for approval and payment by Defendant.

(C) The details of any proposed divestiture under Paragraph (A) of this Section shall be submitted to the Plaintiff. Following the receipt of such details and any additional information that it may request, Plaintiff shall have thirty (30) days in which to object to the proposed divestiture. If Plaintiff does not object, the proposed divestiture may be consummated; if Plaintiff objects, the proposed divestiture shall not be consummated until Defendant obtains an order of this Court approving the proposed divestiture or Plaintiff withdraws its objection.

V

[*Competitive Viability*]

Defendant shall, until the divestiture required by Section IV of this Final Judgment is accomplished:

(1) Maintain Acme in its present status as a separate and viable company;

(2) Make no changes in any of Defendant's recordkeeping which may hinder the divestiture of Acme;

(3) Maintain the existing production and distribution facilities of Acme except for changes in the ordinary course of business;

(4) Maintain a sales organization for Acme that is separate from that of Parker;

(5) Maintain sufficient and adequate personnel at Acme separate and distinct from Defendant's other personnel and capable of managing Acme effectively after divestiture by Defendant;

(6) Preserve all existing competition between Acme and other subsidiaries and divisions of Defendant;

(7) Direct Acme to continue to publicize, sell, and advertise distinctly the name of Acme in connection with products made or distributed by Acme and not indicate Acme's affiliation with it to the detriment of third parties competing with Defendant, except that Acme will be known to be a subsidiary of Ideal or Parker;

(8) Deny its TPH Division and Acme access to the trade secrets, customer lists, supplier lists and prices of the other.

VI

[*Potential Buyers*]

(A) Defendant shall keep written memoranda of all inquiries it receives, whether written, oral, telephonic, or otherwise, from persons seeking information regarding the business to be divested pursuant to Section IV. The

memoranda shall include the name, business address, and business telephone number of each person seeking information, and shall indicate the nature of the inquiry, Defendant's response to the inquiry, the date of the inquiry, and the date of Defendant's response.

(B) Beginning on the 90th day after entry of this Final Judgment, and on every 90th day thereafter until the divestiture ordered by Section IV has been completed, Defendant shall furnish a written report to Plaintiff which shall include:

(1) A list of all persons who contacted Defendant during the reporting period seeking information about the business to be divested pursuant to Section IV, plus copies of the memoranda required by Paragraph (A) of this Section;

(2) A description of steps taken during the reporting period to accomplish divestiture and of the status of all ongoing negotiations for divestiture of Acme, unless a trustee has been appointed pursuant to Section IV(B).

VII

[*Combinations of Products*]

For two years from the date of entry of this Final Judgment, Defendant shall not offer to combine products manufactured by Defendant (other than (a) products manufactured by Ideal and (b) products internally developed by Ideal), with worm-drive hose clamps manufactured by Ideal, with the result that a customer may obtain pooled quantity discounts or meet minimum freight requirements.

VIII

[*Acquisitions*]

For a period of ten years from the date of entry of this Final Judgment, Defendant shall not directly or indirectly acquire any person engaged in whole or in part in the manufacture of any product named in Section II(G) or II(H) of this Final Judgment.

IX

[*Inspections*]

(A) For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, any duly authorized representative of the Department of Justice shall be permitted, 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, subject to any legally recognized privilege:

(1) Access during Defendant's office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Defendant relating to any of the matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of Defendant and without restraint or interference from it, to interview officers, directors, agents, partners or employees of Defendant, who may have counsel present, regarding any of the matters contained in this Final Judgment.

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

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

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 26(c)(7) of the Federal Rules of Civil Procedure," then 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.

X

[*Retention of Jurisdiction*]

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 implementation, for the modification of any of the provisions, for the enforcement of compliance, and for the punishment of violations of this Final Judgment.

XI

[*Public Interest*]

Entry of this Final Judgment is in the public interest.

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Parker Hannifin Corp., U.S. District Court, N.D. Ohio, 1986-1 Trade Cases ¶67,066, (Oct. 30, 1985)

United States v. Parker Hannifin Corp.
1986-1 Trade Cases ¶67,066. U.S. District Court, N.D. Ohio, Eastern Division, Civil No. C-72-493, Filed October 30, 1985, Case No. 2240, Antitrust Division, Department of Justice.

Sherman Act

Acquisitions: Automotive Aftermarket: Acquisitions Ban: Modified Consent Decree.– A ten-year ban on acquisitions by a manufacturer of automotive replacement parts of any manufacturer of related products, such as tire hardware or worm-drive clamps, was modified to permit such acquisitions with the prior approval of the Department of Justice.

For plaintiff: Gerald H. Rubin, Antitrust Div., Dept. of Justice, Cleveland, Ohio. **For defendant:** John F. McClatchey, of Thompson, Hine & Flory, Cleveland, Ohio.

Order Modifying Section VIII of the Final Judgment

Manos, J.: Whereas, the defendant, Parker Hannifin Corporation, has moved this Court to modify Section VIII of the Final Judgment in this action; and

Whereas, public notice and an opportunity for public comment have been given; and

Whereas, the plaintiff, the United States of America, has not withdrawn its consent to entry of this order;

And Whereas, based on the record before us, the Court finds that entry of this order is in the public interest;

Now, Therefore, It Is Ordered and Directed:

That Section VIII of the Final Judgment be and hereby is modified to state as follows:

> For a period of ten years from the date of entry of this Final Judgment, Defendant shall not directly or indirectly acquire any person engaged in whole or in part in the manufacture of any product named in Section II(G) or II(H) of this Final Judgment without the prior written consent of the Department of Justice.