

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. American Locomotive Company, et al., U.S. District Court, N.D. Indiana, 1946-1947 Trade Cases ¶57,621, (Oct. 4, 1947)

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United States v. American Locomotive Company, et al.

1946-1947 Trade Cases ¶57,621. U.S. District Court, N.D. Indiana. Civil Action No. 545. October 4, 1947.

A consent decree entered in an action charging violations of the Sherman Act by a trade association and eight manufacturers of railway springs and spring plates prohibits the defendants jointly from fixing prices or other terms of sale of springs and plates, from fixing sales quotas or allocating orders, or from restricting production of specific types of springs and plates. The association is required to confine itself to the performance of research and experimental work and to the compilation and distribution of general trade information. A defendant is required to license, at uniform reasonable royalties, its patents and improvement patents on spring plates.

For plaintiff: John F. Sonnett, Assistant Attorney General; James E. Kilday, Sigmund Timberg, Melville C. Williams, Ewart Harris, Special Assistants to the Attorney General; Earl Hevers, Maurice Silverman, Special Attorneys; Alexander M. Campbell, United States Attorney.

For defendants: C. D. Williams, J. Tyson Stokes, John D. Black, Winston, Strawn & Shaw, for American Locomotive Company; John D. Black, Winston, Strawn & Shaw, for Railway & Industrial Spring Association; Louis S. Hardin, Fredric H. Stafford, John B. Robinson, Jr., Pam, Hurd & Reichmann, for American Steel Foundries; Arthur Littleton, Morgan, Lewis & Bockius, Robert F. Doolittle, for Baldwin Locomotive Works; Elder W. Marshall, John C. Bane, Jr., Reed, Smith, Shaw & McClay, for Crucible Steel Company of America, Pittsburgh Spring & Steel Company, Union Spring & Manufacturing Co.; Orville J. Taylor, James G. Magner, Taylor, Miller, Busch & Boyden, for Universal Railway Devices Company; L. L. Bomberger, for all defendants.

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on June 20, 1945; and American Locomotive Company, a New York corporation, American Steel Foundries, a New Jersey corporation, The Baldwin Locomotive Works, a Pennsylvania corporation, Crucible Steel Company of America, a New Jersey corporation, Pittsburgh Spring & Steel Company, a Pennsylvania corporation, Union Spring & Manufacturing Company, a Pennsylvania corporation, Universal Railway Devices Company, a Delaware corporation, and Railway & Industrial Spring Association, an unincorporated association, defendants herein, having filed their several answers to said complaint denying any violations of law; and United States of America and said 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 of law and without admission by any party herein in respect of any such issue; Now, therefore, it is hereby ordered, adjudged, and decreed as follows:

[Definitions]

ARTICLE I

As used in this judgment:

1. "Universal plates" means spring plates claimed by defendant Universal Railway Devices Company to be covered by U. S. Letters Patent No. 1,913,076, dated June 6, 1933, and U. S. Letters Patent No. 2,199,339, dated April 30, 1940.
2. "Coil-Elliptic device" means a combination of one or more dispositions of coil springs with one or more elliptic springs and pressed or cast spring plates.
3. "Railway Spring Products" means collectively:

- (a) Universal plates;
- (b) Coil-Elliptic devices;
- (c) Railway and special springs—which are coil, helical, elliptic, or semi-elliptic springs purchased or used by railroads, locomotive and car builders and industrial users for immediate or ultimate application and attachment to railroad equipment; and
- (d) Spring plate—which are pressed or cast plates used, or suitable for use, in conjunction with springs when placed at either or both ends thereof, in order to anchor and secure the disposition of such springs to the side frames, trucks and bolsters of railway cars, tenders, and locomotives.

4. "Defendant spring companies" means the defendants American Locomotive Company, American Steel Foundries, The Baldwin Locomotive Works, Crucible Steel Company of America, Pittsburgh Spring & Steel Company, and Union Spring & Manufacturing Company.

[*Jurisdiction*]

ARTICLE II

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states a cause of action against the defendant spring companies 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, and acts amendatory thereof and supplemental thereto.

[*Applicability to Persons Other Than Defendants*]

ARTICLE III

Reference herein to any defendant shall be deemed to include such defendant, its successors, subsidiaries, assigns, officers, directors, agents, members, employees, and each person acting or claiming to act under, through, or for such defendant.

[*Agreements Cancelled; Performance Enjoined*]

ARTICLE IV

The agreement dated September 28, 1932, described in Paragraph 32 of the complaint herein; each of the various agreements described in paragraphs 33 and 34 of the complaint; the agreement dated March 5, 1934, described in paragraph 36 of the complaint; and each of the agreements described in paragraph 37 of the complaint, are hereby cancelled. Each defendant is hereby enjoined and restrained from the further performance of any such agreements, and from entering into, adopting, adhering to or furthering any agreement or course of conduct for the purpose, or with the effect, of maintaining, reviving, or reinstating any of the provisions of any such agreement or any agreement or provisions thereof similar to those so enjoined.

[*Spring Companies and Association Enjoined from Engaging in Price Fixing*]

ARTICLE V

The defendant spring companies and the defendant Railway & Industrial Spring Association are hereby enjoined and restrained from taking concerted action or agreeing, combining, or conspiring, or from performing or adhering to any program, understanding, plan, or arrangement with each other or with any person, to:

- (1) Fix or have fixed, maintain, or control the prices at which any railway spring products shall be sold or resold to any other person or the terms of such sales or resales;
- (2) Allocate or distribute, have allocated or distributed, or fix quotas or orders for the production or sale of any railway spring products;

- (3) Refuse to make a bid for the sale of railway spring products or any of such products; or to make a bid therefor higher than, or identical with, the bid of anyone else; or to submit collusively a bid therefor in any other manner;
- (4) Disclose or furnish to each other (except to the extent permitted by Article VI of this judgment) information relating to sale or tonnage shipments or railway spring products by any defendant;
- (5) Refrain from the manufacture, sale, or distribution of railway spring products, or any of such products, or any type or variety of such product;
- (6) Refrain from the manufacture, sale, or distribution of any equipment or product competitive with railway spring products, manufactured by any defendant or subject to patents owned by any defendant;
- (7) Impose conditions limiting, restricting, or regulating the manufacture, sale or distribution of railway spring products or any of such products to or by railroads, industrial users or any other person. Provided, however, that the provisions of this article shall not be deemed to apply to, or to determine or affect the validity or invalidity of, any patent license agreement not entered into pursuant to, or used in or pursuant to, any unlawful agreement, combination, or conspiracy.

[Association Further Enjoined]

ARTICLE VI

Defendant Railway & Industrial Spring Association is hereby enjoined and restrained from:

- (1) Collecting, soliciting, utilizing, distributing, or disclosing any data or information concerning the manufacture, sale, or distribution of railway spring products or any of such products (a) for any purpose other than that of compiling and distributing general trade information or reports; or (b) in such a manner as to disclose any data or information concerning any particular firm, corporation, organization, or person;
- (2) Engaging in any other activity or performing any other function other than research and experimental work for the purpose of developing and improving the art of manufacturing railway spring products or any such product;
- (3) Refusing membership to any manufacturer of railway spring products who applies for membership;
- (4) Refusing to make available the results of research and experimental work to any manufacturer of railway spring products, whether a member or a nonmember, provided, however, that a nonmember may be required to contribute on a nondiscriminatory basis to the cost of such research and experimental work.

[Collusive Bidding Enjoined]

ARTICLE VII

Each defendant spring company is hereby enjoined and restrained from submitting bids for the sale of railway spring products for the purpose or with the intent of discouraging or precluding any person from becoming or continuing as a customer of such defendant. A course of action involving the submission of bids which provide higher prices or more unfavorable terms or conditions of sale than such defendant is then regularly offering to others similarly situated shall place on such defendant the burden of disproving such purpose or intent.

[Tying Agreements Prohibited]

ARTICLE VIII

The defendant spring companies are hereby enjoined and restrained, either when acting alone or pursuant to any agreement, combination, or conspiracy with anyone, from: (1) requiring as a condition of any sale or lease, any purchaser of any Coil-Elliptic device to purchase other mechanisms or parts used in assemblies involving the Coil-Elliptic device; or (2) representing or requiring the description of any unpatented mechanisms or parts of an assembly containing the Coil-Elliptic device as being part of a patented device; or (3) prevention or hindering any person, firm, company, or corporation from engaging in the manufacture or sale of the Coil-Elliptic device.

[Licensing Required]

ARTICLE IX

(1) Defendant Universal Railway Devices Corporation is ordered and directed to grant to each applicant therefor a non-exclusive license to make, use, and vend under United States Patents No. 1,913,076 and No. 2,199,339 covering Universal spring plates, or any patent applied for during the period of ten years from the date of this judgment constituting improvements to the inventions disclosed in such patents. Defendant Universal Railway Devices Corporation is hereby enjoined and restrained from making any assignment, sale, or other disposition of said patents, or any license agreement in respect of such patents, which would deprive Universal Railway Devices Corporation of the power or authority to grant licenses in accordance with this paragraph, unless it requires, as a condition of such assignment, sale, or other disposition, or license agreement, that the assignee, purchaser, transferee, or licensee shall observe the requirements of Articles IX, X, and XI of this judgment and the assignee, purchaser, transferee, or licensee shall file with this Court, prior to consummation of said transaction, an undertaking to be bound by the provisions of said Articles IX, X, and XI of this judgment.

(2) Defendant Universal is hereby enjoined and restrained from including any restriction or condition whatsoever in any license granted by it pursuant to the provisions of this article except that (a) a uniform reasonable royalty may be charged; (b) reasonable provisions may be made for periodic inspection of the books and records of the licensee by an independent auditor or any person acceptable to the licensee who shall report to the licensor only the amount of the royalty due and payable; (c) reasonable provision may be made for cancellation of the license upon failure of the licensee to pay the royalties or to permit the inspection of his books and records as hereinabove provided; (d) the license must provide that the licensee may cancel the license at any time by giving thirty days' notice in writing to the licensor; and (e) the license must provide that the licensee shall immediately have the benefit of any more favorable terms granted other licensees.

(3) Upon any application for a license in accordance with the provisions of paragraph (1) of this article, defendant Universal shall advise the applicant of the royalty it deems reasonable for the patents to which the application pertains. If the parties are unable to agree upon what constitutes a reasonable royalty within sixty (60) days from the date application for the license was received by Universal, the applicant for a license may apply forthwith to this Court for a determination of a reasonable royalty, and Universal shall, upon receipt of notice of filing such application, promptly give notice thereof to the Attorney General. In any such proceeding the burden of proof shall be upon Universal Railway Devices Corporation or its assignee, vendee, or transferee to establish the reasonableness of the royalty requested by it; and the reasonable royalty rates, if any, determined by the Court shall apply to the applicant and to the holders of all other licenses issued under the name patent or patents. Pending the completion of negotiations or of any such Court proceeding, the application shall have the right to make, use, and vend under the patents to which its application pertains, without payment of royalty or other compensation, but subject to the following provisions: Universal Railway Devices Corporation, its assignee, vendee, or transferee may apply to the Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty, if any. If the Court fixes such interim royalty rate, a license shall then issue and the applicant shall accept such license providing for the periodic payment of royalties at such interim rate from the date of the making of such application by the applicant. If the applicant fails to accept such license or to pay the interim royalty therein provided, such action shall be ground for the dismissal of his application. Where an interim license has been issued pursuant to these provisions, reasonable royalty rates, if any, as finally determined by the Court, shall be retroactive for the applicant and all other licensees under substantially the same patents to the date the applicant filed his application with the Court for the fixing of a reasonable royalty.

(4) Defendant Universal is hereby enjoined and restrained from bringing or maintaining any suit for any infringement of Patent No. 1,913,076 or Patent No. 2,199,339 alleged to have occurred prior to the date of this judgment.

[Access to Records for Purpose of Securing Compliance]

ARTICLE X

For the purpose of securing compliance with this judgment and for no other purpose, duly authorized representatives of the Department of Justice of the United States of America shall, upon written request of the Attorney General or an Assistant Attorney General, and upon reasonable notice to any defendant spring company, or defendant Railway and Industrial Spring Association, be permitted, subject to any legally recognized privilege, (a) access during reasonable office hours of such defendant spring company or the defendant Association, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant spring company or the defendant Association, relating to any of the matters contained in this judgment, and (b) subject to the reasonable convenience of such defendant spring company or the defendant Association and without restraint or interference from it, to interview officers or employees of such defendant spring company or the defendant Association, who may have counsel present, regarding any such matters; provided, however, that no information obtained by the means permitted by this article shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment or as otherwise required by law.

[*Copies of Judgment to Be Sent to Licensees*]

ARTICLE XI

Defendant Universal Railway Devices Corporation, within thirty days after the entry of this judgment, shall send to each present licensee under the patents subject to article IX a copy of this judgment. In the case of licenses applied for after the entry of this judgment and subject to article IX, a copy of this judgment shall be sent to each such applicant promptly after the application is made.

[*Judgment Does Not Prohibit Activities Lawful Under Webb-Pomerene Act*]

ARTICLE XII

This Judgment shall have no effect with respect to operations or activities, wherever performed, authorized or permitted by the Act of Congress of April 10, 1918, commonly called the Webb-Pomerene Act, or by acts amendatory thereof or supplemental thereto.

[*Jurisdiction Retained*]

ARTICLE XIII

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