

IN THE MATTER OF
HYDRO-AIR ENGINEERING, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT AND SEC. 3 OF THE CLAYTON
ACT

Docket C-2636. Complaint, Feb. 13, 1975 - Decision, Feb. 13, 1975

Consent order requiring a St. Louis, Mo., manufacturer and distributor of truss fabricating equipment and truss connecting plates, among other things to cease tying the sale of wood roof truss connecting plates and/or engineering services to the sale, lease or license of fabricating equipment.

Appearances

For the Commission: *Duncan J. Farmer.*

For the respondent: *Miles W. Kirkpatrick*, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. §41, *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Hydro-Air Engineering, Inc., a corporation, sometimes referred to hereinafter as respondent, has violated the provisions of Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. §45), and Section 3 of the Clayton Act, as amended (15 U.S.C. §14), and it appearing to the Commission that a proceeding by it in respect thereof is in the public interest, hereby issues its complaint stating the following:

PARAGRAPH 1. Respondent Hydro-Air Engineering, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business located at 1201 S. Vandeventer Ave., St. Louis, Mo.

PAR. 2. Respondent Hydro-Air Engineering, Inc., is now, and for some time last past has been engaged in the manufacture and distribution (by sale, lease and/or license) of truss fabricating equipment; the manufacture and sale of truss connecting plates; and the design and sale of engineering services in connection therewith.

PAR. 3. In the course and conduct of its business, respondent Hydro-Air Engineering, Inc., now causes, and has caused in the past, its products, when sold, leased, and/or licensed, to be shipped from its place of business in the State of Missouri to purchasers, lessees and/or licensees thereof in other states, and maintains, and at all times mentioned herein has maintained, a substantial course of trade in said

products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Except to the extent that actual and potential competition has been lessened, restricted and restrained by reason of the practices hereinafter alleged, respondent Hydro-Air Engineering, Inc., has been and is now engaged in competition with firms, partnerships, and corporations engaged in the manufacture and distribution of truss fabricating equipment, the manufacture and sale of truss connecting plates, and the design and sale of engineering services.

PAR. 5. In the course and conduct of its business as described above, respondent Hydro-Air Engineering, Inc., has offered, entered into and enforced agreements with purchasers, lessees and/or licensees of its truss fabricating equipment which require such purchasers, lessees and/or licensees, as a condition to the purchase, lease or license of truss fabricating equipment from said respondent, to purchase truss connecting plates and/or engineering services from said respondent.

PAR. 6. The effect of the aforesaid agreements has been and may be to substantially lessen competition in the manufacture and sale of truss connecting plates and the design and sale of engineering services.

PAR. 7. The acts, practices and methods of competition alleged herein constitute tying agreements or practices by respondent in violation of Section 3 of the Clayton Act and/or Section 5 of the Federal Trade Commission Act.

PAR. 8. The acts, practices and methods of competition alleged herein constitute unfair methods of competition or unfair acts or practices by respondent in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of Section 5 of the Federal Trade Commission Act and Section 3 of the Clayton Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said Agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent Hydro-Air Engineering, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business located at 1210 S. Vandeventer Ave., St. Louis, Mo.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I

For purposes of this order, the following definitions shall apply:

A. The term "respondent" refers to Hydro-Air Engineering, Inc., a corporation, and its subsidiaries, affiliates, successors, assigns, officers, agents, representatives and employees.

B. The term "truss fabricating equipment" refers to all machinery and equipment sold, leased, or licensed by respondent to be used in the assembly, production and construction of wood roof trusses used in the construction of residences, multiple dwellings, commercial or industrial buildings and farm structures.

C. The term "truss connecting plates" refers to all metal plates bearing any number of nails or other sharp devices used to permanently connect the joints of wood roof trusses used in the construction of residences, multiple dwellings, commercial or industrial buildings and farm structures.

D. The term "engineering services" refers to design specification services provided by respondent in connection with the assembly, production and construction of wood roof trusses, and the selection and designation of truss connecting plates deemed necessary for the proper support of said trusses.

II

It is ordered, That respondent, directly or indirectly through any corporate or other device, in connection with the sale, lease or license of truss fabricating equipment, truss connecting plates and/or engineering

services in the United States shall, within thirty (30) days after entry of this order, cease and desist from:

1. Offering, entering into or enforcing any agreement or provision of any agreement, express or implied, which in any way requires or obligates any purchaser, lessee or licensee of respondent's truss fabricating equipment, as a condition to the execution or continuation of a purchase, lease or license agreement with respect to such equipment, to purchase or agree to purchase all or any part of such purchaser's, lessee's or licensee's requirements of truss connecting plates and/or engineering services from respondent or from any source designated by respondent.

2. Offering, allowing or granting a price discount, rental or royalty reduction, rebate, or other valuable consideration on or with respect to the sale, lease or license of respondent's truss fabricating equipment which is in any way based upon purchases of truss connecting plates and/or engineering services from respondent or from any source designated by respondent.

3. Requiring any of its purchasers, lessees or licensees of truss fabricating equipment to purchase truss connecting plates and any other products from respondent or from any source designated by respondent.

III

It is further ordered, That respondent shall:

1. Within thirty (30) days after entry of this order, mail a letter on its stationery, signed by the officers of the respondent and enclosing a copy of this order, to all of its purchasers, lessees, and/or licensees of truss fabricating equipment who have purchased truss connecting plates from it during the twenty-four (24) months preceding entry of this order which informs each such purchaser, lessee or licensee of the prohibitive terms of this order.

2. Notify, during the five (5) year period after entry of this order, each new prospective purchaser, lessee or licensee of its truss fabricating equipment (excluding replacement parts) of the prohibitive terms of this order on its first written proposal to each such new prospective purchaser, lessee or licensee.

3. Within ten (10) days after entry of this order, provide a copy of this order to each of its salesmen, sales agents and sales representatives.

4. Within thirty (30) days after entry of this order, and continuing thereafter, make available its manuals concerning its standard wood roof truss designs, including updated standard wood roof truss designs, to any truss fabricator desiring such manuals; nothing contained in this

order shall prohibit respondent from charging a reasonable fee for such manuals.

5. Within sixty (60) days after entry of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

6. Notify the Commission at least thirty (30) days prior to any proposed corporate change such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which