UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED

APR - 4 2019

JULIA C. DUDLEY, CLERK
BY: [signature]
DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

PITTSBURGH PLATE GLASS COMPANY; CAROLINA MIRROR CORPORATION; GALAX MIRROR COMPANY, INCORPORATED; MOUNT AIRY MIRROR COMPANY; STROUPE MIRROR COMPANY; VIRGINIA MIRROR COMPANY, INCORPORATED, and WEAVER MIRROR COMPANY, INCORPORATED,

Defendants.

Civil Action No. 838

MEMORANDUM IN SUPPORT OF THE MOTION OF
THE UNITED STATES TO TERMINATE LEGACY ANTITRUST JUDGMENT

The United States respectfully submits this memorandum in support of its motion to terminate the legacy antitrust judgment in this case. The Court entered the judgment in 1959; thus, the judgment is nearly sixty years old. After examining the judgment—and after soliciting public comment—the United States has concluded that termination is appropriate. Termination will permit the Court to clear its docket, the Department to clear its records, and businesses to clear their books, allowing each to utilize its resources more effectively.

I. BACKGROUND

From 1890, when the antitrust laws were first enacted, until the late 1970s, the United States frequently sought entry of antitrust judgments whose terms never expired.[1] Such perpetual judgments were the norm until 1979, when the Antitrust Division of the United States Department of Justice ("Antitrust Division") adopted the practice of including a term limit of ten years in nearly all of its antitrust judgments. Perpetual judgments entered before the policy change, however, remain in effect indefinitely unless a court terminates them. Although a defendant may move a court to terminate a perpetual judgment, few defendants have done so. There are many possible reasons for this, including that defendants may not have been willing to bear the costs and time resources to seek termination, defendants may have lost track of decades-old judgments, individual defendants may have passed away, or firm defendants may have gone out of business. As a result, hundreds of these legacy judgments remain open on the dockets of courts around the country. Originally intended to protect the loss of competition arising from violations of the antitrust laws, none of these judgments likely continue to do so because of changed circumstances.

The Antitrust Division recently implemented a program to review and, when appropriate, seek termination of legacy judgments. The Antitrust Division's Judgment Termination Initiative encompasses review of all of its outstanding perpetual antitrust judgments. The Antitrust Division described the initiative in a statement published in the Federal Register.[2] In addition, the Antitrust Division established a website to keep the public apprised of its efforts to terminate

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[1] The primary antitrust laws are the Sherman Act, 15 U.S.C. §§ 1-7, and the Clayton Act, 15 U.S.C. §§ 12-27. The judgment the United States seeks to terminate with the accompanying motion concerns violations of the Sherman Act.

[2] Department of Justice's Initiative to Seek Termination of Legacy Antitrust Judgments, 83 Fed. Reg. 19,837 (May 4, 2018), https://www.gpo.gov/fdsys/granule/FR-2018-05-04/2018-09461.

perpetual judgments that no longer serve to protect competition.[3] The United States believes that its outstanding perpetual antitrust judgments presumptively should be terminated; nevertheless, the Antitrust Division examined each judgment to ensure that it is suitable for termination. The Antitrust Division also gave the public notice of—and the opportunity to comment on—its intention to seek termination of these judgments.

In brief, the process by which the United States determined that it was appropriate to file its motion seeking to terminate the judgment in the above-captioned case is as follows:[4]

- The Antitrust Division reviewed the judgment to determine whether it no longer serves to protect competition such that termination would be appropriate.
- The Antitrust Division posted the name of the case and a link to the judgment on its public Judgment Termination Initiative website, https://www.justice.gov/atr/JudgmentTermination.
- The public had the opportunity to submit comments regarding the proposed termination to the Antitrust Division within thirty days of the date the case name and judgment link was posted to the public website.
- Having received no comments regarding termination, the United States moves this Court to terminate it.

The remainder of this memorandum is organized as follows: Section II provides a summary of the judgment. Section III describes the Court's jurisdiction to terminate the judgment. Section IV explains that perpetual judgments rarely serve to protect competition and those that are more than ten years old should be terminated absent compelling circumstances. This section also describes the additional reasons that the United States believes that the

[3] https://www.justice.gov/atr/JudgmentTermination.

[4] The United States followed this process to move several other district courts to terminate legacy antitrust judgments. *See United States v. Am. Amusement Ticket Mfrs. Ass'n*, Case 1:18-mc-00091 (D.D.C. Aug. 15, 2018) (terminating nineteen judgments); *In re: Termination of Legacy Antitrust Judgments*, No. 2:18-mc-00033 (E.D. Va. Nov. 21, 2018) (terminating five judgments); *United States v. The Wachovia Corp. and Am. Credit Corp.*, Case No. 3:75CV2656-FDW-DSC (W.D.N.C. Dec. 17, 2018) (terminating one judgment); *United States v. Capital Glass & Trim Co., et al.*, Case No. 3679N (M.D. Ala. Jan. 2, 2019) (terminating one judgment); *United States v. Standard Sanitary Mfg. Co., et al.*, Case 1:19-mc-00069-RDB (D. Md. Feb. 7, 2019) (terminating nine judgments).

judgment should be terminated. Section V concludes. Appendix A attaches a copy of the final judgment, and Appendix B is a proposed order terminating that judgment.

II. THE JUDGMENT

This judgment arose out of a complaint charging Defendants with violating Section 1 of the Sherman Act by conspiring to fix the price of plate glass mirrors. The judgment required Defendants to discontinue the use of their existing price lists. It enjoined them from participating in any conspiracy to fix prices, discounts, or other terms of sale for plate glass mirrors or to fix, exchange, or circulate any price lists. It also enjoined them from using any price list compiled or disseminated by any other person as a basis for their sales of plate glass mirrors, requiring them rather to establish independently any price list they used. The judgment also required Defendants to file a report with the Assistant Attorney General within nine months of entry stating whether they were using price lists for sales of plate glass mirrors and, if so, stating when and how each such list was developed and attaching a copy.

III. APPLICABLE LEGAL STANDARDS FOR TERMINATING THE JUDGMENT

This Court has jurisdiction to terminate the judgment entered in this case. Section IX of the judgment provides that the Court retains jurisdiction. The Federal Rules of Civil Procedure grant the Court authority to terminate the judgment. Rule 60(b)(5) and (b)(6) provides that, "[o]n motion and just terms, the court may relieve a party ... from a final judgment ... (5) [when] applying it prospectively is no longer equitable; or (6) for any other reason that justifies relief." Fed. R. Civ. P. 60(b)(5)-(6); *see also Thompson v. U.S. Dep't of Housing & Urban Dev.*, 404 F.3d 821, 826 (4th Cir. 2005) ("The court's inherent authority to modify a consent decree or other injunction is now encompassed in Rule 60(b)(5) of the Federal Rules of Civil Procedure.").

Given its jurisdiction and its authority, the Court may terminate the judgment for any reason that justifies relief, including that the judgment no longer serves its original purpose of protecting competition.[5] Termination of this judgment is warranted.

IV. ARGUMENT

It is appropriate to terminate the perpetual judgment in this case because it no longer continues to serve its original purpose of protecting competition. The United States believes that the judgment presumptively should be terminated because its age alone suggests that it no longer protects competition. Other reasons, however, also weigh in favor of termination, including that key terms of the judgment have been satisfied, and other terms essentially prohibit that which the antitrust laws already prohibit. Under such circumstances, the Court may terminate the judgments pursuant to Rule 60(b)(5) or (b)(6) of the Federal Rules of Civil Procedure.

A. The Judgment Presumptively Should Be Terminated Because of Its Age

Permanent antitrust injunctions rarely serve to protect competition. The experience of the United States in enforcing the antitrust laws has shown that markets almost always evolve over time in response to competitive and technological changes. These changes may make the prohibitions of decades-old judgments either irrelevant to, or inconsistent with, competition. The development of new products that compete with existing products, for example, may render a market more competitive than it was at the time of entry of the judgment or may even eliminate a market altogether, making the judgment irrelevant. In some circumstances, a judgment may be

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[5] In light of the circumstances surrounding the judgment, the United States does not believe it is necessary for the Court to make an extensive inquiry into the facts to terminate it under Fed. R. Civ. P. 60(b)(5) or (b)(6). This legacy judgment would have terminated long ago if the Antitrust Division had the foresight to limit it to ten years in duration as under its policy adopted in 1979. Moreover, the passage of decades and changed circumstances since entry of the judgment, as described in this memorandum, means that it is likely that the judgment no longer serves its original purpose of protecting competition.

an impediment to the kind of adaptation to change that is the hallmark of competition, undermining the purposes of the antitrust laws. These considerations, among others, led the Antitrust Division in 1979 to establish its policy of generally including in each judgment a term automatically terminating the judgment after no more than ten years.[6]

The judgment in this matter—which is nearly six decades old—presumptively should be terminated for the reasons that led the Antitrust Division to adopt its 1979 policy of generally limiting judgments to a term of ten years. There are no affirmative reasons for the judgment to remain in effect; indeed, there are additional reasons for terminating it.

B. The Judgment Should Be Terminated Because It Is Unnecessary

In addition to age, two other reasons weigh heavily in favor of termination of the judgment. First, key terms of the judgment have been satisfied. Section IV of the judgment required Defendants to: (a) discontinue use of the price lists they had used for sale of plate glass mirrors to manufacturers, distributors, and jobbers; (b) notify their furniture manufacturer customers of the discontinuation of those lists; and (c) prepare new lists. All this was required to be completed in April 1960. Similarly, Section VII of the judgment required the defendants to report to the United States in September 1960 on their use and development of new pricing lists. These obligations were satisfied long ago.

Second, key terms of the judgment prohibit that which the antitrust laws already prohibit. Sections V and VI of the judgment essentially prohibit price fixing, an act that is illegal under the antitrust laws; thus, these terms amount to little more than an admonition that Defendants shall not violate the law. Absent such terms, defendants who engage in price fixing still face the

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[6] U.S. DEP'T OF JUSTICE, ANTITRUST DIVISION MANUAL at III-147 (5th ed. 2008), https://www.justice.gov/atr/division-manual.

possibility of imprisonment, significant criminal fines, and treble damages in private follow-on litigation.

C. There Has Been No Public Opposition to Termination

The United States has provided adequate notice to the public regarding its intent to seek termination of the judgment. On April 25, 2018, the Antitrust Division issued a press release announcing its efforts to review and terminate legacy antitrust judgments and noting that it would begin its efforts by proposing to terminate judgments entered by the federal district courts in Washington, D.C., and Alexandria, Virginia.[7] On May 18, 2018, the Antitrust Division listed the judgment in this case on its public website, describing its intent to move to terminate the judgment.[8] The notice identified the case, linked to the judgment, and invited public comment. The Division received no comments concerning the judgment.

V. CONCLUSION

For the foregoing reasons, the United States believes termination of the judgment in this case is appropriate and respectfully requests that the Court enter an order terminating it. A proposed order terminating the judgment is attached. *See* Appendix B.

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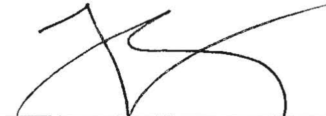
[7] Press Release, Department of Justice, Department of Justice Announces Initiative to Terminate "Legacy" Antitrust Judgments (Apr. 25, 2018), https://www.justice.gov/opa/pr/department-justice-announces-initiative-terminate-legacy-antitrust-judgments.

[8] https://www.justice.gov/atr/judgment-termination-initiative-virginia-western-district, link titled "View Judgments Proposed for Termination in Virginia, Western District of."

Dated: April 4, 2019

Respectfully submitted,

Thomas T. Cullen
United States Attorney



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