

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Philco Corporation., U.S. District Court, E.D. Pennsylvania, 1956 Trade Cases ¶68,409, (Jul. 13, 1956)

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United States v. Philco Corporation.

1956 Trade Cases ¶68,409. U.S. District Court, E.D. Pennsylvania. Civil Action No. 18216. Filed July 13, 1956. Case No. 1211 in the Antitrust Division of the Department of Justice.

Clayton and Sherman Antitrust Acts

Combinations and Conspiracies—Exclusive Dealing—Consent Decree—Practices Enjoined—Exclusive Territories and Dealing—Tying Arrangements—Heavy Household Appliances.—A manufacturer of radios, phonographs, television sets, and heavy household appliances was prohibited by a consent decree from entering into any agreement with any wholesale distributor or retail dealer (1) giving the manufacturer the right to purchase any of its products for the account of such distributor or dealer, (2) preventing or restricting such distributor or dealer from selling or otherwise dealing in products not produced by the manufacturer, or (3) limiting or restricting the persons to whom or the territory within which any wholesale distributor or retail dealer may choose to sell the manufacturer's products. The manufacturer also was prohibited from refusing to enter into or canceling any contract with a wholesale distributor or retail dealer because of his refusal to agree or adhere to any contract contrary to the above prohibitions and from conditioning the filling of any order placed by any established wholesale distributor for any of its products upon the understanding that such distributor will purchase any other product of the manufacturer.

However, the decree provided that the manufacturer may exercise its right to choose and select its distributors and customers, to designate geographical areas in which such distributors shall respectively be primarily responsible for wholesaling its products, and to terminate the franchises of distributors who do not adequately represent and promote the sale of all the manufacturer's products. The decree also permitted the manufacturer, at the request of any wholesale distributor or retail dealer, to purchase products for the account of such person from another wholesale distributor or retail dealer.

For the plaintiff: Edward A. Foote, First Assistant, Antitrust Division, and W. D. Kilgore, Jr., Harry N. Burgess, William L. Maher, Charles F. B. McAleer, and Donald G. Balthis, Attorneys.

For the defendant: Charles I. Thompson, H. B. Weaver, Jr., Frederic L. Ballard, Jr., Edwin H. Pewett, and Philip Dechert (Ballard, Spahr, Andrews & Ingersoll, Philadelphia, Pa., and Weaver & Glassie, Washington, D. C., of counsel).

Final Judgment

ALLAN K. GRIM, District Judge [*In full text*]: The plaintiff United States of America having filed its Complaint herein on December 15, 1954, the defendant having filed its Answer denying the substantive allegations thereof, and the parties hereto by their respective attorneys having consented to the entry of his Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or an admission by any party hereto with respect to any such issue;

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

Ordered, adjudged and decreed as follows:

I

[*Clayton and Sherman Acts*]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims for relief against the defendant under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce from unlawful restraints and monopolies," commonly known as the Sherman Act, as amended, and Section 3 of the Act of Congress 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) "Philco" shall mean the defendant Philco Corporation, with its present principal place of business in Philadelphia, Pennsylvania;
- (B) "Person" shall mean an individual, partnership, firm, corporation, association or other business or legal entity;
- (C) "Wholesale distributor" shall mean any person (other than Philco and its subsidiaries) engaged in the purchase from manufacturers of products for resale primarily to retail dealers. "Retail dealer" shall mean any person (other than Philco and its subsidiaries) engaged in the sale of products primarily to consumers.
- (D) "Products" shall mean home radio receivers, phonographs, television receivers, refrigerators, freezers, air conditioners and electric ranges, and each of them, and accessories and repair and replacement parts therefor.
- (E) "Philco products" shall mean products sold by Philco under any brand name owned by it.

III

[*Applicability of Judgment*]

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

IV

[*Exclusive Dealing and Tying Arrangements Prohibited*]

Defendant Philco is enjoined and restrained from:

- (A) Entering into, adhering to or enforcing any contract, agreement or understanding with any wholesale distributor or retail dealer:
 - (1) giving defendant Philco the right to purchase any Philco products for the account of such distributor or dealer, provided, however, that Philco may at the request of any wholesale distributor or retail dealer purchase Philco products for his account from another wholesale distributor or retail dealer;
 - (2) preventing or restricting such distributor or dealer from selling or otherwise dealing in products not manufactured by Philco;
 - (3) limiting or restricting, directly or indirectly, the persons to whom or the territory within which any wholesale distributor or retail dealer may choose to sell Philco products.
- (B) Refusing to enter into or canceling any contract with a wholesale distributor or retail dealer for the distribution of any Philco products because of his refusal to agree or adhere to any contract, agreement or understanding contrary to any of the provisions of subsection (A) of this Section IV.
- (C) Conditioning the filling of any order placed by any established Philco wholesale distributor for any Philco product upon the agreement or understanding that such distributor will purchase any other Philco product.
- (D) Subject to subsections (A), (B), and (C) above, Philco may exercise its right to choose and select its distributors and customers and to designate geographical areas in which such distributors shall respectively be

primarily responsible for wholesaling Philco products and to terminate the franchises of distributors who do not adequately represent Philco and promote the sale of all Philco products in areas so designated as their primary responsibility.

V

[*Notice of Judgment*]

Defendant Philco is directed, within 60 days after the entry of this Final Judgment, to serve by mail upon each Philco distributor a conformed copy hereof.

VI

[*Inspection and Compliance*]

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

(A) Access, during the office hours of the defendant, to those parts of the 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;

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

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

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

VII

[*Jurisdiction Retained*]

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

VIII

[*Effective Date*]

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