

## FINAL CHAPTER IN THE SWISS SPARE PARTS LITIGATION

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A new and confusing twist took place in the Swiss Spare Parts litigation that may bring this 52-year-old case to an end. On February 27, 2006, the Justice Department made the following two announcements, which appear on their face to be contradictory:

(1) Rolex has agreed to pay \$750,000 as a civil payment to resolve an inquiry as to whether the restrictions it imposes on its authorized dealers regarding maximum retail price and the distribution of spare parts violate a Consent Decree that Rolex agreed to in 1960 with the Justice Department.

(2) The Justice Department will agree to a termination of the 1960 Consent Decree, thereby allowing Rolex to re-impose the restrictions on its authorized dealers.

Confused? So were many in the industry until clarification was obtained by speaking to the parties and doing some historical and legal research.

**HISTORY.** In 1954, the United States commenced an antitrust investigation of Swiss watch manufacturers and their United States importers. The principal target of the investigation was an agreement known as the Collective Convention of the Swiss Watch Industry by which up to twenty Swiss watch companies had agreed to restrict, eliminate and discourage the manufacture of watches and watch parts in the United States.

Rather than going to trial, eleven Swiss watch manufacturers and importers, including Rolex, settled with the Justice Department in 1960 and entered into the Consent Decree. According to the Justice Department, the Consent Decree imposed the following restrictions on the Swiss manufacturers and importers:

- (i) A prohibition against fixing or controlling the maximum or minimum price at which their watches and watch parts were sold by U.S. authorized dealers;

- (ii) A prohibition against restrictions on the resale of their spare parts by their U.S. authorized dealers; and
- (iii) A prohibition against any policy which prevented U.S. authorized dealers from using their parts to repair watches that contained non-genuine components.

**RECENT SUPREME COURT CASES.** When the Consent Decree was entered into in 1960, some of the practices that were prohibited by the Consent Decree were considered *per se* violations of the antitrust law. *Per se* violations are practices that are deemed so detrimental to commerce that they are automatic violations of the antitrust laws and cannot be justified by the other circumstances of a particular case.

Since the Consent Decree was entered into 46 years ago, the Supreme Court has relaxed several of the restrictions that the antitrust laws place on a manufacturer when dealing with its authorized dealers. For example, in a 1997 case, the Supreme Court held that manufacturers who place maximum resale price restrictions on dealers are no longer guilty of a *per se* violation of the antitrust laws. Therefore, practices that were prohibited by the Consent Decree because they were illegal in 1960 are no longer illegal because of intervening decisions by the United States Supreme Court.

**ROLEX POLICY.** With the relaxation of the antitrust law restrictions by the Supreme Court, Rolex revised its policies with regard to authorized dealers and imposed restrictions on the distribution of spare parts and the maximum price at which spare parts could be sold. It also prohibited authorized dealers from repairing Rolex watches that contain non-genuine components. What Rolex did not do, however, is seek a formal termination of the Consent Decree.

Even though the Consent Decree no longer reflected the current state of federal antitrust law, the Justice Department took the view that Rolex could not impose these policies without first obtaining a termination of the Consent Decree. In justifying the Department's motion to

hold Rolex in contempt for allegedly violating the Consent Decree, Thomas Barnett, the Assistant Attorney General in charge of the Antitrust Division, explained that “even when a company believes that a court’s order is no longer necessary to serve its original purpose, the appropriate recourse is to ask the court to modify its order . . .” Rolex disputed the Justice Department’s position and asserted that its policies were lawful and did not violate the Swiss Consent Decree. That dispute has now been settled with Rolex paying \$750,000.

**CONSENT DECREE TERMINATION**. Even though the Justice Department obtained a \$750,000 settlement against Rolex for the alleged violation of the Consent Decree, the Justice Department agrees with Rolex that the Consent Decree should be terminated. In a pleading to the court asking for termination of the Consent Decree, the Justice Department cites the fact that changes in both the antitrust laws and in the watch industry eliminate the need for the Consent Decree.

With regard to the watch industry, the Justice Department cites the fact that the Swiss Collective Convention had been terminated by the Swiss government. Moreover, the Swiss no longer dominate the watch industry as they did in 1954. Therefore, the Justice Department believes that the Consent Decree is no longer necessary to protect U.S. consumers and should be terminated. However, the final decision as to whether to terminate the Consent Decree will be made by the court. Until the court does make the decision to terminate the Consent Decree, the parties are required to abide by its terms.

Given the Justice Department’s strong support for terminating the Consent Decree, it is highly likely that the court will issue an order terminating the Consent Decree. Interested parties will have an opportunity to submit comments to the court regarding the issue of whether the Consent Decree should be terminated. The Department of Justice will be announcing in the very near future how interested parties can submit comments to the court on this issue.