

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
HART SCHAFFNER & MARX,
Defendant.

Civil Action

No. 68-C 2167

Entered: June 1, 1970

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on November 13, 1968, and defendant having appeared and filed its Answer to the Complaint denying the substantive allegations thereof, and the plaintiff and the defendant, by their respective attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issues of fact or law herein, and without this Final Judgment constituting any evidence against or any admission by any party hereto with respect to any such issue of fact or law;

Now, therefore, before the taking of any testimony, without trial or adjudication of any issue of fact or law

herein, and upon consent of the parties hereto, it is hereby Ordered, Adjudged and Decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 7 of the Act of Congress of October 15, 1914 (15 U.S.C. § 18), commonly known as the Clayton Act, as amended.

II

As used in this Final Judgment:

(A) "Men's Suits" means men's wear consisting of a coat and trousers of matching material (with or without a vest) excluding uniforms;

(B) "Men's Better Priced Suits" means men's suits which are normally priced at \$50 or above at wholesale by the manufacturer;

(C) "Men's Retail Clothing Store" means a retail store or group of retail stores in the United States selling men's suits or other men's apparel if the sales of men's apparel constituted ten (10) percent or more of the gross sales (including sales of leased departments) of such store or stores during the last fiscal or calendar year of the store or stores concerned; and

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

III

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

IV

(A) Prior to October 31, 1973, defendant shall divest as going concerns at least 30 men's retail clothing stores which in the aggregate accounted for the purchase of not less than 52,500 men's better priced suits during the fiscal year ending January 31, 1969. As part of such divestiture, defendant, by December 31, 1971, shall divest at least 5 men's retail clothing stores. Such divestiture shall include the transfer of the right to use the identification name associated with such store. For purposes of this section, each store of a group or chain of stores operating under the same name or ownership shall be considered a

separate store. Such divestiture may be accomplished by the sale of substantially all of the assets or all of the stock of the stores selected by defendant. In the event stock of the purchaser is received by defendant in exchange for the assets or stock of the divested stores, such stock received by defendant shall be disposed of within three (3) years; and the voting rights thereto shall be promptly transferred to an independent trustee, approved by the plaintiff, who shall exercise such voting rights without any suggestion or advice from defendant regarding how such voting rights should be exercised. No officer, director or employee of defendant shall be an officer, director or employee of any purchaser while such stock is held by defendant.

(B) Prior to any divestiture under subsection (A) above, defendant shall furnish in writing to the plaintiff complete details of the proposed transaction. Within forty-five (45) days of the receipt of these details, the plaintiff may request supplementary information concerning the transaction which shall also be furnished in writing.

(C) If plaintiff objects to the proposed sale, it shall notify defendant 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 pursuant to Section IV(B) of this Final Judgment or within thirty (30) days after the receipt of a statement from defendant, if applicable, that it does not have some or all of the requested supplementary information. If no request for supplementary information is made, any such notice of objection shall be given within forty-five (45) days of receipt of the originally submitted details concerning the transaction. In the event of such notice, the sale shall not be closed unless approved by the Court or unless plaintiff's objection is withdrawn.

(D) Following the entry of this Final Judgment, defendant shall submit written reports every six (6) months to the Assistant Attorney General in charge of the Antitrust Division describing the efforts made by it to comply with subsection (A) above.

(E) Nothing contained in Section IV of this Final Judgment shall prevent defendant from retaining a bona fide security interest in any men's retail clothing store divested hereunder, and nothing contained herein shall be construed to prohibit repossession pursuant to such security interest. Any men's retail clothing store so repossessed shall be divested by defendant within two (2) years from the date of repossession.

thereof or stores with an equivalent unit volume of men's better priced suits shall be substituted to the extent necessary to meet the requirements of Section IV(A) of this Final Judgment and subject to the terms hereof.

V

(A) Defendant Hart Schaffner & Marx is enjoined and restrained for a period of five (5) years from the date of entry of this Final Judgment from acquiring, directly or indirectly, without the consent of the plaintiff, any financial interest in, or any assets (except assets purchased in the normal course of business), business, good will, or (except to the extent permitted in Section IV) capital stock of any person operating any men's retail clothing store. After said five (5) year period, defendant Hart Schaffner & Marx is enjoined and restrained for an additional period of five (5) years from making, directly or indirectly, any such acquisition, without the consent of the plaintiff, or failing such consent, the approval of the Court upon defendant giving plaintiff thirty (30) days notice and establishing that such acquisition will not substantially lessen competition or tend to create a monopoly.

(B) Nothing contained in this Section V shall be construed to prevent the defendant in the ordinary course of business from acquiring in good faith accounts receivable, notes or other commercial paper, inventory previously purchased from the defendant or inventory which may be repossessed, or enforcing any bona fide obligation, lien or other security interest.

VI

(A) For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representative of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office, be permitted (1) reasonable access, during the 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 of the matters contained in this Final Judgment, and (2) subject to the reasonable convenience of defendant and without restraint or interference from defendant, to interview officers or employees of defendant, who may have counsel present, regarding any such matters.

(B) Defendant, upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be requested in connection with the enforcement of this Final Judgment.

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

VII

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: June 1, 1970

/s/ BERNARD M. DECKER
United States District Judge