

Telescope Seller Receives Big “Constellation” Prize in Antitrust Trial

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A recent \$16.8 million jury verdict against a Chinese telescope manufacturer demonstrates the significant risks that companies defending antitrust suits by competitors face, particularly when a case proceeds to a jury trial, as in *Optronic Techs., Inc. v. Ningbo Sunny Electronic Co., Ltd. et al.*, No. 5:16-cv-06370-EJD-VKD (N.D. Cal. Dec. 5, 2019). There, the trebled partial judgment entered against Ningbo Sunny Electronic Co. Ltd. and its subsidiaries amounted to \$50.4 million, while their alleged co-conspirator settled for just \$500,000 prior to suit.

Background

Plaintiff Orion Technologies, Inc. (Orion) is a California-based distributor and seller of telescopes, binoculars, and accessories. Because Orion does not manufacture its own products, it imports them from Chinese manufacturers like Ningbo Sunny Electronic Co. Ltd., Sunny Optics, Inc., and Meade Instruments, Inc. (collectively, Sunny) and their primary competitor, Suzhou Synta Optical Technology Co. Ltd. and its subsidiary Celestron Acquisition LLC (collectively, Synta). Sunny and Synta are the two largest manufacturers of telescopes sold in the United States. Each sells their telescopes to U.S. distributors like Orion, which then markets and sells the products through mail-order catalogs and an online distributor network.

Concerns first arose for Orion in 2005, when Synta acquired Celestron, which at the time, was the largest distributor of telescopes in the United States, and a close rival of Meade, another main distributor of performance telescopes. In 2002, Meade had attempted to acquire Celestron for itself, but the parties abandoned the deal after the Federal Trade Commission (FTC) issued a temporary restraining order enjoining the deal due to antitrust concerns.

Years later, Sunny—Synta’s main competitor—acquired Meade. The deal was announced in July 2013, when Meade accepted an unsolicited \$5.5 million bid from Sunny. Meade had rejected Orion’s \$4.5 million bid just weeks before, having announced that it had already entered into a merger agreement with a third party.

Shortly before filing suit, Orion entered into a settlement agreement with Synta releasing its claims for \$500,000 and other consideration. Orion then sent a demand letter to Sunny. In response, Sunny stopped selling Orion its telescopes. Orion filed suit against Sunny in November 2016.

The Claims

Orion accused Sunny of conspiring with Synta to “divide the market, fix prices, throttle competition and stifle Orion’s efforts to grow its business” from the time period spanning 2013 through 2018 in violation of the Sherman, Clayton, and California Cartwright Acts, respectively, as well as California’s Unfair Competition Law (UCL). Specifically, Orion alleged that Sunny had conspired with Synta to: (i) purchase Meade; (ii) divide the telescope market by product type; and (iii) fix the prices of consumer telescopes and Orion’s credit terms. Orion also accused Sunny of forming a monopoly and pushing Orion out of the U.S. consumer telescope market by refusing to deal with Orion, and unlawfully concentrating the market for telescope manufacturing services.

Verdict

Following a two-day deliberation, the jury handed down a unanimous verdict in favor of Orion, awarding Orion \$16.8 million in single damages after finding that Sunny had violated the Sherman Act and the Clayton Act by forming a monopoly over the domestic consumer telescope market between 2013 and 2018.

On December 5, 2019, Judge Davila of the United States District Court in the Northern District of California delivered a partial final judgment in the amount of \$50.4 million by trebling the jury’s award and granting post-judgment interest. Orion was also awarded costs of suit and reasonable attorneys’ fees under 15 U.S.C. § 15(a).^[1]

Take-Aways

First, antitrust exposure can be significant. Damages are statutorily trebled under 15 U.S.C. § 15(a). In Sunny’s case, the \$50.4 million judgment is particularly significant in comparison to the \$500,000 that its alleged co-conspirators paid to settle Orion’s claims before suit. *Second*, jury verdicts are always hard to predict. While Orion’s claims, first lodged in November 2016, had to withstand motions to dismiss and summary judgment before being allowed to proceed to trial in November 2018, Orion ultimately won big at trial. *Third*, companies facing agency scrutiny may wish to make sure to clear conflicts and conduct appropriate due diligence when retaining the same counsel for deal and litigation purposes. In Sunny’s case, Orion seized on the fact that the same counsel represented Sunny in both its acquisition of Meade and in the ensuing litigation, and accused counsel of providing guidance to the alleged anticompetitive acquisition of Meade.

[1] Note that the court did not enter judgment and reserved jurisdiction over Orion’s claims for equitable relief, including its UCL claims and its claim under § 16 of the Clayton Act. The court also retained jurisdiction to enter judgment upon application by Orion against Meade and Sunny Optics upon lifting of the automatic stay imposed by their respective bankruptcy filings.

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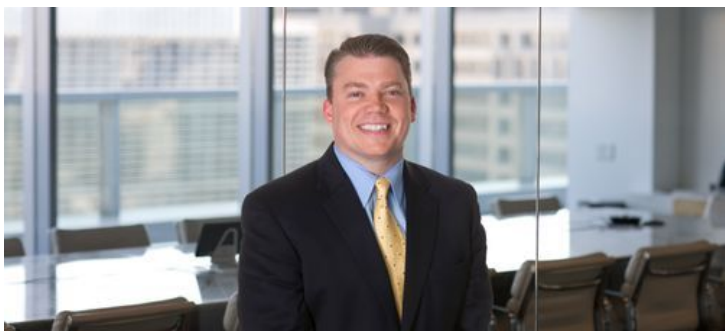
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