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**In the District Court of the United States,
Northern District of Ohio,
Eastern Division.**

UNITED STATES OF AMERICA

v.

A. SCHRADER'S SON, INC., DEFENDANT.

INDICTMENT.

FILED JUNE 19, 1918.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1918

In the District Court of the United States,
Northern District of Ohio,
Eastern Division.

APRIL TERM, 1918.

INDICTMENT.

The grand jurors of the United States of America, duly impaneled, sworn and charged to inquire in and for the Northern District of Ohio, and so inquiring, upon their oaths, do find and present as follows:

A. Schrader's Son, Inc. (the defendant), is a corporation under the laws of the State of New York. Its principal offices and factory are at Brooklyn, New York. It is there engaged in manufacturing, under Letters Patent of the United States, the following products, namely, valves and valve parts, pneumatic pressure gauges, and various other accessories, all for use in connection with pneumatic tires on automobiles and other vehicles. It regularly sells and ships large quantities of such products to tire manufacturers and to jobbers in the Northern District of Ohio and throughout the United States. These tire manufacturers and jobbers resell and reship large quantities of these products to (a) jobbers and vehicle manufacturers, (b) retail dealers, and (c) the consuming public, both within and without the respec-

tive States into which the products are shipped as aforesaid by the defendant. The above described sales and resales, shipments and reshipments of the products of the defendant constitute trade and commerce among the several States of the United States.

Within the three years immediately preceding this indictment, in the said Northern District of Ohio and throughout the United States, the defendant knowingly and unlawfully engaged, in the manner hereinafter described, in a combination with the said tire manufacturers and jobbers to whom it sold and shipped its products, in restraint of the above described trade and commerce among the several States in such products, in violation of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," that is to say:

The defendant executed, and caused all the said tire manufacturers and jobbers to whom it sold its said products to execute with it, uniform contracts concerning resales of such products. Each such manufacturer and jobber was informed by defendant, and well knew when executing such contracts, that identical contracts were executed and adhered to by the other manufacturers and jobbers. The contracts purported to contain a grant of a "license" from the defendant to resell its said products at prices fixed by it to (a) jobbers and vehicle manufacturers similarly "licensed," (b) retail dealers, and (c) the consuming public. The contracts provided that the products should not be resold at prices other than those fixed

by defendant. The provisions of the contracts were as set forth in Exhibits A, B, C, and D, respectively, hereto annexed. The names of the contracting tire manufacturers were inserted as indicated in Exhibits A and B. The names of the contracting jobbers were inserted as indicated in Exhibits C and D.

In connection with the aforesaid contracts the defendant furnished to the tire manufacturers and jobbers who entered into such contracts lists, as shown in Exhibits A, B, C, and D, of uniform prices which it fixed for resales of its said products to (a) jobbers and vehicle manufacturers, (b) retail dealers, and (c) the consuming public, respectively.

The defendant uniformly refused to sell and ship its products to tire manufacturers and jobbers who did not enter into such contracts and adhere to the uniform resale prices fixed and listed by defendant as aforesaid.

By reason of the foregoing, tire manufacturers and jobbers in the Northern District of Ohio and throughout the United States uniformly resold the defendant's products at uniform prices fixed by the defendant and uniformly refused to resell such products at lower prices. Thus competition amongst the said tire manufacturers and jobbers in the resale of such products in the above described commerce among the States was suppressed and the prices of such products to the retail dealers and to the consuming public in the Northern District of Ohio and throughout the United States were maintained and enhanced.

And so the grand jurors, upon their oaths, do say that A. Schrader's Son (Inc.), within the period of three years immediately preceding the return of this indictment, in the Northern District of Ohio, in the manner aforesaid, unlawfully engaged in a combination in restraint of trade and commerce among the several States, against the peace and dignity of the United States and contrary to the statute in such case made and provided.

F. B. KAVANAGH,

Assistant United States Attorney.

JUNE 19, 1918.

EXHIBIT A.

Season 1917-1918.

Agreement between A. Schrader's Son, Incorporated, of Brooklyn, New York (hereinafter called the "licensor"), and [name of contracting tire manufacturer inserted here] (hereinafter called the "licensee").

Whereas, the licensee is a manufacturer of pneumatic tires and tubes for automobiles and other vehicles, each of which requires an inflation valve to fit it for use, and desires to assure itself that it will be able to obtain a sufficient supply of Schrader Universal Valves and Valve Parts to equip its product for the season ending August 31, 1918, and to obtain such valves and valve parts at a uniform price throughout the season and with reasonable promptness as they are required, and is unable to fix with definiteness the number of such valves and valve parts to be required by it in its said business, or to approximate such number, except upon the basis of the number of such valves and valve parts used by it in the past.

And whereas, the licensor as a manufacturer of Schrader Universal Valves and Valve Parts is unable to agree to furnish said licensee with all of the Schrader Universal Valves and Valve Parts which the licensee may use throughout such season at a fixed price and with reasonable promptness when the same are ordered, except by preparing for such manufacture by advance purchases of material and maintaining a large stock on hand, all on the basis of the licensee's requirements in past seasons.

And whereas, the valves and valve parts manufactured by the licensor are manufactured under one or more United States Letters Patent, among which are patents bearing the following dates: September 11, 1900; November 13, 1900; October 29, 1901; January 14, 1902; March 31, 1903; April 11, 1905; August 2, 1910; December 14, 1915; February 8, 1916; April 4, 1916; June 13, 1916; September 5, 1916; October 10, 1916; January 9, 1917; May 15, 1917; and the licensee is desirous of obtaining certain rights under said Letters Patent as herein set forth.

Now, therefore, in consideration of the premises and the mutual covenants hereinafter contained, the parties have agreed as follows:

First. The licensee agrees to buy from the licensor as many Schrader Universal Valves complete as shall equal the total number of tires or tire tubes which shall be manufactured by the licensee during such season, and in proportion as such tires or tubes are manufactured. Reciprocally, the licensor agrees to manufacture Schrader Universal Valves and maintain a suitable stock thereof and deliver the same in similar proportion upon the order of the licensee and with reasonable promptness. Provided, however, that in the event of war, fire, flood, strike, lockout, accident, or other cause beyond the control of the licensor interfering with the production or transportation of the goods herein described, or the supply of any material from which the said articles are manufactured, or in the event of shortage of such material, or delays in procuring the delivery of such material, then deliveries under this contract (and particularly paragraphs First and Fourth) may, at the option of the licensor, be suspended during the period required to remove the cause or repair the damage, and the

total quantity deliverable under this agreement shall be reduced in proportion to the duration of such suspension.

The licensee agrees to advise the licensor as far ahead as possible of its probable requirements, in order that the licensor may be assisted in keeping a proper stock on hand.

The term "valve complete" as used herein shall mean a valve shell or "male," working parts or "insides," a valve cap and whatever washers, spreaders, dust caps, nuts, or other metal fittings are used to fasten the valve to the tube or tire and to the tire casing and to the rim, and to protect the valve.

Second. The parties agree that the prices for the Schrader Universal Valves and Valve Parts so sold shall be those named in the annexed price list under "Licensed Tire Mfr.," and that said prices shall remain uniform during such season. The obligations of the licensor expressed in paragraph First are conditioned upon the payment of said prices by the licensee and upon the faithful performance by the licensee of its obligations herein set forth.

Third. The licensor hereby grants unto the licensee the right, license, and liberty under said patents of using said Schrader Universal Valves and Valve Parts in the manufacture and sale of the tires and tubes made by the licensee in accordance with and subject to the limitations and terms hereof, said license to continue until the termination or expiration of this agreement.

Fourth. It being understood that certain of the said Schrader Universal Valves and Valve Parts are customarily distributed or sold by the licensee for the purpose of repair and replacement of valves already attached to tires, said licensor grants unto the

licensee the right, license, and liberty under said patents (revokable by the licensor at will) of distributing said valves and valve parts for such purposes to certain jobbers (hereinafter called "licensed jobbers") and certain manufacturers of automobiles, motorcycles, and bicycles (hereinafter called "licensed vehicle manufacturers") which have been licensed by the licensor to sell said valves and valve parts, and of selling said valves and valve parts to *bona fide* dealers and consumers in accordance with the terms hereof, said license (unless revoked) to continue until the termination or expiration of this agreement. For the purposes of this paragraph the licensor agrees to supply to the licensee such Schrader Universal Valves and Valve Parts as are normally distributed and sold by the licensee in the course of its business of manufacturing and selling tires and tubes, provided that such valves and valve parts shall be ordered in reasonable quantities and at usual times, and shall be used by the licensee only for the purposes of such distribution or sale during the present season.

The licensor will furnish to the licensee from time to time complete lists of said licensed jobbers and said licensed vehicle manufacturers and shall notify said licensee of the cancellation of the license agreement of any licensed jobber or licensed vehicle manufacturer, such lists and notifications to be mailed or forwarded to all licensees at the same time. The licensee agrees to be bound by said lists in its distribution of licensor's Schrader Universal Valves and Valve Parts to licensed jobbers and licensed vehicle manufacturers.

Fifth. Said Schrader Universal Valves and Valve Parts are licensed only for use and distribution as follows:

1. For use by the licensee in the original manufacture of tires and tubes made by the licensee. When such valves and valve parts have become a part of such tires and tubes the licensee shall have the right to vend the same in connection with said tires and tubes, without restriction as to the prices at which said tires and tubes are sold.

2. For distribution to the licensor's licensed jobbers and licensed vehicle manufacturers at prices not lower than the "licensed jobber's" prices set forth in the annexed price list.

3. For sale to dealers at prices which are not lower than the "dealer's" prices set forth in the annexed price list.

4. For sale to consumers at prices which are not lower than the "consumer's" prices set forth in the annexed price list.

The licensee is not licensed hereunder to sell to any manufacturer, jobber, dealer, or person who shall be named by the licensor as one to whom the licensor itself will supply exclusively its said patented valves.

Sixth. The licensee is not licensed to distribute, sell, or dispose of Schrader Universal Valves and Valve Parts to other persons or concerns or on other terms than those which are above expressly defined. No Schrader Universal Valve or Valve Part is licensed for use for any other purpose than in connection with pneumatic tires or tubes, and then only in the normal and usual manner; and no Schrader Universal Valve Part is licensed for use except in connection with other Valve Parts manufactured by the licensor, and no Schrader Universal Valve or Valve Part is licensed for use except when sold in accordance herewith, and nothing herein contained shall give the licensee the

right in any event to manufacture or procure the manufacture of such patented valves or valve parts or to buy the same or parts thereof from others than the licensor.

It is understood and agreed that the selling prices in the annexed price list to be charged by the licensee are absolutely net, except in so far as they are modified by the particular cash discounts provided in said price list for payments made within the times specified therein. No sale or disposition of said patented Schrader Universal Valves and Valve Parts shall be made on any terms more favorable to the customer, and no other discount or rebate, either general or special, or in any form whatsoever, shall be granted. If the licensee shall grant to any of its branches, agents, or customers, any discount or rebate upon sales of its goods (whether upon quantity sales or otherwise), or pay any premium in any form on such sales, it is agreed that the said Schrader Universal Valves and Valve Parts shall be excluded in computing such discount, rebate, or premium.

Nothing in said agreement shall license, authorize, or empower the licensee to sell or distribute any of said patented Schrader Universal Valves and Valve Parts to any person or concern outside of the United States, or to sell or distribute said patented Schrader Universal Valves and Valve Parts to any person or concern within the United States for export outside of the United States, it being the intent hereof that the sale and use of such patented Schrader Universal Valves and Valve Parts shall be restricted wholly to the United States, unless the parties hereto enter into a separate agreement authorizing such sale or use in other countries.

Provided that the licensee shall have the right to export tires and tubes of its own manufacture, each having not more than one of said Schrader Universal Valves attached thereto in position for inflating it.

Seventh. As a royalty under said Letters Patent the licensee shall pay to the licensor the following:

1. On all Schrader Universal Valves and Valve Parts used by the licensee in the manufacture of the licensee's tires and tubes, four per cent (4%) of the "licensed jobber's" prices set forth in the annexed price list.

2. On all Schrader Universal Valves and Valve Parts distributed by the licensee to licensed jobbers and licensed vehicle manufacturers, four per cent (4%) of the gross prices actually charged by the licensee to licensed jobbers and said licensed vehicle manufacturers.

3. On all Schrader Universal Valves and Valve Parts sold by the licensee to dealers, six per cent (6%) of the licensee's actual gross selling prices.

4. On all Schrader Universal Valves and Valve Parts sold by the licensee to consumers, six per cent (6%) of the licensee's actual gross selling prices.

Eighth. The licensee agrees to keep full, true, and correct accounts showing the number of Schrader Universal Valves and Valve Parts used under subsection 1 of paragraph fifth, the number of Schrader Universal Valves and Valve Parts distributed under subsection 2, and the number of Schrader Universal Valves and Valve Parts sold, respectively, under subsections 3 and 4. Said accounts shall also show the names and addresses of all licensed jobbers and licensed vehicle manufacturers and customers (excepting consumers) who have received or purchased the said licensed valves and valve parts, the number

and kinds of said Schrader Universal Valves and Valve Parts so distributed or sold to each licensed jobber and licensed vehicle manufacturer or customer, the date of each distribution or sale, and the respective prices at which said Schrader Universal Valves and Valve Parts have been distributed or sold. Such accounts, together with any other records, including any stocks of such Schrader Universal Valves and Valve Parts in the possession of the licensee, shall be open to the inspection of the licensor or its duly authorized agent during reasonable business hours.

Ninth. Within ten (10) days after the end of each quarter (ending the first days of December, March, June, and September, respectively) the licensee shall submit a statement in writing (certified to by one of its principals) showing, respectively, the total amounts of Schrader Universal Valves and Valve Parts (1) used by the licensee under subsection 1 of paragraph Fifth, calculated at the "licensed jobber's" prices; (2) distributed under subsection 2; (3) sold under subsection 3; and (4) sold under subsection 4 during the preceding quarter. Royalties shall be due and payable when said statements are due and shall be subject to the same terms for cash as shown in the annexed price list.

Acceptance by the licensor of any payments by the licensee pursuant to any statement rendered by the licensee shall not be construed as a waiver on the part of the licensor as to errors or false statements in said statement.

Tenth. The licensee shall have the option (if exercised in writing within thirty (30) days after the execution of this agreement) of accounting to the licensor for royalties in the following manner, in

lieu of that set forth in paragraphs Eighth and Ninth, viz: The licensee shall keep itemized accounts as set forth in paragraph Eighth, which, together with other records and stock, shall be open to inspection by the licensor as therein set forth. The licensee shall maintain a stock room in which all Schrader Universal Valves and Valve Parts furnished by the licensor shall be kept, and shall keep an accurate account of all such Schrader Universal Valves and Valve Parts taken from said stock room and placed in course of utilization, distribution, or sale by the licensee. Within ten (10) days after the end of each quarter the licensee shall submit a statement in writing (certified to by one of its principals) showing the total amount of Schrader Universal Valves and Valve Parts so taken from said stock room and put in course of utilization, distribution, and sale during such quarter, and showing also such amounts of such Schrader Universal Valves and Valve Parts as have been sold to dealers and consumers, respectively, during such quarter. And the licensee shall pay to the licensor, as royalty hereunder, an amount equal to four per cent (4%) of the value of all such Schrader Universal Valves and Valve Parts so taken from said stock room and put in course of utilization, distribution, and sale, such value to be computed on the basis of the "licensed jobber's" selling prices set forth in the annexed price list. The licensee shall also pay to the licensor a sum equal to two per cent (2%) of the selling prices of the goods so sold to dealers and consumers, respectively, said two per cent (2%) being a royalty payment in addition to the royalty of said four per cent (4%) above provided, making

a total of six per cent (6%) on sales to dealers and consumers. Royalties shall be due and payable when said statements are due and shall be subject to the same terms for cash as shown in the annexed price list. Nothing in this clause shall relieve the licensee from the payment of royalties on all said Schrader Universal Valves and Valve Parts which it uses, distributes, or sells.

Eleventh. The licensee agrees that it will, if the licensor so demands, submit within ten (10) days after the end of each quarter hereunder a statement in writing (certified to by one of its principals) showing each sale, disposal, or distribution of said Schrader Universal Valves and Valve Parts, the date thereof, the name and address of the licensed jobber, licensed vehicle manufacturer, or other customer (excepting consumers) to whom such sale, disposal, or distribution was made, the number and kind of each Schrader Universal Valve or Valve Part so sold, disposed of, or distributed, and the price received by the licensee for each such valve or valve part sold, to the end that the licensor shall receive full information regarding the sale, distribution, or disposal of each of said Schrader Universal Valves and Valve Parts.

Twelfth. It is agreed that no action by the licensee in the distribution of said Schrader Universal Valves and Valve Parts to said licensed jobbers and said licensed vehicle manufacturers shall avoid or diminish the right of the licensor to collect from said licensed jobbers and said licensed vehicle manufacturers the royalty reserved by the licensor on goods so distributed by the licensee to said licensed jobbers and said licensed vehicle manufacturers and sold by them, said royalty being two per cent (2%) of the price at

which said licensed jobbers and said licensed vehicle manufacturers shall sell such valves and valve parts.

Thirteenth. The licensor, as a part of the consideration for this agreement, further agrees to furnish to the licensee during the continuance hereof, free of charge, as many ferrules of the sizes now being furnished as the licensee may require to fasten said patented Schrader Universal Valves into cots or tires, the total amount so furnished not to exceed one ferrule for every cot valve bought.

Fourteenth. The licensee agrees that in printing all price lists for distribution to jobbers, manufacturers of automobiles, motorcycles and bicycles, or dealers, it will print no prices lower than "dealer's" prices shown in the annexed price list, and that these prices shall be at the rate per hundred or per thousand. In all other price lists, or circulars, the licensee agrees that it will print no prices lower than the "consumer's" prices set forth in the annexed price list, and that these shall be the unit prices, or the price for each article.

Fifteenth. It is agreed that the present agreement (unless revoked in writing by the licensor) shall remain in force and effect until August 31, 1918, except as follows:

If the licensor shall in writing revoke the license contained in Article Fourth hereof, said license and all parts of this agreement pursuant thereto shall thereupon terminate, but without affecting the provisions of Articles First, Second, and Third and the parts of this agreement pursuant thereto. If the licensee shall fail to pay any royalties or any indebtedness to the licensor when due, or shall sell any of said Schrader Universal Valves or Valve Parts at less

than the licensed prices herein set forth, or shall otherwise fail to faithfully perform its covenants hereunder, or shall make any default or breach of covenant, or shall become bankrupt or insolvent, or enter into any composition with its creditors, or shall attempt to assign this license, then this agreement as a whole shall *ipso facto* terminate; provided, however, that the licensor may elect to waive such termination, or may elect to terminate this agreement by a written notice to the licensee in which case the agreement shall terminate on the date to be fixed by such notice.

Upon such termination the licensee shall upon demand return to the licensor all said valves and valve parts which the licensee shall then have in stock, whereupon the licensor shall credit to the licensee the net purchase price thereof, and if this shall leave the licensor indebted to the licensee, the former will promptly pay such indebtedness, but this provision shall not apply if this agreement remains in force and effect until August 31, 1918. The termination of this agreement, whether by expiration of its term or otherwise by the licensor, shall not relieve the licensee from any obligation set forth herein nor affect any of the rights of the licensor with regard to Schrader Universal Valves or Valve Parts acquired during the time preceding such termination. Nothing herein (whether this contract be terminated or not) shall lessen or avoid any right of action which the licensor may have for infringement of said Letters Patent arising from any breach of this agreement by the licensee.

Sixteenth. The licensor agrees that if the licensee shall faithfully perform the conditions of this agree-

ment, said licensor will not furnish its Schrader Universal Valves and Valve Parts during the term of this agreement to any other tire manufacturers at a less price, or on more favorable terms with regard to payment, than those set forth herein.

Seventeenth. The licensee agrees that all Schrader Universal Valves and Valve Parts acquired by the licensee under the provisions of the prior agreement, if any, for the season ending August 31, 1917, and not used, distributed, or sold by the licensee prior to September 1, 1917, shall be subject to the terms and conditions of the present agreement as to use, distribution, or sale, the present agreement superseding such prior agreements as to such goods as to disposal or sale, royalty on such goods to be computed on licensee's sales made under the licensed prices for the season of 1917-18 named in the annexed price list.

Eighteenth. This agreement and license are not assignable in whole or in part and no interest therein is acquirable by others, either by operation of law or otherwise.

Nineteenth. This agreement shall be deemed to have been executed and delivered in, and shall be construed according to the laws of, the State of New York, provided that nothing herein contained shall impair any right which the licensor may have by virtue of its ownership of said Letters Patent.

Twentieth. If any clause, sentence, paragraph, or part of this contract shall for any reason be or become invalid, such invalid parts shall not affect, impair, or invalidate the operation of the remaining portions of this contract, except that in such event either party hereto may by notice terminate the contract; and in no event shall such invalidity or ter-

mination impair the obligation of the Licensee to make payment for goods sold and delivered, and to pay the royalties herein provided for.

In witness whereof, the licensor and the licensee have hereunto executed this agreement by their proper principals, thereunto duly authorized, this _____ day of _____ 191-.

A. SCHRADER'S SON, INC.

Treasurer and Manager.

[Name of contracting tire manufacturer signed here.]

By-----

Title of office-----

[Here follows in the indictment, as a part of Exhibit A, a list of resale prices to dealers and consumers, respectively, for valves and valve parts.]

EXHIBIT B.

[Exhibit B is a form of contract and resale price list for tire manufacturers, essentially similar to Exhibit A, but covering pressure gauges, pump connections, valve repair tools, and quick-acting dust caps.]

EXHIBIT C.

[Exhibit C is a form of contract and resale price list for *jobbers*, covering valves and valve parts, essentially similar to Exhibit A.]

EXHIBIT D.

[Exhibit D is a form of contract and resale price list for *jobbers*, covering pressure gauges, pump connections, valve repair tools, and quick-acting dust caps, essentially similar to Exhibit B.]