EXHIBIT A:

FINAL JUDGMENTS

(Ordered by Year Judgment Entered)

UNITED STATES v. MASSACHUSETTS FOOD COUNCIL, INC., ET AL.

Civil Action No. 1592

Year Judgment Entered: 1941

In the District Court of the United States for the District of Massachusetts

CIVIL ACTION No. 1592

UNITED STATES OF AMERICA, PLAINTIFF

v.

MASSACHUSETTS FOOD COUNCIL, INC.
COMMONWEALTH GROC. CO. INC.
S. K. AMES INC.
REUEL W. ELDREDGE
SAMUEL B. WOLF
INDEPENDENT IMPORTING CO.
JOHN L. MACNEIL
FIRST NATIONAL STORES INC.
JULIUS M. ROTHSTEIN
C. A. CROSS & CO., INC.
HAROLD CROSS
LOUIS GOLDBERG
GEORGE S. MONKS
UNITED MARKETS INC.
CENTRAL GROCERS, INC.
A. L. MORENCY
ARTHUR BROCKELMAM
JOSEPH R. DONOVAN
CHARLES R. NAGELSCHMIDT
FRANCIS G. NICHOLS
EDWIN C. CALDERWOOD
CHAPIN GROCERY SPEC. CO.
MORRIS E. COHEN
BENJ. H. KATZ
SPRINGFIELD SUGAR & PRODUCTS CO.

(15)

DOWNING TAYLOR CO.
ALFRED L. JEFFWAY
MAX JACOBSON
NEW ENGLAND GROCER SUPPLY CO.
NORMAN SHARFMAN
HENRY W. BUTTERFIELD
C. A. KING CO. INC.
ARTHUR H. SAWYER
NORMAN W. KALAT
E. T. SMITH COMPANY
UNITED WHOLESALE GROCERY CO.
CHARLES M. MISSLE
WILLIAM A. MURPHY
LEO A. HORRIGAN
ALFRED M. WALKER
ARTHUR C. ENGLAND
RIVAL FOODS INC.
ELM FARM FOODS
M. WINER CO.
JOHN H. EYRE
EARL CHANDLER
BROCKELMAN BROS. INC.
THE GREAT ATLANTIC & PACIFIC TEA CO.
ECONOMY GROCERY STORES CORPORATION
WILLIAM F. BRITTON
GENERAL FRUIT STORES INC., d/b/a UNITED PUBLIC MARKET
DENNIS A. SULLIVAN

FINAL JUDGMENT

FORD, *J.*

The complainant, United States of America, having filed its complaint herein on November 1, 1941; all the defendants having appeared and severally filed their answers to such complaint denying the substantive allegations thereof; all parties hereto by their respective attorneys herein having severally consented to the entry of this final decree herein without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of any such issue; and the defendants having moved the Court for this decree;

Now, Therefore, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent of all parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

That the Court has jurisdiction of the subject matter and of all the parties hereto; that the complaint states a cause of action against the defendants under the Act of Congress of July 2, 1890 entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies" and acts amendatory thereof and supplemental thereto.

II

The following terms, as used herein, shall have the respective meanings hereinafter set forth, viz.:

The term "grocery products" shall mean all grocery products, including fresh fruits and vegetables, dairy products, meats and bakery products, which are usually and customarily sold in retail grocery stores.

The term "Unfair Sales Act" shall mean Chapter 93, Sections 14E–14K, inclusive, of the Massachusetts General Laws as amended.

The term "wholesaler" shall mean any person, partnership, corporation or association engaged in the purchase of products from producers or manufacturers for resale to retail grocers.

The term "retailer" or "retail grocer" shall mean any person, partnership, corporation or association operating one or more stores for the sale and distribution of grocery products to the consuming public.

The term "retailer owned wholesale group" shall mean any partnership, corporation or association of independently owned retail grocers owning a warehouse and engaging in cooperative buying and advertising activities.

The term "wholesale sponsored voluntary chain" shall mean any association of independently owned retailers and a wholesaler by virtue of which the wholesaler and the independently owned retailers engage in cooperative advertising activities.

III

Each of the defendants, their successors, subsidiaries, officers and employees, or any of them, be, and they hereby are, enjoined and restrained from agreeing, combining or conspiring among themselves, or with others, to do, or attempt to do, the following things, or any of them:

1. Raise, fix, maintain or adhere to wholesale or retail prices or minimum wholesale or retail prices of grocery products; except as provided in Section 1 of Chapter 1, Title 15, United States Code Annotated As Amended August 17, 1937, c. 690, Title VIII, 50 Stat. 693.

2. Enforce or cooperate in enforcing through threat of litigation or otherwise, or persuade any wholesaler or retailer to sell or to refrain from selling grocery products at any specified prices;

3. Suggest or specify to wholesalers or retailers the minimum prices allowed by the Unfair Sales Act;

4. Issue any suggested price list;

5. Collect and disseminate any information concerning proposed price policies or proposed prices;

6. Compute an average, normal or uniform cost of merchandise, cost of doing business, or mark-up to cover cost of doing business or establish standards or methods for such computation;

7. Publish material or literature discouraging price competition;

8. Publish any material or literature concerning the Unfair Sales Act which falsely represents the purposes or provisions of said Act;

9. Enforce the Unfair Sales Act through threat of litigation or other coercive activity, or through hearings or trials other than those instituted in the Courts of the State by the injured party, or through attempts to encourage litigation or by determining when an advertisement, offer to sell or sale by a competitor is made with intent to injure competitors, or to destroy competition, or is a sale below cost, or by any other means or method.

IV

Each of the defendants, their successors, subsidiaries, officers and employees, or any of them, be, and they hereby are, enjoined and restrained from doing

or attempting to do the following things, or any of them:

1. Issue to any competitor, including wholesalers and retailers, any suggested price list;

2. Issue to any wholesaler or retailer any suggested price list for any goods which were not supplied by the defendant;

3. Force or coerce any wholesaler or retailer, whether through threat of litigation or otherwise, or attempt to gain an agreement from any wholesaler or retailer, to sell or refrain from selling grocery products at specified prices;

4. Report to any person the name of any wholesaler or retailer who is believed to have violated the Unfair Sales Act, other than for the sole purpose of having such person institute in behalf of the reporter and in his name such legal proceedings as are authorized under the Unfair Sales Act.

5. Support, maintain or encourage any private organization, or any person, other than the appropriate Government official, if such organization or person attempts to enforce the Unfair Sales Act through threat of litigation or other coercive activity, or through hearings or trials other than those instituted in the Courts of the State, or through encouragement of litigation, or by determining when an advertisement, offer to sell or sale by a competitor is made with intent to injure competitors or to destroy competition, or is a sale below cost, or by any other means or method.

6. Collect, disseminate, or report to any private agency, any information designed to assist any activity prohibited in Section III, Paragraph 9.

7. Publish any material or literature concerning the Unfair Sales Act which falsely represents the purposes or provisions of said Act for the purpose of inducing the fixation or maintenance of retail or wholesale prices or of minimum retail or wholesale prices, including, among others, representations—

(a) that the Act prohibits sales below cost even where there is no intent to injure competitors or destroy competition; and that the provision which makes a sale below cost prima facie evidence of intent does more than shift the burden of proof as to intent;

(b) that the Act establishes a uniform minimum price for all competitors;

(c) that a seller must add to the cost of merchandise the mark-ups specified in the Act, even though his own costs of doing business are less than the amount of such mark-ups;

(d) that the seller may not base his prices upon invoice cost if his purchase was made outside the estate, or that he must use only the invoice cost of merchandise bought within the state in establishing his minimum prices;

(e) that a seller is permitted to sell below cost to meet competition if the lower price quoted by a competitor is itself in accord with the Act, but not if such lower price is in violation of the Act;

(f) that advertising allowances received by sellers or other concessions which reduce the net cost of mer-

chandise may not be taken into account in computing minimum prices.

8. Supply to any private association or group of wholesalers or retailers of grocery products, any information concerning proposed price policies or proposed prices;

9. Make any payment or contribution of money to any private organization if such payment or contribution is to be used to conduct private inquiries as to the violation of, police, enforce, or administer state laws which restrict sales below cost.

V

Each of the defendants, their successors, subsidiaries, officers and employees, or any of them, are hereby ordered to take such steps as are necessary to dissolve and liquidate defendant Massachusetts Food Council, Inc.

VI

Nothing contained herein shall be deemed to affect activities which otherwise are lawful within a wholesale-sponsored voluntary chain or within a retailer-owned wholesale group; and nothing in this decree shall be deemed to prohibit a defendant wholesale-sponsored voluntary chain or a defendant retailer-owned wholesale group from engaging in such cooperative advertising activities as may be otherwise lawful. This provision shall not be deemed to pass upon the legality of the activities of wholesale-sponsored voluntary chains or retailer-owned wholesale groups, nor upon the legality of cooperative advertising.

VII

For the purpose of securing compliance with this decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General and on reasonable notice to the defendants made to the principal office of the defendants, be permitted, subject to any legally recognized privilege (1) access, during the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendants, relating to any matters contained in the decree; (2) subject to the reasonable convenience of the defendants and without restraint or interference from them, to interview officers or employees of the defendants, who may have counsel present, regarding any such matters, and (3) the defendants, on such request, shall submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this decree; *provided, however,* that information obtained by the means permitted in this paragraph shall not 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 for the purpose of securing compliance with this decree in which the

United States is a party or as otherwise required by law.

VIII

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this decree, for the modification or termination of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.

FRANCIS J. W. FORD,
United States District Judge.

We hereby consent to the entry of the foregoing decree.

JOHN N. COLE,
H. DONALD LEATHERWOOD,
FRANKLIN C. BAUGH,
Special Attorneys.

THURMAN ARNOLD,
Assistant Attorney General.

We hereby consent to the entry of the foregoing decree.

MASSACHUSETTS FOOD COUNCIL, INC.,
By EDWARD M. SYNAN, *Exec. Pres.;*
EDWARD M. SYNAN;
COMMONWEALTH GROC. CO., INC.,
PHILIP SEGAL, *Asst. Treas.;*
PHILIP SEGAL;
S. K. AMES, INC.,
By RAYMOND W. SWIFT, *Vice Pres.;*
REUEL W. ELDREDGE;
SAMUEL B. WOLF;
INDEPENDENT IMPORTING CO.,
By ISIDORE RABINOVITZ, *Pres. & Treas.;*
JOHN L. MACNEIL;
FIRST NATIONAL STORES, INC.,
By JOHN L. MACNEIL, *V. P.;*
JULIUS M. ROTHSTEIN;
C. A. CROSS & CO., INC.,
By HAROLD CROSS, *Pres.;*
HAROLD CROSS;
LOUIS GOLDBERG;
GEORGE S. MONKS;
UNITED MARKETS, INC.,
G. S. MONKS, *V. P.;*
CENTRAL GROCERS, INC.,
LOUIS GOLDBERG, *Pres.;*
A. L. MORENCY;
ARTHUR BROCKELMAN;
JOSEPH R. DONOVAN;
CHARLES R. NAGELSCHMIDT;
FRANCIS G. NICHOLS;
EDWIN C. CALDERWOOD;
CHAPIN GROCERY SPEC. CO.,
By MORRIS COHEN, *Treas.;*
MORRIS E. COHEN;
BENJ. H. KATZ;
SPRINGFIELD SUGAR & PRODUCTS CO.,
By BENJ. H. KATZ, *Pres.;*
DOWNING TAYLOR CO.,
GEORGE W. FERGUSON, *Pres.;*
ALFRED L. JEFFWAY;
MAX JACOBSON;
NEW ENGLAND GROCER SUPPLY CO.,

By NORMAN SHARFMAN, *Asst. Treas.*;
NORMAN SHARFMAN;
HENRY W. BUTTERFIELD;
C. A. KING CO., INC.,
HENRY W. BUTTERFIELD, *Pres. & Treas.;*
ARTHUR H. SAWYER;
NORMAN W. KALAT;
E. T. SMITH COMPANY,
By NORMAN KALAT, *Asst. Treas.;*
UNITED WHOLESALE GROCERY CO.,
By CHARLES M. MISSLE;
CHARLES M. MISSLE;
WILLIAM A. MURPHY;
LEO A. HORRIGAN;
ALFRED M. WALKER;
ARTHUR C. ENGLAND;
RIVAL FOODS, INC.,
By FRANK S. DELAND, *Atty.;*
ELM FARM FOODS,
By HY WINER;
M. WINER CO.,
By HY WINER;
JOHN H. EYRE,
By EDWARD M. SYNAN, *Power of Atty. Attached;*
EARL CHANDLER,
By EDWARD M. SYNAN, *Power of Atty. Attached;*
BROCKELMAN BROS. INC.,
ARTHUR J. BROCKELMAN, *Pres.;*
THE GREAT ATLANTIC & PACIFIC TEA CO.,
By B. A. BRICKLEY, *Atty.;*
ECONOMY GROCERY STORES CORPORATION,
WILLIAM F. BRITTON,
By their attorney ARTHUR L. SHERIN;
GENERAL FRUIT STORES, INC.,
d/b/a UNITED PUBLIC MARKET,
By BERNARD CUSHMAN, *Power of Attorney Attached;*
DENNIS A. SULLIVAN, *Power of Attorney Attached;*
MAURICE M. GOLDMAN.

UNITED STATES v. NATIONAL UNIT DISTRIBUTORS, INC., ET AL.

Civil Action No. 2514

Year Judgment Entered: 1943

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. National Unit Distributors, Inc., Ramona Distributing Co., Inc., Beaconsfield China Co., Inc., La Mode China Co., Inc., Harry Bloomberg, Peter Groper, Julius Bloomberg, Harry L. Wolk., U.S. District Court, D. Massachusetts, 1940-1943 Trade Cases ¶56,292, (Nov. 5, 1943)

United States v. National Unit Distributors, Inc., Ramona Distributing Co., Inc., Beaconsfield China Co., Inc., La Mode China Co., Inc., Harry Bloomberg, Peter Groper, Julius Bloomberg, Harry L. Wolk.

1940-1943 Trade Cases ¶56,292. U.S. District Court, D. Massachusetts. Civil Action No. 2514, November 5, 1943.

In an action under the Sherman Anti-Trust Act, defendant distributors of dinnerware consent to a decree enjoining them from entering into any agreement with any other distributor or with any manufacturer, wholesaler, or retailer, to fix prices for dinnerware sold to or by any other person; from entering into any agreement, under the Newspaper Sales Promotional Plan, to secure an exclusive right for defendants to distribute two or more patterns of dinnerware, to secure the exclusive right for defendants to distribute any pattern of any dinnerware for a period longer than 44 weeks (or for a period longer than the Newspaper Sales Promotional Plan campaign, whichever period is shorter) or for an area beyond the limits of the territory of the Newspaper Sales Promotional Plan campaign (or for an area beyond the limits of the Newspaper Retail Trading Area of a newspaper used in such campaign, whichever area is smaller), to secure the exclusive right for defendants to distribute any pattern of dinnerware in any territory in which such pattern has been sold by any person, or for the advertising of any dinnerware, offered for sale in connection with the Newspaper Sales Promotional Plan, exclusively for defendants, or not to advertise for any other person; from entering into any agreement for the distribution of any dinnerware exclusively to, through, or for defendants, not to sell to, through or for any other person, or to discriminate against any other person; from entering into any agreement with any other company not to compete in, through or by the Newspaper Sales Promotional Plan; from coercing any person to deal or refrain from dealing with any other person; from threatening or maintaining any suit based on a claim of exclusive right to any method of distributing dinnerware; and from claiming that any copyright includes an exclusive right to use any method of distributing dinnerware.

For plaintiff: Wendell Berge, Assistant Attorney General; Edmond J. Ford and Holmes Baldridge, Special Assistants to the Attorney General.

For defendants: Henry E. Foley.

FORD, J.: The United States of America having filed its complaint herein on the 5th day of November, 1943, against the defendants named herein, and all of the defendants having appeared severally and filed their answers to such complaint, denying the substantive allegations thereof, and all the parties hereto by their respective attorneys herein having severally consented to the entry of this final decree herein without trial and without admission by the defendants in respect to any issue except that a controversy to which this decree is applicable exists and that the Court has jurisdiction:

Now, therefore, before any testimony has been taken herein and on consent of all of the parties hereto, and the Court, being advised and having considered the matter it is hereby

Ordered and decreed as follows:

I

[*Jurisdiction and Cause of Action*]

Such controversy between the parties exists, and the Court has jurisdiction of the subject matter hereof and of all the parties hereto; the complaint states a cause of action against the defendants and each of them under the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies" and the acts amendatory thereof and supplemental thereto.

II

[*Definitions*]

The following words used in this decree shall be taken to have the following meanings:

(1) "Dinnerware" shall mean dishes, articles and fittings customarily used for the setting of a table where meals are served, including not only chinaware and flatware, but also glassware and such cutlery and other implements for serving and containing food as are from time to time used in households in setting and fixing the table for the serving of meals.

(2) "Newspaper Sales Promotional Plan" shall mean a scheme, plan or method for the sale and distribution of dinnerware involving delivery from time to time by installments of units and pieces of dinnerware promoted by advertising through newspapers or other printed matter, theatres or radio broadcasting, and as a part of which a coupon is from time to time issued which, upon presentation to certain redeeming stations (herein included in the term "retailer") permits the bearer thereof to purchase units, pieces, and parts of dinnerware at prices and in methods established as a part of the plan, and any substantially similar scheme, plan or method;

(3) "Affiliated defendant" shall, as to each corporate defendant, mean the corporate defendants which are under the same common control and management and whose respective Issued and outstanding stock of each class, to the extent of at least 75%, is under common ownership, so long as such common control, management and ownership continues;

(4) "Newspaper Retail Trading Area" shall mean that, area in which a newspaper, used in good faith as an advertising medium for a Newspaper Sales Promotional Plan campaign, circulates and in which area local, merchants seek by advertising in said newspaper to reach the general trade for sales 1n the ordinary course of retail business.

III

[*Acts Enjoined*]

Each of the defendants and each of their successors, subsidiaries, directors, officers, employees and agents and all persons acting or claiming to act under, through or for them, or any of them, are hereby enjoined and restrained from doing, attempting to do, or inducing others to do the following things or any of them:

A. Entering into, enforcing or adhering to any contract, agreement, understanding, plan or arrangement with any other distributor or with any manufacturer, wholesaler, or retailer of dinnerware, to fix, adhere to or maintain price for any dinnerware sold or to be sold to or by any other person, or the terms or conditions for sale of any dinnerware to or by any other person;

B. Entering into, enforcing or adhering to any contract, agreement, understanding;, plan or arrangement, in the course of the conduct of business under the Newspaper Sales Promotional,, Plan or pertaining thereto, with any other distributor or with any manufacturer, wholesaler, retailer, newspaper or other advertising medium,

(1) to secure or exercise an exclusive right for the defendants or any one or more of the defendants, to distribute, or to control any part of the channels of distribution or the sources of supply for, two or more patterns or decorative designs of dinnerware or for any other type or kind of dinnerware;

(2) to secure or exercise the exclusive right for the defendants or any one or more of the defendants to distribute, or to control any part of the channels of distribution or the sources of supply for, any pattern or decorative design of any dinnerware (a) for a period longer than forty-four weeks or for a period longer

than the Newspaper Sales Promotional Plan campaign for the selling of the dinnerware of such pattern or decorative design, whichever period is shorter or (b) for an area beyond the limits of the territory of the Newspaper Sales Pro motional Plan campaign or for an area beyond the limits of the Newspaper Retail Trading Area of a newspaper to be used or used in such campaign, whichever area is smaller;

(3) to secure or exercise the exclusive right for the defendants or any one or more of the defendants to distribute, or to control any part of the channels of distribution or the sources of supply for, any pattern or decorative design of dinnerware in any area or territory in which such pattern or decorative design has been, or is at the time of the making of the contract, being sold or offered for sale by any corporation, company, firm or person;

(4) for the advertising by any newspaper or other advertising medium of any dinnerware, offered for sale or advertised under or in connection with the Newspaper Sales Promotional Plan, exclusively for the defendants or any of the defendants; or not to advertise for any other person under any plan, method or program for the sale or distribution of dinnerware;

C. Entering into, enforcing or adhering to any contract, agreement, understanding, plan or arrangement (except as otherwise provided under subsections B (1), (2) and and (3) of this Section III with respect to a particular pattern or decorative design of dinnerware) in the course of the conduct of business under the Newspaper Sales Promotional Plan or pertaining thereto, the any other distributor or with any manufacturer, wholesaler, retailer, newspaper or other advertising medium,

(1) for the handling, distribution or sale of any dinnerware toy any retailer, distributor, manufacturer or wholesaler, exclusively to, through or for, as the case may he, the defendants or any of the defendants;

(2) not to sell, distribute or handle dinnerware to, through or for any other person under any plan, method or program;

(3) to discriminate against or refuse to deal with any other person.

D. Entering into, enforcing or adhering to any contract, agreement, understanding, plan or arrangement with any non-affiliated defendant or with any other corporation, company or firm, or any director, officer, employer or agent of such non-affiliated defendant or other corporation, company or firm, directly or indirectly, whether in connection with the purchase of stock or assets or otherwise, not to compete in, through or by the Newspaper Sales Promotional Plan.

E. Coercing or compelling, by means of threats, intimidation, bribes or other means, any person to deal or refrain from dealing in dinnerware with any other person.

F. Threatening, instituting or maintaining any suit or proceeding based on a claim of exclusive right to any method, plan or program of marketing or distributing dinnerware.

G. Claiming or asserting that any copyright grants or includes an exclusive right to use or license to use any method, program or plan of marketing or distributing dinnerware.

IV

[*Access to Records, Interviews and Reports*]

For the purpose of securing compliance with this decree and for no other purpose, representatives of the Department of Justice, on written request of the Attorney General of the United States or an Assistant Attorney General thereof, and on reasonable notice to any one of the defendant corporations made to any officer or director of said corporation, shall be permitted during office hours of such defendant corporation, access to all books, ledgers, accounts, correspondence, memoranda, or other records and documents in the possession of or under the control of such defendant, relating to any matter contained in this decree, and fully to inspect the ?e and make copies thereof. Without restraint or interference from any defendant, such representatives may interview officers, directors, and employees of the defendant corporations. Each of the defendant corporations on written request of the Attorney General of the United States or an. Assistant Attorney General thereof shall

submit such reports in respect of any matters as from time to time may be reasonably necessary for the proper enforcement of this decree; *Provided, however,* that the information so obtained shall not 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 for the purpose of securing compliance with this decree in which the United States is a party or as otherwise required by law.

V

[*Jurisdiction Retained*]

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

VI

[*Nothing to Restrict or Prohibit War Activities*]

Nothing in this decree shall be construed to restrict or prohibit in any way any action taken by any defendant, its successors, subsidiaries, officers or employees, in good faith and within the fair intendment of the letter of the Attorney General of the United States to the General Counsel of the Office of Production Management, dated April 29, 1941 (a copy of which is attached hereto as Exhibit “A”), [reported at ¶ 1151, and omitted here], or with any amendment or amplification thereof by the Attorney General, or in accordance with any arrangement of similar character between the Attorney General and any national defense agency in effect at the time, provided such letter or arrangement has not at the time of such action been withdrawn or cancelled with respect thereto.

UNITED STATES v. GRINDING WHEEL MANUFACTURERS ASSOCIATION, ET AL.

Civil No. 6636

Year Judgment Entered: 1947

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Grinding Wheel Manufacturers Association; Norton Company; The Carborundum Company; Bay State Abrasive Products Co., Inc.; Simonds Abrasive Company; Macklin Company., U.S. District Court, D. Massachusetts, 1946-1947 Trade Cases ¶57,644, (Nov. 19, 1947)

United States v. Grinding Wheel Manufacturers Association; Norton Company; The Carborundum Company; Bay State Abrasive Products Co., Inc.; Simonds Abrasive Company; Macklin Company.

1946-1947 Trade Cases ¶57,644. U.S. District Court, D. Massachusetts. Civil No. 6636. November 19, 1947.

A consent judgment entered in an anti-trust proceeding against five manufacturers of abrasive devices and an association of manufacturers orders dissolution of the association, requires each defendant individually to revise its price lists, and prohibits any agreements among manufacturers fixing prices, discounts or other terms of sale, or establishing classifications of customers.

For plaintiff: John F. Sonnett, Assistant Attorney General; Robert A. Nitsckke, Sigmund Timberg, Grant W. Kelleher, Elliott H. Meyer, Richard B. O'Donnell, Special Assistants to the Attorney General.

For defendants: Stobbs, Stockwell & Tilton, George R. Stobbs; Hale & Dorr, J. N. Welch; Webster, Sheffield & Horan, Bethuel M. Webster; Gage, Hamilton & June, Paris Fletcher; T. Ewing Montgomery; Withington, Cross, Park & McCann, John S. McCann.

FINAL JUDGMENT

SWEENEY, D. J.: Plaintiff, United States of America, having filed its complaint herein on March 26, 1947, and all the defendants having appeared and filed their answers to such complaints denying the substantive allegations thereof; and all the parties hereto by their attorneys herein having severally consented to the entry of this final judgment herein without trial or adjudication of any issue of fact or law herein and without admission by any defendant in respect of any such issue;

NOW, THEREFORE, before any testimony has been taken herein, and without adjudication of any issue of fact or law herein, and upon the consent of all the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

[*Jurisdiction*]

I

The Court has jurisdiction of the parties to this judgment; and for the purposes of this judgment and proceedings for the enforcement thereof, the Court has jurisdiction of the subject matter hereof; and the complaint states a cause of action 'against the defendants and each of them under Section 1 of the Sherman Act (15 USC § 1).

[*Terms Defined*]

II

When used in this judgment the following terms have the meanings assigned respectively to them below:

A. “Artificial abrasive devices” means grinding wheels, rubbing bricks, sharpening stones, segments, blocks, solid discs and similar devices used for similar purposes (but does not mean coated abrasives).

B. “Subsidiary” means a company in excess of 50 per cent of the voting stock of which is held by another company.

C. “Parent” means any company owning in excess of 50 per cent of the voting stock of any other company.

[*Applicability*]

III

The provisions of this judgment applicable to the defendant manufacturers apply to their successors, officers, directors, agents, employees, and to any other person acting under, through, or for such defendants.

[*Practice Enjoined*]

IV

Each of the defendants is hereby perpetually enjoined and restrained from entering into, adhering to, maintaining or furthering any agreement, understanding, combination or conspiracy with any manufacturer of artificial abrasive devices:

A. To fix, determine, designate or adhere to periods of time during which or for which offers, sales, contracts for sales, and obligations to buy and sell artificial abrasive devices shall be made or entered into with, or required of, others.

B. To establish, maintain, or adhere to any basic price list or list price formula, or any other means of determining or fixing prices, discounts, charges and allowances (including handling charges and allowances for returns or purchases), or any other term or condition of sale or purchase of artificial abrasive devices to be quoted to or by, or required of or by, others.

C. To classify purchasers or distributors or to maintain or adhere to any classification of purchasers or distributors or to any lists, formula or other means for classifying purchasers or distributors.

D. To fix, determine, or maintain charges, allowances, discounts or any other term and condition for the repurchase or handling of artificial abrasive devices from or for any other person, including any government or governmental agency.

[*Dissolution Ordered*]

V

The defendant Grinding Wheel Manufacturers Association shall be dissolved within three months of the date of this judgment.

[*Revision of Price Lists*]

VI

Each defendant manufacturer is hereby ordered to review and within a period of seven years from the date of this judgment to discontinue the use of its present price list for artificial abrasive devices. The failure of any defendant manufacturer, within a period of seven years from the date of this judgment, to revise its price list for artificial abrasive devices, other than devices the price of which is presently controlled under patent license agreements, to the extent of at least 50 per cent of its present dollar sales volume of devices the price of which is not controlled under such patent license agreements, shall be deemed *prima facie* evidence of failure to comply with this paragraph. Each defendant manufacturer shall within seven years from the date of this judgment file with the Court, and serve by registered mail upon the Department of Justice, an affidavit showing compliance with this paragraph.

VII

Nothing contained herein shall be deemed to adjudicate, determine, or affect the legality or illegality of any agreement involving solely relationships between:

A. A defendant manufacturer and its subsidiaries.

B. A defendant manufacturer or its subsidiaries and a parent.

C. Subsidiaries of any such manufacturer or their subsidiaries.

VIII

Nothing in this judgment shall prevent any defendant from availing itself of the benefits of (a) The Act of Congress of April 10, 1918, commonly called the Webb-Pomerene Act, (b) The Act of Congress of 1937, commonly called the Miller-Tydings proviso to Section 1 of The Act of Congress of July 2, 1890, entitled “An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies”, or (c) the patent laws. Paragraph VI hereof shall not be deemed to adjudicate, determine, or affect the legality or illegality of any patent license agreement.

[*Inspection to Secure Compliance*]

IX

For the purposes of securing compliance with this judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General, and on reasonable notice to any defendant manufacturer, be permitted, subject to any legally recognized privilege, (a) reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, relating to any matters contained in this judgment, and (b) subject to the reasonable convenience of such defendant, and without restraint or interference, to interview officers and employees of such defendant, who may have counsel present, regarding any such matters; provided that information obtained by the means permitted in this paragraph shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department except in the course of legal proceedings for the purpose of securing compliance with this judgment in which the United States is a party or as otherwise required by law.

[*Jurisdiction Retained*]

X

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

UNITED STATES v. BOSTON FRUIT & PRODUCE EXCHANGE, ET AL.

Civil No. 7734

Year Judgment Entered: 1949

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Boston Fruit & Produce Exchange, H. P. Hood & Sons, Inc., Armour & Co., Berman & Co., Inc., E. F. Deering Co., Inc., H. A. Hovey Co., A. E. Mills & Son, Inc., Beatrice Foods Co., Brockton Cooperative Egg Auction Ass'n, Inc., and New Hampshire Egg Auction, Inc., U.S. District Court, D. Massachusetts, 1950-1951 Trade Cases ¶62,551, (Dec. 21, 1949)

United States v. Boston Fruit & Produce Exchange, H. P. Hood & Sons, Inc., Armour & Co., Berman & Co., Inc., E. F. Deering Co., Inc., H. A. Hovey Co., A. E. Mills & Son, Inc., Beatrice Foods Co., Brockton Cooperative Egg Auction Ass'n, Inc., and New Hampshire Egg Auction, Inc.

1950-1951 Trade Cases ¶62,551. U.S. District Court, D. Massachusetts. Civil No. 7734. Filed December 21, 1949.

Sherman Antitrust Act

Consent Decree—Egg Market—Price Fixing—Dissemination of Market Data—Market Rules and Regulations.—Egg wholesalers, a produce exchange and their associations consent to a judgment in which price fixing is prohibited, limits imposed upon the type of information disseminated by the exchange and market reporters, requirements imposed as to the kind of data to be supplied by dealers to market reporters and analysts, and prohibition imposed on sales of eggs by the use of formulas based upon a premium or discount above or below high or low market reports or averages thereof. The exchange is required to adopt regulations of trading incorporating certain provisions of the decree.

For the plaintiff: Tom C. Clark, Attorney General; Herbert A. Bergson, Assistant Attorney General; George B. Haddock, Assistant Attorney General, all of Washington; William T. McCarthy, United States Attorney; James M. Malloy, and Richard B. O' Donnell, Special Assistants to the Attorney General, and Alfred M. Agress, Special Attorney, all of Boston.

For the defendants: Charles B. Rugg, Boston, for H. P. Hood & Sons, Inc.; Waldo Noyes (Robbins, Noyes & Jansen), Boston, for Brockton Cooperative Egg Auction Ass'n, Inc., and New Hampshire Egg Auction, Inc.; Joseph C. Duggan, New Bedford, Mass., for Bartlett, Varney Co.; Charles W. Bartlett (Ely, Bradford, Bartlett, Thompson &. Brown), Boston, for Armour & Co.; Edward J. Duggan, Boston, for Beatrice Foods Co.; Daniel E. Murphy, Boston, for Kennedy & Co., Inc.; George Alpert and William Alpert, Boston, for H. A. Hovey Co., Chapin & Adams Corp., A. E. Mills & Son, Inc., E. F. Deering Co., Inc., and Boston Fruit & Produce Exchange; Max Kabatznick (Kabatznick, Stern & Gesmer), Boston, for Berman & Co., Inc.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on June 21, 1948, and each of the defendants named therein, including those defendants who were named individually and as representatives of the defendant class, having appeared and severally filed their answers to such complaint, denying the substantive allegations thereof; and the defendants named in the complaint having severally and jointly consented to the entry of this final judgment both as to themselves and as representatives of the class of defendants charged in the complaint as class defendants,

NOW THEREFORE, before any testimony has been taken herein, and without adjudication of any issue of fact or law herein, and upon the consent of all parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

[*Jurisdiction of Court*]

This Court has jurisdiction of the subject matter herein and of all parties hereto, and the complaint herein states a cause of action against the defendants under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", as amended.

II

The provisions of this judgment applicable to the named and class defendants herein apply to their successors, officers, directors, agents, employees, and to any other persons acting under, through or for such defendants.

III

[*Definitions*]

As used in this judgment:

(A) "Wholesale" or "at wholesale" means buying or selling transactions in shell eggs involving 10 or more cases on any business day during the calendar months of June to September, inclusive, and 25 or more cases on any business day during any other calendar month.

(B) "New England area" means the territory within the States of Massachusetts, Vermont, New Hampshire, Maine, Connecticut, and Rhode Island.

(C) "Boston area" means the territory within Suffolk, Plymouth, Norfolk, Essex and Middlesex Counties, Massachusetts and Rockingham County, New Hampshire.

(D) "Egg producer" means any individual, partnership, corporation, or other business entity owning hens and regularly engaged in the business of selling the eggs produced by such hens.

(E) "Nearby shell eggs" means eggs produced within the New England area.

IV

[*Practices Enjoined*]

Each of the named and class defendants herein is hereby perpetually enjoined and restrained from maintaining, operating, or dealing on a Spot Call Board operated within the New England area for the purchase and sale of shell eggs at wholesale, with the purpose or intent of fixing, raising, depressing, or stabilizing any shell egg market prices or quotations thereof.

V

When any named or class defendant herein shall hereafter maintain, operate, or deal on, a Spot Call Board operated within the New England area for the purchase and sale of shell eggs at wholesale, such defendant is hereby ordered to refrain, after the close of the call, from publishing, or communicating to any dealer in or producer of shell eggs, or to any market reporter, any bids or offers which have been made on such Board.

VI

No named or class defendant or defendants herein shall hereafter maintain, operate, or deal on a Spot Call Board operated within the New England area for the purchase and sale of shell eggs at wholesale unless, to his best knowledge and belief, the facilities of such Board are available to all *egg* cooperatives and to all wholesalers, retailers and producers of, and other persons dealing in, shell eggs, on a non-discriminatory basis.

VII

[*Dissemination of Market Information*]

The defendant Boston Fruit & Produce Exchange is hereby perpetually enjoined and restrained from publishing or circulating any wholesale market quotations on shell eggs, either orally or in writing, prior to 11:30 A. M. on any business day; and each of the other named and class defendants is hereby perpetually enjoined and restrained from acting collectively with any other defendant in publishing or circulating, or using any common

agency for publishing or circulating, any wholesale market quotations on shell eggs, either orally or in writing, prior to 11:30 A. M. on any business day.

VIII

The defendant Boston Fruit & Produce Exchange is hereby perpetually enjoined and restrained from publishing or circulating, either orally or in writing, any wholesale market quotations on nearby shell eggs other than quotations issued by a duly authorized Federal agency, unless such quotations, to the best knowledge and belief of such defendant, meet the requirements hereinafter set forth in this paragraph VIII and in paragraph IX, hereof, and each of the other named and class defendants is hereby perpetually enjoined and restrained from using any common agency for publishing or circulating, or from acting collectively with any other defendant in publishing or circulating, either orally or in writing, any wholesale market quotations on nearby shell eggs, other than quotations issued by a duly authorized Federal Agency, unless such quotations, to the best knowledge and belief of such defendant, meet the requirements hereinafter set forth in this paragraph VIII and in paragraph IX hereof.

The said quotations:

(1)shall be based upon an actual canvass of the wholesale buying and selling trans actions of at least 12 wholesale dealers who do substantial business in the Boston area; which canvass shall have been conducted on the day on which such quotations are issued:

(2) shall be based on wholesale purchases and sales within the Boston area of graded for size, uncandled and unpackaged nearby shell eggs, except purchases of shell eggs from an egg producer, which purchases and sales shall have been made by the said 12 or more wholesale dealers in transactions on the day on which such quotations are issued.

(3) shall take the form of a tabulation showing all of the separate prices, in cents per dozen, at which the said 12 or more wholesale dealers shall have reported sales and purchases of graded for size, uncandled and unpackaged nearby shell eggs at whole sale, on the days on which such reports are issued, and also showing the total number of cases of nearby shell eggs thus re ported to have been sold and bought at each such separate price.

IX

When the defendant Boston Fruit & Produce Exchange or any of the other named and class defendants, acting collectively or through any common agency, shall hereafter circulate reports of nearby shell *egg* wholesale prices that have been gathered, tabulated and published in accordance with the method permitted in paragraph VIII of this judgment, such defendants are hereby ordered to publish and circulate simultaneously the following supplementary market information:

(1) when premiums above or discounts below the low, high, or average levels of such price reports are used in determining final prices for transactions engaged in and reported by any dealer canvassed in connection with such reports, the range of such premiums or discounts in cents per dozen:

(2) the range of all prices, in cents per dozen, at which all dealers canvassed have reported actual, though unaccepted, offers to buy or sell graded for size, uncandled and unpackaged shell eggs at wholesale, except offers to buy shell eggs from an egg producer and offers to buy or sell on a Spot Call Board.

It is further ordered that, when the said supplementary market information shall be published and circulated as directed herein, it shall be so captioned and so separated from the simultaneously published tabulations of final prices at which nearby shell eggs are being sold or bought at wholesale as to make it clearly recognizable as a supplement to rather than a part of such final price tabulations.

X

[*Full Disclosure of Sales Data Required*]

Each named and class defendant dealer is hereby ordered, if he participates in any canvass of his wholesale buying and selling transactions conducted by a market reporter:

(1) to disclose to such market reporter all finally determined prices, in cents per dozen, at which wholesale sales and purchases of nearby graded for size, uncandled and unpackaged shell eggs have been concluded within the New England area by the said dealer on the day of and up to the time of such disclosure, except prices of purchases of shell eggs from an egg producer;

(2) to disclose to such market reporter:

(a) all wholesale sales and purchases of nearby graded for size, uncandled and unpackaged shell eggs, except purchases of shell eggs from an egg producer, which have been concluded within the New England area by the said dealer on the day of and up to the time of such disclosure, under any pricing formula which contemplates the addition of any premium to,or the subtraction of any discount from, any base price that has not been determined at the time of such disclosure;

(b) the amount of any such premium or discount in cents per dozen;

(c) the name and level of the market report, quotation, or other base price to which any such premium is to be added, or from which any such discount is to be subtracted, in determining the final price of such sales and purchases;

(3) to disclose to such market reporter all prices, in cents per dozen, at which all actual, though unaccepted, offers to buy or sell nearby graded for size, uncandled and unpackaged shell eggs at wholesale have been made, by the said dealer on the day of and up to the time of such disclosure, except offers to buy shell eggs from an egg producer;

(4) to refrain from stating to such market reporter any price or prices at which such dealer purports to be willing to sell or buy nearby shell eggs at wholesale, except as ordered in subparagraph X (3) herein;

(5) to refrain from expressing any opinion or preference to such market reporter respecting the raising, lowering, or continuance of any wholesale market quotation for nearby shell eggs.

(6) to keep such records, for a reasonable time, of wholesale sales and purchases as would enable a third party to determine the accuracy of the disclosed information, and to have such records available for inspection, during office hours and subject to the reasonable convenience of such defendant, by the Department of Justice.

XI

[*Use of Pricing Formulas*]

Each named and class defendant herein is hereby ordered, when buying or selling nearby shell eggs at wholesale in the New England area, to refrain from buying or selling or from contracting to buy or sell under any pricing formula which contemplates or provides that the buying or selling prices shall be based on or at any premium over or at any discount under or identical with any high or low market reports or any average that may be drawn therefrom, unless such reports, to the best knowledge and belief of such defendant, are being regularly gathered, tabulated and published in accordance with the requirements of paragraphs VII, VIII and IX of this judgment, or are being regularly issued by a duly authorized State or Federal agency after 11:30 A. M. on the day of issuance.

XII

Each named and class defendant herein is hereby ordered, when buying or selling nearby shell eggs at wholesale in the New England area, to refrain from buying or selling or from contracting to buy or sell under any pricing formula which contemplates or provides that the buying or selling prices shall be based on or at any premium over or at any discount under or identical with the prices of any one or more bids, offers, sales or purchases made on a Spot Call Board or any price that is derived from such Spot Call Board transaction prices.

XIII

[*Adoption of Trading Regulations*]

The defendant Boston Fruit & Produce Exchange is hereby ordered to adopt, within 30 days following entry of this final judgment, rules and regulations concerning egg trading which

(a) shall incorporate the requirements imposed upon the said Exchange in paragraphs IV to XII inclusive of this judgment; and

(b) shall establish as regulations of the said Exchange, binding upon such of its members as may now or hereafter regularly buy or sell shell eggs at wholesale, the requirements imposed in paragraphs IV to XIII inclusive of this judgment;

and the said Exchange is further ordered to take such steps thereafter as may be necessary to cause its officers and members, who regularly buy or sell shell eggs at wholesale, to adhere to the said rules and regulations concerning egg trading.

XIV

The defendant Boston Fruit & Produce-Exchange is hereby ordered:

(1) to mimeograph forthwith and here after retain in its files a sufficient number of copies of this Final Judgment to supply all present and future members of the said Exchange who regularly sell or buy shell eggs; and

(2) to circulate by registered mail, within ten days following the entry of this Final Judgment, one such copy thereof to each named or class defendant herein: and

(3) when new members who regularly buy or sell shell eggs shall hereafter join the said Exchange, to furnish each such new member with one copy of this Final Judgment at the time that such new member's application for membership shall be accepted.

XV

[*Reports and Inspections*]

For the purpose of securing compliance with this judgment, and for no other purpose, and subject to any legally recognized privilege duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General or an Assistant Attorney General, and on reasonable notice to any defendant, be permitted (a) access, during the office hours of any such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records, and documents in the possession or under the control of such defendant relating to any of the matters contained in this judgment; and (b) subject to the reasonable convenience of such defendant, and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding any such matters. For the purpose of securing compliance with this judgment, any defendant upon the written request of the Attorney General, or an Assistant Attorney General, and upon reasonable notice, shall submit such written reports with respect to any of the matters contained in this judgment as from time to time may be necessary for the purpose of enforcement of this judgment. No information obtained by the means provided in this section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, 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 judgment, or as otherwise required by law.

XVI

[*Jurisdiction Retained*]

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

UNITED STATES v. WOMEN'S SPORTSWEAR MANUFACTURERS ASSOCIATION, ET AL.

Civil Action No. 4029

Year Judgment Entered: 1950

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff v. WOMEN'S SPORTSWEAR MANUFACTURERS ASSOCIATION, ET AL., Defendants	CIVIL ACTION NO. 4029 FILED APRIL 18, 1950

FINAL DECREE

This cause having come on for hearing before this Court and having been determined by a decree dismissing the complaint, entered on December 10, 1947, from which the plaintiff appealed to the Supreme Court of the United States which has reversed the decree of this Court and issued its mandate filed herein on May 19, 1949 remanding the cause and directing the entry of a decree in conformity with its opinion and mandate:

NOW, THEREFORE, upon motion of the plaintiff it is ORDERED, ADJUDGED, and DECREED as follows:

1. That the aforesaid decree of this Court entered on December 10, 1947 is in all respects set aside and reversed.

2. That through the concerted imposition by the defendants of the contract of October 17, 1944, upon the twenty-one jobber signatories thereof, the defendants have combined and conspired in restraint of interstate commerce in women's sportswear in violation of Section 1 of the Sherman Act. (Act of July 2, 1890, c. 647, 26 Stat. 209; 15 U.S.C. §1.)

3. That the contract entered into on October 17, 1944 between the defendant Women's Sportswear Manufacturers Association and the twenty-one jobber signatories, copy of which is incorporated in the complaint herein, is a contract in restraint of interstate commerce in women's sportswear, in violation of Section 1 of the Sherman Act. (Act of July 2, 1890, c. 647, 26 Stat. 209; 15 U.S.C. §1.)

4. That the said contract of October 17, 1944 between the defendant Women's Sportswear Manufacturers Association and the twenty-one jobber signatories is hereby cancelled and nullified and declared to be of no further force and effect; that the defendant Women's Sportswear Manufacturers Association and the defendant members of such association together with all their officers, directors, employees, agents, and representatives and all persons, associations or corporations acting on their behalf are perpetually enjoined from carrying out, acting under, or enforcing the said contract, and are perpetually enjoined from entering into, carrying out, acting under, or enforcing any contract containing any provision having the import or effect of:

   (A) securing to the defendants or any of them the exclusive right to service the stitching requirements of any manufacturer or jobber.

   (B) fixing or maintaining the prices to be paid the defendants for the stitching of women's sportswear.

5. That the defendants and their committees, officers, directors, agents, employees, representatives, and all persons, associations, or corporations acting on behalf

of them, or any of them, are perpetually enjoined from engaging in any concerted plan of action having as its purpose the securing to defendants, or any of them, their successors, transferees, or assignees the exclusive right to service stitching requirements of any manufacturer or jobber engaged in the manufacture and sale in interstate commerce of women's sportswear, or to impose any compulsory method of allocating among the defendants the stitching requirements of such jobbers and manufacturers, or to maintain or fix the prices to be paid the defendants for the stitching of women's sportswear.

/s/ William T. McCarthy
United States District Judge

4/18/50

UNITED STATES v. MINNESOTA MINING AND MANUFACTURING COMPANY, ET AL.

Civil Action No. 8119

Year Count 2 Judgment Entered: 1950

Year Count 1 Judgment Entered: 1950

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 8119

UNITED STATES OF AMERICA

v.

MINNESOTA MINING AND MANUFACTURING COMPANY, BEHR-MANNING CORPORATION, THE CARBORUNDUM COMPANY, ARMOUR AND COMPANY, DUREX ABRASIVES CORPORATION, and THE DUREX CORPORATION

FINAL DECREE
September 13, 1950

WYZANSKI, D. J.

This cause having come on to be heard on Count 2 of the Amended Complaint and Answers thereto and the evidence presented on behalf of all parties and having been argued by counsel and fully considered by the Court, it is hereby

ORDERED, ADJUDGED, and DECREED that:

1. As used in this Decree:

"A Day" means ten weeks after entry of this Decree, unless within the period allowed by law an appeal shall be taken to the Supreme Court, in which event "A day" means ten weeks after that Court sends its mandate to this Court.

"B Day" means ten weeks after "A Day".

"C Day" means twenty weeks after "A Day".

"American manufacturing defendants" means Armour and Company, The Behr-Manning Corporation, and Minnesota Mining and Manufacturing Company, The Carborundum Company.

"Durex" means The Durex Corporation.

"Durex manufacturing subsidiaries" means Durex Abrasives, Ltd., Canadian Durex Abrasives, Ltd. and Durex Schleifmittel, G. m. b. H.

"Durex subsidiaries" means both Durex manufacturing subsidiaries and all other subsidiaries of Durex in the United States or in foreign countries including, for example, Australian Durex Products Pty. Ltd. Durex Sociedad Anonima Comercial e Industrial and Durex Lixas e Fitas Adesivas, Ltd.

"Export Company" means Durex Abrasives Corporation.

"Export Company subsidiaries" means all subsidiaries of the Export Company, including, for example, Abrasifs Durex, S. A. France and Durex de Mexico, S. A.

2. Defendants violated section 1 of the Sherman Act, 15 U.S.C. §1, in combining in agreements under which defendants or some of them organized and operated Durex and Durex subsidiaries, entered into the main patent agreement of May 23, 1929 [Ex. G1], granted licenses and took other action pursuant thereto, and made sundry temporary and permanent agreements for various areas, including, for example, markets affiliated with the British Empire, Australia, New Zealand, and various European countries, whereby, for a commission or otherwise, Durex or Durex subsidiaries supplied coated abrasives manufactured in part or in whole in foreign nations. By these agreements and actions undertaken by one or more of the defendants, pursuant to the combination of all defendants, all defendants conspired in restraint of trade and commerce in coated abrasives with foreign nations.

3. Defendants and all persons and corporations acting on behalf of them are enjoined from conspiring to restrain trade and commerce in coated abrasives with foreign nations and from participating in practices having the purpose or effect of continuing or renewing any of the violations described in paragraph 2 hereof. In particular they are enjoined from any joint action by two or more American manufacturers to establish or operate factories in foreign nations to supply coated abrasives.

4. The agreements summarily described in paragraph 2 are adjudged illegal and are cancelled. Before B day defendants shall file

in Court a statement listing the agreements so adjudged and reciting the action taken to cancel those agreements.

5. The American manufacturing defendants and the Export Company acted unlawfully in assigning foreign patents, granting licenses to manufacture thereunder, and circulating manufacturing know-how and like technical manufacturing information to Durex and Durex subsidiaries. Such actions are adjudged illegal. Before B day Durex and Durex subsidiaries shall transfer all such patents and licenses to the original transferor or its successor corporation without compensation; and shall file in Court a statement listing the patents and licenses affected by this paragraph and reciting the action taken to comply with the directions given in this paragraph.

6. In so far as the American manufacturing defendants assigned to Minnesota their foreign patents relating to waterproof sandpaper, to Carborundum their foreign patents relating to discs, to Behr-Manning their foreign patents relating to electrocoated sandpaper and to Armour their foreign patents relating to heat-treated garnet abrasives they acted in violation of section 1 of the Sherman Act. Before B day the present transferees of those patents shall transfer back all such patents to the original transferors or their successor corporations without compensation and shall file in Court a statement listing the patents, if any, affected by this paragraph and reciting the action taken to comply with the directions given in this paragraph.

7. Defendants acted unlawfully in allowing Durex and Durex manufacturing subsidiaries to use trade-marks and brand name registrations which had been originated by or were similar to the trade-marks and brand name registrations which were or are used by the American manufacturing defendants and the Export Company. Before B day Durex and Durex subsidiaries shall transfer all their trade-marks and brand name registrations to the Export Company without compensation and shall file in Court a statement listing the marks and registrations affected by this paragraph and reciting the action taken to comply with the directions given in this paragraph.

8. Before C day the American manufacturing defendants and Durex shall file in Court a proposed plan or series of plans whereby (a) Durex shall be dissolved, (b) the creditors of Durex shall be protected, (c) each of the Durex manufacturing subsidiaries shall be dissolved or transferred to one but not more than one of the American manufacturing defendants or transferred to a party outside this case (provided that in no event shall the party to which Canadian Durex Abrasives, Ltd. is transferred also be the transferee of Durex Abrasives, Ltd. or Durex Schleifmittel, G. m. b. H. and further provided that in no event shall the party to which Durex Abrasives, Ltd. is transferred also be the transferee of Durex Abrasives, Ltd. or Schleifmittel, G. m. b. H. and further provided that in no event shall the party to which Durex Abrasives, Ltd. is transferred also be the transferee of Canadian Durex Abrasives, Ltd. or Durex Schleifmittel, G. m. b. H.), (d) each of the Durex subsidiaries which is not a Durex manufacturing subsidiary shall be dissolved or transferred to the Export Company or to one or more of the American manufacturing defendants or to other parties, and (e) the remaining assets of Durex and the assets of any of its subsidiaries which are to be dissolved shall be distributed fairly and equitably and in a manner that negates the probability of an unlawful monopoly or restraint of trade.

9. Before B day the Export Company and the American manufacturing defendants shall enter into agreements that (a) allow any member to withdraw from the Export Company and to receive the appraised value of its shares and to withdraw from all obligations under the Export Agreement of May 23, 1929 at any time within two years after A day or at any time thereafter upon giving one year's written notice and (b) provide that the Export Company shall not discriminate in price between a distributor in a foreign nation and an exporter in the United States who offer to maintain substantially equivalent foreign sales offices, foreign stocks of coated abrasives and foreign promotional services.

10. Nothing in this Decree shall be construed to prohibit any

American manufacturing company from taking action apart from a combination or conspiracy with others and without monopolistic purpose or effect (a) to abandon in whole or in part its export trade to foreign nations or (b) to establish and operate factories in foreign nations to supply foreign markets.

11. Defendants shall pay costs.

12. Jurisdiction of this cause is retained for the purposes of enabling any of the parties to this Decree to apply to the Court at any time for such further orders and directions as may be appropriate for the correction, construction or carrying out of the Decree, (and in particular for modifying, supplanting or carrying out any plans of dissolution or transfer contemplated by paragraph 8) or for the change of the Decree in the light of legislative, judicial or factual developments.

13. Pursuant to F.R.C.P. 54, this Court having determined that there is no just reason for delay directs entry of this as a final judgment upon Count 2 of the Amended Complaint.

14. The aforesaid paragraphs of this Decree shall impose no obligation on defendants before A day.

Charles E. Wyzanski, Jr.
United States District Judge

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff, v. MINNESOTA MINING AND MANUFACTURING COMPANY, BEHR-MANNING CORPORATION, THE CARBORUMDUN COMPANY, ARMOUR AND COMPANY, DUREX ABRASIVES CORPORATION and THE DUREX CORPORATION, Defendants.	Civil Action No. 8119 Filed November 6, 1950

FINAL JUDGMENT AS TO COUNT ONE

The plaintiff, United States of America, having filed its amended complaint herein on July 5, 1949; the defendants having appeared and filed their separate answers to Count One of the amended complaint denying any violation of law; Count Two of the amended complaint having been tried and final judgment having been entered thereon on September 13, 1950; and the plaintiff and said defendants, by their respective attorneys herein, having severally consented to the entry of this Final Judgment as to Count One without trial or adjudication of any issue of fact or law herein, and without admission by any party in respect of any such issue,

NOW, THEREFORE, before any testimony or evidence has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent as aforesaid of all of the parties hereto,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as to Count One of the amended complaint as follows:

I.

This Court has jurisdiction of the subject matter hereof and of all parties hereto. Count One of the amended complaint states a cause of

action against the defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," as amended.

II

For purposes of this judgment,

A. "Minnesota" means the defendant Minnesota Mining and Manufacturing Company, a corporation organized and existing under the laws of the State of Delaware;

B. "Behr-Manning" means the defendant Behr-Manning Corporation, a corporation organized and existing under the laws of the State of Massachusetts;

C. "Carborundum" means the defendant The Carborundum Company, a corporation organized and existing under the laws of the State of Delaware;

D. "Armour" means the defendant Armour and Company, a corporation organized and existing under the laws of the State of Illinois;

E "Defendants" means Minnesota, Behr-Manning, Carborundum and Armour;

F. "Coated Abrasive Products" means any non-rigid abrasive or polishing article which comprises a flexible sheet or sheetlike backing to one or both surfaces of which there is attached by an adhesive a coating of one or more layers of abrasive or polishing grain, including rigid or non-rigid abrading or polishing articles made therefrom to be used for abrading or polishing purposes;

G. "Defined Patents" means United States letters patent, patent applications and rights under letters patent, as follows:

(1) all letters patent, rights under letters patent, and applications for letters patent, now owned or controlled by any of the defendants, and all letters patent which may issue on or result from said applications,

(2) all letters patent, rights under letters patent, and applications for letters patent, issued to, acquired, or filed by, any of the defendants during the five years following the date of the entry of this judgment, and all letters patent which may issue on or result from said applications,

(3) all divisions, continuances, reissues, or extensions of the patents and applications described above in clauses (1) and (2),

relating to Coated Abrasive Products and any method, material, equipment or process involved in the production or manufacture of Coated Abrasive Products.

III

The provisions of this judgment applicable to any defendant shall apply to such defendant, its successors, subsidiaries, assigns, officers, directors, agents, employees and all other persons acting or claiming to act under, through or for such defendant.

IV

Each of the patent license and cross license agreements relating in whole or in part to Coated Abrasive Products or any method, material, equipment or process involved in the production or manufacture of Coated Abrasive Products, to which any of the defendants is presently a party as licensor, including, but without limitation, the following agreements, is hereby terminated and canceled in its entirety; and each of the defendants is hereby enjoined and restrained from the further performance or enforcement of any of said agreements, or from entering into, adopting, adhering to, or furthering any agreement, arrangement, or course of conduct for the purpose or with the effect of maintaining, reviving or reinstating any of said agreements:

A. the Patent License Agreements Relating to Waterproof Sandpaper, dated as of June 1, 1949, between Minnesota,

as licensor, and Armour, Behr-Manning, and Carborundum, as licensees, respectively;

B. the Patent License Agreements Relating to Electro-coated Sandpaper between Behr-Manning, as licensor, and

(1) Minnesota, as licensee, dated September 19, 1932,

(2) Armour, as licensee, dated October 13, 1932, and

(3) Carborundum, as licensee, dated January 11, 1933,

each as amended by letter dated May 19, 1948;

C. the licenses granted by the Spraying Agreement dated December 6, 1935 between Armour, Behr-Manning, Carborundum and Minnesota;

D. the licenses granted by the Mechanical Orienting Agreement dated March 6, 1936 between Armour, Behr-Manning, Carborundum and Minnesota;

E. the Cross License Agreements dated as of March 17, 1943, as modified as of October 1, 1945, by and between Minnesota and Armour, Minnesota and Behr-Manning and Minnesota and Carborundum, Armour and Behr-Manning, Armour and Carborundum, and Behr-Manning and Carborundum, respectively;

F. the license agreements entered into by the defendants pursuant to said Cross License Agreements, as follows:

(1) the Adhesive Treatment License Agreements between Behr-Manning, as licensor, and

(a) Armour and Minnesota, as licensees, respectively, dated January 1, 1944,

(b) Carborundum, as licensee, dated May 1, 1945,

(c) Midwest Abrasive Company, as licensee, dated September 12, 1946;

(2) the license agreements under United States Letters Patent No. 2,358,724, dated as of January 1, 1945, between Behr-Manning, as licensor, and Armour, Carborundum and Minnesota, as licensees, respectively;

(3) the license agreements under United States Letters Patent No. 2,286,208, between Carborundum, as licensor, and

(a) Minnesota, as licensee, dated August 1, 1949,

(b) Armour, as licensee, dated February 1, 1950, and

(c) Behr-Manning, as licensee, dated August 1, 1949,

(4) the license agreements under United States Letters Patent No. 2,430,099 between Carborundum, as licensor, and

(a) Minnesota, as licensee, dated November 1, 1948,

(b) Armour, as licensee, dated March 23, 1950,

(c) Behr-Manning, as licensee, dated November 1, 1948; and

(d) Mid-West Abrasive Company, as licensee, dated March 24, 1950;

(5) the license agreements under United States Letters Patent No. 2,391,731 between Minnesota, as licensor, and

(a) Carborundum, as licensee, dated August 1, 1946, and

(b) Behr-Manning, as licensee, dated September 1, 1948, and

(6) the license agreements under United States Letters Patent Nos. 2,184,896, 2,302,711 and 2,333,035, dated as of October 1, 1945, between Behr-Manning, as licensor, and Armour and Carborundum, as licensees, respectively.

V

Each defendant is hereby ordered and directed:

A. In so far as it now has or may acquire the power or authority to do so, to issue to any applicant (including any other defendant) making written request therefor a non-exclusive and

unrestricted license or sublicense to make, use and vend Coated Abrasive Products under any, some or all of the Defined Patents, including those presently owned or controlled by defendants as listed in Schedule "A" attached hereto, without any condition or restriction whatsoever, except that:

(1) a reasonable and non-discriminatory royalty may be charged and collected;

(2) reasonable provision may be made for periodic inspection of the books and records of the licensee by an independent auditor who may report to the defendant licensor only the amount of the royalty due and payable and no other information;

(3) the license may be non-transferable;

(4) reasonable provision may be made for cancellation of the license upon failure of the licensee to pay the royalties or to permit the inspection of its books and records as provided in Paragraph A of this Section V;

(5) the license must provide that the licensee may cancel the license at any time by giving thirty (30) days' notice in writing to the licensor.

B. Within thirty (30) days after the date of application, issuance or acquisition of any of the Defined Patents, to advise this Court and the Attorney General, in writing, of the number and date of such application, issuance or acquisition.

C. Upon any application for a license in accordance with the provisions of Paragraph A of this Section V, the defendant to whom such application is made shall advise the applicant of the royalty it deems reasonable for the Defined Patent or Patents to which the application pertains. If the defendant

and the applicant are unable to agree upon what constitutes a reasonable royalty, the defendant may apply to this Court for a determination of a reasonable royalty, giving notice thereof to the applicant and the Attorney General, and shall make such application forthwith upon request of the applicant. In any such proceeding the burden of proof shall be upon the defendant to whom application is made to establish, by a fair preponderance of evidence, a reasonable royalty, and the Attorney General shall have the right to be heard thereon. Pending the completion of any such court proceeding, the applicant shall have the right to make, use and vend under the Defined Patent or Patents to which its application pertains, without the payment of royalty or other compensation, but subject to the following provisions: Such defendant may, with notice to the Attorney General, apply to the Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty. If the Court fixes such interim royalty rate, a license shall then issue providing for the periodic payment of royalties at such interim rate from the date of the making of such application by the applicant; and whether or not such interim rate is fixed, any final order may provide for such readjustments including retroactive or diminished royalties as the Court may order after final determination of a reasonable and non-discriminatory royalty.

D. Each license granted pursuant to this Section V shall provide that the licensee may at any time, without revoking or surrendering its license, dispute the validity, scope or enforceability of any of the patents under which the license is granted, and this judgment shall not be construed as importing any validity or value to any of such patents.

VI

Each defendant is hereby enjoined and restrained from:

A. Making any disposition of any of the Defined Patents which deprives it of the power or authority to issue licenses or sublicenses required by Paragraph A of Section V unless it sells, transfers or assigns such Defined Patents and requires, as a condition of such sale, transfer or assignment that the purchaser, transferee, or assignee thereof shall observe the provisions of Section V of this judgment with respect to the Defined Patents so acquired and the purchaser, transferee or assignee shall file with this Court, prior to the consummation of said transaction, an undertaking to be bound by the provisions of Section V of this judgment with respect to the Defined Patents so acquired.

B. Acquiring any license, sublicense, grant of immunity or similar right under any Defined Patent to make, use and vend Coated Abrasive Products, unless such license, sublicense, grant of immunity or similar right is non-exclusive and contains a provision that throughout its life the licensor will make available an equivalent license, sublicense, grant of immunity or similar right to any third person requesting the same, on terms and conditions at least as favorable as those accorded to said defendant.

VII

Each defendant is hereby ordered and directed, on written request, to furnish to any licensee at the time of granting a license under Paragraph A of Section V of this judgment, upon payment of a purely nominal charge therefor, a written manual or manuals describing all the methods, processes, materials and equipment then currently used by it in commercial production or manufacture under the Defined Patents under which such applicant is licensed. Any such manual or manuals so furnished to a licensee shall be

made available to all prior licensees under the same Defined Patents, excepting the other defendants herein. In the event any such licensee shall find the information set forth in any such manual inadequate to enable successful utilization by that licensee of any of the methods, processes, materials or equipment described therein, and such licensee shall so inform in writing the defendant concerned, then such defendant is ordered and directed to furnish promptly, at the actual cost thereof to the defendant, such additional written information or technical assistance as shall be reasonably necessary to the successful utilization thereof. Any such additional written information shall be made available to all other licensees under the same Defined Patents, excepting the other defendants herein.

VIII

Subject to the provisions of Section VII of this judgment, each defendant is hereby enjoined and restrained from furnishing to any other defendant technical information relating to the production or manufacture of Coated Abrasive Products or methods, equipment, materials and processes to be used in the manufacture thereof, unless it furnishes such technical information to any other manufacturer of Coated Abrasive Products upon reasonable and non-discriminatory terms and conditions.

IX

Each defendant is hereby enjoined and restrained from entering into, adhering to, maintaining or furthering any combination, conspiracy, contract, agreement, understanding, plan or program, directly or indirectly, with any other manufacturer of Coated Abrasive Products:

A. To fix, maintain, stabilize, determine or adhere to prices, discounts, customer classifications or other terms or conditions for the sale of Coated Abrasive Products;

B. To limit, restrict, prevent or restrain any manufacturer of Coated Abrasive Products from making or selling any kinds, types, sizes, styles, or grades of Coated Abrasive Products, or from manufacturing or producing any Coated Abrasive Products

according to any standards or specifications.

X

Nothing contained herein shall be deemed to adjudicate, determine, or affect the legality or illegality of any agreement involving relationships solely between:

A. A defendant and its subsidiaries;

B. A defendant or its subsidiaries and its parent;

C. Subsidiaries of any defendant and their subsidiaries.

XI

For the purpose of securing compliance with this judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or an Assistant Attorney General, and on reasonable notice to any defendant, made to its principal office, be permitted subject to any legally recognized privilege, (1) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant relating to any matters contained in this judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it to interview officers or employees of said defendant, who may have counsel present, regarding any such matters, and (3) upon request the defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this judgment as may from time to time be necessary to the enforcement of this judgment. No information obtained by the means provided in this Section XI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment or as otherwise required by law.

XII

Jurisdiction is retained for the purpose of enabling any of the parties to this 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 judgment or for the modification or termination of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

Dated: Boston, Mass

November 6, 1950

/s/ Wyzanski
United States District Judge

We hereby consent to the entry of the foregoing Final Judgment:

For the Plaintiff:

WM. AMORY UNDERHILL
Acting Assistant Attorney General

SIGMUND TIMBERG
Special Assistant to the
Attorney General

GEORGE GARRITY
United States Attorney

GEORGE W. WISE

MARCUS A. HOLLABAUGH

EDWIN H. PEWETT

GERALD J. McCARTHY
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Attorney General

HAROLD D. COHEN

JOHN T. KELLY
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For Defendant Minnesota Mining and Manufacturing Company

Charles M. Price

John L. Connelly

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Its Attorneys.

For Behr-Manning Corporation

George Link, Jr.
Its Attorney.

For The Carborundum Company

H. Struve Hensel

William S. Gaud, Jr.

Edgar C. Morrison
Its Attorneys

For Armour and Company

George E. Leonard, Jr.
Its Attorney.

SCHEDULE "A"

Defined Patents Owned or Controlled by the Defendants.

Patent No.	Dated	Inventor/s
ARMOUR AND COMPANY PATENTS:		
1,991,645	Feb. 19, 1935	Woodward
1,994,263	March 12, 1935	Woodward
2,050,212	Aug. 4, 1936	Rizor
2,347,244	April 25, 1944	Colt
BEHR-MANNING CORPORATION PATENTS:		
1,987,467	Jan. 8, 1935	Crupi
2,027,087	Jan. 7, 1936	Buckner
Reissue 20,660) Original 2,027,307)	Jan. 7, 1936	Schact
2,027,308	Jan. 7, 1936	Schact
2,027,309	Jan. 7, 1936	Schact
2,082,182	June 1, 1937	Schact
Reissue 21,852) Original 2,123,581)	July 12, 1938	Anderson
2,124,055	July 19, 1938	Courtney
2,130,753	Sept. 20, 1938	Baker
2,136,150	Nov. 8, 1938	Oglesby
2,173,129	Sept. 19, 1939	Oglesby
2,173,130	Sept. 19, 1939	Oglesby
2,173, 796	Sept. 19, 1939	Oglesby
2,175,073	Oct. 3, 1939	Amstuz
2,184,896	Dec. 26, 1939	Oglesby
2,197,741	April 16, 1940	Boucher
2,198,766	April 30, 1940	Gallagher
2,199,752	May 7, 1940	Oglesby
2,209,715	July 30, 1940	Crupi
2,209,716	July 30, 1940	Crupi

Patent No.	Dated	Inventor/s
2,217,247	Oct. 8, 1940	(Walker (Burns
2,217,525	Oct. 8, 1940	Oglesby
2,239,828	April 29, 1941	Oglesby
2,245,301	June 10, 1941	Schact
2,279,361	April 14, 1942	Amstuz
2,287,837	June 30, 1942	Smyser
2,288,624	July 7, 1942	Holmsten
2,288,625	July 7, 1942	Holmsten
2,292,991	Aug. 11, 1942	Crompton
2,294,064	Aug. 25, 1942	Amstuz
2,302,711	July 24, 1942	(Oglesby (Strain
2,305,157	Dec. 15, 1942	Nam
2,307,232	Jan. 5, 1943	Oglesby
2,318,570	May 4, 1943	Carlton
2,318,571	May 4, 1943	Carlton
2,322,156	June 15, 1943	Oglesby
2,328,577	Sept. 7, 1943	Oglesby
2,333,034	Oct. 26, 1943	(Oglesby (Reilly (Gilbert
2,333,035	Oct. 26, 1943	Oglesby
2,339,208	Jan. 11, 1944	Ban der Pyl
2,358,724	Sept. 19, 1944	Manchester
2,370,636	March 6, 1945	Carlton
2,375,813	May 16, 1945	Oglesby
2,375,814	May 15, 1945	Oglesby
2,376,342	May 22, 1945	Carlton
2,376,343	May 22, 1945	Carlton
2,403,018	July 2, 1946	Oglesby
2,456,985	Dec. 21, 1948	Oglesby
2,463,241	March 1, 1949	Carlton

Patent No.	Dated	Inventor/s
2,463,242	March 1, 1949	Carlton
2,485,765	Oct. 25, 1949	Oglesby
BEHR-MANNING CORPORATION PATENT APPLICATIONS:		
733,614	March 10, 1947	Waterfield
761,750	July 18, 1947.	(Webber (Timmer
THE CARBORUNDUM COMPANY PATENTS:		
1,941,962	Jan. 2, 1934	Tone
1,944,898	Jan 30, 1934	McKee
1,988,065	Jan. 15, 1935	Wooddell
1,989,742	Feb 5, 1935	Davis
1,994,283	March 12, 1935	Martin
2,015,658	Oct. 1, 1935	Bezzenberger
2,033,991	March 17, 1936	(Melton (Benner
2,035,521	March 31, 1936	(Benner (Melton (Kirchner
2,049,535	Aug. 4, 1936	(Benner (Kirchner (Melton
2,050,992	Aug 11, 1936	Aust
2,053,360	Sept. 8, 1936	(Benner (Melton
2,053,361	Sept. 8, 1936	(Benner (Melton
2,059,583	Nov. 3, 1936	(Jackson (Kirchner
2,071,549	Feb. 23, 1937	Mahlman
Reissue 21,552) Original 2,078,831)	April 27, 1937	(Benner (Melton
2,082,916	June 8, 1937	Stratford
2,097,806	Nov. 2,1937	Weidrich
2,108,645	Feb. 15, 1938	Bryant
2,111,006	March 15, 1938	Robie

Patent No.	Dated	Inventor/s
2,111,272	March 15, 1938	Paulson
2,115,904	May 3, 1938	Bryant
2,124,666	July 26, 1938	(Benner (Melton
2,128,905	Sept. 6, 1938	(Benner (Melton
2,128,906	Sept. 6, 1938	(Benner (Melton
2,128,907	Sept. 6, 1938	(Benner (Melton
2,128,966	Sept. 6, 1938	Robie
2,129,661	Sept. 13, 1938	Ball
2,129,954	Sept 13, 1938	(Martin (Upper (Aust
2,130,194	Sept. 13, 1938	Robie
2,138,882	Dec. 6, 1938	Robie
2,141,658	Dec. 27, 1938	(Melton (Benner (Kirchner
2,152,392	March 28, 1939	Tone
2,179,487	Nov. 14, 1939	(Benner (Robie
2,184,348	Dec. 26, 1939	(Kirchner (Melton (Benner
2,187,624	Jan. 16, 1940	(Melton (Benner (Kirchner
2,187,743	Jan. 23, 1940	(Kirchner (Wooddell
2,191,827	Feb. 27, 1940	(Benner (Melton
2,194,253	March 19, 1940	(Benner (Melton (Kirchner
2,194,472	March 26, 1940	Jackson
2,201,194	May 21, 1940	(Melton (Benner (Kirchner

Patent No.	Dated	Inventor/s
2,201,195	May 21, 1940	(Melton (Benner (Kirchner
2,201,196	May 21, 1940	Williamson
2,205,276	June 18, 1940	Robie
2,209,059	July 23, 1940	Kirchner
2,209,074	July 23, 1940	Dahlstrom
2,215,210	Sept. 17, 1940	Dahlstrom
2,219,853	Oct. 29, 1940	Tone
2,223,392	Dec. 3, 1940	Smith
2,224,009	Dec. 3, 1940	Aust
2,225,877	Dec. 24, 1940	(Melton (Kirchner
2,225,937	Dec. 24, 1940	Williamson
2,227,200	Dec. 31, 1940	Robie
2,229,490	Jan. 21, 1941	(Benner (Melton (Kirchner
2,233,175	Feb. 25, 1941	(Melton (Benner
2,250,119	July 22, 1941	Williamson
2,252,587	Aug. 12, 1941	(Tone (Martin
2,254,016	Aug. 26, 1941	(Melton (Benner (Kirchner
2,254,531	Sept. 2, 1941	(Kirchner (Melton (Benner
2,255,294	Sept. 9, 1941	(Melton (Benner (Kirchner
2,274,726	March 3, 1942	Melton
2,276,328	March 17, 1942	(Melton (Benner (Kirchner
2,277,520	March 24, 1942	(Martin (Foss

Patent No.	Dated	Inventor/s
2,280,852	April 28, 1942	Robie
2,286,208	June 16, 1942	Kirchner
2,288,649	July 7, 1942	Robie
2,298,318	Oct. 13, 1942	Stratford
2,309,305	Jan. 26, 1943	(Dahlstrom (Horne
2,317,650	April 27, 1943	Stratford
2,320,139	May 25, 1943	Kirchner
2,321,422	June 8, 1943	Robie
2,324,426	July 13, 1943	Robie
2,324,427	July 13, 1943	Robie
2,327,218	Aug. 17, 1943	Robie
2,337,445	Dec. 21, 1943	Buell
2,339,500	Jan. 18, 1944	Martin
2,349,365	May 23, 1944	(Martin (Aust
2,350,861	June 6, 1944	(Argy (Foss
2,351,716	June 20, 1944	Smith
2,366,926	Jan. 9, 1945	Melton
2,378,025	June 12, 1945	(Melton (Thompson
2,402,183	June 18, 1946	(Rowe (Goepfert
2,410,506	Nov. 5, 1946	(Kirchner (Ball
2,412,599	Dec. 17, 1946	Buell
2,430,099	Nov. 4, 1947	Bradley
2,431,035	Nov. 18, 1947	(Goepfert (Buell
2,431,258	Nov. 18, 1947	Kirchner
2,445,807	July 27, 1948	(Summers (Corse
2,452,793	Nov. 2, 1948	Robie

Patent No.	Dated	Inventor/s
2,457,256	Dec. 28, 1948	(Melton (Benner (Kirchner
2,468,056	April 26, 1949	(Goepfert (Robie
2,490,231	Dec. 6, 1949	(Robie (Ball
2,497,469	Feb. 14, 1950	Robie

THE CARBORUNDUM COMPANY PATENT APPLICATIONS:

142,524	Feb. 4, 1950	(Foss (Buell
186,052	Sept. 21, 1950	(Goepfert (Canfield
345,596	July 15, 1940	(Tone (Martin
469,232	Dec. 16, 1942	Robie
559,429	Oct. 19, 1944	Robie
610,479 1/2	Aug. 13, 1945	(Melton (Benner (Kirchner
758,282	July 1, 1947	(Robie (Mahlman

MINNESOTA MINING AND MANUFACTURING COMPANY PATENTS:

2,013,925	Sept. 10, 1935	Okie
2,025,249	Dec. 24, 1935	Shuey
2,030,743	Feb. 11, 1936	Carlton
2,169,277	Aug. 15, 1939	Okie
2,176,942	Oct. 24, 1939	Redman
2,186,001	Jan. 9, 1940	Bartling
2,188,341	Jan. 30, 1940	(Elbel (Seebach
2,197,629	April 16, 1940	Bartling
2,202,765	May 28, 1940	Guth
2,219,263	Oct. 22, 1940	Okie
2,219,278	Oct. 22, 1940	Okie

Patent No.	Dated	Inventor/s
2,220,140	Nov. 5, 1940	Bartling
2,226,553	Dec. 31, 1940	Cross
2,230,934	Feb. 4, 1941	(Carlton (Oakes
2,236,597	April 1, 1941	Hatch
2,248,064	July 8, 1941	(Carlton (Miller
2,248,853	July 8, 1941	(Carlton (Miller
2,269,415	Jan. 6, 1942	(Netherly (Anderson (Cross
2,269,416	Jan. 6, 1942	(Netherly (Anderson (Cross
2,281,558	May 5, 1942	Cross
2,287,060	June 23, 1942	Oakes
2,307,461	Jan. 5, 1943	Guth
2,310,935	Feb. 16, 1943	(Carlton (Oakes
2,314,340	March 23, 1943	(Brown (Clarke
2,314,349	March 23, 1943	Guth
2,347,662	May 2, 1944	(Carlton (Oakes
2,357,335	Sept. 5, 1944	(Eugler (Oakes
2,357,348	Sept. 5, 1944	(Netherly (Cross (Anderson
2,357,350	Sept. 5, 1944	Oakes
2,357,823	Sept. 12, 1944	(Hatch (Clarke
2,358,313	Sept. 19, 1944	Brown
2,371,605	March 20, 1945	(Carlton (Miller
2,386,780	Oct. 16, 1945	Cross
2,391,731	Dec. 25, 1945	(Miller (Reidesel

Patent No.	Dated	Inventor/s
2,405,191	Aug. 6, 1946	Davis
2,414,474	Jan. 21, 1947	March
2,492,143	Dec. 27, 1949	(Gipple (Sindt

MINNESOTA MINING AND MANUFACTURING COMPANY PATENT APPLICATIONS:

433,028	March 2, 1942	Carlton
514,982	Dec. 20, 1943	Nestor
643,730	Jan. 26, 1946	(Frigstad (Clarke
757,929	June 28, 1947	Nestor
34,804	June 23, 1948	(Cross (Netherly
39,587	July 19, 1948	(McNamara (Kugler
40,424	July 23, 1948	(Frigstad (Dahl
43,528	Aug. 10, 1948	(Cross (Netherly
44,233	Aug. 13, 1948	Frigstad
60,772	Nov. 18, 1948	Liedl et al.
85,322	April 4, 1949	Heasley
89,155	April 22, 1949	Nestor
128,298	Nov. 19, 1949	(Alstad (Frigstad
128,299	Nov. 19, 1949	(Reidesel (Frigstad
131,072	Dec. 5, 1949	Reidesel
160,752	May 8, 1950	Kuzma et al.
169,756	June 22, 1950	(Cross (Netherly
172,102	July 5, 1950	Kuzma et al.

UNITED STATES v. BOSTON MARKET TERMINAL CO., ET AL.

Civil Action No. 6070

Year First Final Judgment Entered: 1951

Year Second Final Judgment Entered: 1953

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Boston Market Terminal Co., et al., U.S. District Court, D. Massachusetts, 1950-1951 Trade Cases ¶62,927, (Oct. 8, 1951)

United States v. Boston Market Terminal Co., et al.

1950-1951 Trade Cases ¶62,927. U.S. District Court, D. Massachusetts. No. 6070, Dated October 8, 1951.

Sherman Antitrust Act

Consent Decree—Transportation and Sale of Fruits and Vegetables—Restrictive Practices and Agreements in the Use of Terminal and Transportation Facilities Prohibited—Contingent Provision.—A government civil action charging a fruit and vegetable terminal, its members, and a railroad with restraining and monopolizing the transportation and sale, at the wholesale level, of fruits and vegetables is terminated by the entry of a consent decree. The terminal is enjoined from refusing to admit as a member any person desiring to act as a receiver, except upon the grounds that the applicant is not financially responsible or the facilities of the terminal are inadequate; enjoined from acting as a receiver or engaging in any business activity other than that presently conducted by it; and ordered to cancel a provision of a lease contract with the railroad and to make every reasonable effort to maintain space and facilities on property of the railroad adequate to accommodate additional members. The members are enjoined from entering into any agreement with any other defendant or any other person to use or refrain from using any specified type of transportation. The terminal and its members are enjoined from requiring any member to direct the shipment of any produce of such members to the terminal, restraining the right of any member to engage in any type of business activity outside the terminal, and requiring the payment by any member of any charge which is discriminatory in favor of one member against another; from entering into any understanding with any person not a member having the effect of fixing any of the rules or practices of the members of the terminal; from adopting any rules which have the effect of restricting the right of any member to receive, sell, or ship by truck; and from entering into any understanding with any person other than the defendants which has the effect of restraining the right of any member to use any type of transportation, giving any such person any control in the operations of the terminal or its members, and subjecting the terminal or its members to any charge for using or to refrain them from using any particular type of transportation.
A contingent provision provides that if a judgment is entered against the railroad, the terminal and its members are prohibited from entering into any agreement which prohibits receivers from bringing produce into the terminal by trucks.

For the plaintiff: H. G. Morison, Assistant Attorney General; Gerald J. McCarthy and Sigmund Timberg, Special Assistants to the Attorney General; William D. Kilgore, Jr. and Alfred M. Agress, Trial Attorneys; and George F. Garrity, United States Attorney.

For the defendants: George Alpert for Boston Terminal Market Co., Boston Tomato Co., Inc., Chapin Bros., Inc., Colley Woods Co., Community Produce Co., E. H. Kingman Co., Eaton and Eustis Co., Kingman and Hearty, Inc., Lord and Spencer Co., S. Strock and Co., Samuel J. Shallow Co., Sands Furber and Co., Inc., Sawyer and Co., Inc., Sweeney Lynes and Co., Inc., W. H. Butler and Co., Inc., Winn Ricker and Co., Inc., Henry E. Dodge, Joseph A. Novelline, Andrew D'Arrigo, Anthony J. DiMare, Dominic F. DiMare, Harvey J. Gustin, J. Ernest Gustin, Joseph E. Almeder, John Scalia, Dennis J. Halloran, Ralph L. Gustin, William F. Coady, Francis J. Reardon, Phillip Strazzulia, Frank Strazzulia, and Dominic Strazzulia; Hubert C. Thompson for Louis Sharaf; I. J. Silverman for Mercantile Produce Co.; John L. Saltonstall, Jr. for S. Albertson Co., Inc.; Amos L. Taylor for York and Whitney Co.; and John Finelli for Peter P. Volante.

Final Judgment

SWEENEY, District Judge: [*In full text*]Plaintiff, United States of America, having filed its Complaint herein on October 15, 1946, all the undersigned defendants having appeared and filed their answers to such Complaint

denying the substantive allegations thereof, and said defendants and plaintiff by their attorneys having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of law or fact herein and without admission by any of said defendants in respect of any such issue:

Now, therefore, before any testimony has been taken herein and without trial or adjudication of any issue of fact or law herein and upon the consent of all the parties signatory hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

[*Sherman Antitrust Act*]

This Court has jurisdiction of the parties signatory to this Final Judgment and over the subject matter hereof. The complaint states a cause of action against the undersigned defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

(A) "BMT" shall mean the defendant Boston Market Terminal Company;

(B) "New Haven" shall mean the defendant, the New York, New Haven & Hartford Railroad Company;

(C) "Defendant Receivers" shall mean those persons named in the Complaint herein as defendants and members of BMT;

(D) "Terminal" shall mean the physical structure and facilities used, owned or leased by BMT for the purpose of unloading, displaying and selling fruit and vegetable produce;

(E) "Receiver" shall mean any person to whom fruit or vegetable produce is forwarded for wholesale in private transactions;

(F) "Wholesale" shall mean the sale of fruit and vegetable produce by receivers in quantities of not less than ten packages to jobbers or retailers for resale;

(G) "Member" shall mean a receiver authorized to use the facilities of the Terminal;

(H) "Final Judgment against New Haven" shall mean a judgment terminating this action against defendant New Haven, not subject to further review;

(I) "Person" shall mean an individual, partnership, corporation, association or any other legal entity.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any undersigned defendant shall apply to such defendant, its successors and assigns, and to each of its officers, directors, agents, employees and to all other persons acting or claiming to act under, through or for such defendant.

IV

[*Restrictive Rules and Practices Prohibited*]

(A) Defendant BMT and defendant receivers are jointly and severally enjoined and restrained from adhering to, promulgating, adopting or enforcing any rule or regulation governing the use of the Terminal which is not in conformity with the terms of this Final Judgment;

(B) Defendant BMT and defendant receivers are jointly and severally enjoined and restrained from adhering to, promulgating, adopting or enforcing any rule or regulation governing the use of the Terminal or taking any action for the purpose or with the effect of:

(1) Requiring any member to consign or direct the shipment of any, some or all of the produce of such member to the Terminal or any other designated place or locality,

(2) Restraining in any manner the right of any member to engage in any type of business activity outside the Terminal, or to choose any place to engage therein,

(3) Requiring the payment by any member of any charge which is discriminatory in favor of one member against another.

[*Agreements With Third Persons Prohibited*]

(A) Defendant BMT and defendant receivers are jointly and severally enjoined and restrained from entering into, agreeing to or furthering any contract, agreement or understanding with any person not a member of the Terminal, or which does not do business at the Terminal, having the purpose or effect of regulating or fixing any of the rules, regulations or practices of members of the Terminal, except those required by governmental agency.

VI

[*Denial of Membership—Report to Attorney General*]

(A) Defendant BMT is hereby enjoined and restrained from refusing to admit as a member any person desiring to act as a receiver at the Terminal, except upon the ground that the applicant is not financially respinsible or that the facilities of the Terminal are inadequate.

(B) Defendant BMT is hereby ordered and directed to make every reasonable effort and take whatever steps are reasonable or appropriate to maintain (if economically provident) space and facilities on property of the defendant New Haven adequate to accommodate additional members.

(C)In the event that the defendant BMT denies membership to any applicant upon the ground that the facilities of the Terminal are inadequate to accommodate additional members, defendant BMT shall notify the Attorney General, stating the basis therefor. If the Attorney General is not satisfied as to such denial of membership, he shall so notify defendant BMT and defendant BMT shall present a petition to this Court, and evidence in support thereof, to establish that:

(1) Existing space and facilities will not in view of seasonal variations permit efficient operation if the application is granted, and

(2) the defendant BMT has complied with the foregoing requirements of subsection (B) above,

the Attorney General shall have the right to be heard, and both parties shall abide by the determination of the court therein.

VII

[*Acting as Receiver or in Other Business Activity Prohibited*]

Defendant BMT is hereby enjoined and restrained from directly or indirectly acting as a receiver of fruit or vegetable produce, or engaging in any business activity other than that presently conducted by defendant BMT in the operation and maintenance of the Terminal which is inconsistent with the provisions of this Final Judgment.

VIII

[*Cancellation of Provision in Lease Contract*]

Defendant BMT is ordered and directed to cancel forthwith paragraph 11 of the lease contract between BMT and New Haven, dated October 23, 1928, and defendant BMT is enjoined and restrained from entering into, performing, enforcing, adopting, adhering to, maintaining or furthering or claiming any rights under any contract, agreement, understanding, plan or program for the purpose of continuing or renewing said paragraph 11.

IX

[*Transportation Restrictions and Other Practices Prohibited*]

Defendant BMT and defendant receivers are jointly and severally enjoined and restrained from entering into, adhering to or claiming any rights under any contract, agreement or understanding with any person other than said defendants which has the purpose or effect of:

(A) Restraining in any manner the right of any member to use any type of transportation in receiving, selling or shipping fruit or vegetable produce, except as to transportation of samples;

(B) Giving any such person any control over or voice in the operations of BMT or its members while acting as receivers at the Terminal;

(C) Permitting any such person to use any of the display or selling space or platform space of the Terminal for purposes other than as a receiver of fruit or vegetable produce;

(D) Subjecting BMT or its members to any charge, directly or indirectly, for using or to refrain them from using any particular type of transportation to bring fruit and vegetable produce into the Terminal or to move it out of the Terminal, or requiring BMT or its members to order any particular routing in order to increase charges which may be made by such person. A routing required by a governmental agency is not construed to be in this subsection (D).

X

[*Restrictions on Use of Terminal and Type of Transportation Prohibited*]

(A) Defendant BMT and defendant receivers are jointly and severally hereby enjoined and restrained from promulgating, adopting or enforcing any rule or regulation governing the use of the Terminal, or taking any action for the purpose or with the effect of restricting the right of any member to receive, sell, or ship fruit and vegetable produce by truck, wagon or any other type of conveyance;

(B) Defendant receivers and each of them are hereby enjoined and restrained from entering into any contract, agreement, or understanding with any other defendant or any other person to use or refrain from using any specified type of transportation.

XI

[*Contingent Provision*]

During the period of time between entry of this Final Judgment and entry of a Final Judgment against New Haven, the provisions of Sections V, IX and X of this Judgment shall not be deemed to enjoin those actions, agreements or rules necessary to comply with the requirement of the said defendant New Haven that BMT and the defendant receivers may not bring fruit and vegetable produce into the Terminal by truck. Subsequent to such period of time, Sections V, IX and X shall be in full force and effect provided said Final Judgment against defendant New Haven enjoins New Haven from prohibiting the bringing of fruit and vegetable produce into the Terminal by trucks.

XII

[*Visitation and Compliance*]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice, upon written request of the Attorney General or an Assistant Attorney General, an on reasonable notice to the defendant made to its principal office, be permitted access during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Judgment, and subject to the reasonable convenience of said defendant, and without restraint or interference from it, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters, and, upon request, any defendant shall submit such reports as from time to time may be necessary to the enforcement of this Judgment. No information obtained by the means provided in this section XII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized

representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Judgment or as otherwise required by law.

XIII

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any of the parties to this 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 Judgment, for the modification or termination of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

It is expressly understood, in addition to the foregoing, that the plaintiff may, upon reasonable notice, at any time after entry of this Final Judgment, apply to this Court for modifications of any of the terms herein to prevent any discrimination among members resulting, directly or indirectly, from ownership or use of capital stock of defendant BMT.

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Boston Market Terminal Co., et al., U.S. District Court, D. Massachusetts, 1952-1953 Trade Cases ¶67,611, (Oct. 1, 1953)

United States v. Boston Market Terminal Co., et al. *

1952-1953 Trade Cases ¶67,611. U.S. District Court, D. Massachusetts. Civil Action No. 6070. Dated October 8, 1951, as modified by Order dated October 1, 1953. Case No. 872 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decree—Modification—Deletion of Contingent Provision—Addition of Permissive Provision —Transportation and Sale of Fruits and Vegetables.—A consent decree was modified by the deletion of a provision which provided that during the period of time between the entry of the decree and the entry of a decree against a railroad, specified provisions of the decree shall not be deemed to enjoin certain practices. It was further provided that subsequent to such period of time, the specified provisions shall be in full force and effect provided the decree against the railroad prohibits a certain practice.

A newly added provision provided, in substance, that nothing contained in a specified section of the decree shall be deemed to (1) prohibit the terminal and receivers from adopting and enforcing such reasonable rules and regulations as are necesary for the orderly receipt, unloading, and handling of fruit and vegetable produce delivered by truck, or from making reasonable charges for the unloading and handling of such produce; or (2) require the terminal or receivers to receive such produce by truck in the event that such receipt becomes economically improvident. The procedure for determining when such receipt becomes economically improvident was set forth. Also, it was provided that nothing contained in the decree shall be deemed to prohibit the terminal and receivers from adopting and enforcing, where reasonably necessary in connection with a *bona fide* labor dispute, a rule or vote requiring the cessation of the receipt or delivery of produce by truck, during the continuance of such labor dispute.

For the plaintiff: H. G. Morison, Assistant Attorney General; Gerald J. McCarthy and Sigmund Timberg, Special Assistants to the Attorney General; William D. Kilgore, Jr. and Alfred M. Agress, Trial Attorneys; and George F. Garrity, United States Attorney.

On the modification of October 1, 1953: Stanley N. Barnes, Assistant Attorney General; Gerald J. McCarthy, Special Assistant to the Attorney General; Anthony Julian, United States Attorney; and Alfred M. Agress, Trial Attorney.

For the defendants: George Alpert for Boston Market Terminal Co., Boston Tomato Co., Inc., Chapin Bros., Inc., Colley Woods Co., Community Produce Co., E. H. Kingman Co., Eaton and Eustis Co., Kingman and Hearty, Inc., Lord and Spencer Co., S. Strock and Co., Samuel J. Shallow Co., Sands Furber and Co., Inc., Sawyer and Co., Inc., Sweeney Lynes and Co., Inc., W. H. Butler and Co., Inc., Winn Ricker and Co., Inc., Henry E. Dodge, Joseph A. Novelline, Andrew D'Arrigo, Anthony J. Dimare, Dominic F. Dimare, Harvey J. Gustin, J. Ernest Gustin, Joseph E. Almeder, John Scalia, Dennis J. Halloran, Ralph L. Gustin, William F. Coady, Francis J. Reardon, Phillip Strazzulla, Frank Strazzulla, and Dominic Strazzulla; Hubert C. Thompson for Louis Sharaf; I. J. Silverman for Mercantile Produce Co.; John L. Saltonstall, Jr., for S. Albertson Co., Inc.; Amos L. Taylor for York and Whitney Co.; and John Finelli for Peter P. Volante.

On the modification of October 1, 1953: George Alpert, Hubert C. Thompson, and Amos L. Taylor represented the same defendants as indicated in the above listing. Gerald T. O'Hara for S. Albertson Co., Inc. The order modifying the decree was signed for the Mercantile Produce Co. by its President, Anthony J. Sarno.

Modifying the consent decree entered in the U. S. District Court, District of Massachusetts, 1950-1951 Trade Cases ¶ 62,927.

Final Judgment

SWEENEY, District Judge: [*In full text*] Plaintiff, United States of America, having filed its Complaint herein on October 15, 1946, all the undersigned defendants having appeared and filed their answers to such Complaint denying the substantive allegations thereof, and said defendants and plaintiff by their attorneys having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of law or fact herein and without admission by any of said defendants in respect of any such issue:

Now, therefore, before any testimony has been taken herein and without trial or adjudication of any issue of fact or law herein and upon the consent of all the parties signatory hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

[*Sherman Antitrust Act*]

This Court has jurisdiction of the parties signatory to this Final Judgment and over the subject matter hereof. The complaint states a cause of action against the undersigned defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled “An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies,” commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

(A) “BMT” shall mean the defendant Boston Market Terminal Company;

(B) “New Haven” shall mean the defendant, the New York, New Haven & Hartford Railroad Company;

(C) “Defendant Receivers” shall mean those persons named in the Complaint herein as defendants and members of BMT;

(D) “Terminal” shall mean the physical structure and facilities used, owned or leased by BMT for the purpose of unloading, displaying and selling fruit and vegetable produce;

(E) “Receiver” shall mean any person to whom fruit or vegetable produce is forwarded for wholesale in private transactions;

(F) “Wholesale” shall mean the sale of fruit and vegetable produce by receivers in quantities of not less than ten packages to jobbers or retailers for resale;

(G) “Member” shall mean a receiver authorized to use the facilities of the Terminal;

(H) “Final Judgment against New Haven” shall mean a judgment terminating this action against defendant New Haven, not subject to further review;

(I) “Person” shall mean an individual, partnership, corporation, association or any other legal entity.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any undersigned defendant shall apply to such defendant, its successors and assigns, and to each of its officers, directors, agents, employees and to all other persons acting or claiming to act under, through or for such defendant.

IV

[*Restrictive Rules and Practices Prohibited*]

(A) Defendant BMT and defendant receivers are jointly and severally enjoined and restrained from adhering to, promulgating, adopting or enforcing any rule or regulation governing the use of the Terminal which is not in conformity with the terms of this Final Judgment;

(B) Defendant BMT and defendant receivers are jointly and severally enjoined and restrained from adhering to, promulgating, adopting or enforcing any rule or regulation governing the use of the Terminal or taking any action for the purpose or with the effect of:

(1) Requiring any member to consign or direct the shipment of any, some or all of the produce of such member to the Terminal or any other designated place or locality,

(2) Restraining in any manner the right of any member to engage in any type of business activity outside the Terminal, or to choose any place to engage therein,

(3) Requiring the payment by any member of any charge which is discriminatory in favor of one member against another.

[V]

[*Agreements With Third Persons Prohibited*]

(A) Defendant BMT and defendant receivers are jointly and severally enjoined and restrained from entering into, agreeing to or furthering any contract, agreement or understanding with any person not a member of the Terminal, or which does not do business at the Terminal, having the purpose or effect of regulating or fixing any of the rules, regulations or practices of members of the Terminal, except those required by governmental agency.

VI

[*Denial of Membership—Report to Attorney General*]

(A) Defendant BMT is hereby enjoined and restrained from refusing to admit as a member any person desiring to act as a receiver at the Terminal, except upon the ground that the applicant is not financially responsible or that the facilities of the Terminal are inadequate.

(B) Defendant BMT is hereby ordered and directed to make every reasonable effort and take whatever steps are reasonable or appropriate to maintain (if economically provident) space and facilities on property of the defendant New Haven adequate to accommodate additional members.

(C) In the event that the defendant BMT denies membership to any applicant upon the ground that the facilities of the Terminal are inadequate to accommodate additional members, defendant BMT shall notify the Attorney General, stating the basis therefor. If the Attorney General is not satisfied as to such denial of membership, he shall so notify defendant BMT and defendant BMT shall present a petition to this Court, and evidence in support thereof, to establish that:

(1) Existing space and facilities will not in view of seasonal variations permit efficient operation if the application is granted, and

(2) the defendant BMT has complied with the foregoing requirements of subsection (B) above,

the Attorney General shall have the right to be heard, and both parties shall abide by the determination of the court therein.

VII

[*Acting as Receiver or in Other Business Activity Prohibited*]

Defendant BMT is hereby enjoined and restrained from directly or indirectly acting as a receiver of fruit or vegetable produce, or engaging in any business activity other than that presently conducted by defendant

BMT in the operation and maintenance of the Terminal which is inconsistent with the provisions of this Final Judgment.

VIII

[*Cancellation of Provision in Lease Contract*]

Defendant BMT is ordered and directed to cancel forthwith paragraph 11 of the lease contract between BMT and New Haven, dated October 23, 1928, and defendant BMT is enjoined and restrained from entering into, performing, enforcing, adopting, adhering to, maintaining or furthering or claiming any rights under any contract, agreement, understanding, plan or program for the purpose of continuing or renewing said paragraph 11.

IX

[*Transportation Restrictions and Other Practices Prohibited*]

Defendant BMT and defendant receivers are jointly and severally enjoined and restrained from entering into, adhering to or claiming any rights under any contract, agreement or understanding with any person other than said defendants which has the purpose or effect of:

(A) Restraining in any manner the right of any member to use any type of transportation in receiving, selling or shipping fruit or vegetable produce, except as to transportation of samples;

(B) Giving any such person any control over or voice in the operations of BMT or its members while acting as receivers at the Terminal;

(C) Permitting any such person to use any of the display or selling space or platform space of the Terminal for purposes other than as a receiver of fruit or vegetable produce;

(D) Subjecting BMT or its members to any charge, directly or indirectly, for using or to refrain them from using any particular type of transportation to bring fruit and vegetable produce into the Terminal or to move it out of the Terminal, or requiring BMT or its members to order any particular routing in order to increase charges which may be made by such person. A routing required by a governmental agency is not construed to be in this subsection (D).

X

[*Restrictions on Use of Terminal and Type of Transportation Prohibited*]

(A) Defendant BMT and defendant receivers are jointly and severally hereby enjoined and restrained from promulgating, adopting or enforcing any rule or regulation governing the use of the Terminal, or taking any action for the purpose or with the effect of restricting the right of any member to receive, sell, or ship fruit and vegetable produce by truck, wagon or any other type of conveyance;

(B) Defendant receivers and each of them are hereby enjoined and restrained from entering into any contract, agreement, or understanding with any other defendant or any other person to use or refrain from using any specified type of transportation.

XI [*

(A) Nothing in the foregoing provisions of Section X shall be deemed to:

(1) Prohibit defendant BMT and defendant receivers from adopting and enforcing such reasonable rules and regulations as are necessary for the orderly receipt, unloading and handling of fruit and vegetable produce delivered by truck, or from making reasonable charges for the unloading and handling of such fruit and vegetable produce;

(2) Require defendant BMT or defendant receivers to receive fruit and vegetable produce by truck in the event that such receipt becomes economically improvident, provided, however, in any such event

defendant BMT shall notify the Attorney General thereof. If the Attorney General is not satisfied that receipts by truck have become economically improvident he shall so notify the defendant BMT, and the defendant BMT shall present a petition to this Court and evidence in support thereof to establish that the business of receiving fruit and produce by truck has become economically improvident to it.

(B) Nothing in this Final Judgment shall be deemed to prohibit defendant BMT and defendant receivers from adopting and enforcing, where reasonably necessary in connection with a *bona fide* labor dispute, a rule or vote requiring the cessation of the receipt or delivery of fruit and vegetable produce by truck, during the continuance of such labor dispute.

XII

[*Visitation and Compliance*]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice, upon written request of the Attorney General or an Assistant Attorney General, and on reasonable notice to the defendant made to its principal office, be permitted access during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Judgment, and subject to the reasonable convenience of said defendant, and without restraint or interference from it, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters, and, upon request, any defendant shall submit such reports as from time to time may be necessary to the enforcement of this Judgment. No information obtained by the means provided in this section XII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Judgment or as otherwise required by law.

XIII

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any of the parties to this 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 Judgment, for the modification or termination of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

It is expressly understood, in addition to the foregoing, that the plaintiff may, upon reasonable notice, at any time after entry of this Final Judgment, apply to this Court for modifications of any of the terms herein to prevent any discrimination among members resulting, directly or indirectly, from ownership or use of capital stock of defendant BMT.

Footnotes

* [* Order of Dismissal, dated October 1, 1953, William T. McCarthy, District Judge, provided as follows: “In accordance with Stipulation of Dismissal, the Complaint of the United States of America against the defendant New York, New Haven & Hartford Railroad Company in the above-entitled and numbered action is dismissed without prejudice.”]

* [* By an order dated October 1, 1953, William T. McCarthy, District Judge, Section XI was stricken in its entirety, and in place of the section, the above Section XI was inserted. It was further provided that the order shall in no wise affect any other provisions of the decree.]

UNITED STATES v. H. P. HOOD & SONS, INC., ET AL.

Civil Action No. 7866

Year Final Judgment Entered: 1952

Year Order Modifying Judgment Entered: 1973

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. H. P. Hood&Sons, Inc., et al., U.S. District Court, D. Massachusetts, 1952-1953 Trade Cases ¶67,404, (Dec. 31, 1952)

United States v. H. P. Hood&Sons, Inc., et al.

1952-1953 Trade Cases ¶67,404. U.S. District Court, D. Massachusetts. Civil Action No. 7866. Dated December 31, 1952. Case No. 948 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decrees—Specific Relief—Disposition of Stations—Practices Enjoined—Re-Acquisition of Interests and Use of Plants—Milk.—A defendant, engaged in the business of purchasing milk from producers and processing and selling such milk to business establishments and consumers, is ordered by a consent decree to dispose of all its interest in the country milk receiving stations owned by it in specified cities and towns. Such dispositions shall be completed within one year and, if by sale, dispositions shall be to a party other than a defendant in the suit, or one owned, controlled by, or affiliated with, or related to any such defendant. Such sale shall be subject to the approval of the court upon reasonable notice to the Attorney General.

The defendant and its president are enjoined from (1) re-acquiring the country milk receiving stations in a town heretofore sold on a specified date, and from (2) renewing a specified lease of a country milk receiving station upon its termination. Such defendants are enjoined from using specified milk plants owned by the defendant-company as country milk receiving stations, except such plants may be used for the purpose of receiving milk to be distributed locally; and from using a specified milk plant owned by the defendant-company as a country milk receiving station for a period of three years, except such defendants may ship fluid milk therefrom to a specified marketing area to the extent that such shipments are necessary to retain said plant as a “regulated plant” within the meaning of a specified Federal Marketing order, or to the extent that said shipments are ordered or requested by the Market Administration under said order.

Consent Decrees—Practices Enjoined—Acquisitions.—A defendant and its president, engaged in the business of purchasing milk from producers and processing and selling such milk to business establishments and consumers, are enjoined by a consent decree from acquiring and holding ownership or control of the business, physical assets (except milk or milk products bought in or incidental to the ordinary course of business), or good will, or any part thereof, or any capital stock or securities, of another such defendant. Such other defendant and its president likewise are enjoined from acquiring and from holding such interests of the first named defendant.

The decree further enjoins the defendant and its president from acquiring, and from holding, for. a period of three years, ownership or control of the business, good will or physical assets, or any part thereof, in a specified area, of any handler distributing milk in such area, or the capital stock or securities of any such handler.

Consent Decrees—Practices Enjoined—Performance of Contracts—Agreements Not to Compete.—Defendants, engaged in the business of purchasing milk from producers and processing and selling such milk to business establishments and consumers, are enjoined by a consent decree from the further performance of specified contracts and from adopting any course of conduct for the purpose of reviving such contracts; and from enforcing any contract or understanding made whereby any handler undertook or agreed not to compete with a named defendant in the distribution of milk.

For the plaintiff: Newell A. Clapp, Acting Assistant Attorney General; Edwin H. Pewett; George F. Garrity, United States Attorney; and Gerald J. McCarthy, Robert L. Grant, John J. Galgay, Alfred Karsted, and W. D. Kilgore, Jr., Attorneys for the United States.

For the defendants: Robert G. Dodge; Charles B.Reilly, and Ropes, Gray, Best, Coolidge and Rugg for H. P. Hood&Sons, Inc. and Harvey P. Hood; and E. L. Twomey for Whiting Milk Co. and Alfred A. Stickler.

Final Judgment

[*Consent to Entry of Decree*]

FORD, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on September 27, 1948; and the parties hereto by their attorneys having severally consented to the entry of this Final Judgment herein without trial or adjudication of any issue of fact or law herein, and without admission by any party in respect of any such issue:

Now, therefore, before any testimony has been taken herein, and 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

[*Sherman Act Cause of Action*]

The Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a cause of action against the defendants, and each of them, under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” as amended, commonly known as the Sherman Act (15 U. S. C, Secs. 12).

II

[*Definitions*]

As used in this Final Judgment:

(A) “Milk” shall mean cows' milk produced for human consumption in the form of fluid milk;

(B) “Producer” shall mean any person owning or possessing one or more cows and selling a part or all of the milk produced by such cows to handlers;

(C) “Handler” shall mean any person engaged in the business of purchasing milk from producers and distributing such milk to retailers and consumers;

(D) “County milk receiving station” shall mean the land, buildings, facilities and equipment maintained by a handler, in the area of milk production and outside the area of resale to consumers, at which milk is received directly by the handler from producers' farms and which is used only for receiving, weighing, sampling, testing, grading, pooling and transferring the milk for shipment in bulk to a marketing area and not for processing or manufacturing the milk;

(E) “Greater Boston, Massachusetts, marketing area” shall mean the territory included within the boundary lines of the following Massachusetts cities and towns: Arlington, Belmont, Beverly, Boston, Braintree, Brookline, Cambridge, Chelsea, Dedham, Everett, Lexington, Lynn, Maiden, Marblehead, Medford, Melrose, Milton, Nahant, Needham, Newton, Peabody, Quincy, ‘Reading, Revere, Salem, Saugus, Somerville, Stoheharn, Swampscott, Wakefield, Walt-ham, Watertown, Wellesley, Weymouth, Winchester, Winthrop and Woburn;

(F) “Hood” shall mean the defendant H. P. Hood&Sons, Inc., a corporation organized and existing under the laws of the Commonwealth of Massachusetts and having its principal place of business in the City of Boston, Massachusetts;

(G) “Whiting” shall mean Whiting Milk Company, a corporation organized and existing under the laws of the Common wealth of Massachusetts and having its principal place of business in the City of Boston, Massachusetts;

(H) “Person” shall mean an individual, partnership, firm, corporation, association, trustee or other business or legal entity.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant and each of its officers, directors and subsidiaries, and to each of its or his agents, employees, successors and assigns, and to each person acting or claiming to act under, through or for them or any of them.

IV

[*Performance of Contracts Prohibited*]

Defendants are each enjoined and restrained from the further performance of any of the following contracts, agreements, arrangements or understandings (which have heretofore been cancelled) and from adopting, adhering to or furthering any course of conduct for the purpose or with the effect of maintaining, reviving or reinstating any such contracts, agreements, arrangements or understandings:

(A) Agreement of February 14, 1946, between defendants Harvey P. Hood, Alfred A. Stickler, and Hood, and The First National Bank of Boston, which is set forth as Exhibit A of the complaint herein;

(B) Agreement of January 22, 1947, between defendant Alfred A. Stickler, Myrtle L. Stickler, his wife, and Marion Jule Stickler, his daughter, and Hood, which is set forth as Exhibit B of the complaint herein.

V

[*Disposition of Stations Ordered— Use of Plants Prohibited*]

(A) Defendant Hood is hereby ordered and directed to dispose of all its interest in the country milk receiving stations owned by it in Harmony, Maine, New Sharon, Maine, Island Pond, Vermont and Derby, Vermont. The said dispositions shall be completed within one year from the date of the entry of this Final Judgment and, if by sale, shall be to a party other than a defendant herein, or one owned, controlled by, or affiliated with, or related to any such defendant and such sale shall be subject to the approval of this Court upon reasonable notice to the Attorney General.

(B) Defendants Hood and Harvey P. Hood are each enjoined and restrained (1) from re-acquiring, directly or indirectly, the country milk receiving station at Livermore Falls, Maine, heretofore sold by defendant Hood on January 21, 1947; and (2) from renewing, upon its termination on April 1, 1954, the lease from St. Lawrence Co-operative Dairies, Inc. to defendant Hood of the country milk receiving station at Norfolk, New York, and from continuing to perform under or adhere to said lease after such termination.

(C) Defendants Hood and Harvey P. Hood are each enjoined and restrained from using the milk plants owned by defendant Hood in Fryeburg, Maine and Burlington, Vermont as country milk receiving stations, provided, however, that this shall not prohibit the use by said defendants of said plants, or either of them,for the purpose of receiving milk to be distributed locally.

(D) Defendants Hood and Harvey P. Hood are each enjoined and restrained, for a period of three years from the date of entry of this Final Judgment, from using the milk plant owned by defendant Hood at Newport, Maine, as a country milk receiving station, provided, however, that defendants, may ship fluid milk therefrom to the Greater Boston, Massachusetts, marketing area to the extent that such shipments are necessary to retain said plant as a “regulated plant” within the meaning of Federal Marketing Order No. 4, Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area, as amended, or to the extent that said shipments are ordered or requested by the Market Administrator under said Order.

VI

[*Contracts and Acquisitions Prohibited*]

Defendants Hood and Harvey P. Hood are each enjoined and restrained:

(A) From enforcing any contract, covenant, agreement, understanding or arrangements heretofore made whereby any handler undertook or agreed not to compete with Hood in the distribution of milk;

(B) From acquiring, directly or indirectly, by purchase, merger, consolidation or otherwise, and from holding or exercising. after such acquisition, ownership or control of the business, physical assets (except milk or milk products bought in or incidental to the ordinary course of business), or good will, or any part thereof, or any capital stock or securities, of defendant Whiting;

(C) For a period of three years from the date of entry of this Final Judgment from acquiring, directly or indirectly, by purchase, merger, consolidation or other wise, and from holding or exercising after such acquisition, ownership, or control of the business, good will or physical assets, or any part thereof, in the Greater Boston,Massachusetts, marketing area or in or immediately adjacent to the cities of Portland, Maine, Fall River, Massachusetts, Springfield, Massachusetts, or Providence, Rhode Island, of any handler distributing milk in said area or in any of said cities, or the capital stock or securities of any such handler.

VII

Defendants Whiting and Alfred A. Stickler are each enjoined and restrained from acquiring, directly or indirectly, by purchase, merger, consolidation or otherwise; and from holding or exercising after such acquisition, ownership or control of the business, physical assets (except milk or milk products bought in or incidental to the ordinary course of business), or good will, or any part thereof, or any capital stock or securities, of defendant Hood.

VIII

[*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 in charge of the Antitrust Division and on notice to any defendant, made to such defendant at its principal office, be permitted (A) reasonable access, during the office hours of such defendant, to. all books, ledgers accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, relating to any of the matters, contained in this judgment; and (B) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of such 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, on reasonable notice to any defendant herein made to its principal office, such defendant shall submit such reports in writing as may from time to time be necessary to the enforcement of this Final Judgment. Information obtained punsuant to the provisions of this Section VIII shall not 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 to which the United States is a party, or as otherwise required by law.

IX

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

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	CIVIL ACTION NO. 7866
	)	
H. P. HOOD & SONS, INC., et al.	)	

ORDER MODIFYING JUDGMENT

A Final Judgment was entered in this action on December 31, 1952, which inter alia enjoined H. P. Hood & Sons, Inc. now H. P. Hood Inc. (Hood) from acquiring certain properties of the Whiting Milk Company.

Jurisdiction in these proceedings has been 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 orders and directions as may be necessary or appropriate for the construction, modification . . . of this Final Judgment," and for other causes not herein pertinent.

Hood and Whiting Milk Company, Inc. (Whiting), the purchaser in July 1966 of substantially all of the assets of the business of defendant Whiting Milk Company, appearing through their respective counsel now move that this Court modify the Final Judgment to permit Hood to purchase, lease or otherwise acquire a portion or all of the physical assets employed by Whiting in the course of its operations which are owned or were leased by Whiting.

Whiting has represented to this Court that as of February 17, 1973 it terminated its business because of continuing severe economic losses. It now seeks to make an orderly disposition of its assets and to settle its liabilities, and to minimize its losses to the greatest extent

possible. In order to accomplish this result consideration should be given to all prospective purchasers including Hood. Included among the properties sought to be disposed of are certain chattels which are owned by Whiting's parent company Dairylea Cooperative, Inc. (Dairylea), a New York agricultural cooperative corporation, and which were under lease to Whiting. Portions of these chattels on termination of Whiting's operations have no intended or residual use by Dairylea. The properties in question are non-unique with respect to milk handling and processing but because of their proximity and availability may be of interest to Hood.

Hood has represented to the Court that it is interested in the aforementioned properties and but for the restraining order now outstanding in the Final Judgment would seek to purchase or acquire a portion or all of said properties.

Therefore it appearing to the Court that, were Hood a prospective purchaser, Whiting and Dairylea would be afforded an opportunity to obtain the most financially advantageous disposition of the subject assets that they can reasonably expect.

And it further appearing to the Court that the circumstances underlying the Final Judgment have changed and no longer require continuance of Section VI(B) of that Judgment in full force and effect, and all parties or their successors having indicated their consent to the entry of this ORDER, it is

ORDERED, ADJUDGED AND DECREED as follows:

The Final Judgment entered in this action on December 31, 1972 is modified to permit Hood to purchase, lease or otherwise acquire a portion or all of the physical assets (including both real and personal property) owned or leased by Whiting in the course of its former operations.

Dated: April 2, 1973

United States District Judge for the District of Massachusetts

We consent to the making and entry of the foregoing ORDER:

For the Plaintiff,
UNITED STATES OF AMERICA

Matthew E. Jaffe

Attorneys, Department of Justice

I hereby attest and certify on 4/27/73, that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

GEORGE F. McGRATH
CLERK, U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BY: Deputy

For the Defendant,
H. P. HOOD INC.

George H. Lewald

Ropes & Gray 225 Franklin St Boston, Mass.

For WHITING MILK COMPANY, INC.

Edward D. Strayer

Goodwin Procter & Hoar, 28 State St. Boston, Mass.

UNITED STATES v. UNITED SHOE MACHINERY CORPORATION

Civil Action No. 7198

Year Final Decree Entered: 1953

Year Supplemental Judgment Entered: 1969

Year First Order Entered: 1975

Year Second Order Entered: 1975

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff, v. UNITED SHOE MACHINERY CORPORATION, Defendant.	)	Civil Action No. 7198

FINAL DECREE

February 18, 1953

This cause having come on to be heard, and the Court having fully considered the evidence and arguments, and having filed its Findings of Fact, and Opinions on Violation and Remedy, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. As used in this Decree:

"A Day" means six months after entry of this Decree, unless, within the period allowed by law, an appeal shall be taken to the Supreme Court of the United States, in which event "A Day" means six months after that Court sends its mandate to this Court.

"B Day" means three months after "A Day".

"C Day" means ten years after "A Day".

"Shoe machinery" means all types of shoe machinery except dry thread sewing machinery.

2. Defendant violated Sec. 2 of the Sherman Act, 15 U.S.C. Sec. 2, by monopolizing the shoe machinery trade and commerce among the several States. Defendant violated the same section of the law by monopolizing that part of the interstate trade and commerce in tacks, nails, eyelets, grommets and hooks, which is concerned with supplying the demand for those products by shoe factories within the United States. The other charges of violation of the Sherman Act set forth in the complaint are dismissed with prejudice.

3. Defendant, its subsidiaries, and each of their directors, officers, agents and employees and all persons acting for them are hereby enjoined and restrained from further monopolizing those parts of the trade or commerce among the several States which have been referred to in the previous paragraph.

4. All leases made by defendant which include either a ten-year term, or a full capacity clause, or deferred payment charges, and all leases under which during the life of the leases defendant has rendered repair and other service without making them subject to separate, segregated charges, are declared to have been means whereby defendant monopolized the shoe machinery market.

5. After A Day, defendant shall not offer for lease any machiney type, unless it also offers such type for sale. Defendant, if it offers any machine type for lease, shall set such terms for leasing that machine as do not make it substantially more advantageous for a shoe factory to lease rather than to buy a machine. Defendant shall not be required to secure advance judicial approval of the financial terms in sales or lease contracts. But if any lease or contract substantially discriminates in favor of leasing, plaintiff may apply to this Court for further specific relief.

6. Before A Day, defendant if it desires to continue to lease any shoe machinery, shall file in this Court standard forms of lease that meet the following directions.

a. The maximum term for either an original or renewal lease shall be five years.

b. Provision shall be made that a lessee shall have the right to return the leased machine at any time after one year, on paying all rentals already accrued, the shipping charges, the cost of broken and missing parts, and in addition, no more than the

equivalent of the monthly (not the unit) payments which would have been due had the lessee kept the machine for an additional three months. The lease may provide for return on terms more favorable to the lessee if the return is due exclusively to defects in the machine, or customer dissatisfaction after a trial period, or customer abandonment of operations. But no return charge shall discriminate on account of the substitution of a competitive machine.

c. The new forms of lease shall not include any return or deferred payment charges other than those specified in the previous paragraph. But they may include provisions for initial charges and deposits.

d. Defendant may, if it sees fit, use a unit charge in addition to, or as an alternative to, monthly rental charges. But such unit charges shall have no minimum.

e. After A Day, defendant shall not include within any lease, whether unit charges are used or not, a full capacity clause, or any equivalent.

f. After A Day, defendant shall not include either in the terms of, or the application of, any lease any plan similar to the right of deduction fund which it has heretofore established, or the 1935 Plan which it adopted for lessees desiring to return machinery.

g. Defendant shall not be obliged to present to the Court a statement of what will be the amount of, or method of calculating, its rentals, its charges, deposits, or like financial terms. But, after A Day, in preparing, executing, or applying its leases, defendant shall not discriminate between customers of the same general class, except that defendant may make different deposit provisions for different persons, upon an individaul basis.

h. Defendant may propose various uniform lease forms particularly adapted to peak-load or experimental installations. Such special forms shall comply with the preceding paragraphs.

i. Each lease shall expressly state what services and privileges it covers. After A Day, defendant may render, without separate charges, instruction services, installation services, repair services or other services, during a period of 30 days after the machine has been first installed. After the 30 day period, defendant shall not provide any services for the machine covered by the lease, except upon the basis of separate and reasonable charges for the services rendered.

j. Defendant shall not vary the forms of lease submitted to the Court, without the Court's approval. This provision shall not be interpreted as requiring defendant to secure advance judicial approval of the dollars and cents figures used in setting monthly rental charges, unit charges, deposits or other specifically fiscal aspects of the lease.

7. Except for good cause, defendant shall not refuse a prospective customer's request to lease or buy a machine, of a type which defendant is currently offering for commercial lease or sale. In the event that a prospective customer is refused the privilege of buying or leasing a machine, he shall have the right to intervene in this case in this Court to have his controversy adjudicated, and in such proceedings, defendant shall have the burden of proving that there is good cause for refusing to make the sale or lease.

8. Before A Day, defendant shall present to the Court, if it desires to continue to render repair and other services, a tariff of the charges which it proposes to apply for rendering service. This service tariff shall have uniform charges for leased and sold machines. It may take into account travel time as well as time used in making repairs or

rendering other services. It may recognize any economy defendant actually realizes in its business on a quantity basis, or any other economies in servicing customers of a particular type, or customers who commit themselves for particular periods of time, in any event, however, not exceeding twelve months at a time. Neither the tariff nor this Decree shall be interpreted as requiring defendant to render services in connection with machines, or parts, not of its manufacture. The tariff shall provide that parts shall be made available on the same terms to customers receiving services, customers not receiving services, and any other person; provided, however, that defendant shall not be obliged to furnish parts to a customer to help him construct an entire new machine out of assembled parts.

9. Before B Day, defendant after conferring with plaintiff, with representatives of The National Shoe Manufacturers Association, and with any lesses who previous to A Day have intervened in these proceedings, shall present to the Court a detailed plan for terminating all outstanding leases. This plan shall make appropriate non-discriminatory financial provisions for defendant's rights and each lessee's rights in connection with the termination of existing leases. It shall also make non-discriminatory provisions under which, within a reasonable period of time, lessees under leases existing before B Day may buy or lease those machines which have been installed. Such provisions shall be as least as favorable to shoe factories as the provisions in the new lease and sale forms.

10. Before B Day, defendant shall submit a plan for disposing of such parts of its business and the business of its subsidiaries as are concerned with the manufacture or distribution of tacks, nails, eyelets, grommets and hooks.

11. Beginning three years after A Day, defendant shall not distribute any supplies not manufactured by itself or a corporation in which it owns at least 20% of the Common Stock, provided that this shall not apply to supplies acquired by United before then.

12. Defendant shall grant to any applicant, except a deliberate infringer, a non-exclusive license under any or all patents now held by defendant at a uniform, reasonable royalty. Such licenses shall, however, be limited to the manufacture, use and sale of shoe machinery, shoe supplies, and like products used in shoe factories. Such licenses may contain a provision for the inspection of the records of the licensee by an independent auditor who shall report to the licensor only the amount of royalty due and payable and no other information. Such licenses shall contain a provision for imparting in writing, at a reasonable charge by the licensor to the licensee, the methods and processes used by defendant as of the date of this Decree in its commercial practices under the patents licensed. This Court reserves jurisdiction to pass upon the reasonableness of any royalty or charge herein directed to be reasonable. Nothing in this paragraph applies to patents issued upon the basis of applications filed later than A Day.

13. After A Day, defendant shall not acquire from any person not currently in its employ any patent unless it files in this Court an agreement to license that patent on the same terms provided in the previous paragraph with respect to patents it now owns.

14. After A Day, defendant shall not acquire any exclusive license under any patent.

15. After A Day, defendant shall not acquire any shoe machinery business, any business manufacturing or distributing supplies for shoe factories, or any part thereof, or any stock therein, if the transaction involves more than $10,000 or its equivalent.

16. After A Day, defendant shall not buy or acquire any second-hand shoe machinery manufactured by it or any other person except for experimental or like purposes. The total acquisitions under this paragraph in any one year shall not represent an expenditure of more than $25,000 or its equivalent. Nothing in this paragraph shall be construed to apply to such rights as defendant may have to repossess, or to acquire

at public auction, machines which it has conditionally sold and which the purchaser has lost the right to retain.

17. After A Day, defendant shall not continue any plan for quantity discounts in connection with any of its supplies, unless such discount system complies with all applicable laws.

18. On C Day, both parties shall report to this Court the effect of this Decree, and may then petition for its modification, in view of its effects in establishing workable competition. If either party takes advantage of this paragraph by filing a petition, each such petition shall be accompanied by affidavits setting forth the then structure of the shoe machinery market and defendant's power within that market.

19. Defendant shall pay the costs of this case.

20. Three months before A Day, defendant shall send to each of its then lessees a written copy of this decree.

21. Nothing in this Decree shall impose any obligation on defendant until three months before A Day.

22. Nothing in this Decree shall impose any obligation on defendant or its subsidiaries to do or omit any action outside the United States.

23. Jurisdiction of this cause is retained for the purpose of enabling either of the parties to apply to this Court at any time for such further orders and directions as may be appropriate for the correction, construction or carrying out of this Decree and to set aside the Decree and take further proceedings if future developments justify that course in the appropriate enforcement of the Antitrust Act.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA Plaintiff, v. UNITED SHOE MACHINERY CORPORATION Defendant.	)	Civil Action No. 7198

SUPPLEMENTAL JUDGMENT, February 20, 1969,
as modified by the COURT, February 24, 1969.

This Court having fully considered the opinion dated May 20, 1968 of the Supreme Court of the United States in this case and the parties having consented to the entry of this Supplemental Judgment (Judgment) herein, without this Judgment constituting an adjudication or finding on any issue of fact or law in this case and without this Judgment constituting evidence or admission by any party with respect to any such issue, and this Court being of the view that this Judgment satisfies the mandate of the Supreme Court,

Now, therefore, without any such adjudication or finding, and on consent of the parties hereto, it is hereby

Ordered, Adjudged And Decreed:

I

For the purposes of this Judgment:

(A) "Shoe machine model" shall mean shoe machines to which defendant has given or gives a separate model designation.

(B) "Productive assets" for a shoe machine model shall mean the jigs, dies and fixtures principally used to manufacture the model; copies of the manufacturing and assembling data for such model; copies of the know-how, designs and processes used in the manufacture and assembly of such model; and such similar assets as are necessary to manufacture and assemble the model.

(C) "Shoe machine assets" for a shoe machine model shall mean the inventory and entire leased population of the model, the productive assets for such model, and the inventory of parts allocable for use in or with such model.

(D) "Unique shoe machine product" with respect to a shoe machine model shall mean a product which is essential to the operation of the model and which is not generally available from a source other than defendant.

(E) "Shoe machine patent" shall mean any United States Letters patent, covering a shoe machine, a shoe machine part, or a design or process for the manufacture of a shoe machine or shoe machine part.

(F) "Unique shoe machine product patent" shall mean any United States Letters patent, covering a unique shoe machine product or a design or process for the manufacture of a unique shoe machine product.

(G) "Base year" shall mean the year ended February 29, 1968.

(H) "Prior Decree" shall mean the Final Decree dated February 18, 1953 of this Court in this case, and orders entered thereunder.

(I) "Shoe machinery market" shall mean the market for shoe machinery used in shoe factories in the United States in the manufacture or repair of footwear, including vulcanized rubber footwear, but shall not include dry thread sewing machines.

(J) "Commercial basis" shall mean the selling or leasing or otherwise placing of any shoe machine model in any shoe factory, excluding, however, a total of two or less experimental machines of any one model for which no charge is made.

(K) "Purchaser" as used in Section III shall mean any person who acquires divested assets under any of the methods specified in Section III (G).

II

The provisions of this Judgment shall apply to defendant, its subsidiaries, and their respective officers, directors, agents, employees, successors and assigns, exclusive of any eligible purchaser of divested assets. Nothing in this Judgment shall impose any obligation to do or omit any action outside the United States. The obligations of defendant under this Judgment are as described herein and shall not apply by implication to activities other than the manufacture, distribution or sale of shoe machinery or unique shoe machine products.

III

(A) Defendant is ordered and directed, within twenty-four months from the date of entry

of this Judgment, to divest itself of shoe machine assets for particular shoe machine models, which models accounted for $8,500,000 in gross revenues to defendant from lease and sale of shoe machinery in the United States during the base year. Based upon estimates agreed to by the parties, an $8,500,000 reduction in revenues would be sufficient to reduce defendant's share of the shoe machinery market during the base year to no more than 33 percent.

(B) The assets to be divested shall consist of the following:

(1) All shoe machine assets for particular shoe machine models, which models accounted for gross revenues to defendant from lease and sale of shoe machinery in the United States of not less than $6,375,000 in the base year. The models with respect to which shoe machine assets are to be divested under this subsection (1) shall be selected in defendant's discretion from those listed on attached Schedule A, except that defendant must divest not less than six of the models designated by an asterisk; and

(2) The entire leased population of particular shoe machine models (whether or not defendant retains other shoe machine assets relating to such models), which models accounted for not more than $2,125,000 of gross revenues to defendant from lease and sale of shoe machinery in the United States in the base year, or shoe machine assets for shoe machine models, which models accounted for not more than $2,125,000 of such gross revenues, or any combination of the two. Defendant shall have the discretion under this subsection (2) in selecting the assets to be divested.

(C) Divestiture of the shoe machine assets under Section III (B) shall be made only to an eligible purchaser or purchasers, defined as (1) a person (a) who is not directly or indirectly a shoe manufacturer; (b) who intends as a viable competitor to utilize acquired productive assets, if any, principally for the production of shoe machines for lease or sale to others, or who intends as a viable competitor to lease or sell acquired leased machines, if any, principally in the shoe machinery market; or (2) any person to whom plaintiff consents. Plaintiff shall be deemed to consent to a person if within 60 days after receipt of written notice of defendant's intention to divest assets to such person, plaintiff does not advise defendant in writing of its refusal to consent. The requirements of this Section III (C) shall be applied to the ultimate recipient of the divested assets under subsection III (G). New Corporation referred to in subsection III (G) (2) or any other corporation the stock of which is owned by stockholders of defendant may be regarded as an eligible purchaser only if it otherwise meets the requirements of this Section III (C).

(D) If the purchaser of the productive assets for a shoe machine model does not purchase all of the leased population for such model, such leased population as is not so purchased shall be divested to another eligible purchaser or purchasers.

(E) No single otherwise eligible purchaser shall acquire the shoe machine assets (1) for more than three models designated by an asterisk on Schedule A; nor (2) for models which accounted in the base year for substantially more than one-half of defendant's lease and sale revenues generated by machines on Schedule A to be divested, unless (i) plaintiff consents, or (ii) in the absence of such consent, unless defendant establishes to the satisfaction of this Court either:

(a) That during a reasonable period of time, not less than six months nor more than one year from the date of the first published notification of the availability of the assets to be divested under this Judgment, defendant has not received from eligible purchasers bona fide offers, pending or renewed, covering in the aggregate substantially the same assets as are covered by defendant's proposed divestiture or divestitures, and meeting all the requirements of this Section III; or

(b) That defendant's proposed divestiture or divestitures are likely to provide a shoe machinery market substantially as competitive as the market that would be provided were defendant to accept such bona fide offers.

Plaintiff shall be deemed to have given its consent to a divestiture transaction if, within 60 days after receipt of written notice of defendant's intention to enter into the said transaction, plaintiff does not advise defendant in writing of its refusal to consent to such transaction. Nothing contained in this Section III (E) shall prohibit any divestiture to a single eligible purchaser without approval by plaintiff or this Court so long as defendant divests to others or retains the obligation to divest to others shoe machine assets for models listed on Schedule A which accounted in the base year for lease and sale revenues of more than $3,187,500, including not less than three models designated by an asterisk on Schedule A.

(F) Defendant shall use its best efforts to obtain offers and to negotiate in good faith with all persons who express bona fide interest in purchasing shoe machine assets for any or all of the shoe machine models selected for divestiture. Subject to the provisions of Section III (E), defendant may, upon 60 days' notice to the plaintiff, consummate any divestiture to an eligible purchaser or purchasers. The time period set forth in Section III (A) shall be tolled during the pend-

any proceeding under this Judgment which delays the consummation of any divestiture transaction proposed by defendant.

(G) Subject to the other terms of this Judgment defendant may employ one or more of the following means or any combination thereof:

(1) Transferring all or some of the assets to be divested in return for cash, property, or other consideration; or

(2) Transferring all or some of the assets to be divested to one or more existing or newly-formed corporations (hereinafter collectively or individually "New Corporation") in exchange for the stock of New Corporation, followed by:

(a) sale or exchange of the stock or assets of New Corporation; or

(b) distribution of the stock or assets of New Corporation (i) to holders of defendant's common stock on a pro rata basis, or (ii) to such holders of defendant's common stock as may elect to exchange shares of such stock, or (iii) to holders of transferable rights to purchase such stock or assets, or (iv) a combination of any or all of clauses (i), (ii) and (iii).

(H) Should defendant, by enforcement or settlement of any security arrangement or in any other way, thereafter regain ownership or control through stock or otherwise of any of the assets divested, defendant shall, within a reasonable period of time, dispose of such stock or assets to a purchaser eligible under Section III (C).

IV

(A) In any divestiture of productive assets for a shoe machine model, defendant may retain any assets used in the production of the model if such assets are not used principally for such purpose or are not requested by the purchaser, provided that defendant shall furnish at a reasonable price, at the request of a purchaser of the productive assets for such model, such reasonable means of producing such model as are satisfactory to the plaintiff.

(B) In any divestiture of productive assets for a shoe machine model, defendant shall, to the extent that it has the power to do so, without modifying pre-existing rights of other persons, furnish to the purchaser of the productive assets for such model:

(1) an assignment of any shoe machine patent principally relating to such model or to parts therefor or of any patent for a unique shoe machine product with respect to such model and principally used with the said model, provided that such assignment shall be subject to defendant's right to retain a royalty-free license to make, use and sell, limited to defendant and its subsidiaries, if such license is necessary to produce retained or new machine models, parts or products consistent with the provisions of Section V hereof, and further provided that if any patent for rod cement or for the box toe applying machine listed on Schedule A would otherwise come within this Section IV (B) (1), defendant shall not assign such patent but shall grant to the purchaser a royalty-free license, and shall issue no other license under such patent for two years, after which defendant shall make such patent available for licensing under Section VII (A) of this Judgment.

(2) A royalty-free license under any other shoe machine patent relating to the manufacture of such shoe machine model or parts therefor, or under any other patent for a unique shoe machine product with respect to such model.

(C) At the request of a purchaser of the productive assets for a shoe machine model:

(1) Defendant shall for a period of up to two years following the date of purchase furnish, at a reasonable price, service for shoe machines of that model and training for personnel of the purchaser in performance of such service, in assembling techniques, and in other similar matters.

(2) Defendant shall for a period of up to ten years following the date of purchase furnish, at a reasonable price, replacement parts for shoe machines of that model and products usable in or with such machines provided that defendant may decline to furnish (i) commonly available standardized parts; (ii) products other than a unique shoe machine product with respect to such model; or (iii) parts which can be manufactured by such productive assets as are acquired by the purchaser pursuant to this Judgment.

V

(A) Defendant is hereby enjoined and restrained, for five years from the date of purchase of productive assets for a shoe machine model, from offering for sale, lease or otherwise in the United States:

(1) such model;

(2) a modification of any model retained by the defendant at the date of purchase if the modification would make the retained model the substantial equivalent of such model:

(3) any other new model which defendant has not offered for sale, lease or otherwise prior to the date of purchase which in whole or in significant part is the substantial equivalent of such model in function and operation.

(B) Section V (A) (3) shall not apply if:

(1) Defendant offers to furnish to the purchaser the following items to the extent necessary to enable the purchaser to manufacture, assemble and sell such new model by a date that (a) in the case of new models which in whole or major part are the substantial equivalent of the divested model in function and operation, is no later than two years before the date such new model is first offered by defendant on a commercial basis, and (b) in the case of new models which in significant but less than major part are the substantial equivalent of the divested model in function and operation, is no later than the date such new model is first offered by defendant on a commercial basis:

(a) For a reasonable royalty, a license under (i) shoe machine patents, (ii) applications on file for shoe machine patents, and (iii) patents issued under such applications, which license is necessary for such new model, and such license to conform to the provisions of Section VII (B) hereof; and

(b) For reasonable payment, productive assets for such new model, and if the purchaser is otherwise unable to manufacture such new model, reasonable assistance (excluding financial assistance), satisfactory to plaintiff, in obtaining assets required for such purpose; and

(c) For reasonable payment, replacement parts and any unique shoe machine product for such new model, provided that defendant may decline to furnish commonly available standardized parts; and

(2) Defendant offers to sell to the purchaser, for a period beginning with the date such new model is offered on a commercial basis and ending five years from the date of purchase, machines of such new model at a price not greater than defendant's offering price, current at the time of sale, for such machines to shoe manufacturers, less a reasonable distributor's discount;

(C) Defendant shall, in any agreement for the divestiture of productive assets, include a covenant incorporating in substance the terms of this Section V.

VI

Defendant shall not offer in the United States, for five years from the date of entry of this Judgment, machines which are manufactured or distributed by any foreign corporation that is a subsidiary of or one controlled by defendant and which perform any of the same operations on a shoe as any of the shoe machine models for which productive assets have been divested.

VII

(A) Upon written request made during a period ending ten years from the date of entry of this Judgment, or eight years following completion of the divestiture required by Section III of this Judgment, whichever first occurs, defendant shall grant, to the extent that it has the power to do so, without modifying pre-existing rights of other persons, to any applicant, engaged or intending in good faith to engage in the business of manufacturing shoe machinery or unique shoe machine products, or both, and intending in good faith to use any license hereunder substantially but not necessarily exclusively for such purpose, a non-exclusive license to make, use and sell under any:

(1) shoe machine patent, or

(2) unique shoe machine product patent which is held by defendant at the time of the request or under which defendant at such time has the right to issue sublicenses.

(B) Any license granted by defendant pursuant to subsection (A) shall be unrestricted and shall be for the full term of the patents or licenses licensed, except that such licenses:

(1) If the applicant so requests, may be for a term less than the full term of the patent or license and convey less than all of the rights to make, use and sell under the patent or license;

(2) may provide that a reasonable royalty or reasonable royalties under the patent shall be paid;

(3) may contain reasonable provisions for periodic reports to defendant by the licensee as to the amount of royalty due and payable;

(4) may contain a reasonable provision for periodic inspection of books and records of the licensee by an independent auditor or other person acceptable to the licensee who shall report to the defendant only the amount of royalty due and payable;

(5) may contain a provision that the license shall be nontransferable and shall not include the right to sublicense;

(6) may contain a reasonable provision for marking all items made, used or sold under the license in accordance with applicable statutory provisions;

(7) may contain a reasonable provision for cancellation of the license upon failure of the licensee to pay the royalties due or to comply with such conditions as may be imposed under this Section VII;

(8) may contain a provision that, for a period of two years from the date of issuance of the license, defendant shall have the right to cancel the license if defendant establishes to the satisfaction of this Court that, at the time of issuance of the license, the licensee did not have the intent in good faith to engage in the business of manufacturing shoe machinery or unique shoe machine products, or both, and to use the license substantially but not necessarily exclusively for such purpose; and

(9) shall contain a provision giving the licensee the right to cancel the license after one year from the date of the license upon giving defendant 30 days' written notice.

(C) (1) Upon receipt of a written application pursuant to subsection (A), defendant shall advise the applicant in writing within thirty days of the royalty it deems reasonable for the license requested in the application, and shall furnish the applicant with a copy of this Judgment. If defendant and the applicant are unable to agree upon what constitutes a reasonable royalty within ninety days from the date the written application for the license was received by defendant, either defendant or the applicant, with written notice thereof to the other and to plaintiff herein, may apply to this Court for a determination of a reasonable royalty.

(2) Upon application to the defendant in accordance with this Section VII and pending completion of any proceedings thereunder, said applicant shall have the right, subject to payment of interim royalties to be determined by this Court, to make, use and sell under the patent or license to which the application for license pertains, and upon determination of an interim royalty rate, defendant shall then issue to said applicant a license pursuant to subsection (A) providing for the periodic payment of royalties at such interim rate from the date of application to defendant; and any final order by this Court may provide for such readjustments, including refunds or retroactive royalties, as this Court may order after final determination of a reasonable royalty. No determination of a reasonable royalty under this Section VII shall affect any previously negotiated royalty under other licenses for the same patent or patents.

(3) If said applicant fails to accept within a reasonable time any license terms determined by this Court under this Section VII or fails to pay the royalties agreed upon or established by this Court, such failure shall be grounds for the dismissal by this Court of said applicant's application with costs to be paid by the applicant together with any royalties found by this Court to be due to defendant. As to said applicant, defendant shall have no further obligation or duty under this Judgment with respect to the patent or patents involved.

(D) Upon written request made within the period specified in Section VII (A), any recipient of a license granted pursuant to subsection (A) hereof shall be entitled to receive from defendant know-how relating to a shoe machine, a shoe machine part, a design or process, or a unique shoe machine product covered by the license. Defendant may charge a reasonable fee for such know-how, such reasonable fee to be determined, in case of disagreement, pursuant to the procedures of subsection (C) hereof. With respect to any information provided pursuant to this subsection (D), defendant may reasonably protect against unauthorized disclosure by requiring the licensee to agree not to disclose the information to persons other than those who are entitled to make, have made for its use or sell under the license and who agree not to make any further disclosure.

(E) Nothing in this Section VII shall apply to or confer any rights with respect to existing licenses under defendant's patents. Nor shall anything in this Judgment prohibit defendant from making a bona fide sale or assignment from time to time of any patent held by it, provided that, if defendant, in any sale or assignment of a patent covered by this Section VII, retains rights under such patent, defendant shall be required also to retain the authority to sublicense such retained rights under this Section VII.

VIII

Until the obligations to issue licenses under Section VII (A) cease to apply, defendant is ordered and directed:

(A) commencing sixty days after the date of entry of this Judgment, to insert every six months in a publication or publications of general circulation in the shoe manufacturing and shoe machinery manufacturing industries the patent numbers and brief descriptions of all patents and

patent licenses subject to Section VII (A), except that after the first such insertion, subsequent insertions may be limited to those patents and patent licenses obtained during the preceding six-month period; and

(B) to maintain a cumulative listing of all shoe machinery patents and patent licenses subject to Section VII (A), which upon written request shall be furnished to any person.

IX

Defendant shall, commencing one year after the date of entry of this Judgment or promptly following the date of closing of last purchase agreement covering divestiture, whichever is earlier, offer its shoe machinery for sale to persons who intend to resell or to lease it to others, and offer to furnish installation, service, repair and parts of machinery so sold, upon prices and terms no less favorable than those offered by defendant to shoe manufacturers. Notwithstanding the provisions of Paragraph 16 of the Prior Decree, defendant shall repurchase, upon reasonable mutually satisfactory terms to be determined at the time of repurchase, any of such machinery which may be returned to such person by lessees or purchasers on conditional sales contracts which such person may elect to resell to defendant.

X

For the purpose of securing compliance with Sections II through IX of this Judgment only, and not for the purpose of securing compliance with the Prior Decree or for any other different purpose:

(A) Any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to defendant made to its principal office, be permitted subject to any legally recognized privilege:

(1) Access during the office hours of defendant, who may have counsel present, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant related to any matters contained in this Judgment; and

(2) 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 matters.

(B) Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such reports in writing with respect to the matters contained in this Judgment as from time to time may be requested for the purpose of securing compliance with this Judgment and for no other purpose.

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

XI

The provisions of the Prior Decree and of this Judgment shall terminate and shall have no further force and effect as follows:

(A) Paragraphs 8, 9, 10, 12, 13, 15, 17, 18, 20, 21 and 23 of the Prior Decree and any orders thereunder shall terminate on the date of closing of the last purchase agreement covering divestiture;

(B) Paragraphs 6, 7 and 11 of the Prior Decree and any orders thereunder shall terminate five years from the date of closing of the last purchase agreement covering divestiture;

(C) Paragraph 14 of the Prior Decree and any orders thereunder shall terminate in accordance with the time period set forth in Section VII of this Judgment with respect to the licensing of patents;

(D) Section III of this Judgment and any orders thereunder shall terminate upon the completion of divestiture in accordance with the terms thereof;

(E) Sections IV, V, VI, VII and VIII of this Judgment and any orders thereunder shall terminate in accordance with the time periods set forth in the provisions of the respective Sections; and;

(F) All other Paragraphs of the Prior Decree and all other Sections of this Judgment and any orders thereunder shall terminate ten years from the date of closing of the last purchase agreement covering divestiture, provided that plaintiff may apply to this Court for the continuation of any provision covered by this Section XI (F), such application to be made not later than nine years from the date of closing of the last purchase agreement covering divestiture. This Court may grant such application if plaintiff establishes to the satisfaction of this Court that adequate competitive conditions in the shoe machinery market had not been brought about.

XII

The provisions of this Judgment shall not be construed as nor shall they operate as a finding that the defendant has violated the antitrust laws at any time after February 18, 1953, since no such issue was before this Court.

XIII

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

XIV

Defendant shall pay the taxable costs of this proceeding.

Schedule A

Operation Code Number	Model	Machine Name
* 20007-284	(A)	USM Vamp Preforming
20012-648	(A)	USM Roll Top Folding
* 20012-673	(C)	USM Thermo Cementing & Folding
20014-0672	(A)	USMC Thermo Cement & Fold
20031-0208	(A)	USMC Lacing
30010-0669	(B)	Unishank Moulding
31106-0749	(C)	Goodyear Insole Rib Attach
31106-0751	(B)	Goodyear Insole Rib Attach
32116-0722	(A)	Untd Marginal Sole Rgh
* 32121-782	(C)	USM Rod Sole Cementing
* 32121-791	(B)	USM Rod Sole Cementing
32121-0787	(A)	USMC Rod Sole Cementing 1/
40001-0785	(A)	USM Insole Tacking
40006-0301	(B)	USMC Pulling Over
40008-0217	(D)	USMC Heel Seat Lasting 2/
40008-0218	(E)	USMC Heel Seat Lasting 2/
40008-0727	(F)	UNTD Heel Seat Lasting
41103-012	(C)	USM Backpart Mould & Assemble
* 41104-0621	(B)	USM Thermo Box Toe Aply

1/ If this is divested, either model B or model C (Operation Code Numbers 32121-791 and 32121-782) must also be divested, but not necessarily to the same purchaser.

2/ If either is divested, model F (Operation Code Number 40008-0727) must also be divested, but not necessarily to the same purchaser.

Schedule A (continued)

	Operation Code Number	Model	Machine Name
	41107-0598	(D)	USMC Staple Side Lasting
	41108-0734	(A)	UNTD Tack Side Lasting
	42104-0531	(A)	UNTD Auto Wlt Toe Lasting
	50006-0584	(A)	Goodyear Sole Laying
	50006-0594	(C)	USMC Cement Sole Attach
	50006-0729	(C)	UNTD Cem Sol & Br Fl At
*	50006-120	(A)	USM Duopress
*	50006-121	(B)	USM Duopress
*	50007-737	(A)	USM Auto Edge Shaping
	50007-0320	(C)	USMC Rough Rounding
	50007-0330	(B)	USMC Rough Rounding
	50010-765	(A)	USM High Speed Stitching
*	50011-620	(A)	USM Seat Mould & Fastening
	50013-0714	(A)	United Auto Leveling
	54101-0435	(D)	USMC Sole Stitching
*	61105-0783	(A)	USMC Heel Nailing
	71010-0666	(F)	USMC Twin Edge Setting

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,
Plaintiff,

v.

CIVIL ACTION
No. 7198

UNITED SHOE MACHINERY CORPORATION
Defendant.

ORDER

March 6, 1975

Wyzanski, Senior District Judge. In order to effectuate the purposes of decrees previously entered in this case, it is further ordered:

Unless this court, after notice and hearing otherwise orders, neither USMC (previously called United Shoe Machinery Corporation) nor any person, corporate or individual, who at any time after the entry of this decree owns, directly or indirectly, or otherwise controls, more than one thousand (1000) shares of any and all classes of the stock of USMC shall acquire after March 7, 1975 directly or indirectly control of any corporation or other entity (or substantially all the assets thereof) the control of which or of whose assets this court has at any time ordered USMC to divest itself.

Charles E. Wyzanski, Jr.
U. S. Senior District Judge.

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,
Plaintiff,

v.

CIVIL ACTION
No. 7198

UNITED SHOE MACHINERY CORPORATION,
Defendant.

ORDER

March 7, 1975

WYZANSKI, Senior District Judge:

Supplementing its order of March 6, 1975, this court orders that:

No stockholder, officer or employee of USMC shall take any action intended to bring, or having the effect of tending to bring, under common control USMC and assets of which this court ordered USMC to divest itself.

Charles E. Wyzanski, Jr.,

JWW

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

I certify that I received over the telephone on March 7, 1975 the aforesaid order for immediate entry.

Marilyn Lucht

Marilyn Lucht
Secretary to Judge Wyzanski

UNITED STATES v. LAWRENCE FUEL OIL INSTITUTE, INC., ET AL.

Civil Action No. 55-544-M

Year Judgment Entered: 1955

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Lawrence Fuel Oil Institute, Inc.; Cyr Oil Company; Korbey Heating & Oil Co., Inc.; J. A. Leone & Sons, Inc., Dalrymple Oil Co., Inc.; Cross Coal Co.; George E. Gagnon; Philip Dalrymple; A. John Korbey; Jerome W. Cross; Louis Eidam; Wilfred Cyr; Francis Reusch; Joseph A. Leohe; Michael Abraham; Harry. F. Priestley; Julius Ortstein; and Joseph Therrien., U.S. District Court, D. Massachusetts, 1955 Trade Cases ¶68,075, (Jun. 21, 1955)

United States v. Lawrence Fuel Oil Institute, Inc.; Cyr Oil Company; Korbey Heating & Oil Co., Inc.; J. A. Leone & Sons, Inc., Dalrymple Oil Co., Inc.; Cross Coal Co.; George E. Gagnon; Philip Dalrymple; A. John Korbey; Jerome W. Cross; Louis Eidam; Wilfred Cyr; Francis Reusch; Joseph A. Leohe; Michael Abraham; Harry. F. Priestley; Julius Ortstein; and Joseph Therrien.

1955 Trade Cases ¶68,075. U.S. District Court, D. Massachusetts. Civil Action No. 55-544-M. Dated June 21, 1955. Case No. 1240 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Price Fixing— Consent Decree—Practices Enjoined —Fuel Oil Dealers and Trade Association.—Fuel oil dealers and a trade association were prohibited by a consent decree from entering into any conspiracy (1) to fix or maintain prices, profit margins, discounts, allowances, or other conditions of sale, or (2) to influence any person with respect to prices, profit margins, markups, discounts or other conditions of sales to be charged or used by any person. The defendants were further enjoined from distributing any price list to any person engaged in the fuel oil business which purports to indicate any prevailing, standard, or established price of fuel oil.

Combinations and Conspiracies—Consent Decree-—Practices Enjoined—Boycotts— Restrictions on Sales.—Fuel oil dealers and a trade association were enjoined by a consent decree from entering into any conspiracy (1) to refuse to purchase or sell fuel oil from or to any person or class of persons, (2) to hinder or prevent any person from purchasing or selling fuel oil from or to any person, or (3) to compel any bulk plant or tank truck dealer to use any seal, sign, or device for the purpose of identifying such dealer as a member of the trade association. The defendants were further prohibited from restricting or preventing any person from purchasing or selling fuel oil from or to any other person," provided that nothing shall prevent an individual defendant from unilaterally exercising its right of customer selection.

Department of Justice Enforcement and Procedure Consent Decrees—Specific Relief —Enforcement —Trade Association.—An association of fuel oil dealers was ordered in a consent decree (1) to admit to membership any bona fide bulk plant or tank truck dealer making written application therefor, (2) to cancel and revoke any provision of its by-laws and regulations which is inconsistent with the provisions of the consent decree, (3) to serve a copy of the consent decree upon each of its present members, (4) to institute and complete such proceedings as may be necessary to amend its by-laws so as to incorporate therein specified provisions of the consent decree and require as a condition of membership that all members be bound thereby in the same way that the defendants are bound, (5) to furnish all of its present and future members a copy of its by-laws as amended, and (6) to expel from membership any member who shall violate the provisions of its by-laws incorporating the provisions of the decree when the association shall have knowledge of such violation.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; W. D. Kilgore, Jr., Worth Rowley, and Richard B. O'Donnell, Special Assistants to the Attorney General; Anthony Julian, U. S. Attorney; and William J. Elkins and John J Galgay, Trial Attorneys.

For the defendants: Paul R. Foisey for Lawrence Fuel Oil Institute, Inc.; Cyr Oil Co.; Korbey Heating & Oil Co., Inc.; J. A. Leone & Sons, Inc.; George E. Gagnon; A. John Korbey; Louis Eidam; Wilfred Cyr; Francis Reusch; Joseph A. Leone; Michael Abraham; Harry F. Priestley; Julius Ortstein; and Joseph Therrien. Warren F, Farr (Ropes, Gray, Best, Coolidge & Rugg) for Dalrymple Oil Co., Inc., Cross Coal Co., Philip Dalrymple, and Jerome W. Cross.

Final Judgment

WILLIAM T. MCCARTHY, District Judge [*In full, text*]: The plaintiff, United States of America, having filed its complaint herein on June 21, 1955, and each of the defendants having appeared herein, and the plaintiff and the defendants, by their respective attorneys, having 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 evidence or admission by the defendants in respect of any such issue;

Now, therefore, before any testimony or evidence has been taken herein, 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

[*Sherman Act*]

The Court has jurisdiction of the subject matter herein and all the parties hereto. The complaint states a claim against the defendants and each of them under Section 1 of the Act of Congress of July 2, 1890, entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

(A) “Person” means any individual, partnership, firm, association, corporation, or other legal entity.

(B). “Fuel Oil” means that oil commonly used for heating plants of dwellings and places of business and shall be deemed to include No. 1 and No. 2 oil, so called.

(C) “Bulk plant dealer” means persons engaged in the business of purchasing fuel oil from distributors’ for resale to tank truck dealers or consumers or to both.

(D) “Tank truck dealer” means persons engaged in the business of purchasing fuel oil from bulk plant dealers for resale to consumers.

(E) “Defendant Association” means the defendant Lawrence Fuel Oil Institute, Inc.

III

[*Applicability of Judgment*]

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

IV

[*Practices Prohibited*]

The defendants are jointly and severally enjoined and restrained from entering into, maintaining or furthering, or claiming any rights under, any contract, combination, conspiracy, agreement, understanding, plan or program among themselves or with any other person:

(a) to fix, establish, stabilize or maintain prices, profit margins, discounts, allowances, or other terms and conditions of sale of fuel oil to third persons;

(b) to refuse to purchase or sell fuel oil from or to any person or any class of persons;

(c) to hinder, restrict, limit or prevent any person from purchasing or selling fuel oil from or to any person;

(d) to influence or attempt to influence any third person with respect to the price or prices, profit, margins, markups, discounts, or other terms and conditions of sales to be charged or used by such third person for the sale of fuel oil;

(e) to compel any bulk plant or tank truck dealer to use any seal, sigh or device for the purpose of identifying such dealer as a member of the defendant Association.

V

The defendants are jointly and severally enjoined and restrained from directly or indirectly:

(a) controlling or attempting to control through the defendant Association or otherwise, the prices, profit margins, markups, discounts or other terms or conditions of sale to be charged or used by any other person engaged in the fuel oil business for the sale of said fuel oil;

(b) restricting or preventing, or attempting to restrict or prevent, any person from purchasing or selling fuel oil from or to any other person, provided that nothing herein shall be construed to prevent an individual defendant from unilaterally exercising its right of customer selection;

(c) distributing or disseminating, in any manner, any price list or price bulletin to any person engaged in the fuel oil business which purports to indicate any prevailing, standard, or established price of fuel oil, except in connection with the bona fide purchase or sale of fuel oil from or’ to such other person.

VI

[*Trade Association Provisions*]

Defendant Association is ordered and directed:

(a) to admit to membership any bona fide bulk plant or tank truck dealer making written application therefor, provided, however, such dealer may be subsequently dropped from membership for failure to pay dues;

(b) to cancel and revoke any provision of its by-laws, rules and regulations, including Paragraph 8 of its Rules & Regulations relating to sales of fuel oil below “established prices,” which is inconsistent with 4he provisions of this Final Judgment;

(c) within thirty (30) days after the entry hereof to serve by mail upon each of its present members a conformed copy of this Final Judgment and to file with this Court and with the Attorney General or the Assistant Attorney General in Charge of the Antitrust. Division, proof by affidavit of service upon each such member;

(d) to institute forthwith and to complete within three months from entry of this Judgment such proceedings as may be appropriate and necessary to amend its bylaws so as to incorporate therein Sections IV and V of this Judgment and require as a condition of membership or retention of membership that all present and future members be bound thereby in the same way that the defendants herein are now bound;

(e) to furnish to all its present and future members a copy of its by-laws as amended in accordance with subsection (d) of this Section VI;

(f) to expel promptly from membership any present or future member of the defendant who shall violate the provisions of its by-laws incorporating Sections IV and V of this Judgment when the said defendant shall have knowledge of such violation.

VII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, 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 any defendant, be permitted, subject to any legally-recognized privilege, (a) reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, relating, to any of the matters contained in this Final Judgment, and (b) subject to the reasonable convenience of any defendant, and without restraint or interference, to interview officers and employees of such defendant, who may have counsel present, regarding any such matters. For the purpose of securing compliance with this Final Judgment, any defendant, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means permitted in the Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department except in the course of legal proceedings for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

VIII

[*Jurisdiction Retained*]

Jurisdiction of this Court is retained for the purpose of enabling any of the parties to this Final Judgment to apply to: the 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 thereof, for the enforcement of compliance therewith and punishment of violations thereof.

UNITED STATES v. LOWELL FUEL OIL DEALER ASSOCIATES, INC., ET AL.

Civil Action No. 55-586-W

Year Judgment Entered: 1955

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Lowell Fuel Oil Dealer Associates, Inc.; E. A. Wilson Co., Inc.; McGoohan Fuel and Appliance Co., Inc.; George E. Gagnon; Herbert Carragher; Walter C. Wilson Jr.; John S. McGoohan; John C. Linehan; Max Gardner; and Wesley Inglis., U.S. District Court, D. Massachusetts, 1955 Trade Cases ¶68,090, (Jul. 1, 1955)

United States v. Lowell Fuel Oil Dealer Associates, Inc.; E. A. Wilson Co., Inc.; McGoohan Fuel and Appliance Co., Inc.; George E. Gagnon; Herbert Carragher; Walter C. Wilson Jr.; John S. McGoohan; John C. Linehan; Max Gardner; and Wesley Inglis.

1955 Trade Cases ¶68,090. U.S. District Court, D. Massachusetts. Civil Action No. 55-586-W. Dated July 1, 1955. Case No. 124.9 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing —Fuel Oil Dealers and Trade Association.—Fuel oil dealers, a trade association, and certain of its officials were prohibited by a consent decree from entering into any conspiracy (1) to fix or maintain prices, profit margins, discounts, allowances, or other conditions of sale, or (2) to influence any person with respect to prices, profit margins, markups, discounts, or other conditions of sales to be charged or used by any person. The defendants were further enjoined from distributing any price list to any person engaged in the fuel oil business which purports to indicate any prevailing, standard or established price of fuel oil.

Combinations and Conspiracies—Consent Decree-—Practices Enjoined—Boycotts-r-Restrictions on Sales.—Fuel, oil dealers, a trade association, and certain of its officials were enjoined by a consent decree from entering into any conspiracy (1) to refuse to purchase or sell fuel oil from or to any person or class of persons, (2) to hinder or prevent any person from purchasing or selling fuel oil from or to any person, or (3) to compel any bulk plant or tank truck dealer to use any seal, sign, or device for the purpose of identifying such dealer as a member of the trade association. The defendants were further prohibited from restricting or preventing arty person from purchasing or selling fuel oil from or to any other person, provided that nothing shall prevent an individual defendant from unilaterally exercising its right of customer selection.

Department of Justice Enforcement and Procedure—Consent Decrees-r-Specific Relief —Enforcement —Trade Association.—An association of fuel oil dealers was ordered in a consent decree (1) to admit to membership any bona fide bulk plant or tank truck dealer making written application therefor, (2) to cancel and revoke any provision of its by-laws and regulations which is inconsistent with the provisions of the consent decree, (3) to serve a copy of the consent decree upon each of its present members, (4) to institute and complete such proceedings as may be necessary to amend its by-laws so as to incorporate therein specified provisions of the consent decree and require as a condition of membership that all members be bound thereby in the same way that the defendants are bound, (5) to furnish all of its present and future members a copy of its by-laws as amended, and (6) to expel from membership any member who shall violate the provisions of its by-laws incorporating the provisions of the decree when the association shall have knowledge of such: violation.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; Anthony Julian, United States Attorney; William D, Kilgore, Jr., Worth Rowley, and Richard B. O'Donnell, Special Assistants to the Attorney General; and William J. Elkins and John J. Galgay, Trial Attorneys.

For the defendants: Paul R. Foisey, Warren Farr, and; Ropes, Gray, Best, Coolidge & Rugg.

Final Judgment

WYZANSKI, District Judge [In full text] The plaintiff, United States of America, having filed its complaint herein on [July 1, 1955], and each of the defendants having appeared herein, and the plaintiff and the defendants, by their respective attorneys, having 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 evidence or admission by the defendants in respect of any such issue;

Now, therefore, before any testimony or evidence has been taken herein, 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

[*Sherman Act*]

The Court has jurisdiction of the subject matter herein and all the parties hereto. The complaint states a claim against the defendants and each of them under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

(A) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(B) "Fuel oil" means that oil commonly used for heating plants of dwellings and places of business and shall be deemed to include No. 1 and No, 2 oil, so called.

(C) "Bulk plant dealer" means persons engaged in the business of purchasing fuel oil from distributors for resale to tank truck dealers or consumers or to both.

(D) "Tank truck dealer" means persons engaged in the business of purchasing fuel oil from bulk plant dealers for resale to consumers.

(E) "Defendant Association" means the defendant Lowell Fuel Oil Dealer Associates, Inc.

III

[*Applicability of Judgment*]

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

IV

[*Practices Enjoined*]

The defendants are jointly and severally enjoined and restrained from entering into, maintaining or furthering; or claiming any rights under, any contract, combination, conspiracy, agreement, understanding, plan or program among themselves or with any other person:

(a) to fix, establish, stabilize or maintain prices, profit margins, discounts, allowances, or other terms and conditions of sale of fuel oil to third persons;

(b) to refuse to purchase or sell fuel oil from or to any person or any class of persons;

(c) to hinder, restrict, limit or prevent any person from purchasing or selling fuel oil from or to any person;

(d) to influence, or attempt to influence any third person with respect to the price or prices, profit margins, markups, discounts, or other terms and conditions of sales to be charged or used, by such third person for the sale of fuel oil;

(e) to compel any bulk plant or tank truck dealer to use any seal, sign or device for the purpose of identifying such dealer as a member of the defendant Association.

V

The defendants are jointly and severally enjoined and restrained from directly or indirectly:

(a) controlling or attempting to control through the defendant Association or otherwise, the prices, profit margins, markups, discounts or other terms or conditions of sale to be charged or used by any other person engaged in the fuel oil business for the sale of said fuel oil;

(b) restricting or preventing, or attempting to restrict or prevent, any person from purchasing or selling fuel oil from or to any other person, provided that nothing herein shall be construed to prevent an individual defendant from unilaterally exercising its right of customer selection;

(c) distributing or disseminating, in any manner, any price list or price bulletin to any person engaged in the fuel oil business which purports to indicate any prevailing, standard, or established price of fuel oil, except in connection with the bona fide purchase or sale of fuel oil from or to such other person.

VI

[*Trade' Association Provisions*]

Defendant Association is ordered and directed:

(a) to admit to membership any bona fide bulk plant or tank truck dealer making written application therefor, provided, however, such dealer may be subsequently dropped from membership for failure to pay dues;

(b) to cancel and revoke any provision of its by-laws, rules and regulations, including Paragraph 8 of its Rules & Regulations relating to sales of fuel oil below "established prices," which is inconsistent With the provisions of this Final Judgment;

(c) within thirty (30) days after the entry hereof to serve by mail upon each of its present members a conformed copy of this Final Judgment and to file with this Court and with the Attorney General or the Assistant Attorney General in Charge of the Antitrust Division, proof by, affidavit of service upon each such member;

(d) to institute forthwith and to complete within three months from entry of this Judgment such proceedings as may be appropriate and necessary to amend its bylaws so as to incorporate therein Sections IV and V of this Judgment and require as a condition of membership or retention of membership that, all present and future members be bound thereby in the same way that the defendants herein are now bound;

(e) to furnish to all its present and future members a copy of its by-laws as amended in accordance with subsection (d) of this Section VI;

(f) to expel promptly from membership any present or future member of the defendant who shall violate the provisions of its by-laws incorporating Sections IV and V of this Judgment when the said defendant shall have knowledge of such violation.

VII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final judgment, 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 any defendant, be permitted, subject to any legally-recognized privilege, (a) reasonable access, during the office hours of such defendant, to all books, ledgers,

accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this Final Judgment, and (b) subject to the reasonable convenience of any defendant, and without restraint or interference, to interview officers and employees of such defendant who may have counsel present, regarding any such matters. For the purpose of securing compliance with this Final Judgment, any defendant, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means permitted 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 Department except in the course of legal proceedings for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

VIII

[*Jurisdiction Retained*]

Jurisdiction of this Court is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the 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 thereof, for the enforcement of compliance therewith and punishment of violations thereof.

UNITED STATES v. HAVERHILL FUEL OIL DEALERS' ASSOCIATION, ET AL.

Civil Action No. 55-532-S

Year Judgment Entered: 1956

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff, v. HAVERHILL FUEL OIL DEALERS' ASSOCIATION; CRANTON FUEL OIL CO., INC.; GEORGE E. GAGNON; WALTER F. BUSFIELD; GEORGE H. CRANTON; LAWRENCE BACIGALUPO; and RAYMOND SAYERS Defendants.	Civil Action No. 56-532-S (FILED SEPTEMBER 18, 1956)

FINAL JUDGMENT

The plaintiff, United States of America, having filed its complaint herein on June 27, 1956, and each of the defendants having appeared herein, and the plaintiff and the defendants, by their respective attorneys, having 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 evidence or admission by the defendants in respect of any such issue;

NOW, THEREFORE, before any testimony or evidence has been taken herein, 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

The Court has jurisdiction of the subject matter herein and all the parties hereto. The complaint states a claim against the defendants and each of them under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

As used in this Final Judgment:

(A) "Person" means any individual, partnership, firm, association, corporation, or other legal entity;

(B) "Fuel Oil" means that oil commonly used for heating plants of dwellings and places of business and shall be deemed to include No.1 and No.2 oil, so called;

(C) "Bulk plant dealer" means persons engaged in the business of purchasing fuel oil from distributors for resale to tank truck dealers or consumers or to both;

(D) "Tank truck dealer" means persons engaged in the business of purchasing fuel oil from bulk plant dealers for resale to consumers;

(E) "Defendant Association" means the defendant Haverhill Fuel Oil Dealers' Association.

III

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

IV

The defendants are jointly and severally enjoined and restrained from entering into, maintaining or furthering, or claiming any rights under, any contract, combination, conspiracy, agreement, understanding, plan or program among themselves or with any other person:

(a) to fix, establish, stabilize or maintain prices, profit margins, discounts, allowances, or other terms and conditions of sale of fuel oil to third persons;

(b) to influence or attempt to influence any third person with respect to the price or prices, profit margins, markups, discounts, or other terms and conditions of sales to be charged or used by such third person for the sale of fuel oil.

V

The defendants are jointly and severally enjoined and restrained from directly or indirectly:

(a) controlling or attempting to control through the defendant Association or otherwise, the prices, profit margins, markups, discounts or other terms or conditions of sale to be charged or used by any other person engaged in the fuel oil business for the sale of fuel oil;

(b) distributing or disseminating, in any manner, any price list or price bulletin to any person engaged in the fuel oil business which purports to indicate any prevailing, standard or established price of fuel oil, except in connection with the bona fide purchase or sale of fuel oil from or to such other person.

VI

Defendant Association is ordered and directed:

(a) to admit to membership any bona fide bulk plant or tank truck dealer making written application therefor, provided, however, such dealer may be subsequently dropped from membership for failure to pay dues;

(b) to cancel and revoke any provision of its by-laws, rules and regulations, including Paragraph 8 of its Rules and Regulations relating to sales of fuel oil below "established prices," which is inconsistent with the provisions of this Final Judgment;

(c) within thirty (30) days after the entry hereof to serve by mail upon each of its present members a conformed copy of this Final Judgment and to file with this Court and with the Attorney General or the Assistant Attorney General in Charge of the Antitrust Division, proof by affidavit of service upon each such member;

(d) to institute forthwith and to complete within three months from entry of this Judgment such proceedings as may be appropriate and necessary to amend its by-laws so as to incor-

porate therein Sections IV and V of this Judgment and require as a condition of membership or retention of membership that all present and future members be bound thereby in the same way that the defendants herein are now bound;

(e) to furnish to all its present and future members a copy of its by-laws as amended in accordance with subsection (d) of this Section VI;

(f) to expel promptly from membership any present or future member of the defendant who shall violate the provisions of its by-laws incorporating Sections IV and V of this Judgment when the said defendant shall have knowledge of such violation.

VII

For the purpose of securing compliance with this Final Judgment, 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 any defendant, be permitted, subject to any legally-recognized privilege, (a) reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this Final Judgment, and (b) subject to the reasonable convenience of any defendant, and without restraint or interference, to interview officers and employees of such defendant who may have counsel present, regarding any such matters. For the purpose of securing compliance with this Final Judgment, any defendant, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means permitted 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 Department except in the course of legal proceedings for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

VIII

Jurisdiction of this Court is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the 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 thereof, for the enforcement of compliance therewith and punishment of violations thereof.

Dated: September 18, 1956

/s/ George C. Sweeney
United States District Judge

We hereby consent to the making and entry of the foregoing Final Judgment.

For the Plaintiff:

/s/ Victor R. Hansen
Assistant Attorney General

/s/ John J. Galgay
/s/ Philip Bloom

/s/ W. D. Kilgore, Jr.

/s/ William J. Elkins

/s/ Worth Rowley

/s/ Richard B. O'Donnell

/s/ Charles F.B. McAleer
Attorneys for Plaintiff

/s/ Anthony Julian
United States Attorney

For the Defendants:

Haverhill Fuel Oil Dealers' Association;
Cranton Fuel Oil Co., Inc.; George E. Gagnon;
Walter F. Busfield; George H. Cranton;
Lawrence Bacigalupo; Raynond Sayers

/s/ JOHN J. RYAN, JR.
Attorney for above defendants.

UNITED STATES v. GOLD FILLED MANUFACTURERS ASSOCIATION, INC., ET AL.

Civil Action No. 56-295 W

Year Judgment Entered: 1957

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff, against GOLD FILLED MANUFACTURERS ASSOCIATION, INC., et al., Defendants.	Civil Action No. 56-295 W Filed: July 1, 1957

FINAL JUDGMENT

The plaintiff, United States of America, having filed its complaint herein on April 5, 1956, and each of the defendants having appeared herein and the plaintiff and said defendants, 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 evidence or admission by any such defendant in respect of any such issue;

NOW, THEREFORE, before any testimony or evidence has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of all the parties hereto, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

I

The Court has jurisdiction of the subject matter herein and all the parties hereto. The complaint states a claim upon

which relief may be granted against the defendants and each of them under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

As used in this Final Judgment:

(A) "Person" means any individual, partnership, firm, association, corporation, or other legal entity; for the purposes of this Judgment Edward N. Cook Plate Company, Inc. and I. Stern & Co., Inc. shall be deemed to be one person and one defendant;

(B) "Gold filled manufacturer" means a person engaged in the business of manufacturing gold filled and rolled gold plate sheet, wire or tubing, hereinafter referred to as "gold filled and rolled gold plate";

(C) "Defendant Association" means Gold Filled Manufacturers Association, Inc.

III

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

IV

The defendant Association is enjoined and restrained from collecting from or circulating, reporting, or recommending to any gold filled manufacturer any costs or averaged costs of

manufacture or sale of gold filled or rolled gold plate, any prices or terms of sale of gold filled or rolled gold plate or any formulae for computing such costs or prices.

V

The defendants are jointly and severally enjoined and restrained from:

(A) Urging, influencing or suggesting, or attempting to urge, influence or suggest, to any other gold filled manufacturer the price or prices, or other terms or conditions for the sale of gold filled or rolled gold plate;

(B) Entering into, adhering to, maintaining or claiming any right under any contract, combination, agreement, understanding, plan or program with any other manufacturer of gold filled or rolled gold plate or any association or central agency of or for such manufacturers to fix, determine, establish or maintain prices, pricing methods, discounts or other terms of sale of gold filled or rolled gold plate;

(C) Circulating or exchanging any price lists or price quotations applicable to gold filled or rolled gold plate with any other gold filled manufacturers in advance of the publication, circulation or communication of such price lists or price quotations to the customers of such defendants;

(D) Circulating, exchanging or using, in any manner, any price list or purported price list containing or purporting to contain any prices or terms or conditions for the sale of gold filled or rolled gold plate which have been agreed upon or

established by agreement between two or more gold filled manufacturers; and

(E) Being a member of, contributing anything of value to, or participating in any of the activities of, any trade association or central agency for gold filled manufacturers with knowledge that the activities thereof are in violation of any of the provisions of this Final Judgment.

VI

Each of the defendants, other than the defendant Association, is ordered and directed, not later than sixty (60) days following the date of the entry of this Final Judgment, individually and independently (1) to review its then prevailing prices for gold filled and rolled gold plate, (2) to determine prices for gold filled and rolled gold plate based on its own manufacturing and overhead costs, the margin of profit individually desired and other lawful considerations, and (3) in place of its then prevailing prices, to establish the prices determined under (2) above, which prices shall become effective not later than one hundred and fifty (150) days following the date of the entry of this Final Judgment. The provisions of this section shall not apply to any defendant which since November 1, 1955 has individually and independently established its own prices in a manner consistent with the procedures set forth in this section.

VII

The provisions of Sections V and VI above shall not be deemed to invalidate, prohibit or restrain bona fide negotiations between gold filled manufacturers concerning sales to one another.

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VIII

The defendant Association is ordered and directed, within ten (10) days after the date of its entry, to furnish to each of its present members a conformed copy of this Final Judgment and to file with this Court, and with the plaintiff herein, a report setting forth the fact and manner of its compliance with this Section VIII, together with the names and addresses of each person to whom a copy of this Final Judgment shall have been furnished in compliance herewith.

IX

For the purpose of securing compliance with this Final Judgment, 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 Anti-Trust Division, and on reasonable notice to any defendant made to its principal office, be permitted, subject to any legally-recognized privilege, (a) reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this Final Judgment, and (b) subject to the reasonable convenience of such defendant, and without restraint or interference, to interview officers and employees of such defendant who may have counsel present, regarding such matters. For the purpose of securing compliance with this Final Judgment, the defendants, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Anti-Trust Division, shall submit such written reports with respect to any of the matters

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

X

Jurisdiction of this Court is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the 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 thereof, for the enforcement or compliance therewith, and punishment of violations thereof.

_____ _____

Date United States District Judge

We consent to the making and entry of the foregoing Final Judgment:

For the Plaintiff:

/s/ Victor R. Hansen
VICTOR R. HANSEN
Assistant Attorney General

/s/ Harry N. Burgess
HARRY N. BURGESS

/s/ Richard B. O'Donnell
RICHARD B. O'DONNELL

/s/ John J. Galgay
JOHN J. GALGAY

/s/ W. D. Kilgore, Jr.
WILLIAM D. KILGORE, JR.

/s/ Philip Bloom
PHILIP BLOOM

/s/ Joseph T. Maioriello
JOSEPH T. MAIORIELLO

/s/ Alan L. Lewis
ALAN L. LEWIS
Attorneys

Attorneys

We consent to the making and entry of the foregoing Final Judgment:

For the Defendants:

GOLD FILLED MANUFACTURERS ASSOCIATION, INC.

By /s/ John M. Hall
of counsel

METAL & CONTROLS CORPORATION

By /s/ Matthew W. Goring
of counsel

J. L. ANTHONY & COMPANY

By /s/ John M. Hall
of counsel

STANDARD METALS CORPORATION

By /s/ John M. Hall
of counsel

COOK-DUNBAR-SMITH COMPANY

By /s/ Matthew W. Goring
of counsel

I. STERN & CO., INC.

By /s/ Ralph J. Gutman
of counsel

EDWARD M. COOK PLATE COMPANY, INC.

By /s/ Ralph J. Gutman
of counsel

UNION PLATE & WIRE CO.

By /s/ Samuel H. Lane
of counsel

HORTON ANGELL COMPANY

By /s/ John W. McIntyre

VENNERBECK AND CLASE COMPANY

By /s/ Francis J. Kiernan

A. HOLT AND COMPANY, INC.

By /s/ Ronald B. Smith
of counsel

A. T. WALL COMPANY

By /s/ Westcote H. Chesebrough

THE IMPROVED SEAMLESS WIRE COMPANY

By /s/ John M. Hall
of counsel

THE H. A. WILSON COMPANY

By /s/ Ralph J. Gutman
of counsel

LEACH & GARNER COMPANY

By /s/ Ronald B. Smith
of counsel

UNITED STATES v. NEW ENGLAND CONCRETE PIPE CORPORATION, ET AL.

Civil Action No. 57-631-A

Year First Final Judgment Entered: 1957

Year Second Final Judgment Entered: 1959

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff, v. NEW ENGLAND CONCRETE PIPE CORPORATION; HUME PIPE OF N. E., INCORPORATED; and CONCRETE PIPE MACHINERY COMPANY, Defendants.	Civil Action No. 57-631-A Filed: December 12, 1957

FINAL JUDGMENT

The plaintiff, United States of America, having filed its complaint herein on June 28, 1957, and the defendant Hume Pipe of N. E., Incorporated, having appeared herein, and the plaintiff and said 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 evidence or admission by such defendant in respect of any such issue;

NOW, THEREFORE, before any testimony or evidence has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of Hume Pipe of N. E. Incorporated and the plaintiff, it is hereby

ORDERED, ADJUDGED, and DECREED as follows:

I

The Court has jurisdiction of the subject matter herein and of the parties signatory hereto. The complaint states a claim upon which relief may be granted against Hume under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

As used in this Final Judgment:

(A) "Person" means any individual, partnership, firm, association, corporation, or other legal or business entity;

(B) "Concrete pipe manufacturer" means a person engaged in the business of manufacturing concrete pipe;

(C) "Concrete pipe" means concrete sewer pipe or concrete drain culvert pipe, plain and reinforced, or both of them;

(D) "Hume" means defendant Hume Pipe of N. E., Incorporated, with its principal place of business in Swampscott, Massachusetts.

III

The provisions of thisFinal Judgment applicable to Hume shall apply also to its officers, agents, servants, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with Hume who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Hume is enjoined and restrained from collecting from or circulating, reporting or recommending to any concrete pipe manufacturer any costs or averaged costs of manufacture or sale of concrete pipe or any formulae for computing any such costs.

V

Hume is enjoined and restrained from:

a) Urging, influencing or suggesting, or attempting to urge, influence or suggest, to any other concrete pipe manufacturer any price, bid, quotation, or other term or condition to be used by such other manufacturer or manufacturers in the sale of concrete pipe;

b) Entering into, adhering to, maintaining or claiming any right under any contract, combination, agreement, understanding, plan or program with any other concrete pipe manufacturer or manufacturers or any association or central agency of or for such manufacturers to fix,

determine, establish or maintain prices, bids, quotations, pricing methods, discounts or other terms or conditions of sale of concrete pipe to be used by Hume or by such other manufacturer or manufacturers;

c) Circulating to, or exchanging with any concrete pipe manufacturer any price list or price quotations applicable to concrete pipe in advance of the publication, circulation or communication of such price lists or price quotations to its customers generally;

d) Circulating, exchanging or using in any manner, any price list or purported price list or making any bid, containing or purporting to contain any prices or terms or conditions for the sale of concrete pipe which had been agreed upon or established by agreement between two or more concrete pipe manufacturers;

e) Disclosing to, or exchanging with any other concrete pipe manufacturer or manufacturers the amount or other terms or conditions of any concrete pipe bid by Hume or by such other manufacturer or manufacturers in advance of the filing of such bid; and

f) Being a member of, contributing anything of value to, or participating in the activities of any association or central agency for concrete pipe manufacturers with knowledge that the activities are in violation of any of the provisions of this Final Judgment.

VI

Hume is enjoined and restrained from:

a) Urging, influencing or suggesting, or attempting to urge, influence or suggest to any other concrete pipe

manufacturer the customers, areas, or towns and cities, in or to which concrete pipe is to be sold or offered for sale or in or to which concrete pipe is not to be sold or offered for sale by such other manufacturer;

b) Entering into, adhering to, maintaining or claiming any right under any contract, combination, agreement, understanding, plan or program with any other concrete pipe manufacturer or manufacturers or any association or central agency of or for such manufacturer or manufacturers to allocate customers, territories or markets for the sale of concrete pipe;

c) Entering into, adhering to, maintaining or enforcing any contract, agreement, understanding, plan or program to boycott or otherwise refuse to do business with any person.

VII

Hume is ordered and directed, not later than sixty (60) days following the date of the entry of this Final Judgment, individually and independently (1) to review its then prevailing prices for concrete pipe, (2) to determine prices for concrete pipe based on its own manufacturing and overhead costs, the margin of profit individually desired and other lawful considerations, and (3) in place of its then prevailing prices, to establish the prices determined under (2) above, which prices shall become effective not later than one hundred and fifty (150) days following the date of the entry of this Final Judgment. Nothing contained herein shall prevent Hume from deviating from, modifying or otherwise changing the price list as established herein, for the purpose of meeting competition, reducing excessive inventory, or for other lawful business reasons.

VIII

The provisions of Sections V, VI, and VII above shall not be deemed to invalidate, prohibit or restrain bona fide negotiations between Hume and any other concrete pipe manufacturer

or manufacturers concerning bona fide sales to one another.

IX

For the purpose of securing compliance with this Final Judgment, 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 Hume made to its principal office, be permitted, subject to any legally-recognized privilege, (a) reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this Final Judgment, and (b) subject to the reasonable convenience of such defendant, and without restraint or interference, to interview officers and employees of such defendant who may have counsel present, regarding such matters. Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, Hume shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means permitted in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department except in the course of legal proceedings for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

X

Jurisdiction of this Court is retained for the purpose of enabling either of the parties to this Final Judgment to apply to the 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 thereof, for the enforcement of compliance therewith, and punishment of violations thereof.

Dated: December 12, 1957

/s/ Bailey Aldrich
United States District Judge

We consent to the making and entry of the foregoing Final Judgment:

For the Plaintiff:

/s/ Victor R. Hansen
VICTOR R. HANSEN
Assistant Attorney General

/s/ John J. Galgay
JOHN J. GALGAY

/s/ William D. Kilgore, Jr.
per H. N. B.
WILLIAM D. KILGORE, JR.

/s/ Alan L. Lewis
ALAN L. LEWIS

/s/ Worth Rowley
WORTH ROWLEY

/s/ Harry N. Burgess
HARRY N. BURGESS

/s/ Charles F. B. McAleer
CHARLES F. B. McALEER

/s/ Philip Bloom
PHILIP BLOOM

Attorneys

/s/ Richard B. O'Donnell
RICHARD B. O'DONNELL

Attorneys

For the Defendant:

/s/ Henry M. Leen
HENRY M. LEEN

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil Action
	)	
v.	)	No. 57-631-A
	)	
NEW ENGLAND CONCRETE PIPE CORPORATION; HUME PIPE OF N. E., INCORPORATED; and CONCRETE PIPE MACHINERY COMPANY,	)	Filed: September 30, 1959
	)	
Defendants.	)	

FINAL JUDGMENT

The plaintiff, United States of America, having filed its complaint herein on June 28, 1957, and the defendants New England Concrete Pipe Corporation and Concrete Pipe Machinery Company, having appeared herein, and the plaintiff and said defendants, 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 evidence or admission by plaintiff or such defendants in respect of any such issue;

NOW, THEREFORE, before any testimony or evidence has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of the plaintiff and New England Concrete Pipe Corporation and Concrete Pipe Machinery Company, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

I

The Court has jurisdiction of the subject matter herein and of the parties signatory hereto. The complaint states claims upon which relief may be granted against defendants New England and Concrete Machinery under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

As used in this Final Judgment:

(A) "Person" means any individual, partnership, firm, association, corporation or other legal or business entity;

(B) "Concrete pipe manufacuturer" means a person engaged in the business of manufacturing concrete pipe;

(C) "Concrete pipe" means concrete sewer pipe or concrete drain culvert pipe, plain or reinforced, or both of them;

(D) "New England" means defendant New England Concrete Pipe Corporation, with its principal place of business in Newton, Massachusetts;

(E) "Concrete Machinery" means defendant Concrete Pipe Machinery Company, with its principal place of business in Sioux City, Iowa.

III

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

IV

New England is enjoined and restrained from collecting from or circulating, reporting or recommending to any concrete pipe manufacturer any costs or averaged costs of manufacture or sale of concrete pipe or any formulae for computing any such costs.

V.

New England is enjoined and restrained from:

(A) Urging, influencing or suggesting, or attempting to urge, influence or suggest, to any other concrete pipe manufacturer any price, bid, quotation, or other term or condition to be used by such other manufacturer or manufacturers in the sale of concrete pipe;

(B) Entering into, adhering to, maintaining or claiming any right under any contract, combination, agreement, understanding, plan or program with any other concrete pipe manufacturer or manufacturers or any association or central agency of or for such manufacturers to fix, determine, establish or maintain prices, bids, quotations, pricing methods, discounts or other terms or conditions of sale of concrete pipe to be used by New England or by such other manufacturer or manufacturers;

(C) Circulating to, or exchanging with any concrete pipe manufacturer any price list or price quotations applicable to concrete pipe in advance of the publication, circulation or communication of such price lists or price quotations to its customers generally.

(D) Circulating, exchanging or using in any manner, any price list or purported price list or making any bid, containing or purporting to contain any prices or terms or conditions for the sale of concrete pipe which had been agreed upon or established by agreement between two or more concrete pipe manufacturers;

(E) Disclosing to or exchanging with any other concrete pipe manufacturer or manufacturers the amount or other terms or conditions of any concrete pipe bid by New England or by such other manufacturer or manufacturers in advance of the filing of such bid; and

(F) Being a member of, contributing anything of value to, or participating in the activities of any association or central agency for concrete pipe manufacturers with knowledge that the activities are in violation of any of the provisions of this Final Judgment.

VI

New England is enjoined and restrained from:

(A) Urging, influencing or suggesting, or attempting to urge, influence or suggest to any other concrete pipe manufacturer the customers, areas or towns and cities, in or to which concrete pipe is to be sold or offered for sale or in or to which concrete pipe is not to be sold or offered for sale by such other manufacturer;

(B) Entering into, adhering to, maintaining or claiming any right under any contract, combination, agreement, understanding, plan or program with any other concrete pipe manufacturer or manufacturers or any association or central agency of or for such manufacturer or manufacturers to allocate customers, territories or markets for the sale of concrete pipe;

(C) Entering into, adhering to, maintaining or enforcing any contract, agreement, understanding, plan or program to boycott or otherwise refuse to do business with any person.

VII

New England is ordered and directed, not later than sixty (60) days following the date of the entry of this Final Judgment, individually and independently (1) to review its then prevailing prices for concrete pipe, (2) to determine prices for concrete pipe based on its own manufacturing and overhead costs, the margin of profit individually desired and other lawful considerations, and (3) in place of its then prevailing prices, to establish the prices determined under (2) above, which prices shall become effective not later than one hundred and fifty (150) days following the date of the entry of this Final Judgment. Nothing contained herein shall prevent New England from deviating from, modifying or otherwise changing the price list as established herein, for the purpose of meeting competition, reducing excessive inventory, or for other lawful business reasons.

VIII

Nothing contained in the provisions of Sections, V, VI and VII above shall be deemed (1), to invalidate, prohibit or restrain bona fide negotiations between New England and any other concrete pipe manufacturer or manufacturers concerning bona fide sales to one another, or (2), to enjoin New England from entering into, participating in, or maintaining with any other concrete pipe manufacturer or with any one acting for or in behalf of any other concrete pipe manufacturer, a joint venture agreement whereby a single bid will be submitted and the assets and facilities of each of the parties thereto will be combined for the sale and installation of concrete pipe of such monetary value or in such quantities that each party to the joint venture could not singly bid on or perform the contract. Provided, however, that such joint ventures shall not be used or permitted to circumvent or evade any of the other provisions of this Final Judgment or to implement other activities in derogation thereof.

IX

New England is enjoined and restrained from:

(A) Asserting, or threatening to assert, any rights to the exclusive use of any pipemaking machinery in any designated area under (1) a contract dated May 31, 1927, between McCracken Machinery Company of Sioux City, Iowa and G. S. Rutherford of Painesville, Ohio, (2) a contract dated September 26, 1934 between P. A. Lucy, Receiver of McCracken Machinery Company of Iowa and New England; and (3) a contract dated February 15, 1936 between Concrete Machinery and New England;

(B) Entering into or continuing in effect any other agreement or contract with Concrete Machinery or any other manufacturer of concrete pipemaking machinery having the purpose or effect of securing to New England the exclusive use of any concrete pipemaking machinery in any designated area.

X

New England and Concrete Machinery are ordered and directed to cancel forthwith the contracts described in Section IX (A) herein and to file with this Court, and with the plaintiff, a report setting forth the fact and manner of their complaince with this Section X.

XI

Concrete Machinery is enjoined from entering into or continuing in effect any contract or agreement with any concrete pipe manufacturer having the purpose or effect of (1) securing to such manufacturer the exclusive use of any concrete pipemaking machinery in any designated area within the New England States; or (2) restraining such manufacturer's use or disposition of any pipemaking machinery after purchase of such machinery from Concrete Machinery; Provided, however, that this Section XI shall not be deemed to prohibit Concrete Machinery, until payment therefor is completed, from restricting the movement or substitution of parts of machinery sold by conditional sales contract or chattel mortgage.

XII

For the purpose of securing compliance with this Final Judgment, duly authorized representative 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 New England and Concrete Machinery made to its principal office, be permitted, subject to any legally-recognized privilege, (a) reasonable access, during the office hours of such defendants, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendants, relating to any of the matters contained in this Final Judgment, and (b) subject to the reasonable convenience of such defendants, and without restraint or interference, to interview officers and employees of such defendants who may have counsel present, regarding such matters. Upon such written request of the Attorney General, or the Antitrust Attorney General in charge of the Antitrust Division, New England and Concrete Machinery

shall submit such written reports with respect any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means permitted in this Section XII 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 for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

XIII

Jurisdiction of this Court 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 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 thereof, for the enforcement of compliance therewith, and punishment of violations there

Dated: September 30, 1959

Bailey Aldrich
United States District Judge

We consent to the making and entry of the foregoing Final Judgment:

For the Plaintiff:

/s/ Robert A. Bicks
ROBERT A. BICKS
Acting Assistant Attorney General

/s/ John J. Galgay
JOHN J. GALGAY

/s/ William D. Kilgore, Jr.
WILLIAM D. KILGORE, JR.

/s/ Richard L. Shanley
RICHARD L. SHANLEY

/s/ Baddia J. Rashid
BADDIA J. RASHID

/s/ Gerald R. Dicker
GERALD D. DICKER

/s/ Richard B. O'Donnell
RICHARD B. O'DONNELL

Attorneys

Attorneys

For the Defendants:

/s/ William F. Byrne
/s/ Tyler & Reynolds
NEW ENGLAND CONCRETE PIPE CORPORATION

/s/ Hale and Dorr - Edmund Burke
CONCRETE PIPE MACHINERY COMPANY

UNITED STATES v. CONCRETE FORM ASSOCIATION OF CENTRAL NEW ENGLAND, ET AL.

Civil Action No. 57-216-S

Year Judgment Entered: 1958

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Concrete Form Association of Central New England; Standard Construction Co., Inc.; Schofields, Inc.; Noe A. Brisson; Ernest R. Schofield; Lewis A. Schofield; and Nathaniel S. Schofield., U.S. District Court, D. Massachusetts, 1958 Trade Cases ¶69,043, (May 5, 1958)

United States v. Concrete Form Association of Central New England; Standard Construction Co., Inc.; Schofields, Inc.; Noe A. Brisson; Ernest R. Schofield; Lewis A. Schofield; and Nathaniel S. Schofield.

1958 Trade Cases ¶69,043. U.S. District Court, D. Massachusetts. Civil Action No. 57-216-S. Entered May 5, 1958. Case No. 1324 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing.—A regional trade association of concrete form suppliers and contractors, two contracting firms, and individuals who had been officers, directors, or committee members of the association were prohibited by a consent decree from entering into any agreement with any other contractor or any association or central agency of contractors to (1) fix, maintain, or stabilize prices for performance or sale of concrete form work, (2) adopt or use any designated type of sales, bid or order form for the performance of concrete form work, or (3) urge or suggest to any other concrete form contractor the prices or other terms or conditions for the performance of concrete form work. **Department of Justice Enforcement and Procedure—Consent Decree—Specific Relief —Dissolution of Trade Association.**—A regional trade association of concrete form suppliers and contractors was required by a consent decree to dissolve the association, such dissolution to be completed within the minimum period of time permitted by the laws of the state.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; W. D. Kilgore, Jr., Worth Rowley, Charles F. B. McAleer, Richard B. O'Donnell, John J. Galgay, Augustus A. Marchetti, and Philip Bloom, Attorneys, Department of Justice.

For the defendants: Edmund A. Baldi.

Final Judgment

GEORGE C. SWEENEY, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on March 1, 1957, and each of the said defendants having appeared herein and the plaintiff and the defendants, 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 evidence or admission by any defendant in respect of any such issue;

Now, therefore, before any testimony or evidence has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of all the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and all the parties hereto. The complaint states a claim upon which relief may be granted against the defendants and each of them under Section 1 of the Act of Congress of July 2, 1890, entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

(A) “Person” shall mean any individual, partnership, firm, association, corporation or other legal entity;

(B) “Defendant association” shall mean the defendant Concrete Form Association of Central New England;

(C) “Concrete form work” shall mean the business of supplying and erecting concrete forms and pouring and spreading the concrete.

III

[*Applicability of Decree*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant and to his or its officers, agents, servants, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with any defendant who shall have received actual notice of this Final Judgment by persona] service or otherwise.

IV

[*Dissolution Ordered*]

The defendants are ordered and directed:

(A) Forthwith to institute such action as may be necessary to dissolve the defendant association under the laws of the State of Massachusetts and to complete such dissolution within the minimum period of time permitted by the laws of the State of Massachusetts;

(B) Upon the completion of such dissolution of the defendant association, to file an affidavit with this Court and with plaintiff herein setting forth the fact of their compliance with this Section.

V

[*Agreements Prohibited*]

The defendants are jointly and severally enjoined and restrained from directly or indirectly entering into, adhering to, maintaining or claiming any right under any contract, combination, agreement, understanding, plan or program with any other concrete form contractor or any association or central agency of such contractors,

(A) To fix, determine, establish, maintain or stabilize prices for performance or sale of concrete form work;

(B) To adopt, use or adhere to any designated type of sales, bid or order form for the performance of concrete form work.

VI

[*Other Practices Prohibited*]

The defendants are jointly and severally enjoined and restrained from, directly or indirectly:

(A) Urging, influencing or suggesting, or attempting to urge, influence or suggest, to any other concrete form contractor the prices or other terms or conditions for the performance of concrete form work;

(B) Being a member of, contributing any thing of value to, or participating in any of the activities of, any trade association or central agency for concrete form contractors with knowledge that the activities thereof are inconsistent in any manner with any of the provisions of this Final Judgment.

VII

[*Notice of Judgment*]

The defendant association is ordered and directed, within ten (10) days after the date of entry hereof, to furnish to each of its present members a conformed copy of this Final Judgment and to file with this Court, and with the plaintiff herein, a report setting forth the fact and manner of its compliance with this Section VII, together with the names and addresses of each person to whom a copy of this Final Judgment shall have been furnished in compliance herewith.

VIII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, 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 any defendant made to its principal office, be permitted, subject to any legally-recognized privilege, (A) reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this Final Judgment, and (B) subject to the reasonable convenience of such defendant, and without restraint or interference, to interview officers and employees of such defendant who may have counsel present, regarding any such matters. Upon such written request said defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means permitted 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 Department 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.

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 the Court at any time for such further orders and directions as may be necessary or appropriate for the construction and carrying out of this Final Judgment, for the modification or termination of any of the provisions thereof, for the enforcement of compliance therewith and punishment of violations thereof.

UNITED STATES v. WHITIN BUSINESS EQUIPMENT CORPORATION

Civil Action No. 58-567-A

Year Judgment Entered: 1960

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Whitin Business Equipment Corporation., U.S. District Court, D. Massachusetts, 1960 Trade Cases ¶69,672, (Mar. 30, 1960)

United States v. Whitin Business Equipment Corporation.

1960 Trade Cases ¶69,672. U.S. District Court, D. Massachusetts. Civil Action No. 58-567-A. March 30, 1960. Case No. 1391 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Price Fixing—Consent Decree.—A manufacturer of rotary offset duplicating machines was prohibited by a consent decree from fixing, either singly or by agreement with others, the prices to be charged to third persons.
Allocating Markets and Customers—Consent Decree.—A manufacturer of rotary offset duplicating machines was prohibited by a consent decree from restricting, either singly or by agreement with others, the territories in which, or the customers to whom, any other person may sell such machines.
Import and Export Control—Consent Decree.—A manufacturer of rotary offset duplicating machines was prohibited by a consent decree from restricting, singly or by agreement with others, imports into the United States or exports from the United States by any other person.

For the plaintiff: Robert A. Bicks, Acting Assistant Attorney General; Lewis Bernstein, William D. Kilgore, Jr., Philip L. Roache, Jr., Joseph J. O'Malley, and Allan J. Reniche, Attorneys, Department of Justice.

For the defendant Herrick, Smith, Donald, Farley & Ketchum, by Kevin Hern.

Final Judgment

[*Consent Decree*]

GEORGE C. SWEENEY, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on May 29, 1958; defendant, Whitin Business Equipment Corporation, having appeared and filed its answer to the complaint denying the substantive allegations thereof; and the plaintiff and the defendant, by their attorneys, having severally consented to the entry of this Final Judgment without adjudication of any issue of fact or law and without admission by any party hereto in respect to any such issue;

Now, Therefore, before 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

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states claims upon which relief may be granted against the defendant, Whitin Business Equipment Corporation, under Section 1 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

As used in this Final Judgment:

(A)"Defendant" means the Whitin Business Equipment Corporation, a corporation organized and existing under the laws of the State of Delaware, with its present principal place of business at Whitinsville, Massachusetts and any subsidiary thereof;

(B) "Machines" mean any rotary offset duplicating machine;

(C) “Person” means any individual, partnership, firm, association, corporation or other business or legal entity;

(D) “ATF” means American Type Founders Co., Inc., a corporation organized and

(E) “Photostat” means Photostat Corporation, a corporation organized and existing under the laws of the State of Rhode Island, with its principal place of business at Providence, Rhode Island;

(F) “Gestetner” means Gestetner, Ltd., a corporation organized and existing under the laws of Great Britain, with its principal place of business in London, England;

(G) “Whitin” means Whitin Machine Works, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, with its principal place of business in Whitinsville, Massachusetts.

III

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

[*Price Fixing—Allocating Territories—Restricting Imports*]

Defendant is enjoined and restrained from, directly or indirectly, entering into, adhering to, maintaining, enforcing, or claiming any rights under, any contract, agreement, understanding, plan or program with any other person to:

(A) Fix, establish, maintain or adhere to prices, discounts, or other terms or conditions for the sale of machines to any third person;

(B) Restrict, limit or prevent any person from exporting machines from the United States or importing machines into the United States;

(C) Limit, allocate or restrict the territories in which or the customers to whom any person may sell machines.

V

Defendant is enjoined and restrained from, directly or indirectly:

(A) Fixing, restricting or suggesting, or attempting to fix, restrict or suggest the price, discount, or other terms or conditions for the sale of machines by any other person;

(B) Limiting or restricting or attempting to limit or restrict the territories in which or the customers to whom any other person may, or shall, sell machines;

(C) Limiting, restricting or preventing, or attempting to limit, restrict or prevent, any other person from importing machines into the United States or exporting machines from the United States.

VI

Sections IV and V of this Final Judgment shall not be construed as prohibiting defendant from exercising such lawful rights as it may have under, and pursuant to: The Miller-Tydings Act, as amended, or the patent laws of the United States.

VII

[*Compliance*]

Defendant is ordered and directed, within thirty (30) days from the entry of this Final Judgment, to mail to American Type Founders Co., Inc., Photostat Corporation, Gestetner, Ltd., and Whitin Machine Works a true and complete copy of this Final Judgment, and within sixty (60) days from the 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 this Subsection VII.

VIII

For the purpose of securing compliance with this Final Judgment, 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 all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant relating 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 such written request, said defendant shall submit such reports in writing to the Department of Justice with respect to 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 permitted 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 in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

IX

Jurisdiction is retained by this Court for the purpose of enabling any party to this Final Judgment to apply to this Court at any time for such 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, or for the punishment of violations thereof.

UNITED STATES v. THE LAKE ASPHALT AND PETROLEUM CO. OF MASSACHUSETTS, ET AL.

Civil Action No. 59-786-W

Year Final Judgment Entered: 1960

Year Final Judgment Against Koppers Company, Inc. Entered: 1960

Year Final Judgment Against Allied Chemical Corporation Entered: 1960

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Lake Asphalt and Petroleum Co. of Massachusetts; H. H. McGuire & Co., Inc.; Trimount Bituminous Products Co.; Rock-Asphalt Corp.; Mystic Bituminous Products Co., Inc.; Wachusett Bituminous Products Co.; American Oil Products Co.; and D. J. Cronin Asphalt, Inc., U.S. District Court, D. Massachusetts, 1960 Trade Cases ¶69,835, (Oct. 17, 1960)

United States v. The Lake Asphalt and Petroleum Co. of Massachusetts; H. H. McGuire & Co., Inc.; Trimount Bituminous Products Co.; Rock-Asphalt Corp.; Mystic Bituminous Products Co., Inc.; Wachusett Bituminous Products Co.; American Oil Products Co.; and D. J. Cronin Asphalt, Inc.

1960 Trade Cases ¶69,835. U.S. District Court, D. Massachusetts. Civil Action No. 59-786-W. Dated October 17, 1960. Case No. 1482 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Price Fixing—Sales of Asphalt—Allocation of Markets and Customers—Bidding Practices—Trade Association—Regulating Price—Consent Decree.—Sellers of asphalt were prohibited by a consent decree making or influencing noncompetitive bids, quotations, prices, contract conditions, or sales; from allocation of territories or customers; from refraining or inducing others to refrain from bidding; and from exchanging information as to prices or bids. Independent prices are to be established, and a sworn statement to that effect included with each bid submitted to a government body during a five-year period. The consent judgment, also, is to be prima facie evidence of an unlawful combination and conspiracy in suits which had been filed by Massachusetts state and local government bodies, and defendants are enjoined from denying that effect, but are otherwise free to rebut the prima facie case or present available defenses.

For the plaintiff: Robert A. Bicks, Assistant Attorney General, William D. Kilgore, Jr., Baddia J. Rashid, John D. Swartz, John J. Galgay, Bernard Wehrmann, Elhanan C Stone, Attorneys for the Department of Justice.

For the defendants: Thomas E. Dwyer for Trimount Bituminous Products Co., Philip T. Jones for Lake Asphalt and Petroleum Co. of Mass., James M. Mallory for H. H. McGuire & Co., Inc., John L. Murphy, Jr., for American Oil Products Co., John L. Murphy, Jr., for Rock-Asphalt Corp., J. F. Connolly for D. J. Cronin Asphalt, Inc., Willard P. Lombard for Mystic Bituminous Products Co., and Seymour Weinstein for Wachusett Bituminous Products Co.

Final Judgment

WYZANSKI, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on October 13, 1959, and defendants signatory hereto having admitted the allegations contained in the Government's complaint herein solely for the purpose and to the extent necessary to give to the following adjudication the prima facie effect stated in Section I below in the suits specified below, and for no other purpose,

Now, therefore, before any testimony has been taken herein without trial and upon the consent of all the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

That on the basis of said limited admission the defendants signatory hereto have engaged in an unlawful combination and conspiracy in violation of Section 1 of the Sherman Act as charged in the said complaint, this

adjudication being for the sole purpose of establishing the prima facie effect of this Final Judgment, in the suits specified below, and for no other purpose;

Each defendant is enjoined and restrained from denying that this Final Judgment has such prima facie effect in any such suit; provided, however, that this section shall not be deemed to prohibit any such defendant from rebutting such prima facie evidence or from asserting any defense with respect to damages or other defenses available to it. The specified suits referred to above are the suits instituted in this Court by the Commonwealth of Massachusetts wherein the defendants signatory hereto are named as defendants and numbered 60-229-S on the docket of this Court and any other suit instituted by any Massachusetts city or town against any of the defendants signatory hereto prior to the date of entry of this Final Judgment, and which alleges violation of the Federal antitrust law and claims damages growing out of the purchases of Asphalt from any such defendant.

II

[*Jurisdiction*]

The Court has jurisdiction of the subject matter herein and all parties hereto. The complaint states a claim upon which relief may be granted against the defendants signatory hereto, and each of them, under Section 1 of the Act of Congress of July 2, 1890, entitled, “An Act to protect trade and commerce against unlawful restraints and monopolies,” commonly known as the Sher-man Act, as amended.

III

[*Definitions*]

As used in this Final Judgment:

(A) “Person” means any individual, partnership, firm, corporation, association or other business or legal entity;

(B) “Asphalt” means a paving material derived from crude petroleum and sold in the form of asphalt cutbacks and asphalt emulsions;

(C) “Governmental body” means the United States, any State, County or Municipality and any Agency thereof.

IV

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant signatory hereto shall apply to such defendant and to its officers, agents, servants, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with any such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

V

[*Combinations and Conspiracies Prohibited*]

The defendants signatory hereto are jointly and severally enjoined and restrained from directly or indirectly:

(A) Urging, influencing or suggesting to, or attempting to urge, influence or suggest to, any other person to quote or charge non-competitive or specified prices or terms or conditions of sale for asphalt to any third person;

(B) Entering into, adhering to, maintaining or claiming any right under any contract, combination, agreement, understanding, plan or program among themselves or with any other vendor of asphalt or any association or central agency of or for such vendors, to:

(1) fix, determine, establish, or maintain prices, pricing methods, discounts, or other terms of sale of asphalt to any third person;

(2) allocate territories or customers for the sale of asphalt;

(3) refrain from submitting bids for the supply of asphalt to any governmental body or to any other person;

(4) submit a bid for the supply of asphalt to any governmental body or other person which bid is not intended to attract the award of a contract;

(5) refrain from competing in the sale of asphalt.

(C) Communicating, circulating, exchanging, among themselves or with other vendors of asphalt, in any manner, any price information, price list or purported price list containing or purporting to contain any prices or terms or conditions for the sale of asphalt; provided that nothing in this subparagraph (C) shall be deemed to invalidate, prohibit or restrain bonafide negotiations between vendors of asphalt.

(D) Being a member of, contributing anything of value to, or participating in any of the activities of any trade association or central agency for asphalt vendors with knowledge that the activities thereof are in violation of any of the provisions of this Final Judgment;

(E) Disclosing to or exchanging with any other vendor of asphalt:

(1) the intention to submit or not to submit a bid to a governmental body;

(2) the fact that a bid has or has not been submitted, or

(3) the content of any bid.

VI

[*Independent Prices*]

Each of the defendants signatory hereto is ordered and directed, not later than sixty (60) days following the date of the entry of this Final Judgment, individually and independently (1) to review its then prevailing prices for asphalt, (2) to determine prices of asphalt based on its own manufacturing and overhead costs, the margin of profit individually desired and other lawful considerations, and (3) to establish the prices determined under (2) above, which prices shall become effective not later than ninety (90) days following the date of the entry of this Final Judgment.

VII

[*Affidavit Required with Each Bid*]

Each of the defendants signatory hereto is ordered and directed for a period of five years after the date of entry of this Final Judgment to submit a sworn statement in the form set forth in the Appendix A [1] hereto, with each bid for asphalt submitted to any governmental body. Such sworn statement shall be signed by the principal officer of said defendant, by the person actually responsible for the preparation of said bid, and by the person who signed said bid; and a duplicate of each such sworn statement and of such bid, together with the workpapers used in the preparation of such bid shall be kept in the files of the defendant for a period of six years from the date of execution of such bids.

VIII

[*Enforcement and Compliance*]

For the purpose of securing compliance with this Final Judgment, 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 any defendant signatory hereto made to its principal office, be permitted, subject to any legally recognized privilege:

(a) reasonable access during the office hours of such defendants, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matter contained in this Final Judgment; and

(b) subject to the reasonable convenience of such defendant, and without restraint or interference, to interview officers and employees of such defendant, who may have counsel present, regarding such matters.

Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means permitted in this Section 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 for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

IX

[*Jurisdiction Retained*]

Jurisdiction of this Court 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 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 thereof, for the enforcement of compliance therewith, and punishment of violations thereof.

Footnotes

1 [Appendix A is an affidavit, which reads as follows.—CCH]

The undersigned hereby certify that:

1. The attached bid to ....(name of recipient of bid) dated .... has been arrived at by .... (name of defendant) unilaterally and without collusion with any other vendor of asphalt.

2. The intention to submit the attached bid, the fact of its submission, and the contents thereof, have not been communicated by the undersigned nor to their best knowledge and belief, by any employee or agent of .... (name of defendant), to any person not an employee or agent of .... (name of defendant), and will not be communicated to any such person prior to the official opening of the attached bid.

.....	.....
Date	S gnature of pr nc pa offcer.
	.....
	S gnature of person who prepared b d.
.....	.....
Notar zat on	S gnature of person who s gned b d.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff v. THE LAKE ASPHALT AND PETROLEUM COMPANY OF MASSACHUSETTS; ALLIED CHEMICAL CORPORATION; H. H. McGUIRE & CO., INC.; TRIMOUNT BITUMINOUS PRODUCTS CO.; ROCK-ASPHALT CORPORATION; MYSTIC BITUMINOUS PRODUCTS CO., INC.; WACHUSETTS BITUMINOUS PRODUCTS COMPANY; AMERICAN OIL PRODUCTS COMPANY; D. J. CRONIN ASPHALT, INC.; and KOPPERS COMPANY, INC. Defendants	CIVIL ACTION No. 59-786-w Filed October 20, 1960

FINAL JUDGMENT AGAINST KOPPERS COMPANY, INC.

The plaintiff, United States of America, having filed its complaint herein on October 13, 1959, and the defendant Koppers Company, Inc. having appeared herein and having admitted in open court, in the course of the trial and after the taking of testimony, the one specific violation of Section 1 of the Sherman Act hereinafter set forth in paragraph II hereof, and without receiving any other evidence applicable to said defendant,

NOW, THEREFORE, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

The Court has jurisdiction of the subject matter herein and of the defendant Koppers Company, Inc. The complaint states a claim upon which relief may be granted against said defendant under Section 1 of the Act of Congress of July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, as amended.

II

The defendant Koppers Company, Inc. was engaged in a combination and conspiracy in restraint of interstate and foreign commerce in fixing the price of asphalt sold to the Commonwealth of Massachusetts during the year 1959 for use by the Commonwealth for the purpose of highway maintenance by it in Bristol County, in violation of Section 1 of the Sherman Act.

III

As used in this Final Judgment:

(A) "Person" means any individual, partnership, firm corporation, association or other business or legal entity;

(B) "Asphalt" means a paving material derived from crude petroleum and sold in the form of asphalt cutbacks and asphalt emulsions.

(C) "Governmental body" means the United States, any State, County or Municipality and any Agency thereof.

IV

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

V

The defendant Koppers Company, Inc. is hereby enjoined and restrained from directly or indirectly:

(A) Urging, influencing or suggesting to, or attempting to urge, influence or suggest to, any person to quote or charge non-competitive or specified prices or terms or conditions of sale for asphalt to any third person;

(B) Entering into, adhering to, maintaining or claiming any right under any contract, combination, agreement, understanding, plan or program with any other vendor of asphalt or any association or central agency of or for such vendors, to:

(1) fix, determine, establish, or maintain prices, pricing methods, discounts, or other terms of sale of asphalt to any third person;

(2) allocate territories or customers for the sale of asphalt;

(3) refrain from submitting bids for the supply of asphalt to any governmental body or to any other person;

(4) submit a bid for the supply of asphalt to any governmental body or other person which bid is not intended to attract the award of a contract;

(5) refrain from competing in the sale of asphalt.

(C) Communicating, circulating, exchanging with other vendors of asphalt, in any manner, any price information, price list or purported price list containing or purporting to contain any prices or terms or conditions for the sale of asphalt; provided that nothing in this subparagraph (C) shall be deemed to invalidate, prohibit or restrain bona fide negotiations between vendors of asphalt.

(D) Being a member of, contributing anything of value to, or participating in any of the activities of any trade association or central agency for asphalt vendors with knowledge that the activities thereof are in violation of any of the provisions of this Final Judgment;

(E) Disclosing to or exchanging with any other vendor of asphalt:

(1) The intention to submit or not to submit a bid to a governmental body;

(2) the fact that a bid has or has not been submitted, or

(3) the content of any bid.

VI

The defendant Koppers Company, Inc. is ordered and directed, not later than sixty (60) days following the date of the entry of this Final Judgment, individually and independently (1) to review its then prevailing prices for asphalt, (2) to determine prices of asphalt based on its own manufacturing and overhead costs, the margin of profit individually desired and other lawful considerations, and (3) in place of its then prevailing prices, to establish the prices determined under (2) above, which prices shall become effective not later than ninety (90) days following the date of the entry of this Final Judgment.

VII

The defendant Koppers Company, Inc. is ordered and directed for a period of five years after the date of entry of this Final Judgment to submit a sworn statement in the form set forth in the Appendix A hereto, with each bid for asphalt submitted to any governmental body. Such sworn statement shall be signed by the vice president and general manager of the defendant's division dealing with paving materials, by the person actually responsible for the preparation of said bid, and by the person who signed said bid; and a duplicate of each such sworn statement and of such bid, together with the workpapers used in the preparation of such bid shall be kept in the files of the defendant for a period of six years from the date of execution of such bids.

VIII

For the purpose of securing compliance with this Final Judgment, 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 Koppers Company,

Inc. made to its principal office, be permitted, subject to any legally recognized privilege (a) reasonable access during the office hours of said defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant, relating to any of the matters contained in this Final Judgment, and (b) subject to the reasonable convenience of said defendant, and without restraint or interference, to interview officers and employees of said defendant, which may have counsel present, regarding such matters. Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Anti-trust Division, the said defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means permitted in this Section 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 for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

IX

Jurisdiction of this Court is retained for the purpose of enabling either 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 thereof, for the enforcement of compliance therewith, and punishment of violations thereof.

Dated: October 20, 1960

(signed) Charles E. Wyzanski, Jr.
United States District Judge

APPENDIX A

AFFIDAVIT

The undersigned hereby certify that:

1. The attached bid to _____ (name of recipient of bid) dated _____ has been arrived at by Koppers Company, Inc. ("Koppers") unilaterally and without collusion with any other vendor of asphalt.

2. The intention to submit the attached bid, the fact of its submission, and the contents thereof, have not been communicated by the undersigned nor, to their best knowledge and belief, by any employee or agent of Koppers, to any person not an employee or agent of Koppers, and will not be communicated to any such person prior to the official opening of the attached bid.

_____ Date

_____ Signature of vice president of division dealing with paving materials.

_____ Signature of person who prepared bid.

_____ Notarization

_____ Signature of person who signed bid.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff v. THE LAKE ASPHALT AND PETROLEUM COMPANY OF MASSACHUSETTS; ALLIED CHEMICAL CORPORATION; H. H. McGUIRE & CO., INC.; TRIMOUNT BITUMINOUS PRODUCTS CO.; ROCK-ASPHALT CORPORATION; MYSTIC BITUMINOUS PRODUCTS CO., INC.; WACHUSETT BITUMINOUS PRODUCTS COMPANY; AMERICAN OIL PRODUCTS COMPANY; D. J. CRONIN ASPHALT, INC.; and KOPPERS COMPANY, INC., Defendants	CIVIL ACTION NO. 59-786-w Filed October 20, 1960

FINAL JUDGMENT AGAINST ALLIED CHEMICAL CORPORATION

The plaintiff, United States of America, having filed its complaint herein on October 13, 1959 and the defendant, Allied Chemical Corporation, having appeared herein and having answered said complaint and the cause having come on for trial before me without jury, and testimony having been taken therein, in accordance with the findings of fact and conclusions of law it is hereby

ORDERED, ADJUDGED and DECREED as follows:

I

The Court has jurisdiction of the subject matter herein and all parties hereto. The complaint states a claim upon which relief may be granted against the defendant, Allied Chemical Corporation, under Section 1 of the Act of Congress of July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

The defendant, Allied Chemical Corporation, in the year 1957 engaged in an unlawful combination and conspiracy in unreasonable restraint of interstate trade and commerce in the sale and distribution of asphalt to the Commonwealth of Massachusetts in the year 1957, in violation of Section 1 of the Sherman Act.

III

As used in this Final Judgment:

(A) "Person" means any individual, partnership, firm, corporation, association or other business or legal entity;

(B) "Asphalt" means a paving material derived from crude petroleum and sold in the form of asphalt cutbacks and asphalt emulsions;

(C) "Governmental body" means the United States, any State, County or Municipality and any Agency thereof.

IV

The provisions of this Final Judgment shall apply to the defendant, Allied Chemical Corporation, and to its officers, agents, servants, employees; subsidiaries, successors and assigns, and to all persons in active concert or participation with it who shall have received actual notice of this Final Judgment by personal service or otherwise.

V

The defendant, Allied Chemical Corporation, is enjoined and restrained from directly or indirectly:

(A) Urging, influencing or suggesting to, or attempting to urge, influence or suggest to, any other person to quote or charge non-competitive or specified prices or terms or con-

ditions of sale for asphalt to any third person;

(B) Entering into, adhering to, maintaining or claiming any right under any contract, combination, agreement, understanding, plan or program among themselves or with any other vendor of asphalt or any association or central agency of or for such vendors, to:

(1) fix, determine, establish, or maintain prices, pricing methods, discounts, or other terms of sale of asphalt to any third person;

(2) allocate territories or customers for the sale of asphalt;

(3) refrain from submitting bids for the supply of asphalt to any governmental body or to any other person;

(4) submit a bid for the supply of asphalt to any governmental body or other person which bid is not intended to attract the award of a contract;

(5) refrain from competing in the sale of asphalt.

(C) Communicating, circulating, exchanging, with other vendors of asphalt, in any manner, any price information, price list or purported price list containing or purporting to contain any prices or terms or conditions for the sale of asphalt; provided that nothing in this subparagraph (C) shall be deemed to invalidate, prohibit or restrain bona fide negotiations between vendors of asphalt.

(D) Being a member of, contributing anything of value to, or participating in any of the activities of any trade association or central agency for asphalt vendors with knowledge that the activities thereof are in violation of any of the provisions of this Final Judgment;

(E) Disclosing to or exchanging with any other vendor of asphalt;

(1) The intention to submit or not to submit a bid to a governmental body;

(2) The fact that a bid has or has not been submitted, or

(3) The content of any bid.

VI

The defendant, Allied Chemical Corporation, is ordered and directed, not later than sixty (60) days following the date of the entry of this Final Judgment, individually and independently (1) to review its then prevailing prices for asphalt, (2) to determine prices of asphalt based on its own manufacturing and overhead costs, the margin of profit individually desired and other lawful consideration and (3) to establish the prices determined under (2) above, which prices shall become effective not later than ninety (90) days following the date of the entry of this Final Judgment.

VII

The defendant, Allied Chemical Corporation, is ordered and directed for a period of five years after the date of entry of this Final Judgment to submit a sworn statement in the form set forth in the Appendix A hereto, with each bid for asphalt submitted to any governmental body. Such sworn statement shall be signed by the principal officer of the Division of the defendant, Allied Chemical Corporation, which handles asphalt sales, by the person actually responsible for the preparation of said bid, and by the person who signed said bid; and a duplicate of each such sworn statement and of such bid, together with the workpapers used in the preparation of

such bid shall be kept in the files of the defendant for a period of six years from the date of execution of such bids.

VIII

For the purpose of securing compliance with this Final Judgment, 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, Allied Chemical Corporation, made to its principal office, be permitted, subject to any legally recognized privilege:

(a) reasonable access during the office hours of said defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant, relating to any of the matters contained in this Final Judgment; and

(b) subject to the reasonable convenience of said defendant, and without restraint or interference, to interview officers and employees of said defendant, who may have counsel present, regarding such matters.

Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means permitted in this Section 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 for the

purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

IX

Jurisdiction of this Court is retained for the purpose of enabling either 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 thereof, for the enforcement of compliance therewith, and punishment of violations thereof.

Dated: October 20, 1960.

/s/ C. Wyzanski
United States District Judge

APPENDIX A

AFFIDAVIT

The undersigned hereby certify that:

1. The attached bid to _____ (name of recipient of bid) dated _____ has been arrived at by _____ (name of defendant) unilaterally and without collusion with any other vendor of asphalt.

2. The intention to submit the attached bid, the fact of its submission, and the contents thereof, have not been communicated by the undersigned nor, to their best knowledge and belief, by any employee or agent of _____ (name of defendant), to any person not an employee or agent of _____ (name of defendant), and will not be communicated to any such person prior to the official opening of the attached bid.

_____ Date

_____ Signature of principal Division officer.

_____ Signature of person who prepared bid.

_____ Notarization

_____ Signature of person who signed bid.

UNITED STATES v. ALLIED CHEMICAL CORP., ET AL.

Civil Action No. 59-784-S

Year Final Judgment Entered: 1960

Year Stipulation Modifying Final Judgment Against Defendant Allied Chemical Corporation Entered: 1961

Year Stipulation Modifying Final Judgment as to Defendant Koppers Company Entered: 1961

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Allied Chemical Corp., Koppers Co., Inc., Trimount Bituminous Products Co., James Huggins &Son, Inc., H. H. McGuire &Co,, Inc., and Independent Coal Tar Co., U.S. District Court, D. Massachusetts, 1961 Trade Cases ¶69,923, (Nov. 28, 1960)

United States v. Allied Chemical Corp., Koppers Co., Inc., Trimount Bituminous Products Co., James Huggins &Son, Inc., H. H. McGuire &Co,, Inc., and Independent Coal Tar Co.

1961 Trade Cases ¶69,923. U.S. District Court, D. Massachusetts. Civil Action No. 59-784-S. Dated November 28, 1960. Case No. 1480 in the Antitrust Division of the Department of Justice.

Sherman Act

Combinations and Conspiracies—Road Tar Sales—Price Fixing—Bidding Practices— Allocation of Territories—Consent Decree.—Vendors of road tar have been prohibited, by a consent decree, from influencing or suggesting noncompetitive pricing; from entering into agreements or understandings as to price fixing, allocation of territories or customers, refraining from bidding, or submitting noncompetitive bids; from exchanging price information, except in connection with good faith negotiations between vendors; and from exchanging or disclosing information as to bids or bidding intentions. The decree is made prima facie evidence in suits by governmental units filed in Massachusetts, Maine, New Hampshire or Vermont. Also, for a period of five years bids to government units are to be accompanied by sworn statements that prices are independent and in good faith.

For the plaintiff: Robert A. Bicks, Assistant Attorney General, William D. Kilgore, Jr., Baddia J. Rashid, John D. Swartz, John J. Galgay, Bernard Wehrmann, EHianan Stone, and Paul J. McQueen, Attorneys, Department of Justice.

For the defendants: Kevin Hern for Allied Chemical Corp., Thomas E. Dwyer for Trimount Bituminous Products Co. and James Huggins &Son, Inc., Ralph Warren Sullivan for H. H. McGuire &Co., Inc., John B. Reigeluth for Independent Coal Tar Co. and Donald R. Grant, Ropes, Gray, Best, Coolidge &Rugg, for Koppers Co., Inc., all of Boston, Mass.

Final Judgment

SWEENEY, Chief Judge [*In full text*] : The plaintiff, United States of America, having filed its complaint herein on October 13, 1959, and defendants signatory hereto having admitted the allegations contained in the Government's complaint herein solely for the purpose and to the extent necessary to give to the following adjudication the *prima facie* effect stated in Section I below in the suits specified below, and for no other purpose,

Now, therefore,, before any testimony has been taken herein without trial and upon the consent of all the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

That on the basis of said limited admission the defendants signatory hereto have engaged in an unlawful combination and conspiracy in violation of Section 1 of the Sherman Act as charged in the said complaint, this adjudication being for the sole purpose of establishing the *prima facie* effect of this Final Judgment, in the suits specified below, and for no other purpose;

Each defendant is enjoined and restrained from denying that this Final Judgment has such *prima facie* effect in any such suit; provided, however, that this section shall not be deemed to prohibit any such defendant from rebutting such *prima facie* evidence or from asserting any defense with respect to damages or other defenses available to it. The specified suits referred to above are any suits instituted in this or any other court by the Commonwealth of Massachusetts, the States of Maine, New Hampshire, or Vermont, or any city or town within these states or the Commonwealth of Massachusetts against any of the defendants signatory hereto prior to September 14, 1960, and which allege violation of the Federal antitrust law and claim damages growing out of the purchases of road tar from any such defendant.

II

The Court has jurisdiction of the subject matter herein and all parties hereto. The complaint states a claim upon which relief may be granted against the defendants signatory hereto, and each of them, under Section 1 of the Act of Congress of July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

III

As used in this Final Judgment:

(A) "Person" means any individual, partnership, firm, corporation, association, or other business or legal entity;

(B) "Road tar" means a road paving material consisting of "heavy tar" and "light fluxing tar".

(C) "Governmental body" means the United States, any State, County or Municipality and any Agency thereof.

IV

The provisions of this Final Judgment applicable to any defendant signatory hereto shall apply to such defendant and to its officers, agents, servants, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with any such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

V

The defendants signatory hereto are jointly and severally enjoined and restrained from directly or indirectly:

(A) Urging, influencing or suggesting to, or attempting to urge, influence or suggest to, any other person to quote or charge noncompetitive or specified prices or terms or conditions of sale for road tar to any third person;

(B) Entering into, adhering to, maintaining or claiming any right under any contract, combination, agreement, understanding, plan or program among themselves or with any other vendor of road tar or any association or central agency of or for such vendors, to:

(1) fix, determine, establish, or maintain prices, pricing methods, discounts, or other terms of sale of road tar to any third person;

(2) allocate territories or customers for the sale of road tar;

(3) refrain from submitting bids for the supply of road tar to any governmental body or to any other person;

(4) submit a bid for the supply of road tar to any governmental body or other person which bid is not intended to attract the award of a contract;

(5) refrain from competing in the sale of road tar.

(C) Communicating, circulating, exchanging, among themselves or with other vendors of road tar, in any manner, any price information, price list or purported price list containing or purporting to contain any prices or terms or conditions for the sale of road tar; provided that nothing in this subparagraph (C) shall be deemed to invalidate, prohibit or restrain bona fide negotiations between vendors of road tar.

(D) i Being a member of, contributing anything of value to, or participating in any of the activities of any trade association or central agency for road tar vendors with knowledge that the activities thereof are in violation of any of the provisions of this Final Judgment;

(E), Disclosing to or exchanging, with any other vendor of road tar:

(1) The intention to submit or not to submit a bid to a governmental body;

(2) the fact that a bid has or has not been submitted, or

(3) the content of any bid.

VI

Each of the defendants signatory hereto is ordered and directed, not later than sixty (60) days following the date of the entry of this Final Judgment, individually and independently (1) to review its then prevailing prices for road tar, (2) to determine prices of road tar based on its own manufacturing and overhead costs, the margin of profit individually desired and other lawful considerations, and (3) to establish the prices determined under (2) above, which prices shall become effective not later than ninety (90) days following the date of the entry of this Final Judgment.

VII

Each of the defendants signatory hereto is ordered and directed for a period of five years after the date of entry of this Final Judgment to submit a sworn statement in the form set forth in the Appendix A hereto, with each bid for road tar submitted to any governmental body. Such sworn statement shall be signed by the principal officer of said defendant, by the person actually responsible for the preparation of said bid, and by the person who signed said bid; and a duplicate of each such sworn statement and of such bid, together with the work papers used in the preparation of such bid shall be kept in the files of the defendant for a period of six years from the date of execution of such bids.

VIII

For the purpose of securing compliance with this Final Judgment, 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 any defendant signatory hereto made to its principal office, be permitted, subject to any legally recognized privilege:

(a) reasonable access during the office hours of such defendants, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this Final Judgment; and

(b) subject to the reasonable convenience of such defendant, and without restraint or interference, to interview officers and employees of such defendant, who may have counsel' present, regarding such matters.

Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means permitted in this Section 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 for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

IX

Jurisdiction of this Court 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 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 thereof, for the enforcement of compliance therewith, and punishment of violations thereof.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff	Civil Action
v.	No. 59-784-S
ALLIED CHEMICAL CORPORATION, et al., Defendants.	

STIPULATION MODIFYING FINAL JUDGMENT

AGAINST DEFENDANT ALLIED CHEMICAL CORPORATION

Now come the plaintiff and the defendant Allied Chemical Corporation and, acting by and through their respective undersigned attorneys of record, hereby stipulate and agree, subject to the approval of the Court, that the final judgment hereinbefore entered against said defendant on November 28, 1960, shall be modified by amending paragraphs VI and VII to read, respectively, as follows:

VI

"The defendant, Allied Chemical Corporation, is ordered and directed, not later than sixty (60) days following the date of the entry of this Final Judgment, individually and independently (1) to review its then prevailing prices for road tar in New England, (2) to determine prices of road tar in New England based on its own manufacturing and overhead costs, the margin of profit individually desired and other lawful considerations, and (3) to establish in New England the prices determined under (2) above, which prices shall become effective not later than ninety (90) days following the date of the entry of this Final Judgment.

VII

"The defendant, Allied Chemical Corporation, is ordered and directed for a period of five years after the date of the entry of this Final Judgment to submit a sworn statement in the form set forth in Appendix A hereof, with each bid for road tar submitted to any governmental body in New England. Such sworn statement shall be signed by a principal officer of the division of the defendant, Allied Chemical Corporation, which handles road tar sales, by the person actually responsible for the preparation of said bid, and by the person who signed said bid; and a duplicate of each such sworn statement and of such bid, together with the workpapers used in the preparation of such bid shall be kept in the files of the defendant for a period of six years from the date of execution of such bids."

For the plaintiff:

/s/ John J. Galgay
JOHN J. GALGAY

/s/ Bernard Wehrmann
BERNARD WEHRMANN

/s/ Elhanan C. Stone
ELHANAN C. STONE

Attorneys, Department of Justice

ALLIED CHEMICAL CORPORATION

By /s/ Kevin Hern
Kevin Hern
Herrick Smith Donald Farley & Ketchum
Its Attorneys

Approved:

/s/ Geo. C. Sweeney
United States District Judge

Dated: 1-18-61

A TRUE COPY ATTEST

/s/ Eleonor T. Forry
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff v. ALLIED CHEMICAL CORPORATION, et al., Defendants.	Civil Action No. 59-784-S

STIPULATION MODIFYING FINAL JUDGMENT AS TO DEFENDANT KOPPERS COMPANY, INC.

Now come the plaintiff and the defendant Koppers Company, Inc. and, acting by and through their respective undersigned attorneys of record, hereby stipulate and agree, subject to the approval of the Court, that the final judgment hereinbefore entered on November 28, 1960, shall be modified as to said defendant by amending paragraphs VI and VII to read, respectively, as follows:

VI

"The defendant Koppers Company, Inc. is ordered and directed, not later than sixty (60) days following the date of the entry of this Final Judgment, individually and independently (1) to review its then prevailing prices for road tar in New England, (2) to determine prices of road tar in New England based on its own manufacturing and overhead costs, the margin of profit individually desired and other lawful considerations, and (3) to establish in New England the prices determined under (2) above, which prices shall become effective not later than ninety (90) days following the date of entry of this Final Judgment.

VII

"The defendant Koppers Company, Inc. is ordered and directed for a period of five years after the date of entry of this Final Judgment to submit a sworn statement in the form set forth in Appendix A hereto, with each bid for road tar submitted to any governmental body in New England. Such sworn statement shall be signed by the vice president and general manager of the defendant's division dealing with paving materials, by the person actually responsible for the preparation of said bid, and by the person who signed said bid; and a duplicate of each such sworn statement and of such bid, together with the workpapers used in the preparation of such bid shall be kept in the files of the defendant for a period of six years from the date of execution of such bids."

The plaintiff and the defendant Koppers Company, Inc., acting as aforesaid, hereby further stipulate and agree, subject to the approval of the Court, that Appendix A to said Final Judgment shall be modified as to said defendant by striking out the words "Signature of principal officer" appearing under the first signature line thereof and by substituting in place thereof the words "Signature of vice president of division dealing with paving materials."

For the plaintiff:

/s/ John J. Galgay
JOHN J. GALGAY

/s/ Bernard Wehrmann
BERNARD WEHRMANN

/s/ Elhanan C. Stone
ELHANAN C. STONE

Attorneys, Department of Justice

KOPPERS COMPANY, INC.

By /s/ Donald R. Grant
Ropes, Gray, Best, Coolidge & Rugg

Donald R. Grant
Ropes, Gray, Best, Coolidge & Rugg,
Its Attorneys

Approved:

/s/ Geo. C. Sweeney
United States District Judge

Dated: 1-18-61

A TRUE COPY ATTEST

/s/ Eleonor T. Forry
Deputy Clerk

3

UNITED STATES v. BITUMINOUS CONCRETE ASSN., INC., ET AL.

Civil Action No. 59-785-M

Year Judgment Entered: 1960

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Bituminous Concrete Assn., Inc.; Allied Chemical Corp.; Warren Brothers Roads Co.; Trimount Bituminous Products Co.; Essex Bituminous Concrete Corp.; H. H. McGuire & Co., Inc.; Rock-Asphalt Corp.; Merrimack Paving Corp.; Vulcan Construction Co. and Massachusetts Broken Stone Co., U.S. District Court, D. Massachusetts, 1960 Trade Cases ¶69,878, (Dec. 7, 1960)

United States v. Bituminous Concrete Assn., Inc.; Allied Chemical Corp.; Warren Brothers Roads Co.; Trimount Bituminous Products Co.; Essex Bituminous Concrete Corp.; H. H. McGuire & Co., Inc.; Rock-Asphalt Corp.; Merrimack Paving Corp.; Vulcan Construction Co. and Massachusetts Broken Stone Co.

1960 Trade Cases ¶69,878. U.S. District Court, D. Massachusetts. Civil Action No. 59-785-M. Filed December 7, 1960. Case No. 1481 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Price Fixing—Sales of Asphalt—Allocation of Markets and Customers—Bidding Practices—Trade Association—Regulating Price—Consent Decree.—Sellers of bituminous concrete and a trade association were prohibited by a consent decree from making or influencing noncompetitive bids, quotations, prices, or sales; from allocation of territories or customers; from refraining or inducing others to refrain from bidding; and from exchanging information as to prices or bids. Independent prices are to be established, and a sworn statement to that effect included with each bid submitted to a government body during a five-year period. The trade association was prohibited from collecting or circulating, reporting, or recommending to any vendor of concrete any costs or average costs of manufacture or sale, or any prices, or any formulae for computing such costs or prices. The consent judgment, also, is to be prima facie evidence of an unlawful combination and conspiracy in suits which were filed prior to a specified time by Massachusetts state and local government bodies, or any city or town within the state of New Hampshire, and the defendants are enjoined from denying that effect, but are otherwise free to rebut the prima facie case or present available defenses.

For the plaintiff: Robert A. Bicks, Assistant Attorney General, William D. Kilgore, Jr., Baddia J. Rashid, John D. Swartz, John J. Galgay, Bernard Wehrmann, Elhanan Stone and J. Paul McQueen, Attorneys, Department of Justice.

For the defendants: Kevin Hern for Allied Chemical Corp.; Warren F. Farr (D. R. Grant), Ropes, Gray, Best, Coolidge & Rugg for Warren Brothers Roads Co. and Massachusetts Broken Stone Co.; Thomas E. Dwyer for Trimount Bituminous Products Co.; Ralph Warren Sullivan for H. H. McGuire & Co., Inc., Bituminous Concrete Assn., Inc. and Vulcan Construction Co.; John L. Murphy, Jr., for Rock-Asphalt Corp.; George N. Hurd, Jr., for Merrimack Paving Corp.; and John M. Fogarty for Essex Bituminous Concrete Corp.

Final Judgment

SWEENEY, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on October 13, 1959, and defendants signatory hereto having admitted the allegations contained in the Government's complaint herein solely for the purpose and to the extent necessary to give to the following adjudication the *prima facie* effect stated in Section I below in the suits specified below, and for no other purpose,

Now, therefore, before any testimony has been taken herein without trial and upon the consent of all the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

[*Prima Facie Effect of Final Judgment*]

That on the basis of said limited admission the defendants signatory hereto have engaged in an unlawful combination and conspiracy in violation of Section 1 of the Sherman Act as charged in the said complaint, this adjudication being for the sole purpose of establishing the *prima facie* effect of this Final Judgment, in the suits specified below, and for no other purpose;

Each defendant is enjoined and restrained from denying that this Final Judgment has such *prima facie* effect in any such suit; provided, however, that this section shall not be deemed to prohibit any such defendant from rebutting such *prima facie* evidence or from asserting any defense with respect to damages or other defenses available to it. The specified suits referred to above are any suits instituted in this or any other court by the Commonwealth of Massachusetts, or any city or town within the Commonwealth of Massachusetts or the State of New Hampshire against any of the defendants signatory hereto prior to September 14, 1960, and which allege violation of the Federal antitrust law and claim damages growing out of the purchases of bituminous concrete from any such defendant.

II

[*Jurisdiction*]

The Court has jurisdiction of the subject matter herein and all parties hereto. The complaint states a claim upon which relief may be granted against the defendants signatory hereto, and each of them, under Section 1 of the Act of Congress of July 2, 1890, entitled, “An Act to protect trade and commerce against unlawful restraints and monopolies,” commonly known as the Sherman Act, as amended.

III

[*Definitions*]

As used in this Final Judgment:

(A) “Person” means any individual, partnership, firm, corporation, association or other business or legal entity;

(B) “Bituminous concrete” means a paving material made by preheating densely graded mineral aggregate and mixing it in controlled proportions with hot asphalt cement;

(C) “Governmental body” means the United States, any State, County or Municipality and any Agency thereof.

IV

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant signatory hereto shall apply to such defendant and to its officers, agents, servants, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with any such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

V

[*Provision Pertaining to Association*]

The defendant Association signatory hereto is enjoined and restrained from collecting from or circulating, reporting, or recommending to any vendor of bituminous concrete any costs or average costs of manufacture or sale or any prices, pricing methods, discounts or other terms of sale of bituminous concrete or any formulae for computing such costs or prices.

VI

[*Conspiracy to Fix and Maintain Prices Prohibited*]

The defendants signatory hereto are jointly and severally enjoined and restrained from, directly or indirectly:

(A) Urging, influencing or suggesting to, or attempting to urge, influence or suggest to any other person to quote or charge noncompetitive or specified prices or terms or conditions of sale for bituminous concrete to any third person;

(B) Entering into, adhering to, maintaining or claiming any right under any contract, combination, agreement, understanding, plan or program among themselves or With any other vendor of bituminous concrete or any association or central agency of or for such vendors, to:

(1) fix, determine, establish or maintain prices, pricing methods, discounts, or other terms of sale of bituminous concrete to any third person;

(2) allocate territories or customers for the sale of bituminous concrete;

(3) refrain from submitting bids for the supply of bituminous concrete to any governmental body or to any other person;

(4) submit a bid for the supply of bituminous concrete to any governmental body or other person which bid is not intended to attract the award of a contract;

(5) refrain from competing in the sale of bituminous concrete.

(C) Communicating, circulating, exchanging, among themselves or with other vendors of bituminous concrete, in any manner, any price information, price list or purported price list containing or purporting to contain any prices or terms or conditions for the sale of bituminous concrete; provided that nothing in this subparagraph (C) shall be deemed to invalidate, prohibit or restrain *bona fide* negotiations between vendors of bituminous concrete.

(D) Being a member of, contributing anything of value to, or participating in any of the activities of any trade association or central agency for bituminous concrete vendors with knowledge that the activities thereof are in violation of any of the provisions of this Final Judgment;

(E) Disclosing to or exchanging with any other vendor of bituminous concrete:

(1) The intention to submit or not to submit a bid to a governmental body;

(2) the fact that a bid has or has not been submitted, or

(3) the content of any bid.

VII

[*Independent Prices*]

Each of the defendants signatory hereto, other than the defendant Association, is ordered and directed, not later than sixty (60) days following the date of the entry of this Final Judgment, individually and independently (1) to review its then prevailing prices for bituminous concrete in New England, (2) to determine prices of bituminous concrete in New England based on its own manufacturing and overhead costs, the margin of profit individually desired and other lawful considerations, and (3) to establish in New England the prices determined under (2) above, which prices shall become effective not later than ninety (90) days following the date of the entry of this Final Judgment.

VIII

[*Requirement of Affidavit With Each Governmental Bid*]

Each of the defendants signatory hereto, other than the defendant Association, is ordered and directed for a period of five years after the date of entry of this Final Judgment to submit a sworn statement in the form set forth in the Appendix A hereto, with each bid for bituminous concrete submitted to any governmental body in New England. Such sworn statement shall be signed by a principal officer of said defendant, by the person actually

responsible for the preparation of said bid, and by the person who signed said bid; and a duplicate of each sworn statement and of such bid, together with the workpapers used in the preparation of such bid, shall be kept in the files of the defendant for a period of six years from the date of execution of such bids.

IX

[*Enforcement and Compliance*]

For the purpose of securing compliance with this Final Judgment, 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 any defendant made to its principal office, be permitted, subject to any legally recognized privilege, (a) reasonable access during the office hours of such defendants, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this Final Judgment, and (b) subject to the reasonanble convenience of such defendant, and without restraint or interference, to interview officers and employees of such defendant who may have counsel present, regarding such matters. Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means permitted in this Section 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 for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

X

[*Jurisdiction Retained*]

Jurisdiction of this Court 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 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 thereof, for the enforcement of compliance therewith, and punishment of violation thereof.

APPENDIX A

Affidavit

The undersigned hereby certify that:

1. The attached bid to ..... (name of recipient of bid) dated .... has been arrived at by ..... (name of defendant) unilaterally and without collusion with any other vendor of bituminous concrete.

2. The intention to submit the attached bid, the fact of its submission, and the contents thereof, have not been communicated by the undersigned nor, to their best knowledge and belief, by any employee or agent of .....(name of defendant), to any person not an employee or agent of ..... (name of defendant), and will not be communicated to any such person prior to the official opening of the attached bid.

.....

Date

Notarization

.....

Signature of principal officer.

.....

Signature of person who prepared bid.

.....

Signature of person who signed bid.

UNITED STATES v. ALLIED APPLIANCE CO.

Civil Action No. 62-482-F

Year Judgment Entered: 1962

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Allied Appliance Co., U.S. District Court, D. Massachusetts, 1962 Trade Cases ¶70,381, (Jul. 30, 1962)

United States v. Allied Appliance Co.

1962 Trade Cases ¶70,381. U.S. District Court, D. Massachusetts. Civil Action No. 62-482-F. Entered July 30, 1962 Case No. 1685 in the Antitrust Division of the Department of Justice.

Sherman Act

Resale Price Fixing—Refusal to Deal—Electrical Appliances—Consent Judgment.— A wholesaler was prohibited by a consent judgment from entering into any agreement with retail customers fixing prices, profits margins, or other terms for the sale of electrical appliances to third persons, or boycotting any retail customer. Also, the wholesaler was prohibited from refusing to sell appliances to any customer because of the customer's refusal to agree or adhere to any prohibited agreement.

For the plaintiff: Lee Loevinger Assistant Attorney General, Harry G. Sklarsky, John J. Galgay, and John D. Swartz, Attorneys, Department of Justice.

For the defendant: Joseph J. Gottlieb, Morton Steinberg, and Samuel London.

Final Judgment

FORD, District Judge [*in full text*]: Plaintiff, United States of America, having filed its complaint herein on June 29, 1962, the defendant having appeared, and the plaintiff and defendant, by their respective attorneys having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without an admission by any party in respect of any such issue;

Now, therefore, before the taking of any testimony and upon the said consent of the parties, it is hereby:

Ordered, adjudged and decreed, as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter herein and the parties hereto, and the complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Act of Congress of July 2, 1890, entitled “An Act to protect trade and commerce against unlawful restraints and monopolies”, commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

(A)“Person” shall mean any individual, partnership, firm, corporation or other business or legal entity; and

(B)“Appliances” shall include but not be limited to television receivers, phonographs, radios, air conditioners, dehumidifiers and vacuum cleaners.

III

[*Applicability*]

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

IV

[*Price Fixing*]

Defendant is enjoined and restrained from entering into, adhering to, maintaining or furthering, or claiming any rights under, any contract, combination, conspiracy, agreement or understanding with any other person having the purpose or effect of:

(A) Fixing, determining, establishing, maintaining or stabilizing prices, profit margins, pricing systems, markups, discounts or other terms or conditions for the sale of appliances to any third person;

(B) Boycotting or threatening to boycott any person in connection with the sale or distribution of appliances;

Hindering, restricting, limiting or preventing any person from purchasing or selling appliances.

V

[*Refusal to Deal*]

The defendant is enjoined and restrained from refusing to enter into any contract or agreement with any person for the sale or distribution of appliances because of his refusal to agree or adhere to any contract, agreement or understanding contrary to any of the provisions of this Final Judgment.

VI

[*Lawful Activities*]

The provisions of this Final Judgment shall not restrict the right of the defendant to exercise such lawful rights which it may have, in connection with the sale and distribution of appliances, to choose and select its own customers or to enter into lawful resale price maintenance agreements with its customers.

VII

[*Notice of Judgment*]

The defendant is ordered and directed to place an advertisement or notice, setting forth the substantive terms of this Final Judgment, in two successive issues of each of two publications of general circulation in the retail appliance trade in Massachusetts and New Hampshire.

VIII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, 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) reasonable access, during office hours, to all books, ledgers, accounts, minutes, correspondence, memoranda and other records and documents in the possession or under the control of the defendant, relating to any matters contained in this Final Judgment, and (B), subject to the reasonable convenience of the defendant, and without restraint or interference from it, to interview officers and employees of the defendant, who may have counsel present, regarding any such matters. Upon such written request the defendant shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment.

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 in which the United States is a party, for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

IX

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any party 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 thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

UNITED STATES v. ASIATIC PETROLEUM CORPORATION, ET AL.

Civil Action No. 70-1807-M

Year Judgment Entered: 1971

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff, v. ASIATIC PETROLEUM CORPORATION, and C. H. SPRAGUE & SON COMPANY, Defendants.	)	CIVIL ACTION No. 70-1807-M Entered: October 4, 1971

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on December 8, 1970, and defendants having appeared and filed their respective answers to the complaint denying the substantive allegations thereof, and plaintiff and defendants, Asiatic Petroleum Corporation and C. H. Sprague & Son Company, 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;

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

This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto. The complaint states a claim upon which relief may be granted against defendants Asiatic Petroleum Corporation and C. H. Sprague & Son Company 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

As used in this Final Judgment:

(A) "Asiatic" means the defendant Asiatic Petroleum Corporation, a Delaware corporation.

(B) "Associates" means Sprague Associates, Inc., a Delaware corporation.

(C) "Sprague" means the defendant C. H. Sprague & Son Company, a Delaware corporation, all the outstanding shares of capital stock of which are presently owned by Asiatic.

(D) "Lease Guaranty" means the guaranty by Asiatic to Associates and its assignees of the obligations of Sprague under the Terminal Leases and Subleases, as defined below.

(E) "Person" means any individual, corporation, partnership, association, firm or other legal entity.

(F) "Sprague Oil Business" means the distillate and residual fuel oil business of Sprague, together with all its assets relating thereto, including, without limitation, sales and other contracts; goodwill; trademarks and trade names; accounts receivable; office leases, fixtures and equipment; its interest as lessee or sublessee in the Terminal Leases and Subleases; and all the outstanding shares of capital stock of its three wholly-owned subsidiaries, Atlantic Terminal Sales Corporation, Lord and Keenan, Inc., and Petroleum Heat and Power Company of Rhode Island.

(G) "Sprague Stock" means all the outstanding shares of capital stock of Sprague.

(H) "Terminal Leases and Subleases" means all the leases and subleases from Associates to Sprague of various deepwater terminals and related facilities.

(I) "New England" means the states of Maine, Vermont, New Hampshire, Rhode Island, Connecticut, and Massachusetts.

III

The provisions of this Final Judgment shall apply to Asiatic, its officers, directors, agents and employees, and to Asiatic's subsidiaries (including Sprague unless and until Asiatic shall sell and dispose of the Sprague stock as provided in IV (A)(i) of this Final Judgment), 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 defendants who receive actual notice of this Final Judgment by personal service or otherwise.

IV

(A) Asiatic is ordered and directed, within eighteen (18) months from the date of entry of this Final Judgment, at the option of Asiatic, either

(i) to divest all the Sprague Stock, or

(ii) to cause Sprague to divest the Sprague Oil Business.

Such divestiture shall be on a basis which will permit the Sprague Oil Business to be maintained as a viable operating business in competition with other distributors and marketers of fuel oil in the New England area.

(B) As a part of any offer to sell the Sprague Stock or the Sprague Oil Business pursuant to subsection (A) of this Section IV, Asiatic shall, if the person acquiring such stock or business so desires, agree to enter into a contract for a period of not more than three (3) years to supply or cause to be supplied, on reasonable terms and conditions, all or a portion of the requirements for residual fuel oil of the Sprague Oil Business up to a maximum annual number of barrels not exceeding the number of such barrels acquired by the Sprague Oil Business during the 12-month

period immediately preceding the date of sale of Sprague Stock or the Sprague Oil Business, of which

(i) during the calendar year 1972, up to 4,080,000 barrels will be of 1% sulphur content and 1,640,000 barrels will be of 1.5% sulphur content,

(ii) during the calendar year 1973, up to 7,500,000 barrels will be of 1% sulphur content and 1,640,000 barrels will be of 1.5% sulphur content, and

(iii) during the calendar year 1974 or any calendar year thereafter, up to 9,250,000 barrels will be of 1% sulphur content;

provided, however, that if the contract period shall include part of a calendar year, such maximum amounts shall be appropriately prorated.

(C) Asiatic shall make known the availability of the Sprague Stock or the Sprague Oil Business for sale by ordinary and usual means for a sale of a business, and shall furnish to all bona fide prospective purchasers on an equal and non-discriminatory basis all necessary information, including business records, regarding the property to be divested, and shall permit them to have access to and make such inspections of said property as are reasonably necessary for the above purpose.

(D) Prior to the closing of any sale or other form of divestiture under this Section IV, Asiatic 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 shall object to the proposed sale, it shall notify Asiatic in writing

within forty-five (45) days after receipt of the supplementary information submitted pursuant to plaintiff's last request for such information made pursuant to this subsection (D), or within forty-five (45) days after the receipt of a statement from Asiatic, if applicable, that it does not have the requested supplementary information. If no request for supplementary information shall be made, said notice of objection shall be given within forty-five (45) days after receipt of the originally submitted details concerning the transaction. Any such notice of objection shall state the reasons plaintiff considers the transaction objectionable. In the event of such notice of objection by the plaintiff, the sale or other form of divestiture shall not be consummated unless approved by this Court or unless plaintiff's objection shall be withdrawn.

(E) Following the entry of this Final Judgment and continuing until the divestiture by Asiatic of the Sprague Stock or by Sprague of the Sprague Oil Business, Asiatic shall render reports to the Assistant Attorney General in charge of the Antitrust Division every three (3) months, outlining in detail the efforts made by Asiatic to accomplish said divestiture. The first such report shall be rendered within three (3) months after the entry of this Final Judgment.

(F) Pending divestiture pursuant to subsection (A) of this Section IV, the provisions of the Stipulation and Order entered by this Court on January 29, 1971, shall remain in effect.

V

(A) The divestiture ordered and directed by this Final Judgment shall be made in good faith and shall be absolute and unqualified and the Sprague Stock, if so divested, shall not be

reacquired by Asiatic and the Sprague Oil Business, if so divested, shall not be reacquired by Sprague or acquired by Asiatic.

(B) Anything in subsection (A) of this Section V to the contrary notwithstanding,

(i) if the divestiture shall be of the Sprague Stock by Asiatic, Asiatic may acquire, retain and enforce any bona fide pledge, lien, mortgage, deed of trust or other form of security on all or any part of the Sprague Stock or the Sprague Oil Business given for the purpose of securing to Asiatic payment of any unpaid portion of the purchase price of the Sprague Stock 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;

(ii) if the divestiture shall be of the Sprague Oil Business, (a) Sprague and Asiatic or either of them may acquire, retain and enforce any bona fide pledge, lien, mortgage, deed of trust or other form of security on all or any part of the Sprague Oil Business given for the purpose of securing to Sprague or Asiatic, as the case may be, 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 and (b) Sprague may retain and enforce against the purchaser of the Sprague Oil Business any rights as sublessor or assignor which Sprague may have pursuant to a sublease or assignment to such purchaser of the Terminal Leases and Subleases or as provided by law to ensure performance by such purchaser of the terms of such sublease or assignment to such purchaser and of the terms of the Terminal Leases and Subleases; and

(iii) Asiatic may retain and enforce against Sprague, if the divestiture shall be of the Sprague Stock by Asiatic, or against the purchaser of the Sprague Oil Business, if the divestiture shall be of said business by Sprague, any rights which Asiatic may have pursuant to the Lease Guaranty or as provided by law to reimburse it for any loss which it may incur under the Lease Guaranty or otherwise to ensure performance either, as the case may be, by Sprague of the terms of the Terminal Leases and Subleases or by such purchaser of the terms of such sublease or assignment from Sprague to such purchaser and of the terms of the Leases and Subleases.

In the event that any defendant, as a result of the enforcement of any bona fide pledge, lien, mortgage, deed of trust or other form of security, or as a result of its right as sublessor, assignor or guarantor, should acquire or reacquire possession of the divested Sprague Stock or the Sprague Oil Business or any part thereof, such defendant shall notify plaintiff in writing of such acquisition or reacquisition within thirty (30) days thereof, and within one (1) year from such repossession shall, in accordance with the provisions of this Final Judgment, effect divestiture of the Sprague Stock or Sprague Oil Business so reacquired.

VI

Except as provided in Section V hereof, Asiatic and all persons acting on its behalf shall not, for a period of ten (10) years from the date of entry of this Final Judgment, directly or indirectly purchase or acquire the stock, assets, properties or businesses, or any part thereof (excepting purchases or acquisitions of goods, wares, and merchandise in the regular course of business and enforcement of bona fide obligations, liens or other security interests or creditor's rights acquired in the regular course of

business) or merge with any person engaged in the distribution or marketing of distillate or residual fuel oil in New England unless it has obtained the prior written consent of the plaintiff.

VII

(A) For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege and subject in the case of Sprague to the provisions of Section III hereof, 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 Asiatic or Sprague made to its principal office, be permitted (i) reasonable access, during the office hours of Asiatic or Sprague, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in possession or under control of Asiatic or Sprague relating to any of the matters contained in this Final Judgment, and (ii) subject to the reasonable convenience of Asiatic or Sprague and without restraint or interference from Asiatic or Sprague, to interview officers or employees of Asiatic or Sprague, who may have counsel present, regarding any such matters.

(B) Asiatic, upon written request of 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 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 plaintiff, except in the course of legal proceedings to which the United States of America shall be

a party for the purpose of determining and securing compliance with this Final Judgment or as otherwise required by law.

VIII

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.

Dated: October 4, 1971

/s/ FRANK J. MURRAY
United States District Judge

UNITED STATES v. CONVERSE RUBBER CORPORATION; ELTRA CORPORATION, ET AL.

Civil Action No. 72-2075-J

Year Judgment Entered: 1972

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff, v. CONVERSE RUBBER CORPORATION; ELTRA CORPORATION, and THE B. F. GOODRICH COMPANY, Defendants.	)	Civil Action No. 72-2075-J **Entered: August 29, 1972**

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on July 3, 1972, seeking to enjoin an alleged violation of Section 7 of the Clayton Act (15 U.S.C. § 18); and defendants, Converse Rubber Corporation, Eltra Corporation and the B. F. Goodrich Company, having appeared, and the plaintiff and the defendants by their respective attorneys having each consented to the making and entry of this Final Judgment;

NOW, THEREFORE, before any testimony has been taken and without trial or adjudication of any issue of law or fact herein, and without any admission by any party with respect to any such issue and upon the consent of plaintiff and defendants, the Court being advised and having considered the matter, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

[Jurisdiction]

This Court has jurisdiction over the subject matter and the parties consenting hereto. The complaint states a

claim upon which relief may be granted against defendants 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) "Canvas footwear" means footwear manufactured by attaching a canvas upper to a rubber or plastic sole by either the autoclave or the machine-made method, and commonly known as gym shoes, tennis shoes or sneakers;

(B) "Rubber Canvas Footwear" means canvas footwear manufactured by attaching a canvas upper to a rubber sole;

(C) "Canvas footwear production facility" or "production facilities" means Converse's present plants located at Malden, Mass.; Andover, Mass.; Bristol, R.I.; Presque Isle, Me.; Berlin, N.H.; and Canovanas, Puerto Rico;

(D) "Eligible purchaser" means any person intending to operate production facilities for the purpose of manufacturing canvas footwear to which plaintiff, after notice, does not object, or if plaintiff does object, of which the Court approves;

(E) "Goodrich Trademarks" means the trademarks "PF", "PF Flyer" and "Jack Purcell;"

(F) "Goodrich Patents" means those unexpired U.S. patents previously owned by the B. F. Goodrich Company pertaining to canvas footwear and registered under the following U.S. Patent Nos.:

2,943,405
2,900,953
2,994,972
3,508,289
3,568,638
2,879,452
2,937,744
3,259,299

(G) "Canvas footwear manufacturer" means any person engaged in the business of manufacturing canvas footwear in the United States, or which intends to enter the business of manufacturing canvas footwear in the United States, or which has canvas footwear manufactured for it in the United States;

(H) "Lumberton Plant" means the canvas footwear manufacturing plant at Lumberton, N.C., formerly operated by the B. F. Goodrich Company;

(I) "Lawrence Warehouse" means the warehouse facility at Lawrence, Kansas formerly leased by the B. F. Goodrich Company;

(J) "Person" means any individual, partnership, firm, corporation, association or other business or legal entity.

III

[Applicability]

The provisions of this Final Judgment applicable to defendant Converse Rubber Corporation ("Converse") shall apply also to its parent, Eltra Corporation, and shall also apply to each of Converse's subsidiaries, successors and assigns, and their officers, directors, agents and employees, and to those persons in active concert or participation with any of them who receive actual notice of this Final Judgment, by personal service or otherwise. Any person not a party hereto who acquires any assets by means of a divestiture pursuant to this Final Judgment shall not be considered to be a successor or an assign of Converse.

IV

[Divestiture - Conditions and Terms]

(A) Converse is ordered and directed, by June 30, 1974, to sell, as going canvas footwear manufacturing operation(s), to an eligible purchaser or purchasers a canvas footwear production facility or facilities demonstrably capable of producing annually approximately 7 million pairs of autoclave and machine-made canvas footwear, at least 4.5 million pairs of which shall be autoclave capacity capable of producing Goodrich trademarked footwear. Any sale pursuant to this Section IV shall be on terms and conditions which are fair and reasonable under the circumstances.

(B) If the divestiture requirements of Subsection (A) of this Section IV have not been met by June 30, 1974, Converse shall, unless the Court shall direct otherwise on application by Converse, place in the control of a Trustee, promptly after his appointment by this Court, upon application by either party hereto, at the cost and expense of Converse, its interest, at its option, in either (i) the Lumberton plant, or (ii) a canvas footwear production facility or facilities demonstrably capable of producing annually approximately 7 million pairs of autoclave and machine-made canvas footwear, at least 4.5 million pairs of which shall be autoclave capacity capable of producing Goodrich trademarked footwear, and which, when offered for sale, will be viable and in good operating condition for use as canvas footwear manufacturing operation(s). The Trustee shall have full authority to dispose of such production facility or facilities as going canvas footwear manufacturing operation(s), to an eligible purchaser or purchasers

subject to Court supervision after hearing the parties hereto on any issue presented. If the Trustee has been unable to make such disposition by June 30, 1976, the Trusteeship shall end, the production facility or facilities placed in his control shall revert to Converse, and Converse shall no longer be required by any provision of this Final Judgment to sell or divest itself of any of its production facilities.

(C) If Converse loses canvas footwear production capacity due to acts of God before the sale of canvas footwear production facilities pursuant to Subsections (A) and (B) of this Section IV, it shall only be required to dispose of such production facilities as will make its total reduction in production capacity approximately 7 million pairs annually. If the loss of production capacity due to acts of God approximates 7 million pairs, Converse shall be relieved of any obligation to sell production facilities under this Section IV.

(D) Converse further is ordered and directed to sell the Goodrich Trademarks, together with the then existing inventory of canvas footwear bearing the said Trademarks and the related dies or other tooling required to reproduce the Trademarks, as well as any models, patterns, or unique equipment essential to produce the Goodrich trademarked footwear, by selling one or all of the Trademarks to an eligible purchaser or purchasers at the time of the sale to such purchaser or purchasers of production facilities pursuant to Subsection (A) or (B) of this Section IV. In the event that eligible purchaser(s) of production facilities decline to purchase one or more of the Goodrich Trademarks, or that no production facilities can be sold pursuant to Subsection (A) or (B), Converse shall sell

the remaining Trademark(s) separately from production facilities, within one year following the sale of production facilities or, failing the sale of production facilities, before June 30, 1977, to a canvas footwear manufacturer or manufacturers approved by plaintiff or this Court. Should a Trademark be sold to a person which does not manufacture canvas footwear itself, Converse shall for a period of two years, if requested by such person, sell to such person at a competitive price up to fifty percent (50%) of the number of pairs of canvas footwear bearing such Trademark(s) sold by B. F. Goodrich during 1971. In this connection, Converse shall keep the Goodrich Trademarks alive, and shall continue to market rubber canvas footwear under the Goodrich Trademarks until at least six months after the sale of production facilities pursuant to Subsection (A) or (B) or until December 31, 1976, whichever is earlier.

(E) Converse is ordered and directed to grant to any eligible purchaser or purchasers of canvas footwear production facilities pursuant to subsections (A) or (B) of this Section IV, which so requests, non-exclusive, unrestricted and royalty free licenses or sublicenses under the Goodrich Patents. In addition, Converse is ordered and directed to grant non-exclusive, unrestricted and royalty free licenses or sublicenses under the Goodrich Patents to any other canvas footwear manufacturer, which may so request, with total pairage sales of canvas footwear not in excess of Converse's total pairage sales of canvas footwear for the immediately preceding calendar year. In this connection, the canvas footwear sales of any parent or subsidiary of the canvas footwear manufacturer requesting a license or sublicense shall be considered to be the sales of the firm making the request.

(F) Converse is ordered and directed, if so requested by J. C. Penney Company, Inc. ("Penney"), to continue to sell at a competitive price based on quality and service, for a maximum period of three years from the date of entry of this Final Judgment, Penney-branded canvas footwear to Penney in an amount equal to at least fifty percent (50%) to Penney's purchases in pairs of such footwear from B. F. Goodrich in 1971; provided, however, that Converse shall be immediately relieved of any obligation to supply Penney if an eligible purchaser of production facilities pursuant to Subsection (A) or (B) of this Section IV agrees to assume the obligation to supply Penney, and provided further that, if no eligible purchaser or purchasers of production facilities pursuant to Subsections (A) and (B) is willing to assume the obligation to supply Penney, Converse shall only be obligated to supply Penney during the selling season immediately following the sale of such production facilities.

(G) Converse is ordered and directed to offer, during a period of one year following the entry of this Final Judgment, to transfer such rights as it may have in the Lawrence Warehouse to Penney or its designee which has assumed Converse's obligation pursuant to Subsection (F) to supply canvas footwear to Penney.

(H) Following the entry of this Final Judgment and continuing until the completion of the divestiture as described in Subsection (A) of this Section IV or, failing such divestiture, until the provisions of Subsection (B) of this Section IV are complied with, Converse shall:

(i) Report to the Assistant Attorney General in charge of the Antitrust Division every ninety (90) days concerning the efforts made by it to comply with the above divestiture provisions. Such reports shall include offers received and the type of production capacity desired by the prospective purchaser. The first such report shall be rendered within ninety (90) days after entry of this Final Judgment; and

(ii) Report promptly to the Assistant Attorney General in charge of the Antitrust Division the name of any person making inquiry whom Converse does not believe to be a bona fide prospective eligible purchaser, as defined in Subsection (D) of Section II above.

V

[Future Acquisitions]

Converse is enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from acquiring all or any part of the stock or assets, other than goods in the normal course of business, of any person engaged in the United States in the manufacture and sale or the distribution of canvas footwear, except with the prior written consent of plaintiff, or if such consent is refused, then upon approval by this Court.

VI

[Inspection and Compliance]

(A) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, Converse shall permit duly authorized representatives of the Department

of Justice, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Converse at its principal office, subject to any legally recognized privilege:

(1) Access during the office hours of Converse, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Converse which relate to any matters contained in this Final Judgment;

(2) Subject to the reasonable convenience of Converse and without restraint or interference from it, to interview officers or employees of Converse, who may have counsel present, regarding such matters.

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

(C) No information obtained by the means provided in this Section VI of this Final Judgment 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 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, modification, or termination of any of the applicable provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

/s/ ANTHONY JULIAN
UNITED STATES DISTRICT JUDGE

Dated: August 29, 1972

UNITED STATES v. CITIES SERVICE CO., ET AL.

Civil Action No. 68-213-S

Year Judgment Entered: 1975

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Cities Service Co., Cities Service Oil Co., Jenney Manufacturing Co., and Chelsea Terminals, Inc., U.S. District Court, D. Massachusetts, 1975-2 Trade Cases ¶60,656, (Dec. 3, 1975)

United States v. Cities Service Co., Cities Service Oil Co., Jenney Manufacturing Co., and Chelsea Terminals, Inc.

1975-2 Trade Cases ¶60,656. U.S. District Court, D. Massachusetts. Civil Action No. 68-213-S. Entered December 3, 1975. (Competitive impact statement and other matters filed with settlement: 40 *Federal Register* 45204). Case No. 1996, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions—Retail Gasoline Outlets—Divestiture—Acquisitions Ban—Consent Decree.—An oil company was required to divest service station outlets accounting for a specified volume of gasoline sales, and purchasers of the stations were to be offered supply contracts, under the terms of a consent decree. A five-year ban on acquiring automotive gasoline retail marketing outlets in specified locations and for specified dollar amounts was imposed. Additionally, the obligations of the acquired service station chain and the rights of the oil company with regard to the chain's fee-owned retail outlets were spelled out.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, John C. Fricano, Rodney O. Thorson, Jill Devitt Radek, Robert J. Ludwig, and Matthew E. Jaffe, Attys., Dept. of Justice.

For defendants: Harold Hestnes, of Hale and Dorr, and Darrel A. Kelsey for Cities Service Co., Cities Service Oil Co., and Chelsea Terminals, Inc.; Robert E. Sullivan, of Herrick, Smith, Donald, Farley & Ketchum, for Jenney Manufacturing Co.

Final Judgment

SKINNER, D. J.: Plaintiff, United States of America, having filed its Complaint herein on March 8, 1968 and the Plaintiff and the Defendants by their respective attorneys, having consented to the entry of this Final Judgment without admission by any party with respect to any issue and without this Final Judgment constituting evidence or an admission by any party hereto with respect to any such issue;

Now, Therefore, before any testimony has been taken herein, and 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 over the subject matter of this action and of the parties hereto. The Complaint states claims upon which relief may be granted against the defendants under Section 7 of the Act of Congress of October 15, 1914, as amended (15 U. S. C. 18), commonly known as the Clayton Act. Entry of this Judgment is in the public interest.

II.

[*Definitions*]

As used in this Final Judgment:

(A) Defendant “Cities” shall mean the Cities Service Company, the Cities Service Oil Company, and Chelsea Terminals, Inc.;

(B) Defendant “Jenney” shall mean Jenney Manufacturing Company;

(C) The “two-state area” shall mean the Commonwealth of Massachusetts and the State of New Hampshire;

(D) “New England” shall mean the Commonwealth of Massachusetts and the States of New Hampshire, Maine, Vermont, Connecticut and Rhode Island;

(E) “Retail volume” shall mean motor gasoline which is sold or distributed for eventual sale to the public through retail outlets;

(F) “Retail outlets” shall mean those service stations through which the defendants market their brand name petroleum products;

(G) “Person” shall mean an individual, partnership, corporation, firm or any other business or legal entity.

III.

[*Applicability*]

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

IV.

Chelsea Terminals, Inc., is hereby dismissed as a named defendant in this Final Judgment, but shall be bound by the terms thereof as long as it remains a subsidiary of Cities.

V.

[*Divestiture*]

(A) Defendant Cities is ordered and directed within three (3) years from the effective date of this Final Judgment, to divest itself of retail outlets accounting for an annual retail volume in the two-state area of not less than fifteen million two hundred seventy-five thousand (15,275,000) gallons in the calendar year immediately preceding the year of entry of this Final Judgment;

(B) Defendant Cities is ordered and directed to offer to each person initially acquiring any retail outlets to be divested pursuant to Paragraph V(A) or Paragraph VI of this Final Judgment contracts to supply such person for such periods as may be requested by such person not exceeding four (4) years, upon reasonable terms and conditions, with annual quantities of motor gasoline equal to that sold at the retail outlets in the calendar year immediately preceding the year of entry of this Final Judgment, and each such person shall be free to allocate and sell such supply volumes among and through retail outlets as he sees fit. Provided, however, that should Cities’ gasoline production increase during such period, additional volumes equal to the percentage of such increase of gasoline production shall be offered to such purchasers. Nothing in this Paragraph shall require defendant Cities to undertake any act inconsistent with any federal government regulations relating to the allocation and distribution of petroleum products;

(C) The divestiture required by this Section V shall be absolute and unconditional upon terms and conditions and to a person or persons first approved by the plaintiff or, failing such approval by the plaintiff, by the Court;

(D) Not less than sixty (60) days prior to the closing date of any divestiture made pursuant to this Section V, defendant Cities shall furnish plaintiff in writing the complete details of the proposed transaction. Plaintiff may request supplementary information concerning the proposed divestiture within twenty-five (25) days after receipt of the details of a proposed transaction or within twenty-five (25) days after receipt of previously submitted information, which supplementary information shall be promptly furnished in writing;

(E) If plaintiff objects to any divestiture proposed pursuant to this Section V, it shall notify defendant Cities of such objection in writing within thirty (30) days of receipt of the supplementary information submitted pursuant to plaintiff's last request for such information, or within thirty (30) days after the receipt by plaintiff of a statement from defendant Cities that it does not have some or all of the requested supplementary information. If plaintiff makes no request for supplementary information, notice of objection to any proposed divestiture must be given in writing to the defendant Cities within thirty (30) days of plaintiff's receipt of the originally submitted details of the proposed divestiture. If plain tiff objects to the proposed divestiture, then such divestiture shall not be consummated unless approved by the Court or unless plaintiff notifies defendant Cities in writing that its objection has been withdrawn. If plaintiff does not object within thirty (30) days of its receipt of the originally submitted details of a proposed divestiture, plaintiff may be deemed to have approved the divestiture;

(F) Any of the retail outlets divested pursuant to this Final Judgment repossessed or reacquired by defendant Cities shall be divested within one (1) year from the date of such repossession, or with the prior approval of the plaintiff, retail outlets with an equivalent retail volume shall be substituted therefor to the extent necessary to meet the divestiture requirements of this Final Judgment;

(G) The time period set forth in Section V(A) shall be tolled during the pendency of any proceedings in this Court under this Final Judgment relating to approval of a proposed divestiture.

VI.

[*Trustee*]

If defendant Cities is unable to complete the divestiture required by this Final Judgment within the time period set forth in Section V hereof, the Court shall appoint a trustee who shall have authority to select and divest retail outlets in the two-state area accounting for such portion of the retail volume provided in Section V(A) which Cities has been unable to divest All sales or other disposition of retail outlets by such trustee shall be subject to prior approval of the Court and the Court shall provide the parties with opportunity for hearing on the terms of any sale or disposition of retail outlets prior to granting approval for same.

VII.

[*Fee-Owned Stations*]

Under this Final Judgment the obligations of Jenney, and the rights of Cities with respect to Jenney fee-owned retail outlets, as affected by this Judgment, shall be limited as follows:

(A) When requested by Cities in order for Cities to complete the divestiture or divestitures under this Final Judgment or upon request of the Trustee pursuant to the Trustee's powers under Section VI, Jenney shall sell to Cities for resale by Cities to a third party or parties or to Cities to replace outlets sold by Cities to a third party or parties up to a total of sixty (60) fee-owned Jenney retail outlets upon terms determined under the Lease Agreement, dated July 1, 1963, between Jenney and Cities, as subsequently amended on September 23, 1975 (the “Lease”); provided, however, that in no event shall Jenney be required to sell (1) retail outlets the annual basic rentals allocable to which under the terms of the Lease aggregate to more than 25% of the total annual basic rental currently being received by Jenney under the Lease; or (2) replacement outlets having an annual gasoline sales volume, in the aggregate, in excess of such volume of the outlets replaced. Jenney shall have the right to be consulted concerning the selection of such sixty (60) fee-owned retail outlets and to be heard by the Court if it objects to the inclusion of any retail outlet or retail outlets and further shall have the right (exercisable within thirty days after written notice from Cities or the Trustee, as the case may be, of the selection thereof) to exclude from such selections a total of up to 10% of the retail outlets in which it held a fee interest on the date of entry of this Final Judgment.

(B) Cities may assign or sublet to others the lease of fee-owned retail outlets under the Lease and may assign its rights to extend the term of the Lease as provided in Paragraph 4 of the Lease, and may sublet during the present term and any extension thereof Jenney fee-owned outlets, all as permitted by and in accordance with the provisions of Paragraph 14-B of the Lease.

VIII.

[*Compliance Report*]

Defendant Cities is ordered and directed to file with the plaintiff every three (3) months after the date of entry of this Final Judgment a written report setting forth the steps taken by it to accomplish the divestiture required by such Final Judgment.

IX.

[*Acquisitions Ban*]

For a period of five (5) years from the date of entry of this Final Judgment Cities shall not acquire from any person any interest in (a) any automotive gasoline retail marketing outlets in the two-state area, or (b) any automotive gasoline retail marketing outlets elsewhere in New England without prior written approval by the plaintiff or, failing such approval, by the Court; provided, however, that the prohibitions in (a) and (b) above shall not apply to acquisitions where (i) the consideration does not exceed one million dollars ($1,000,000.00), (ii) the acquisition is of Cities branded distributors, or (iii) the acquisition is the result of enforcement of any bona fide lien, mortgage, deed of trust or any other security interest held by defendant Cities to secure any loan of ten million dollars ($10,000,000.00) or less made to a distributor which, at the time of the loan, was a Cities branded distributor.

X.

[*Prior Stipulation*]

The Stipulation and Order entered into by the parties on April 25, 1968 and ordered by this Court on April 25, 1968 is hereby revoked and its provisions are of no further effect.

XI.

[*Compliance Inspection*]

A. For the purpose of determining or securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice to any defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(a) Access, during office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of said defendant relating to any of the matters contained in this Final Judgment; and

(b) Subject to the reasonable convenience of any defendant to interview the officers and employees of said defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal office, each defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be requested.

C. No information obtained by the means provided in this Section XI shall be divulged to 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 is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XII.

[*Retention of Jurisdiction*]

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

UNITED STATES v. THE GILLETTE COMPANY

Civil Action No. 68-141-G

Year Judgment Entered: 1975

CORRECTED

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff v. THE GILLETTE COMPANY, Defendant.	CIVIL ACTION NO. 68-141-G Filed: June 19, 1975 Entered: December 30, 1975

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on February 14, 1968, and defendant having filed its answer thereto and plaintiff and defendant by their respective attorneys having consented to the entry of this Final Judgment:

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or admission by any party hereto with respect to any such issue, and upon consent of the said parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

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 defendant 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. Entry of this Final Judgment is in the public interest.

II

As used in this Final Judgment:

(A) "Gillette" means the defendant, The Gillette Company and its subsidiaries but, except as otherwise expressly provided, does not include Braun or subsidiaries of Braun.

(B) "Braun" means Braun Aktiengesellschaft, a corporation organized and existing under the laws of the West German Republic, and its subsidiaries and successors in interest.

(C) "New Company" means the corporation formed as ordered in paragraph IV hereof and its successors, including any buyer of its stock, business or assets pursuant to paragraph V hereof.

(D) "Sale of New Company" means the sale of all of the stock of New Company (and any indebtedness of New Company to Gillette or Braun) or all of the business and assets of New Company as hereinafter required by paragraph V hereof.

(E) "Buyer" means any one or more persons acquiring the stock or assets of New Company, approved by plaintiff or this Court if plaintiff fails so to approve after notice to plaintiff and opportunity to be heard.

(F) "Person" means an individual, partnership, association, firm, corporation or other legal or business entity.

III

The provisions of this Final Judgment shall apply to Gillette, to Braun, and to New Company until sold pursuant to Section V of this Final Judgment, their respective successors and assigns and to each of their respective officers, directors, agents and employees and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. Any person not a defendant herein who acquires by purchase, grant, exchange or otherwise any stock or assets of New Company pursuant to this Final Judgment shall not by such acquisition be considered to be a successor bound by this Final Judgment.

IV

Defendant Gillette is ordered and directed to do as follows:

(A) Not later than 120 days after the date of this Final Judgment, Gillette shall cause a new corporation to be established in the United States (hereinafter referred to as "New Company") to carry on the electric shaver business (or potential electric shaver business) of Braun as hereinafter set forth. In order to constitute New Company a fully operative, viable, going business in the electric shaver market in the United States, within the period of not more than two years after the date New Company is required to be established as a corporation in the United States pursuant to the above

provisions of this Final Judgment, Gillette is directed to cause New Company to make an entry into the electric shaver market in the United States by distributing electric shavers manufactured by Braun and to do or cause Braun to do as follows:

(1) Transfer to New Company or cause New Company to hire personnel to enable New Company, with the services and investment to be furnished under subparagraphs IV(A)(2), (3) and (4), to operate as a fully operative, viable, going business. Such personnel may include persons employed by Braun or by Gillette. Gillette will use its best efforts to cause personnel employed by New Company to continue with New Company after the date of Sale, but shall not be obligated to require any person to accept employment with New Company or the Buyer if he shall be unwilling to do so, and, if requested by the Buyer, Gillette shall cause management personnel services to be furnished, for a period of up to eighteen months after the date of Sale, to New Company at cost, determined in accordance with generally accepted accounting principles. For six (6) years following the formation of New Company, defendant is enjoined and restrained from employing or offering to employ any of such transferred personnel in the manufacture or distribution of electric shavers or safety razors and blades, except with the prior consent of plaintiff or this Court if plaintiff fails so to consent.

(2) Cause New Company to retain legal counsel and a certified public accountant not otherwise associated with Gillette or Braun, thereby to make available to New Company in connection with operations under this Final Judgment, including the compliance by Gillette and Braun with the provisions of this Final Judgment, legal and public accounting services independent of those being otherwise furnished to Gillette and Braun. Nothing in this paragraph shall preclude New Company from obtaining, at its option, any other independent consulting services.

(3) Furnish at cost, determined in accordance with generally accepted accounting principles, to New Company pursuant to contracts, leases or other agreements with New Company until the date of Sale of New Company, and, if requested by the Buyer, continuing for three years after the Sale of New Company, such market research, marketing and distribution consulting services, and such supplementary accounting, billing, data processing and other administrative services (including computer time) and such leased facilities for headquarters and warehousing and service and repair in the United States as New Company may reasonably request. Any of such services or facilities may be provided by Gillette or Braun, and in each case such services or facilities shall be furnished without Gillette or Braun knowingly retaining any information, after

Sale of New Company, which has resulted from the furnishing of such services or facilities to New Company.

(4) In order to enable New Company to meet the requirements of paragraph IV(A), and to enable New Company to be a fully operative, viable, going business:

(a) cause investments to be made in cash for the capital stock of New Company of not less than the following amounts for each of the first three twelve month periods following the date of this Final Judgment:

First Twelve Months	Second Twelve Months	Third Twelve Months
$835,000	$835,000	$830,000

for a total investment in the capital stock of New Company through the third twelve month period of $2,500,000;

(b) cause New Company to reinvest all earnings and to pay no dividends;

(c) cause New Company not to be insolvent for each of the five years following the date of this Final Judgment, solvency to be measured by total assets in excess of total liabilities (but excluding from liabilities all capital stock, retained earnings, and any debt of New Company in respect of loans or guarantees from Gillette or Braun);

(d) cause Braun to supply on an exclusive basis in the United States New Company's requirements of electric shavers and repair parts for servicing the electric shavers from the date of this Final Judgment until the date of Sale of New Company at a product cost to New Company no less favorable than the lowest price for such electric shavers (determined on the basis of F.O.B. Braun Germany) offered by Braun to any of its subsidiaries on the same functional level as New Company (except upon the consent of plaintiff or this Court if plaintiff fails so to consent after notice to plaintiff and opportunity to be heard); and

(e) Agree that neither Gillette nor Braun shall, unless approved by this Court, purchase from New Company, prior to the date of Sale of New Company, any electric shavers supplied by Braun to New Company pursuant to subparagraph IV(A)(4)(d) of this Final Judgment, except for purchases by Braun of return goods or excess inventory of models and purchases by Braun for resale in markets other than the United States,

provided, however, that except as required by subparagraph IV(A)(4)(c), nothing herein shall require Gillette to cause New Company to incur debt for borrowed money,

and provided further that each of the obligations set forth in this paragraph IV(A)(4) shall terminate at the date of any earlier divestiture pursuant to paragraph V.

(5) Grant to New Company prior to the date of Sale assignments of all United States patents pertaining to electric shavers wholly owned by Braun on the date of this Final Judgment and patents issued on applications owned by Braun on that date, including without limitation those listed in Appendix I hereto (subject to the nonexclusive rights of Ronson Corporation to the extent provided in the Ronson-Braun Termination Agreement dated as of June 12, 1974), and except that all United States patents and patent applications listed in Appendix I, ownership of which is joint, will be exclusively licensed by Braun to New Company for the life of the patents.

(6) Grant to New Company as of the date of Sale assignments of all United States patents pertaining to electric shavers, not specified in paragraph IV(A)(5), wholly owned by Braun on the date of Sale of New Company, provided that all United States patents, ownership of which is joint, will be exclusively licensed by Braun to New Company for the life of the patents; provided further that if Braun becomes independent of Gillette: Braun shall be entitled to nonexclusive licenses at a reasonable royalty for the life of said assigned

patents, and the exclusive licenses granted on patents jointly owned shall be subject to Braun's rights to produce and sell thereunder.

(7) Grant to New Company nonexclusive, royalty-free licenses for the life of the patent on all United States patent applications pertaining to electric shavers, not specified in paragraph IV(A)(5), wholly owned by Braun and pending on the date of Sale of New Company.

(8) Agree to make available without cost to New Company, upon notice that New Company has decided to produce electric shavers in the United States, for use in its electric shaver manufacturing operations in the United States, electric shaver technical information and manufacturing know-how of Braun (to the extent of Braun's full interest therein), including design and engineering data and specifications, existing on the date of Sale of New Company, said use to be nonexclusive, and, upon reasonable request by New Company in connection with the transmission to New Company of such information and know-how, whether or not theretofore in writing, to make available to New Company at cost, determined in accordance with generally accepted accounting principles, qualified Braun technical personnel.

(9) Agree that it will, upon request by the Buyer at the date of Sale of New Company, enter into a supply contract with New Company pursuant to which Braun will

supply for delivery in the United States, duty paid for the account of New Company, for a period of up to five years after the Sale of New Company, New Company's reasonable requirements, in order to enable New Company to be a fully operative, viable, going business in the electric shaver market in the United States, of electric shavers (or components thereof for use in manufacturing by New Company pursuant to this Final Judgment) manufactured by or for Braun at any time during the period of the supply contract (or which having previously been manufactured by or for Braun can then be reasonably manufactured by or for Braun) and of repair parts for servicing the electric shavers sold under the supply contract. In the event that the five year term of such supply contract would end prior to May 16, 1984, Braun shall, upon request of the Buyer, supply New Company's reasonable requirements (for use in electric shavers manufactured by New Company), through May 16, 1984, of parts for the cutter bar coupling, covered by Ronson Corporation's United States patents numbers 3,319,333 and 3,319,334, licensed to Braun. Such supply contract shall provide, in exchange for New Company's obligation to purchase reasonable annual minimum quantities of electric shavers (said quantities to be negotiated prior to approval of the Sale of

New Company pursuant to the provisions of this Final Judgment), that New Company shall be appointed as the exclusive United States distributor of electric shavers that are manufactured by or for Braun, or that are manufactured by or for Gillette and marketed or distributed by Braun anywhere in the world, provided that the foregoing shall not prohibit Gillette from utilizing in connection with electric shavers manufactured by Gillette or for Gillette by any person other than Braun, for marketing or distribution in any market by Gillette other than through Braun, any of Braun's electric shaver knowhow or other assets of Braun not required to be exclusively transferred to New Company by the provisions of this Final Judgment. Such supply contract shall enable New Company to develop the electric shaver market in the United States. Such supply contract shall be terminable by New Company on nine months' notice, and shall provide for reasonable sales prices (determined on the basis of F.O.B. Braun Germany) to New Company and such other reasonable terms and conditions of sale, which prices, terms and conditions shall be no less favorable to New Company than the lowest prices and the best terms and conditions at or upon which such products are from time to time sold to other independent third parties on the same functional level as New Company. Subject

as aforesaid, in the event New Company and Braun shall be unable to agree on any price or other term or condition, or any compliance therewith, the same shall be determined by arbitration within the standards set forth above.

(10) Agree that it will, for a period of three years after the Sale of New Company, make available at cost, determined in accordance with generally accepted accounting principles, qualified Braun supervisory and technical personnel to provide assistance and advice in connection with New Company's construction and operation of facilities for the manufacture of electric shavers in the United States

(11) Grant to the Buyer, at reasonable royalties, with respect to electric shavers (or repair parts for servicing such shavers) manufactured in the United States by the Buyer pursuant to patents and applications described in subparagraphs (A)(5), (A)(6) and (A)(7) of this Final Judgment, immunity under corresponding foreign patents and applications owned or controlled by Braun or Gillette. The amount of such reasonable royalties shall be determined at the date of Sale of New Company or at such later date when New Company gives notice that it has decided to commence production of electric shavers in the United States. Braun may require that Buyer agree to cause reasonable

precautions to be taken to avoid confusion of source or dilution of the good will of Braun except the confusion or dilution which necessarily results from the practice of the Braun patents or applications described herein. Disputes arising under such agreement shall be determined pursuant to the law of the jurisdiction where the Buyer has its principal place of business. Subject as aforesaid, in the event New Company and Braun shall be unable to agree on reasonable royalties for said immunity or any other terms thereof or such agreement or shall be unable to resolve any dispute with respect thereto, the same shall be determined by arbitration within the standards set forth above.

(12) Grant to New Company as of the date of Sale of New Company assignments without reservation of all United States trademarks and trade names, and corresponding foreign rights thereto, if any, used by New Company at any time prior to the date of Sale of New Company on sales by New Company of electric shavers purchased from Braun, provided, however, that in no event shall New Company have any rights after the Sale of New Company to use the Braun or Gillette names, whether by way of trademark, trade name, company name or otherwise, and Gillette or Braun shall retain all rights with respect thereto. Prior to the date of Sale of New Company, New Company shall not market or distribute electric shavers under the trademark

or trade name Gillette or the trademark or trade name Braun but may identify Braun as the source of manufacture. Notwithstanding the foregoing, New Company may distribute up to 28,000 electric shavers (manufactured by Braun for New Company prior to the date of this Final Judgment) with the Sixtant trademark imprinted thereon without Gillette or Braun being thereby required to grant any rights to said Sixtant trademark to New Company as of the date of Sale of New Company.

(B) In furtherance of the divestiture required by the Sale of New Company pursuant to paragraph V, Gillette shall agree to license New Company, on the date of Sale of New Company, under all United States patents pertaining to electric shavers owned by Gillette on the date of Sale, such licenses to be on a nonexclusive basis for the entire lives of the respective patents; provided, however, that New Company agrees to and does pay reasonable royalties on the manufacture and sale of electric shavers covered by said patents, except that those United States patents pertaining to electric shavers acquired from Interelectric Sachseln S.A. (being listed in Appendix II) shall be licensed on an exclusive basis (except for license rights granted to Interelectric Sachseln S.A. with respect to survival kits under the Agreement dated December 18, 1967, which shall be licensed on a nonexclusive basis). The amount of such reasonable royalties shall be determined at the date of Sale of New Company or at

such later date when New Company gives notice that it has decided to commence production of electric shavers in the United States. Subject as aforesaid, in the event New Company and Gillette shall be unable to agree on reasonable royalties for said license or any other terms thereof or shall be unable to resolve any dispute with respect thereto, the same shall be determined by arbitration within the standards set forth above.

(C)(1) Nothing in paragraph IV shall require Braun or Gillette to enforce any of the patents or patent applications assigned or licensed to New Company. Any and all information and know-how furnished to New Company, to the extent confidential, shall be kept confidential by New Company. Subject as aforesaid, in the event that New Company and Braun shall be unable to resolve any dispute relating to the transmission or use of know-how and manufacture of the products pursuant to such know-how in accordance with this Final Judgment, the same shall be determined by arbitration within the standards set forth above and elsewhere in this paragraph IV.

(C)(2) If, at any time prior to the date of sale of New Company, Gillette or Braun were to sell electric shavers in the United States to persons other than New Company, the Court may, upon motion of the plaintiff or upon its own motion, appoint a patent trustee, at the cost and expense of Gillette, who shall be authorized, until the date of Sale of New Company, to engage in patent infringement litigation, including negotiation and settlement,

on New Company's behalf against Gillette or Braun with respect to protection of New Company's rights in the United States electric shaver patents required to be assigned or licensed to New Company pursuant to paragraph IV of this Final Judgment. At the date of Sale of New Company, New Company shall succeed the said trustee as party to any such infringement litigation commenced prior to such Sale. In the event that the said trustee brings any such action for infringement of the said patent rights or in the event that, at any time within five years after the date of Sale of New Company, New Company brings any such action against Gillette or Braun for infringement of New Company's rights in the United States electric shaver patents required to be assigned or licensed to New Company pursuant to paragraph IV of this Final Judgment, neither Gillette nor Braun will allege or prove in such action the invalidity of such patents (provided, however, that such forebearance by Gillette or Braun in any infringement litigation relating to sales of electric shavers during the five year period after the Sale of New Company shall be determined by this Court at that time not to be contrary to the public interest), and, further, if the trustee (or New Company as successor) or New Company should be successful in such action with respect to any allegations of infringement therein, damages for infringement on account of such allegations, and relating to such sales of electric shavers by Gillette or Braun in the United States to persons other than New Company prior to the

date of Sale of New Company or prior to the end of the five year period after the date of Sale of New Company, shall be trebled, and Gillette shall pay the expenses and costs of the said action relating thereto, including counsel fees (but the said expenses and costs shall not be an item of damages and shall not be trebled), provided, however, that the foregoing provisions of this paragraph (C)(2) shall be inapplicable to Braun if Braun becomes independent of Gillette. If the trustee or New Company (whether or not as successor) should be unsuccessful with respect to any such allegations, the expenses and costs of said action with respect to such allegations incurred by the trustee prior to the date of Sale of New Company, including counsel fees, shall be paid in such manner as this Court shall direct, but the expenses and costs of said action with respect to such allegations incurred after the date of Sale of New Company, including counsel fees, shall not be payable by Gillette or Braun. Notwithstanding the foregoing, neither Gillette nor Braun shall be precluded in any such infringement action brought by said trustee or by New Company within five years of the date of Sale of New Company from asserting invalidity based on any prior court decision.

(D) Except as otherwise expressly provided, no assignment, exclusive license, nonexclusive license, sublicense, immunity, or right to or under any patent, patent application, know-how, information, trademark, or company or trade name of Gillette or Braun with respect

to any product or component or with respect to any jurisdiction or geographic area, shall be granted or implied to New Company or to any other person in connection with any transaction pursuant hereto, and neither New Company nor the Buyer shall be permitted to assign, sublicense or convey the rights transferred to New Company by Braun and Gillette under paragraph IV other than in connection with a sale of all or substantially all the assets of this electric shaver business of New Company or Buyer; except that the rights obtained under subparagraphs IV(A)(5) and (6) may be assigned or exclusively licensed other than in connection with a sale of all or substantially all the assets, provided that any such assignment or exclusive license of rights under (A)(5) and (A)(6) within 5 years of the date of Sale shall be subject to consent of the plaintiff, after not less than 30 days notice to plaintiff and defendant, and after opportunity for defendant and New Company to be heard, or if plaintiff fails so to consent then subject to approval by this Court after notice and opportunity to be heard.

Notwithstanding any assignment or exclusive license granted to New Company pursuant to this paragrph IV, Braun shall retain nonexclusive rights in respect thereof not pertaining to electric shavers, and shall have the right to require New Company to execute all license documents required to confirm said rights; any license by Braun with respect to jointly owned patents or patent applications shall encompass rights not pertaining to electric

shavers to the extent Braun has the right to grant such license.

(E) The time periods set forth in this paragraph IV shall be tolled during the pendency of any judicial proceedings (including appeal periods) pursuant to the provisions of 15 U.S.C. § 16 (b) - (h), P.L. 93-528 (December 21, 1974) with respect to this Final Judgment.

V

(A) Defendant Gillette is ordered and directed, not later than two (2) years following the two year period within which New Company is to be established and caused to be a fully operative, viable, going business pursuant to paragraph IV(A), to divest New Company by causing to be sold all of the stock of New Company and all of the interest of Gillette or Braun in any debt of New Company to the Buyer or all the business and assets of New Company to the Buyer.

Nothing in this Final Judgment shall preclude Gillette from considering offers for the Sale of New Company prior to the end of the two year period within which New Company is to be established and caused to be a fully operative, viable, going business pursuant to paragraph IV(A) or from causing New Company to be divested prior to the end of said two year period.

(B) The complete details of any contemplated Sale or other disposition of any assets required by this Final Judgment shall be submitted to plaintiff by Gillette. Following the receipt of such information, plaintiff

shall have sixty (60) days in which to object thereto by written notice to Gillette. Whether or not the plaintiff objects, the transaction shall not be consummated until Gillette obtains the approval of this Court. In connection with such approval the Court may consider inter alia the Buyer's financial resources, business experience, and the nature of the Buyer's existing business, if any; the condition of the United States electric shaver industry; the likelihood that the Buyer will continue the business of New Company; and the Buyer's bona fides and qualifications under the provisions of this Final Judgment; provided, however, that in case the plaintiff objects, the period set forth herein within which the assets in question must be sold or otherwise disposed of shall be extended by agreement with plaintiff, and if the parties cannot agree, the period of extension shall be determined by this Court after notice to plaintiff and opportunity to be heard, and further provided, that the period set forth herein within which the assets in question must be sold or otherwise disposed of shall be extended by the period of time during which approval of this Court is being sought pursuant to this subparagraph.

(C) Following the date of this Final Judgment, Gillette shall render reports quarter-annually to the Assistant Attorney General in charge of the Antitrust Division, outlining in reasonable detail the efforts made by Gillette to comply with the provisions of paragraph IV of this Final Judgment and, after the period of two years

following the date of this Final Judgment, also the provisions of paragraph V. Such report shall be treated as reports submitted pursuant to paragraph XV.

VI

If the stock (and debt) or business and assets of New Company to be sold or disposed of pursuant to paragraph V hereof shall not have been sold or otherwise disposed of within the time specified in paragraph V, the Court shall, upon application of the plaintiff, appoint a trustee, at the cost and expense of Gillette, to secure a Buyer for the stock (and Gillette's or Braun's interest in the debt of New Company) or the business and assets of New Company to be sold as promptly as practicable within not more than one year after the time specified in paragraph V, said Buyer to be approved by plaintiff, or failing such approval, by the Court, and said sale to be subject to Court supervision after hearing the parties on any issue presented.

VII

All sales pursuant to this Final Judgment shall be made in good faith and shall be absolute and unqualified; provided, however, that if any stock (and debt) or business and assets of New Company sold or transferred are not simultaneously paid for in full, nothing herein shall prohibit Gillette or Braun from retaining, accepting and enforcing a bona fide lien, mortgage, deed of trust or other form of security other than voting stock on such stock or assets for the purpose of securing to Gillette or Braun full payment of the price at which such stock

or assets are sold; and provided further that if, after bona fide disposal pursuant to this Final Judgment, Gillette or Braun by enforcement or settlement of a bona fide lien, mortgage, deed of trust or other form of security regains ownership or control of any such stock or assets, Gillette or Braun shall, subject to the provisions of this Final Judgment, redispose of any such stock or assets thus regained within one (1) year from the time of reacquisition, and if said redisposition shall not have been made within said one year period, the Court shall, upon application of the plaintiff, appoint a trustee, at the cost and expense of Gillette, to secure a Buyer for the stock (and Gillette's or Braun's interest in the debt of New Company) or the business and assets of New Company to be sold as promptly as practicable within not more than one year after the said one year period specified in this paragraph VII, at the best purchase price obtainable, said Buyer to be approved by plaintiff, or failing such approval, by the Court, and said Sale to be subject to Court supervision after hearing the parties on any issue presented.

VIII

None of the stock or assets of New Company to be sold or othewise disposed of pursuant to this Final Judgment shall be sold or otherwise disposed of directly or indirectly to any person, who at and after the date of said Sale is an officer, director or employee of Gillette or Braun or any of their subsidiaries or affiliates (other than New Company) or in which they or

any of them own or control beneficially more than one percent of the voting securities (including securities convertible into voting securities).

IX

(A) Until the divestiture of New Company required by paragraph V shall be completed, Gillette shall not cause or permit Braun to take, and shall not itself, take any action which would knowingly prevent, hinder or impair the carrying out of the divestiture required.

(B) Nothing in this Final Judgment shall preclude Gillette, at its option, from causing to be sold other interests in Braun or Gillette, not subject to the provisions of paragraph IV of this Final Judgment.

(C) In the event that the Buyer should directly or indirectly acquire substantially all the assets of or rights to Braun or to Braun's electric shaver business, as it relates to areas outside the United States, the rights granted by Gillette pursuant to paragraph IV(B) shall be of no force and effect from and after the date of said other acquisition.

X

Gillette is enjoined and restrained for a period of ten (10) years from the date of this Final Judgment from acquiring (whether or not through Braun) any part of the stock (in excess of one percent thereof) of, or merging or consolidating with, any person engaged in the manufacture or distribution in the United States of electric shavers or safety razors and blades, or from acquiring (whether or not through Braun) the whole

or any part of the assets (except acquisitions of industrial property rights on a nonexclusive basis) of any such person which are devoted to the manufacture or distribution of electric shavers or safety razors and blades in the United States, without the consent of plaintiff or failing such consent the approval of the Court upon a showing that such acquisition will not substantially lessen competition or tend to create a monopoly, except that nothing in the Final Judgment shall preclude any further combination of Braun with Gillette.

XI

The Stipulated Order entered herein on February 16, 1968, having provided that it should continue "until such time as a full hearing shall be had and the parties shall have had full and adequate opportunity to present as complete and detailed evidence as they deem necessary for the purpose of resolving the issues raised in this action" and "pending adjudication of the merits of the complaint," and plaintiff and defendant and the Court having intended thereby to mean continuation only until the entry of a Final Judgment in this action, including a Final Judgment entered on consent, now, therefore, the said Stipulated Order is hereby dissolved.

XII

Any matters to be determined by arbitration pursuant to this Final Judgment shall be determined, upon notice to the plaintiff, under the provisions of Chapter 251 of the Massachusetts General Laws in accordance with the rules then obtaining of the American Arbitration Association,

and in the event of such arbitration the periods of time provided herein concerning the duration of the rights and obligations of the parties to the matters being arbitrated shall be extended for a period of time equalling the period required for such arbitration.

XIII

Except as to matters to be arbitrated pursuant to this Final Judgment, any disagreement as to the prices, terms or conditions of any transaction under this Final Judgment shall be determined by this Court upon written application of either party to the transaction and after notice to the plaintiff. Pending the completion of any such proceeding, this Court may determine interim terms, which may be adjusted retroactively at the time of the final determination. In any such proceeding the burden of proof shall be upon the defendant to establish that any price, term or condition requested by it conforms to the requirements of this Final Judgment.

XIV

Nothing contained in this Final Judgment shall be deemed to prohibit any person from:

(A) Performing, or causing to be performed, any act in any foreign country which is required of it under the law or regulations of such foreign country, or of any other international body having jurisdiction therein, or

(B) Refraining from performing, or causing to be performed, any act in any foreign country which would be illegal under the law or regulations of such foreign country, or of any other international body having jurisdiction therein.

XV

(A) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, 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 at its principal office, be permitted:

(1) Access, during office hours of defendant, to all 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

(2) 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 matters.

(B) For the purpose of determining or securing compliance with this Final Judgment, defendant, upon the written request of the Attorney General or of 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 Final Judgment 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 court proceedings to which plaintiff is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XVI

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 of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.

Bailey Aldrich
United States ~~District~~ Judge
Circuit
By designation

Dated:
12/30/75

DOCKETED

APPENDIX I TO FINAL JUDGMENT

List of Braun U.S. Patents on Inventions Pertaining to Electric Shavers

U.S. Patent No.	Dated	Expires	Inventor	Filing Date
Des. 216,383	12/23/69	12/23/83	R. Fischer	1/13/69
Des. 217,528	5/05/70	5/05/84	R. Fischer	1/13/69
Des. 221, 501	8/17/71	8/17/85	F. Seiffert	6/08/70
Des. 221,504	8/17/71	8/17/85	F. Seiffert	6/08/70
Des. 222,202	10/05/71	10/05/85	F. Seiffert	6/08/70
2,908,970	10/20/59	10/20/76	A. Braun et al.	1/11/54
3,064,349	11/20/62	11/20/79	B. Futterer et al.	3/25/60
3,093,899	6/18/63	6/18/80	B. Futterer	8/12/60
3,111,755	11/26/63	11/26/80	B. Futterer et al.	2/21/61
3,155,855	11/03/64	11/03/81	B. Futterer	2/27/61
3,169,317	2/16/65	2/16/82	B. Futterer et al.	8/07/62
3,172,201	3/09/65	3/09/82	W. Messinger et al.	7/15/63
3,213,536	10/26/65	10/26/82	B. Futterer et al.	8/02/63
3,269,008	8/30/66	8/30/83	W. Messinger et al.	7/15/63
3,421,216	1/14/69	1/14/86	O.K. Anna	10/31/66
3,440,724	4/29/69	4/29/86	R. Wich et al.	5/02/67
3,440,725	4/29/69	8/30/83	W. Messinger et al.	6/29/66
3,464,110	9/02/69	9/02/86	O.K. Anna	10/31/66
3,468,025	9/23/69	9/23/86	W. Messinger	9/09/66
3,521,093	7/21/70	7/21/87	L. Harms	7/11/69
3,552,005	1/05/71	1/05/88	R. Fischer	10/16/68
3,566,468	3/02/71	3/02/88	W. Messinger	5/27/68
3,568,026	3/02/71	3/02/88	O.K. Anna	4/29/68
3,589,005	6/29/71	6/29/88	R. Fischer et al.	2/07/69
3,597,844	8/10/71	8/10/88	W. Messinger	4/24/69
3,601,679	8/24/71	8/24/88	A. Braun et al.	12/30/69

List of Braun U.S. Patents on Inventions Pertaining to Electric Shavers (Cont'd.)

U.S. Patent No.	Dated	Expires	Inventor	Filing Da
3,614,491	10/19/71	10/19/88	O.K. Anna et al.	6/03/70
3,673,683	7/04/72	7/04/89	R. Fischer	7/13/70
3,694,916	10/03/72	10/03/89	L. Harms et al.	7/10/70
3,696,508	10/10/72	10/10/89	W. Messinger	8/20/70
3,724,072	4/03/73	4/03/90	W. Messinger	4/16/71
3,729,821	5/01/73	5/01/90	G. Voigt et al.	4/22/71
3,748,503 *	7/24/73	7/24/90	C. C. Cobarg et al.	9/10/71
3,748,504 *	7/24/73	7/24/90	Guntersdorfer et al.	2/16/72
3,750,279	8/07/73	8/07/90	C. C. Cobarg et al.	9/09/71
3,760,203 *	9/18/73	9/18/90	Guntersdorfer et al.	2/22/72
3,760,497	9/25/73	9/25/90	A. Kuhl et al.	6/23/72
3,768,348	10/30/73	10/30/90	A. Braun et al.	2/15/73
3,771,842	11/13/73	11/13/90	W. Messinger	4/16/71
3,793,724	2/26/74	2/26/91	W. Messinger et al.	6/07/72
3,797,206	3/19/74	3/19/91	O. K. Anna et al.	8/31/72
3,802,073	4/09/74	4/09/91	A. Braun et al.	9/13/71
3,813,774	6/04/74	6/04/91	C. C. Cobarg	11/06/72
3,840,759 *	10/08/74	10/08/91	Guntersdorfer et al.	8/01/72

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List of Braun U.S. Patent Applications on Inventions Pertaining to Electric Shavers

Application Serial No.	Filed	Inventor
173,607	August 20, 1971	R. Wich
336,448 *	February 28, 1973	Guntersdorfer et
336,449 *	February 28, 1973	H. Heywang et a
414,767	November 12, 1973	C. C. Cobarg
443,859	February 19, 1974	C. C. Cobarg et

*/ Jointly owned by Braun A.G. and Siemens AG.

APPENDIX II TO FINAL JUDGMENT

List of Gillette U.S. Patents Pertaining to Electric Shavers Acquired from Interelectric Sachseln A.G.

U.S. Patent No.	Dated	Expires	Inventor	Filing Date
3,643,331	2/22/72	2/22/89	Bodo Futterer & Hugo Fritschy	6/24/70
3,655,529	4/11/72	4/11/89	Bodo Futterer	7/07/70
3,695,927	10/03/72	10/03/89	Bodo Futterer	7/07/70
3,726,770	4/10/73	4/10/90	Bodo Futterer	1/04/72
3,517,441	6/30/70	6/30/87	Bodo Futterer, Hugo Fritschy & Klaus Gorlinger	7/06/67
3,504,433	4/07/70	4/07/87	Bodo Futterer	6/06/67
3,605,264	9/20/71	9/20/88	Bodo Futterer	9/18/68
3,611,572	10/12/71	10/12/88	Bodo Futterer	9/16/68
3,655,528	4/11/72	4/11/89	Bodo Futterer	5/18/70
3,409,984	11/12/68	11/12/85	Bodo Futterer	12/17/65
3,498,891	3/03/70	3/03/87	Bodo Futterer	7/31/68
3,512,070	5/12/70	5/12/87	Bodo Futterer & Hugo Fritschy	2/06/67
3,577,852	5/11/71	5/11/88	Bodo Futterer	8/01/68
Des. 222,219	10/05/71	10/05/85	Bodo Futterer	3/13/68
Des. 214,059	5/06/69	5/06/83	Bodo Futterer	3/13/68
Des. 214,487	6/24/69	6/24/83	Ernst Reichl	3/13/68
Des. 218,281	8/11/70	8/11/84	Horst Diener	3/13/68