

## Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Champion Papers Inc., U.S. District Court, D. Nebraska, 1968 Trade Cases ¶72,560, (Aug. 28, 1968)

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United States v. Champion Papers Inc.

1968 Trade Cases ¶72,560. U.S. District Court, D. Nebraska. Civil Action No. 02270. Entered August 28, 1968. Case No. 1852 in the Antitrust Division of the Department of Justice.

### Clayton Act

#### **Acquisitions and Mergers—Pulp and Paper Products—Divestiture of Wholesalers— Consent Decree.—**

A final consent judgment required a manufacturer of pulp and paper products to sell, within two years, 23 of 44 paper merchant houses that the government had charged were illegally acquired. Further, the firm would be required, within five years, to divest, as viable paper merchant establishments, one or more paper merchant houses which aggregately accounted for \$7.5 million in the 12 months preceding divestiture. Unapproved acquisitions of fine paper merchants were barred for 10 years.

For the plaintiff: Robert A. Hammond III, Lewis Bernstein, W. D. Kilgore, Jr., and Robert J. Ludwig, Attys., Dept. of Justice.

For the defendant: Swarr, May, Royce, Smith, Andersen & Ross by Robert Berkshire; Arnold & Porter by William L. McGovern, for U. S. Plywood-Champion Papers Inc.

### Final Judgment

ROBINSON, D. J.: Plaintiff, United States of America, having filed its complaint herein on April 19, 1965, 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 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 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.

#### II.

[ *Definitions* ] As used in this Final Judgment:

(A) "USP-CPI" means U. S. Plywood-Champion Papers Inc., successor to the defendant, Champion Papers Incorporated;

(B) "Fine paper merchant" means a corporation engaged in the United States in the business of distributing printing and writing papers at wholesale to commercial printers, but does not include a paper merchant distributing only an insignificant amount of fine paper.

(C) “Acquired merchant houses” means the merchant houses owned by USP-CPI on the date of this Final Judgment at the following locations:

Austin, Texas  
Billings, Montana  
Chicago, Illinois (723 S. Wells St.)  
Chicago, Illinois (14 N. Peoria St.)  
Corpus Christi, Texas  
Des Moines, Iowa  
Duluth, Minnesota  
Fort Smith, Arkansas  
Grand Island, Nebraska  
Grand Rapids, Michigan  
Great Falls, Montana  
Harlingen, Texas  
Indianapolis, Indiana  
Lincoln, Nebraska  
Lubbock, Texas  
Missoula, Montana  
Nashville, Tennessee  
Oklahoma City, Oklahoma  
Omaha, Nebraska  
Pittsburgh, Pennsylvania  
Portland, Oregon  
Salt Lake City, Utah  
Sioux City, Iowa

III.

[ *Applicability* ]

The provisions of this Final Judgment shall apply to USP-CPI, its officers, directors, agents and employees, and to USP-CPI's subsidiaries, successors and assigns, and to each of their respective officers, directors, agents and employees; and to all other persons in active concert or participation with USP-CPI who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

[ *Divestiture—Specified Houses* ]

(A) USP-CPI is ordered and directed, within two (2) years from the date of entry of this Final Judgment, to divest said “acquired merchant houses” on such basis as would permit said “acquired merchant houses,” to the extent possible, to be maintained as operating businesses in competition with other paper merchant houses.

(B) USP-CPI shall make known the availability of the “acquired merchant houses” for sale by ordinary and usual means for a sale of a business. USP-CPI shall furnish to *bona fide* prospective eligible purchasers all

*necessary information*, including business records, regarding the “acquired merchant houses,” and shall permit them to have such access to and make such inspections of said “acquired merchant houses” as are reasonably necessary for the above purpose.

(C) Prior to the closing of any sale here under, USP-CPI shall furnish in writing to the Assistant Attorney General in charge of the Antitrust Division complete details of the proposed transaction. Within thirty (30) days of the receipt of these details, the Assistant Attorney General may request supplementary information concerning the transaction which shall also be furnished in writing. If plaintiff objects to the proposed sale, it shall notify USP-CPI 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 this paragraph, or within thirty (30) days after the receipt of a statement from USP-CPI, if applicable, that it does not have some or all of 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 of objection by the plaintiff, the sale shall not be closed unless approved by the Court or unless plaintiff's objection is withdrawn.

(D) Following the entry of this Final Judgment and continuing until the divestiture of the “acquired merchant houses,” and of the paper merchant houses to be divested pursuant to Section V hereof, USP-CPI shall

(1) Render bimonthly reports to the Assistant Attorney General in charge of the Antitrust Division outlining in detail the efforts made by it to accomplish said divestiture. The first such report shall be rendered within thirty (30) days after the entry of this Final Judgment; and

(2) Report promptly to the Assistant Attorney General in charge of the Antitrust Division the name of any person making inquiry whom USP-CPI does not believe to be a *bona fide* prospective eligible purchaser as contemplated by paragraph IV(B).

## V.

### [ *Divestiture—Other Houses* ]

In addition to the “acquired merchant houses” to be divested pursuant to Section IV hereof, within five (5) years from the date of entry of this Final Judgment, USP-CPI shall divest, as viable paper merchant establishments, subject to the prior approval of the plaintiff, one or more paper merchant houses, of USP-CPI's selection, which in the aggregate accounted for sales volume in the twelve (12) months preceding the date of divestiture of seven and one-half million (\$7,500,000) dollars. Sales to the Federal Government shall not be included in determining the aforesaid aggregate sales volume.

## VI.

### [ *Security for Purchase Price* ]

The divestiture ordered and directed by this Final Judgment, when made, shall be made in good faith and shall be absolute and unqualified; *provided*, however, that USP-CPI may acquire and enforce any *bona fide* lien, mortgage, deed of trust or other form of security on all or any of the paper merchant houses divested given for the purpose of securing to USP-CPI 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. In the event that USP-CPI, as a result of the enforcement of any *bona fide* lien, mortgage, deed of trust or other form of security, reacquires possession of any of the divested paper merchant houses, USP-CPI shall notify plaintiff in writing of any such repossession within thirty (30) days of such repossession. Within thirty (30) days of the date of such notification, USP-CPI shall, offer any such repossessed paper merchant house for sale in accordance with, all the terms of this Final Judgment; and USP-CPI shall, within two (2) years thereafter, effect divestiture of such repossessed house as a viable paper merchant house, subject to the prior approval of the plaintiff.

## VII.

**[ Future Acquisitions]**

USP-CPI is enjoined and restrained, for a period of ten (10) years from the effective date of this Final Judgment, from acquiring (1) the capital stock, or (2) any assets (except products purchased in the normal course of business) of a fine paper merchant, except as follows: if USP-CPI wishes to make any acquisition of the capital stock or assets of any fine paper merchant at any time prior to ten (10) years from the date of this Final Judgment, it shall submit to the plaintiff the facts relating to such proposed acquisition and the reasons therefor. If the plaintiff shall not object to the proposed acquisition within thirty (30) days after receipt of such notice, such acquisition shall be deemed not to be a violation of this Final Judgment. In the event plaintiff shall object, USP-CPI may apply to this Court for permission to make such acquisition, which may be granted upon a showing by USP-CPI to the satisfaction of this Court that the acquisition may not substantially lessen competition or tend to create a monopoly in any line of commerce in any section of the country.

**VIII.**

**[ Inspection and Compliance]**

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

(B) USP-CPI, 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 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 to which the United States of America is a party for the purpose of determining and 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 modification or termination of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.