

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROLEX WATCH U.S.A., INC.,

Defendant.

Supplemental to
Civil Action No. 96-170
Date: February 28, 2006

Civil Part I Judge

**PETITION BY THE UNITED STATES FOR AN ORDER TO SHOW CAUSE WHY
DEFENDANT ROLEX WATCH U.S.A., INC. SHOULD NOT BE FOUND IN CIVIL
CONTEMPT**

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, presents this Petition for an Order requiring Defendant Rolex Watch U.S.A., Inc. to show cause why it should not be found in civil contempt of the Final Judgment entered by this Court on March 9, 1960 in United States v. The Watchmakers of Switzerland Information Center, Inc., Trade Reg. Rep. (CCH) ¶ 69,655 (S.D.N.Y. Mar. 9, 1960) ("Final Judgment"). A copy of the Final Judgment is attached to this petition. The United States represents as follows:

I.
THE DEFENDANT

1. Defendant Rolex Watch U.S.A., Inc. (“Rolex”) is the successor in interest to the American Rolex Watch Corporation – one of the named defendants in the Final Judgment. Rolex’s principal place of business is at 665 Fifth Avenue, New York, NY, 10022-5305.

II.
JURISDICTION OF THE COURT

2. This Petition alleges violations of the Final Judgment by Defendant. This Court has jurisdiction under its inherent powers and Section XI.A of the Final Judgment, which provides in relevant part:

Jurisdiction is retained by this Court for the purpose of enabling any of the parties signatory 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 enforcement or compliance therewith, and for the punishment of violations thereof. . . .

III.
BACKGROUND

3. On October 19, 1954, the United States filed an antitrust complaint in this Court under Section 1 of the Sherman Act, 15 U.S.C. § 1, alleging a wide-ranging conspiracy between Swiss and United States watch companies to fix prices, terms, and conditions of the sale of watches and watch parts, restrict the manufacturing of watches and watch parts in the United States, and control the export of watches and watch parts into the United States. The complaint named more than twenty defendants, including Rolex’s predecessor – the American Rolex Watch Corporation.

4. On March 9, 1960, the United States and eleven of the defendants named in the complaint (all of whom were United States importers of Swiss watches or watch parts), including the American Rolex Watch Corporation, entered into the Final Judgment. The purpose of the Final Judgment was to prevent the defendant importers from engaging in certain collusive and unilateral conduct that was causing significant competitive harm at the time the Final Judgment was entered.

**IV.
CONDUCT PROHIBITED BY THE FINAL JUDGMENT**

5. Section VI.C of the Final Judgment states, in relevant part, that each defendant importer “is enjoined from . . . [r]estricting or controlling [t]he use by any person in the United States of watch parts or watchmaking machines purchased from” any defendant importer.

6. Section VI.H of the Final Judgment states that each defendant importer “is enjoined from . . . [e]ntering into any agreement or understanding with any reseller of watches, watch parts or watchmaking machines to fix or control the markup or the maximum or minimum price at which, the terms or conditions on which, or the customers to whom any such product may be resold.”

**V.
VIOLATIONS OF THE FINAL JUDGMENT**

7. Rolex sells watch parts to certain independent watch repair facilities, usually known in the industry as watchmakers. Rolex requires that, prior to being able to purchase watch parts, these watchmakers agree to adhere to certain rules. These rules are specified in a Policy Statement issued by Rolex.

8. Since 1996, Rolex's Policy Statement has included certain provisions that violate the Final Judgment.

9. One of the provisions in Rolex's Policy Statement, under the heading "Rolex Trademarks and Goodwill," states: "Parts may not be used in any watch that has non-Rolex parts or accessories (such as generic dials, bezels, crystals or bracelets)." This restriction on the ability of watchmakers to use parts purchased from Rolex to repair Rolex watches that have non-Rolex parts or accessories violates Section VI.C of the Final Judgment by limiting the use by watchmakers of the watch parts purchased from Rolex.

10. Another provision in Rolex's Policy Statement, under the heading "Terms of Sale," states: "Spare parts are sold for end use by the purchaser only. Spare parts may not be resold under any circumstances." This restriction on the ability to resell parts violates both Section VI.H of the Final Judgment by limiting the circumstances under which watch parts may be resold, and Section VI.C of the Final Judgment by limiting a watchmaker's use of the watch parts it purchases from Rolex.

11. A third provision in Rolex's Policy Statement, under the heading "General Policies," states: "To the extent that charges for spare parts are itemized, the markup shall not exceed fifty percent (50%)." This maximum pricing restriction violates Section VI.H of the Final Judgment by fixing the maximum markup that watchmakers can charge (when itemizing) for watch parts when performing repairs.

12. Since implementing each of these changes to its Policy Statement, Rolex has been in civil contempt for violating Sections VI.C and VI.H of the Final Judgment.

VI.
RELATED FILING

13. On February 28, 2006, Rolex filed a Motion to Terminate the Final Judgment claiming that the Final Judgment no longer serves a procompetitive purpose.

14. Under certain circumstances, the United States believes that termination of final judgments may be appropriate. The United States has tentatively consented to termination of final judgments, subject to public notice and an opportunity for public comment, where there have been significant changes in the industry such that the provisions of these final judgments were no longer necessary to maintain competition, and/or the antitrust laws have changed such that conduct that was deemed *per se* illegal at the time these final judgments were entered, and was prohibited under these final judgments, is now analyzed under the rule of reason.

15. On February 28, 2006, the United States responded to Rolex's Motion to Terminate by filing a Memorandum for Order Terminating Final Judgment and a Stipulation. In these filings, the United States tentatively consented to the termination of the Final Judgment as to all defendants, subject to notice and an opportunity for public comment, because there have been significant changes in the watch industry since the entry of the Final Judgment in 1960, the requirements of the Final Judgment are no longer necessary to prevent collusion and maintain competition, and the law relating to vertical restraints has changed significantly such that these restraints are no longer deemed *per se* illegal but are now analyzed under the rule of reason.

16. Until the Final Judgment is terminated, however, Rolex is required to abide by its terms. As alleged in Paragraphs 8-11, since 1996 Rolex has been in violation of the Final Judgment.

Moreover, Rolex failed to raise the issue of terminating the Final Judgment prior to the United States' determination of a violation. Therefore, even though the United States agrees with Rolex that the Final Judgment may be terminable, the United States believes that defendants should not be permitted to violate extant decrees without consequence. Accordingly, the United States filed this Petition.

**VII.
PRAYER**

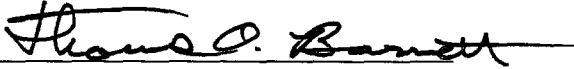
WHEREFORE, for the foregoing reasons, the United States respectfully requests that this Court enter an Order directing Defendant Rolex to appear before this Court at a time and place to be fixed in said Order, to show cause why it should not be adjudged in civil contempt of this Court, and prays for the following relief:

- (1) that Defendant Rolex be found in civil contempt for the violations of the Final Judgment described above;
- (2) that Defendant Rolex be ordered to pay an amount deemed appropriate by the Court for contempt of this Court's Final Judgment;
- (3) that the United States be awarded costs and attorneys fees incurred in investigating Rolex's conduct and filing this Petition to Show Cause; and
- (4) that the United States have any and all other relief as the Court may deem justified by Defendant Rolex's actions.

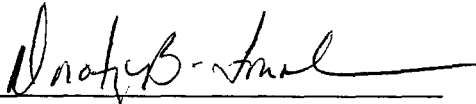
Dated:

Respectfully submitted,

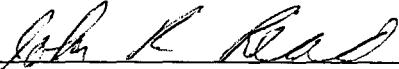
FOR PLAINTIFF
UNITED STATES OF AMERICA



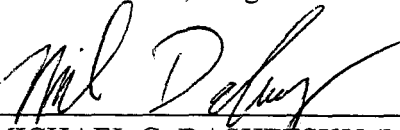
THOMAS O. BARNETT (TB, 1317)
Assistant Attorney General



DOROTHY B. FOUNTAIN (DF, 3585)
Deputy Director of Operations



JOHN READ (JR, 8964)
Chief, Litigation III Section
NINA HALE (NH, 7828)
Assistant Chief, Litigation III Section



MICHAEL G. DASHEFSKY (MD, 6191)
JILL A. BEAIRD (JB, 7102)
JENNIFER A. WAMSLEY (JW, 2261)
U.S. Department of Justice
Antitrust Division
325 7th Street, N.W., Suite 300
Washington, DC 20530
Telephone: (202) 353-3062
Facsimile: (202) 514-1517