

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,)
)
 Plaintiff)
)
 v.)
)
 BUSINESS EQUIPMENT UNLIMITED,)
 a Maine corporation with)
 offices at Portland,)
 Cumberland County, Maine;)
 DOUGLAS TIMM, an individual)
 residing at Cape Elizabeth,)
 Cumberland County, Maine;)
 KEMCO, Inc., a Maine)
 corporation with offices at)
 Portland, Cumberland County,)
 Maine; and BRADFORD BURNS)
 an individual residing at)
 Falmouth, Cumberland County,)
 Maine,)
)
 Defendants)

CONSENT DECREE OF BUSINESS
EQUIPMENT UNLIMITED AND
DOUGLAS TIMM

Plaintiff, State of Maine, having filed its Complaint on March 24, 1987, and Plaintiff and Defendants having consented to the entry of this Consent Decree without trial or adjudication of any issue of fact or law herein and without this Decree constituting any evidence against, or an admission by, any party with respect to 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 parties hereto, it is hereby ordered and decreed as follows:

I. JURISDICTION

This Court has jurisdiction of the subject matter of this action.

II. RELIEF

A. Prohibitions.

Defendants, their officers, servants, and employees and other persons in active concert or participation with them, are hereby permanently enjoined pursuant to 5 M.R.S.A. § 209 and 10 M.R.S.A. § 1104 from entering into or continuing any combination or conspiracy with any competitor, or soliciting any competitor, to:

1. Fix, raise, and maintain the prices of toner; or
2. Allocate among themselves toner customers.

B. Payments.

1. Defendant Business Equipment Unlimited shall pay to the State of Maine, on or before the date this Consent Decree is filed, the amount of \$15,000 pursuant to 10 M.R.S.A. § 1104 (Supp. 1986).

2. Defendant Douglas Timm shall pay to the State of Maine, on or before the date this Consent Decree is filed, the amount of \$2,500 pursuant to 10 M.R.S.A. § 1104 (Supp. 1986).

III. RETENTION OF JURISDICTION


Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Consent Decree to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of the Consent Decree, for the modification of or termination of any of the provisions hereof, and for the enforcement of compliance herewith.

Consented to on behalf of the
State of Maine by:

JAMES E. TIERNEY
Attorney General

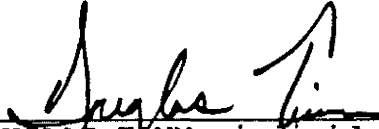
DATED:

3/23/87


STEPHEN L. WESSLER
Assistant Attorney General
Chief, Consumer & Antitrust Division
State House Station 6
Augusta, Maine 04333
(207) 289-3661


Consented to on behalf of Defendants
Business Equipment Unlimited and
Douglas Timm by:

DATED:



DOUGLAS TIMM, individually and as
President of Business Equipment
Unlimited

It is hereby ORDERED and DECREED as set forth above.

March 24, 1987



JUSTICE, SUPERIOR COURT

A TRUE COPY
ATTEST:


Nancy A. Desjardin
Clerk of Courts

MAR 24 1987

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
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 KEMCO, Inc., a Maine)
 corporation with offices at)
 Portland, Cumberland County,)
 Maine; and BRADFORD BURNS)
 an individual residing at)
 Falmouth, Cumberland County,)
 Maine,)
)
 Defendants)

CONSENT DECREE OF KEMCO, INC.
AND BRADFORD BURNS

Plaintiff, State of Maine, having filed its Complaint on March 24, 1987, and Plaintiff and Defendants having consented to the entry of this Consent Decree without trial or adjudication of any issue of fact or law herein and without this Decree constituting any evidence against, or an admission by, any party with respect to 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 parties hereto, it is hereby ordered and decreed as follows:

I. JURISDICTION

This Court has jurisdiction of the subject matter of this action.

II. RELIEF

A. Prohibitions.

Defendants, their officers, servants, and employees and other persons in active concert or participation with them, are hereby permanently enjoined pursuant to 5 M.R.S.A. § 209 and 10 M.R.S.A. § 1104 from entering into or continuing any combination or conspiracy with any competitor, or soliciting any competitor, to:

1. Fix, raise, and maintain the prices of toner; or
2. Allocate among themselves toner customers.

B. Payments.

1. Defendant KEMCO, Inc. shall pay to the State of Maine the amount of \$15,000 pursuant to 10 M.R.S.A. § 1104 (Supp. 1986).

2. Defendant Bradford Burns shall pay to the State of Maine the amount of \$2,500 pursuant to 10 M.R.S.A. § 1104 (Supp. 1986).

III. RETENTION OF JURISDICTION

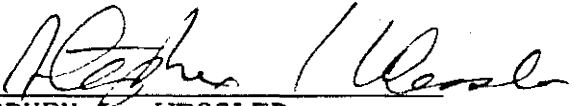
Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Consent Decree to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or

carrying out of the Consent Decree, for the modification of or termination of any of the provisions hereof, and for the enforcement of compliance herewith.

Consented to on behalf of the State of Maine by:

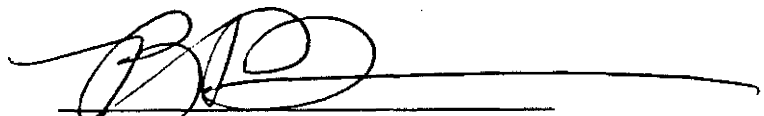
JAMES E. TIERNEY
Attorney General

DATED: 3/23/87

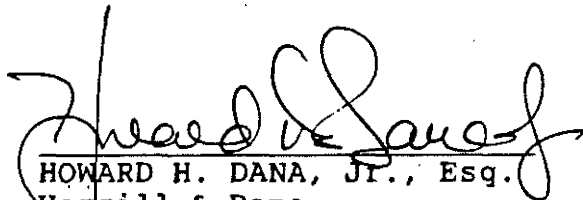

STEPHEN L. WESSLER
Assistant Attorney General
Chief, Consumer & Antitrust Division
State House Station 6
Augusta, Maine 04333
(207) 289-3661

Consented to on behalf of Defendants by:


DATED: 3-16-87


BRADFORD BURNS


DATED: 3-16-87


HOWARD H. DANA, JR., Esq.
Verrill & Dana
Two Canal Plaza
P.O. Box 586
Portland, Maine 04112
(207) 774-4000
Attorney for Defendant Bradford Burns

DATED: 3/23/87


KEMCO, INC.

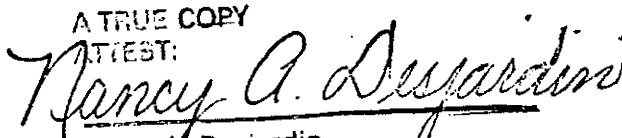
DATED: 3/23/87


ANDREW G. SIKET, Esq.
Petruccelli, Cohen, Erler & Cox
50 Monument Square
Portland, Maine 04101
(207) 775-0200
Attorney for Defendant KEMCO, Inc.

It is hereby ORDERED and DECREED as set forth above.

March 24, 1987


JUSTICE, SUPERIOR COURT

A TRUE COPY
ATTEST:

Nancy A. Desjardin
Clerk of Courts

MAR 24 1987

NEWS RELEASE



State of Maine
Department of the Attorney General
Augusta, Maine 04333

For Release: 9:30 a.m., March 24, 1987

Contact: STEPHEN L. WESSLER
Assistant Attorney General
289-3661

James E. Tierney
Attorney General

AUGUSTA--THE KENNEBEC COUNTY SUPERIOR COURT TODAY APPROVED A SETTLEMENT OF AN ANTITRUST SUIT FILED BY THE DEPARTMENT OF THE ATTORNEY GENERAL AGAINST TWO OFFICE COPIER FIRMS AND THEIR CHIEF EXECUTIVE OFFICERS. SPECIFICALLY, THE DEPARTMENT OF THE ATTORNEY GENERAL FILED A LAWSUIT UNDER STATE ANTITRUST LAWS AGAINST BUSINESS EQUIPMENT UNLIMITED, A PORTLAND-BASED COPIER BUSINESS, ITS PRESIDENT DOUGLAS TIMM, KEMCO, INC., ANOTHER PORTLAND-BASED COPIER BUSINESS, AND ITS PRESIDENT BRADFORD BURNS.

THE ATTORNEY GENERAL ALLEGED IN ITS SUIT THAT THE TWO COMPANIES AND THEIR PRESIDENTS HAD REACHED AN ILLEGAL AGREEMENT NOT TO COMPETE WITH EACH OTHER ON THE SALE OF TONER FOR WHICH THEY DID NOT HAVE A FRANCHISE. TONER, WHICH MUST BE ADDED TO COPIERS AT PERIODIC INTERVALS, IS A BLACK SUBSTANCE WHICH APPEARS AS THE PRINTED MATERIAL ON COPIES PRODUCED BY COPIER MACHINES. ADDITIONALLY, THE ATTORNEY GENERAL ALLEGED IN ITS LAWSUIT THAT THE DEFENDANTS HAD SOLICITED OTHER COMPETING COPIER FIRMS TO ENTER INTO SIMILAR AGREEMENTS NOT TO COMPETE.

NEWS RELEASE

IN THE COURT SETTLEMENT, APPROVED TODAY BY SUPERIOR COURT JUSTICE MORTON A. BRODY, THE DEFENDANTS AGREED TO AN INJUNCTION AGAINST CERTAIN ACTIONS WHICH WOULD VIOLATE STATE ANTITRUST LAWS. IN ADDITION, THE DEFENDANTS AGREED TO PAY \$35,000 TO THE STATE OF MAINE. SPECIFICALLY, EACH OF THE CORPORATIONS AGREED TO PAY \$15,000 AND MR. TIMM AND MR. BURNS AGREED TO PAY \$2,500 EACH. THE DEFENDANTS, IN AGREEING TO THE COURT-APPROVED SETTLEMENT, DID NOT ADMIT TO VIOLATING THE STATE'S ANTITRUST LAWS.

ASSISTANT ATTORNEY GENERAL STEPHEN L. WESSLER, CHIEF OF THE CONSUMER AND ANTITRUST DIVISION, COMMENTED: "TODAY'S COURT ACTION DEMONSTRATES THE CONTINUED COMMITMENT OF THIS OFFICE TO ENFORCE THE STATE'S ANTITRUST LAWS. OUR ENFORCEMENT OF THOSE LAWS PROTECTS BOTH BUSINESSES AND CONSUMERS BY ENSURING THAT BUSINESSES AGGRESSIVELY COMPETE WITH EACH OTHER AND, AS A CONSEQUENCE, DELIVER TO CONSUMERS THE BEST QUALITY PRODUCT OR SERVICE AT THE LOWEST COMPETITIVE PRICE." WESSLER FURTHER COMMENTED: "THE SETTLEMENT AGREED TO BY THE ATTORNEY GENERAL'S OFFICE AND THE PARTIES SHOULD NOT BE CONSTRUED AS A REFLECTION ON THE QUALITY OF THE PRODUCTS AND SERVICES OFFERED BY THE COMPANIES OR THE INTEGRITY OF THE COMPANIES OR THE INDIVIDUALS INVOLVED."

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-89-103

STATE OF MAINE,)
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 Plaintiff)
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 v.)
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 BUSINESS EQUIPMENT UNLIMITED,)
 a Maine corporation with)
 offices at Portland,)
 Cumberland County, Maine;)
 DOUGLAS TIMM, an individual)
 residing at Cape Elizabeth,)
 Cumberland County, Maine;)
 KEMCO, Inc., a Maine)
 corporation with offices at)
 Portland, Cumberland County,)
 Maine; and BRADFORD BURNS)
 an individual residing at)
 Falmouth, Cumberland County,)
 Maine,)
)
 Defendants)

COMPLAINT
(Request for Permanent
Injunction and Civil Penalties)

INTRODUCTION

1. This is an action to enjoin Defendants from engaging in unreasonable restraints of trade in the copier toner business within the State of Maine and to assess civil penalties for such conduct and to enjoin Defendants from engaging in unfair methods of competition in the copier toner business in the State of Maine.

JURISDICTION AND PARTIES

2. This Court has jurisdiction over this matter pursuant to 4 M.R.S.A. § 152 (Supp. 1986), 10 M.R.S.A. § 1104 (Supp. 1986), and 5 M.R.S.A. § 209 (1979 & Supp. 1986).

3. The STATE OF MAINE, by and through its Attorney General, brings this action seeking injunctive relief and civil penalties for anticompetitive conduct of the Defendants in the copier toner business within this State.

4. BUSINESS EQUIPMENT UNLIMITED (hereinafter referred to as BEU) is a Maine corporation with offices at Portland, Cumberland County, Maine.

5. DOUGLAS TIMM is an individual residing in Cape Elizabeth, Cumberland, Maine. Defendant Timm is the president and chief executive officer of BEU.

6. KEMCO, Inc. (hereinafter referred to as KEMCO) is a Maine corporation with offices in Portland, Cumberland County, Maine.

7. BRADFORD BURNS is an individual residing in Falmouth, Cumberland County, Maine. Defendant Burns is the president, majority shareholder and chief executive of KEMCO, Inc.

NATURE OF TRADE AND COMMERCE

8. "Southern Maine" for purposes of this Complaint includes York, Cumberland and Sagadahoc Counties.

9. Office copiers require the use of toner. Toner is the black substance (either liquid or dry) which appears as the

printed material on copies produced by copier machines. Copiers must be refilled with toner at periodic intervals.

10. Firms in the copier business sell and lease copy machines for personal and office use; service the machines which they sell or lease; and sell supplies, including toner, necessary for the operation of copier machines.

11. Firms in the copier business hold one or more franchises or distributorships from manufacturers of copier machines. Most major manufacturers have only one dealer or distributor in southern Maine.

12. The following firms have the following exclusive franchises or distributorships in southern Maine: BEU - Savin and Minolta distributorships; KEMCO - Toshiba distributorship.

13. Generally, customers purchase toner from the copier firm which has sold or leased the customer its copier. However, some copier firms market toner to customers who have purchased or leased their machine from another copier firm.

FACTS

14. On several occasions from October 1983 to August 1986 Defendants BEU and Douglas Timm solicited competing copier firms, including KEMCO, to enter into agreements not to compete with BEU on the sale of competitive toners for which they did not have a franchise.

15. On several occasions from the summer of 1984 to October 1985 Defendants KEMCO and Bradford Burns solicited

competing copier firms to enter into agreements not to compete with KEMCO on the sale of competitive toners for which they did not have a franchise.

16. In January or February 1985 Defendants Bradford Burns and Doulgas Timm agreed that KEMCO and BEU would not sell toner for the copiers marketed by the other firm.

COUNT I

(Agreement Not To Compete On The Sale Of Toner)

24. Paragraphs 1 through 23 are incorporated by reference into Count I.

25. Beginning in January or February of 1985 and continuing until the fall of 1986, Defendants BEU and Douglas Timm and Defendants KEMCO and Bradford Burns have engaged in a continuing combination and conspiracy, the substantial terms of which were, through an agreement, understanding and concerted action:

- a. to allocate among themselves toner customers in southern Maine; and
- b. to restrain competition for new and existing toner customers.

26. For the purpose of effectuating the combination and conspiracy described in the preceding paragraph, the Defendants did those things which they combined and conspired to do.

27. Defendants' actions have had and continue to have the following effects:

a. toner customers in southern Maine have been deprived of the benefits of free and open competition in the purchase of toner; and

b. competition among the Defendant companies in the sale of toner has been and will continue to be restrained, suppressed and eliminated.

28. Defendants' conduct as described in this Complaint constitutes a contract, combination or conspiracy in unreasonable restraint of trade in violation of 10 M.R.S.A. § 1101 (1980) and an unfair method of competition in violation of 5 M.R.S.A. § 207 (1979).

COUNT II

(Solicitations To Enter Into An Agreement
Not To Compete on the Sale of Toner)

29. Paragraphs 1 through 23 are incorporated by reference into this Count.

30. Beginning in October 1983 and continuing to the fall of 1986, Defendants BEU and Douglas Timm and Defendants KEMCO and Bradford Burns engaged in solicitations to each other and to other firms to enter into agreements not to compete on the sale of toner for which they did not have a franchise.

31. Defendants' solicitations, if successful, would have had the following effects:

a. toner customers in southern Maine would have been deprived of the benefits of free and open competition in the purchase of toner; and

b. competition among the Defendant companies in the sale of toner would have been restrained, suppressed and eliminated.

32. Defendants' conduct as described in this Complaint constitute unfair methods of competition in violation of 5 M.R.S.A. § 207 (1979).

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Declare that Defendants' conduct as set forth in this Complaint constitutes violations of 10 M.R.S.A. § 1101 (1980) and 5 M.R.S.A. § 207 (1979).

2. Permanently enjoin Defendants, their agents, employees, assigns or other persons acting for them or under their control, from entering into or continuing any combination or conspiracy with a competing firm, or soliciting any competing firm, to:

- a. fix, raise and maintain the prices of toner; and
- b. allocate among themselves toner customers.


3. Order each Defendant pursuant to 10 M.R.S.A. § 1104 (1980 & Supp. 1986) to pay a civil penalty not to exceed \$50,000 for each course of conduct constituting a violation of 10 M.R.S.A. § 1101 (1980).

4. Order Defendants to pay the costs of this suit and of the investigation of Defendants made by the Attorney General pursuant to 5 M.R.S.A. § 209 (1979 & Supp. 1986).

5. Grant such other relief as the Court deems just and proper.

DATED: 3/23/87

JAMES E. TIERNEY
Attorney General



STEPHEN L. WESSLER
Assistant Attorney General
Chief, Consumer & Antitrust Division
State House Station 6
Augusta, Maine 04333
(207) 289-3661