

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Gestetner Corp., U.S. District Court, S.D. New York, 1968 Trade Cases ¶72,536, (Sept. 9, 1968)

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United States v. Gestetner Corp.

1968 Trade Cases ¶72,536. U.S. District Court, S.D. New York. Civil Action No. 64 Civ. 3121. Entered September 9, 1968. Case No. 1824 in the Antitrust Division of the Department of Justice.

## Sherman Act

**Resale Restrictions—Prices, Customers and Territories—Stencil Duplicating Machines and Supplies—Consent Decree.**—A manufacturer of stencil duplicating machines and supplies was barred by a consent decree from fixing resale prices and restricting customers to whom and territories in which the firm's products could be sold. Suggested list prices may be issued under the terms of the decree if the firm specifies that the goods may be sold at any price the dealer chooses.

For the plaintiff: Edwin M. Zimmerman, Assistant Attorney General, Baddia J. Rashid, William D. Kilgore, Jr., Norman H. Seidler, John Sirignano, Jr., Ralph T. Giordano, and Joan Sidor, Attorneys, Department of Justice, Washington, D. C.

For the defendant: Kaye, Scholer, Fierman, Hays & Handler, New York, by Stanley D. Robinson; McLaughlin & Stern, New York, N. Y., by Frederick R. Ballen.

## Final Judgment

MCLEAN, D. J.: Plaintiff, United States of America, having filed its complaint herein on October 14, 1964, and defendant, Gestetner Corporation, having appeared and filed its answer to such complaint denying the substantive allegations thereof, and plaintiff and defendant each having consented to the entry of this Final Judgment herein, without trial or adjudication of or finding on any issue of fact or law herein and without this Final Judgment constituting evidence or admission by any party with respect to any issue;

Now, Therefore, without any testimony having been taken herein, and without trial or adjudication of or finding on any issue of fact or law herein, 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 hereof and of the parties hereto. The complaint states a claim upon which relief may be granted under Section 1 of the Act of Congress of July 2, 1890, as amended, commonly known as the Sherman Act.

### II

#### [ Definition]

As used in this Final Judgment:

- (a) "Person" means any individual, partnership, firm, corporation, association, or other business or legal entity;
- (b) "United States" means the United States, any territory thereof, the District of Columbia and any insular possession or other place under the jurisdiction of the United States;

- (c) "Distributor" means any person who purchases Gestetner products from the defendant for resale to sub-dealers and users;
- (d) "Dealer" means any person who purchases Gestetner products from the defendant for resale to users;
- (e) "Sub-dealer" means any person who purchases Gestetner products from the defendant or a distributor for resale to users;
- (f) "Gestetner products" means any stencil duplicating machines, electronic scanning machines, and any related machines and parts, and accessories and supplies therefor, sold, marketed or otherwise distributed by the defendant;
- (g) "User" means any person who purchases Gestetner products for use and not for resale.

### III

#### **[ Applicability ]**

The provisions of this Final Judgment applicable to the defendant shall apply also to each of its subsidiaries, affiliates, successors and assigns, and to their respective officers, directors, agents, servants and employees, and to all other persons in active concert or participation with defendant who shall have received actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment, defendant and its parent, subsidiaries, affiliates, officers, directors, servants and employees, or any of them, shall be deemed to be one person, when acting in such capacity.

### IV

#### **[ Resale Restrictions ]**

Defendant is enjoined and restrained from directly or indirectly:

- (a) Entering into, maintaining, adhering to, enforcing or claiming any rights under any contract, agreement, understanding, plan or program with any person to fix, establish, limit, or restrict the territory in which, or the persons or classes of persons to whom, or the prices, terms or conditions at which any person may sell or lease, or offer to sell or lease, or advertise to sell or lease any Gestetner products to any third person in the United States.
- (b) Selling or offering to sell any Gestetner products to any person upon any condition or understanding which fixes, establishes, limits or restricts the persons to whom, or the territory within which, or the prices, terms or conditions at which such person may sell or lease, or offer to sell or lease, or advertise to sell or lease any Gestetner products to any third person in the United States.
- (c) Refusing or threatening to refuse to sell, or offer to sell any Gestetner products to any person because of the persons to whom, or the territories in which, or the prices, terms or conditions at which such person has sold or leased, offered to sell or lease, or advertised to sell or lease, any Gestetner products in the United States.
- (d) Issuing or disseminating to any person any material suggesting or recommending the prices at which any person shall resell Gestetner products in the United States unless such material contains a statement to the effect that such person may resell Gestetner products at prices of his own choosing.

### V

#### **[ Cancellation of Agreements—Notification ]**

A. Defendant is ordered and directed, within 120 days from the date of entry of this Final Judgment, to take all necessary action to effect the cancellation of each provision of every contract, agreement or understanding between and among the defendant and its distributors, dealers and sub-dealers, or any other persons, which is contrary to or inconsistent with any provision of this Final Judgment.

B. Defendant is ordered and directed, within 120 days from the date of entry of this Final Judgment, to mail to each of its distributors, dealers and sub-dealers a conformed copy of this Final Judgment together with a letter setting forth the substance of this Final Judgment.

C. Defendant is ordered and directed to mail to each distributor and dealer appointed by it and each sub-dealer known by it to be appointed by a distributor, during the period of one year from date of entry of this Final Judgment, a conformed copy of this Final Judgment together with a letter setting forth the substance of this Final Judgment.

D. Defendant is ordered and directed to file with this Court and serve upon the plaintiff, within 150 days from the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subsections A and B of this Section V and subsection (d) of Section IV of this Final Judgment, and within 13 months from 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 its compliance with subsection C of this Section V of this Final Judgment.

## **VI**

### **[ Inspection and Compliance]**

For the purpose of determining and 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:

A. Access during the office hours of defendants to 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; and

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 matter.

Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such written reports with respect to the matters covered 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 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 Retained]**

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