

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Wilson Sporting Goods Co. and Nissen Corp., U.S. District Court, N.D. Illinois, 1968 Trade Cases ¶72,585, (Oct. 28, 1968)

United States v. Wilson Sporting Goods Co. and Nissen Corp.

1968 Trade Cases ¶72,585. U.S. District Court, N.D. Illinois, Eastern Division. Civil Action No. 68 C 549. Entered October 28, 1968. Case No. 2000 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquisition—Sporting Goods Company—Gymnastic Equipment Company—Injunction —Consent Decree.—A broad line sporting goods company was prohibited by a consent decree from acquiring a leading manufacturer of gymnastic equipment, the decree superseding a preliminary injunction barring the merger pending adjudication. The decree also prohibited the sporting goods firm from acquiring gymnastic equipment manufacturers for five years except upon 60 days' prior written notice to the government.

For the plaintiff: Edwin M. Zimmerman, Asst. Atty. Gen.; Baddia J. Rashid, Joel Davidow, John E. Sarbaugh and Kenneth H. Hanson, Antitrust Div., Dept. of Justice, Chicago, Ill.

For the defendants: Richard K. Decker, of Lord, "Bissell & Brook, Chicago, Ill.; Howard Adler, Jr., of Bergson, Borkland, Margolis & Adler, Washington, D. C.; Haven E. Simmons, of Simmons, Perrine, Albright & Ellwood, Cedar Rapids, Ia.

Final Judgment

MAROVITZ, J.: Plaintiff, United States of America, having filed its complaint herein on March 27, 1968 seeking to enjoin the merger of Nissen Corporation (Nissen) with and into Wilson Sporting Goods Company (Wilson); the Court on the following day having granted an order temporarily restraining consummation of the proposed merger; the Court on July 8, 1968 having entered an Order for preliminary injunction granted after hearing and consideration of both written and oral evidence, and based upon the findings of fact and conclusions of law stated in the Memorandum Opinion of the Court dated July 2, 1968; and the defendants, by Abandonment Agreement dated as of July 31, 1968, having agreed to abandon the merger and to terminate the Plan and Agreement of Merger previously executed by the said defendants; and the plaintiff and Wilson having consented to the entry of this Final Judgment,

It Is Hereby Ordered, Adjudged and Decreed as follows:

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 Wilson under Section 7 of the Act of Congress of October 15, 1914 (15 U. S. C. § 18) as amended, commonly known as the Clayton Act.

II

[Applicability]

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

III

[Merger Prohibition]

Wilson and all persons acting on its behalf are hereby enjoined from taking any action, directly or indirectly, to purchase or acquire the stock, assets, properties, or businesses of Nissen, or from merging and consolidating such assets, properties, or businesses, or acquiring any financial or other interest in Nissen, except that nothing herein shall preclude Wilson from purchasing or acquiring goods, wares, and merchandise in connection with a bona fide purchase or sale in the regular course of business from Nissen.

IV

[Definitions]

As used herein:

“Gymnastic Equipment” means apparatus and equipment sold for use in the sport of gymnastics, including such items as trampolines, parallel bars, side horses, balance beams, horizontal bars and gymnastic apparel.

V

[Future Mergers]

For a period of five (5) years from and after the date of entry of this Final Judgment, Wilson and all persons acting on its behalf shall not directly or indirectly complete the purchase or acquire the stock, assets, properties, or businesses, or any part thereof (excepting purchases of goods, wares, and merchandise in connection with a bona fide purchase or sale in the regular course of business), or merge with, any manufacturer of gymnastic equipment in the United States except upon sixty (60) days' prior written notice to the plaintiff, informing plaintiff as to the relevant facts of such proposed transaction.

VI

[Preliminary Injunction Superseded]

This Final Judgment and the terms and conditions contained herein shall supersede the aforesaid Order of preliminary injunction entered July 8, 1968.

VII

[Inspection and Compliance]

For the purpose of determining and securing 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 Wilson made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during the office hours of said defendant, to books, ledgers, accounts, correspondence, memoranda, and other records in the possession or under the control of said defendant relating to any subject 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 officers or employees of the said defendant, who may have counsel present, regarding any such matters.

Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, Wilson shall submit such reports in writing with respect to the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment. No information obtained by the means provided for in this Section VII 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 for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII

[*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 or directions as may be necessary or appropriate for the of the provisions thereof, and for the construction or carrying out of this Final enforcement of compliance therewith and Judgment, or for the modification of any punishment of violations thereof.