

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF
AMERICA,

Plaintiff,

v.

TRUE TEMPER CORPORATION;
WILSON ATHLETIC
GOODS MFG. CO., INC.;
A. G. SPALDING & BROS.,
INC.; MacGREGOR SPORT
PRODUCTS, INC.; and
HILLERICH & BRADSBY CO.,

Defendants.

CIVIL ACTION
NO. 58 C 1159

At Chicago, Illinois, in said Division and District
on August 1, 1961

FINAL JUDGMENT

Plaintiff, United States of America, having filed
its complaint herein on June 30, 1958, each of the
defendants having appeared, and the plaintiff and
each of 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 said judgment constituting
evidence or an admission by any party with respect
to any such issue;

NOW, THEREFORE, before the taking of any
testimony and without trial or adjudication of any
issue of fact or law herein, and upon consent of the
plaintiff and each defendant, 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 claims upon which relief against the defendants
may be granted under Sections 1 and 2 of the Act
of Congress of July 2, 1890, entitled "An Act to
protect trade and commerce against unlawful re-
straints and monopolies," commonly known as the
Sherman Act, as amended.

II.

As used in this Final Judgment:

(A) "Defendant club manufacturers" shall mean
Wilson Athletic Goods Mfg. Co., Inc., a Delaware
corporation, A. G. Spalding & Bros., Inc., a Dela-
ware corporation, MacGregor Sport Products, Inc., a
Ohio corporation, and Hillerich & Bradsky Co., a
Kentucky corporation;

(B) "True Temper" shall mean the defendant
True Temper Corporation, an Ohio corporation;

(C) "Golf club" shall mean and include any
kind, variety, style, or type of club used in playing
the game of golf, regardless of the material out of
which such club or any component thereof is made;

(D) "Club manufacturer" shall mean any person
engaged in the production or assembly of golf clubs;

(E) (1) "Shaft" shall mean the shaft component
of golf clubs, whether made of steel or
other material;

(2) "Standard shaft" shall mean any shaft
(other than special shafts) manufactured
and sold by defendant True Temper in
its regular course of business;

(3) "Special shaft" shall mean any shaft
manufactured by defendant True Temper
for and sold to a single club manu-
facturer according to a specially de-
veloped design (i) different from the design
of any other shafts produced by True
Temper and (ii) set forth or confirmed
in writing to defendant True Temper
by the particular club manufacturer for
whom such special shafts are being or
to be manufactured;

(F) "Jobber" shall mean any person, other than
a club manufacturer, who purchases golf clubs for
resale to other jobbers or to dealers;

(G) "Dealer" shall mean any person, other than
a club manufacturer, who purchases golf clubs from
any club manufacturer or jobber for resale to ulti-
mate consumers;

(H) "Person" shall mean any individual, part-
nership, firm, association, corporation, or other legal
entity;

(I) "Subsidiary" shall mean any person more
than fifty per cent of whose stock is, directly or
indirectly, owned or controlled by a defendant.

III.

The provisions of this Final Judgment applicable
to any defendant shall apply to each of its officers,
directors, agents, employees, subsidiaries, successors
and assigns, and to all other 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. For the purposes
of this Final Judgment each defendant and its offi-
cers, directors, agents, employees, subsidiaries, or any
of them, when acting in such capacity, shall be
deemed to be one person.

IV.

The defendants, and each of them, are jointly
and severally enjoined and restrained from, directly
or indirectly, entering into, adhering to, maintaining,
enforcing, or attempting to enforce, any contract,
agreement, understanding, plan, or program among
themselves or with any other person:

(A) To fix, establish, maintain, or enforce prices
or other terms or conditions for the sale or resale
of any shaft or golf club to third persons; provided
that after the expiration of five years following the
entry of this Final Judgment each defendant may,
acting independently, and not in concert with one
another or with any other person, exercise such lawful
rights, if any, as each may have under the so-called
Miller-Tydings Act with respect to golf clubs sold by it;

(B) To establish or maintain any particular or
uniform time or season for the introduction of new
models, types, grades, or styles of shafts or golf clubs
or accessories, or to hinder, restrict, limit, or pre-
vent any person from introducing, at any time, any
model, type, grade, or style of shaft, golf club, or
accessory;

(C) To refrain from manufacturing, distributing,
or selling any particular kind, type, grade, or style
of shaft or golf club, or golf clubs embodying any
particular kind, type, grade, or style of shaft;

(D) To hinder, restrict, limit, or prevent, or
attempt to hinder, restrict, limit, or prevent any third
person from purchasing (i) standard shafts or (ii)
his own special shafts from True Temper or any
other source.

The provisions of this Section IV shall not ap-
ply to transactions solely between (a) a defendant
and its subsidiary or subsidiaries, (b) a defendant and
its parent corporation, and (c) a defendant and cor-
porations affiliated therewith through common own-
ership and controlled by the same parent corporation.

V.

(A) Any contract or agreement existing on the
date of this Final Judgment by the terms of which
(i) any defendant club manufacturer is required, or
obligated, to purchase all, or any designated per-
centage or proportion, of its requirements for shafts from
defendant True Temper or (ii) defendant True Tem-
per is required or obligated to sell to any defendant
club manufacturer all or any designated percentage
or proportion of the requirements of such defendant
club manufacturer for shafts, is hereby ordered can-
celled as of the date of this Final Judgment.

(B) The defendants are jointly and severally en-
joined and restrained from renewing, adhering to,
maintaining, or claiming any rights under any con-
tract or agreement cancelled by the foregoing sub-
section (A) or entering into any like or similar con-
tract or agreement with any other defendant.

VI.

(A) Defendant True Temper is enjoined and re-

strained from directly or indirectly:

- (1) Fixing, suggesting, or influencing, or attempting to fix, suggest, or influence the price or prices (including resale prices), terms or conditions upon which any golf club or shaft may or shall be sold by any other person;
- (2) Hindering, restricting, limiting or preventing, or attempting to hinder, restrict, limit or prevent any other person from (a) manufacturing or selling any shaft or golf club for or to any third person or class of persons, or (b) purchasing any shaft or golf club from any manufacturer thereof;
- (3) Making proposals or suggestions to any club manufacturer, jobber, or dealer regarding (a) the price or prices at which any such club manufacturer, jobber, or dealer sells, has sold, or will sell any golf club, (b) the person or persons, or categories of persons, to whom any such club manufacturer, jobber, or dealer sells, has sold or will sell any golf club, or (c) the person or persons to whom defendant True Temper sells, has sold or will sell any standard shaft;
- (4) Giving, or offering to give, to any club manufacturer in the United States, in connection with any sale of standard shafts, any price, discount, rebate, or advertising or other allowance, except such as (a) are lawful under applicable laws of the United States relating to price discrimination, (b) shall have first been published generally to the trade, and (c) shall be available to all purchasers upon the published terms and conditions; provided, however, that in any suit or proceeding which may hereafter be instituted by the plaintiff against defendant True Temper, in which the plaintiff shall have established a *prima facie* case that defendant True Temper has violated this section, defendant True Temper may rebut such *prima facie* case by showing that the difference in price, discount, rebate, advertising, or other allowance, term or condition of sale was (i) lawful under the applicable laws of the United States relating to the meeting of competition, and (ii) was made, offered, or given in good faith by defendant True Temper in order to meet an equally low price, discount, rebate, advertising, or other allowance, or term or condition of sale, offered, or given by a competitor;
- (5) Entering into any contract, agreement, understanding, plan, or program with any club manufacturer whereby defendant True Temper offers, or undertakes to (a) refuse to sell any shaft (other than special shafts) to any other club manufacturer, or (b) limit or restrict its production of shafts to special shafts of any defendant club manufacturer;
- (6) Coercing, compelling, or otherwise requiring, or in any manner, attempting to coerce, compel, or otherwise require, any golf club manufacturer in the United States to enter into any contract or agreement obligating such golf club manufacturer to purchase all or any designated percentage or proportion of its requirements of shafts from the defendant True Temper or any other source.
- (B) Defendant True Temper is ordered and directed to sell standard shafts to any club manufacturer in the United States who makes application in writing to True Temper, upon its usual and normal trade terms and conditions, including credit requirements; provided, however, that subject soever as to availability, price, terms, conditions, or credit requirements, provided however, that subject to subsection (A) (4) of Section VI this subsection (B) shall not (i) prohibit True Temper from establishing such differences in prices, discounts, rebates, advertising, or other allowances, or terms or conditions of sale as may be lawful under the laws of the United States, or (ii) require defendant True Temper to continue the manufacture of any standard shaft which defendant True Temper has previously and publicly announced to the trade its intention

to discontinue.

(C) If at any one time defendant True Temper manufactures or sells special shafts for or to three or more of the defendant club manufacturers, then, upon the request of any other club manufacturer in the United States and the submission by such manufacturer of a firm order in writing for a minimum of 15,000 special shafts of one grade for woods, or a minimum of 15,000 special shafts of one grade for irons, which can be manufactured by True Temper's normal and usual manufacturing methods, such order to be for delivery in lots of not less than 5,000 shafts, defendant True Temper is ordered and directed to manufacture special shafts for such club manufacturer upon True Temper's normal and usual manufacturing and trade terms and conditions and to schedule the manufacture or production of such special shafts pursuant to such order in accordance with its normal and usual scheduling procedures, without any discrimination whatsoever against any non-defendant club manufacturer, and without offering or affording to any defendant club manufacturer any preference or priority over a non-defendant club manufacturer; provided, however, that True Temper may in good faith reflect in the prices at which such special shafts are sold any differences in the cost of manufacture, sale, or delivery of such special shafts. At any time after five (5) years from the date of entry of this decree, defendant True Temper may petition the Court to be relieved of this Section VI(C) or for appropriate modification thereof, and such relief shall be granted upon a showing by defendant True Temper that the relief incorporated in this Section VI(C) is (i) not then necessary or appropriate and (ii) that substantial and effective competition exists in the manufacture and sale of special shafts.

(D) In the event of the failure, refusal or inability of defendant True Temper to (i) sell standard shafts to any non-defendant club manufacturer in accordance with the subsection (B) above or to (ii) manufacture and sell to or for any club manufacturer special shafts in accordance with subsection (C) above, defendant True Temper is ordered and directed (i) to advise such non-defendant club manufacturer, by letter, of the specific reason or reasons for such failure, refusal or inability and (ii) to furnish to the plaintiff a copy of each such letter. In any suit or proceeding which, at any time, may hereafter be brought or instituted by the plaintiff arising out of, or based upon, any such failure, refusal or inability of defendant True Temper, defendant True Temper is enjoined and restrained from raising any excuse for such failure, refusal or inability except that specifically stated in such letter to such non-defendant club manufacturer.

VII.

The defendant club manufacturers are each individually enjoined and restrained from directly or indirectly:

(A) Coercing, compelling, or otherwise seeking to require or induce dealers or jobbers to observe or adhere to such defendant's suggested resale prices for golf clubs manufactured by defendant; provided that each defendant club manufacturer may disseminate to its jobbers or dealers suggested resale prices on golf clubs of its own manufacture if each separate document or paper, or the first inside page of any catalogue, so disseminated and containing or purporting to contain suggested resale prices bears a clear statement, in bold type, on the face thereof, or on such page, to the effect that the prices therein contained are suggested prices only, and are not binding upon any person;

(B) Hindering, restricting, or preventing, or attempting to hinder, restrict, or prevent any other person from:

- (1) Purchasing any shaft or shafts from any source;
- (2) Selling any shaft or shafts, or golf club or clubs to any third person;
- (3) Manufacturing, selling, or distributing any golf clubs;

(C) Entering into, adhering to, maintaining, enforcing, or attempting to enforce, any contract, agreement, understanding, plan, or program with any

other person to restrict or limit, in any manner, the sale or resale of any particular grade or type of golf club, or any golf club embodying any particular grade or type of shaft, to any particular category or categories of customers or purchasers, or through any particular channel or channels of distribution; except that each defendant club manufacturer may individually and independently elect to sell particular grades or types of golf clubs to particular customers or categories of customers, provided such golf clubs bear the brand name or names of the selling defendant or the purchaser;

(D) Permitting any of its officers, directors, agents, or employees, to serve also, at the same time, in any similar capacity with any other club manufacturer or with defendant True Temper, or permitting any of its officers or directors while so serving to hold or continue to hold, individually or as a group, in excess of one per cent of the outstanding stock of any class or in excess of one per cent of the outstanding debt obligations of any class of any other club manufacturer or of defendant True Temper;

(E) Communicating, in any manner, circulating, or disseminating to any person outside of the defendant's own organization or employ, any price lists or quotations or tentative lists or quotations for the sale of golf clubs, in advance of or prior to, the general publication, circulation, or dissemination of such price lists or quotations to the customers of the defendants and to the trade generally; or

(F) Being a member of, contributing anything of value to, or participating in any of the activities of, any trade association or central agency of or for club manufacturers, jobbers, or dealers, with knowledge, or reasonable grounds to believe, that any of the activities thereof are, or may be, inconsistent with any of the provisions of this Final Judgment;

(G) For a period of five (5) years following entry of this Final Judgment, using any decal, trade, or grade name, mark, or other designation, owned or controlled by defendant True Temper, on any golf club manufactured or sold by such defendant club manufacturer, provided however that defendant True Temper may mark with its name "True Temper" or its initials "TT," shafts manufactured by it and sold to any defendant club manufacturer if all such shafts sold to defendant club manufacturers are uniformly and inconspicuously so marked.

VIII.

Should defendant True Temper, at any time hereafter, engage in the manufacture or sale of golf clubs, all of the provisions of this Final Judgment applicable to the defendant club manufacturers, except Sections VII(D) and IX shall be equally applicable to defendant True Temper as a golf club manufacturer and True Temper shall be enjoined and restrained from permitting any of its officers, directors, agents, or employees, to serve also, at the same time, in any similar capacity with any other golf club or shaft manufacturer, or permitting any of its officers or directors, while so serving, to hold or continue to hold, individually or as a group, in excess of one per cent of the outstanding stock of any class or in excess of one per cent of the outstanding debt obligations of any class of any other golf club or shaft manufacturer. This provision shall have no effect upon the other provisions of this Final Judgment applicable to defendant True Temper as a shaft manufacturer.

IX.

The defendant club manufacturers are ordered and directed to:

(A) Each, independently review, within ninety (90) days after the date of this Final Judgment, its then prevailing prices for golf clubs;

(B) Each, independently and individually, determine its own prices for golf clubs on the basis of its own business judgment and without any consultation with any other defendant or club manufacturer;

(C) Each publish and disseminate to its customers, and the plaintiff, on or before October 15, 1961, a price list or price lists containing the prices determined pursuant to subsection (B) above.

X.

(A) The defendants are ordered and directed to cause a copy of this Final Judgment to be published at least once a month for three (3) consecutive months in the trade magazines *Sporting Goods Dealer* and *Goldom*. The costs of compliance with this subsection (A) shall be borne equally by the defendants.

(B) For a period of five (5) years, the defendants are ordered and directed to furnish a copy of this Final Judgment to any person upon request.

XI.

For the purpose of 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 the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to any defendant made to its principal office, be permitted:

(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 control of said defendant relating to any of the matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview the officers and employees of said defendant, who may have counsel present, regarding any such matters.

For the purpose of securing compliance with this Final Judgment, each consenting defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice made to its principal office, shall submit such written reports (under oath, if so requested) with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment. No information obtained by the means provided 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 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.

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 and for the enforcement of compliance therewith and the punishment of the violation of any of the provisions contained herein.

(Signed) EDWIN A. ROBSON,
United States District Judge.