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Chinese Co. Owes $40M For Telescope Monopoly, Jury Told

By **Dorothy Atkins**

Law360, San Jose (November 21, 2019, 9:45 PM EST) -- A Chinese telescope seller should pay $40.3 million for suppressing competition and for its "complete and total domination" of the telescope market, a California company told a federal jury during closings of an antitrust trial Thursday, while the Chinese seller said there's no evidence it engaged in a price-fixing conspiracy.

Orion Telescopes & Binoculars' counsel, Noah Hagey of BraunHagey & Borden LLP, told eight men and one woman sitting on the jury that Ningbo Sunny Electronic Co. Ltd. conspired with another telescope distributor to fix the price of consumer telescopes, eventually pushing Orion out of the market. If the jury doesn't find in its favor, Orion will likely go out of business within the year, Hagey said.

"The market has been taken over," he said. "When they get rid of Orion, they'll have complete and total domination of it. And that was their goal."

Hagey's comments came during closing arguments of a weekslong trial in San Jose, California, over Orion's claims that Ningbo Sunny violated the Sherman Act and Clayton Act by forming a monopoly over the domestic consumer telescope market between 2013 and 2018. Orion's suit originally named Synta Technology Corp.'s U.S. telescope maker subsidiary, Celestron, as well, but Celestron settled those claims before trial.

During trial Thursday, Hagey said Ningbo Sunny bought an independent telescope distributor, Meade Instruments Corp., in 2013 to keep its foothold in the market and then overcharged Orion 30% to 83% for comparable Synta Celestron products.

As an alleged result of the conspiracy, he said, Orion couldn't land deals with big-box stores like Costco, Amazon and Sports Authority, and the company experienced stagnant growth and low revenues and was forced to lay off employees.

Hagey said during trial that none of the defendants' witnesses provided evidence other than their memory to back their statements. He also attacked the credibility of Ningbo Sunny's single expert, arguing that the expert was kept in the dark about much of the evidence and didn't even address damages.

Hagey also pointed out that Orion's counsel submitted 126 trial exhibits, three fact witnesses, an industry expert and a damages expert, while Ningbo Sunny's counsel only submitted 40 trial exhibits, no industry or damages experts, and witnesses who "repeatedly lied under oath."

Hagey urged the jury to find the Chinese company liable for a price-fixing claim, two monopoly claims and a market allocation claim under the Sherman Act as well as a Clayton Act violation. He said Ningbo Sunny should also pay $40.3 million in damages.

Hagey added that all of the conspirators are jointly and severally liable for all the harm that was caused and the jury shouldn't reduce damages, just because Synta is not a party to the trial.

"Once you're a part of a crime, you get tagged with all of the consequences," he said.

But Ningbo Sunny's counsel, Michael Scarborough of Sheppard Mullin Richter & Hampton LLP, fired back, arguing that Orion's case amounts to "smear tactics," and it presented no evidence that showed Ningbo Sunny fixed the prices of telescopes or colluded with others. He added that Ningbo Sunny doesn't control even half of the consumer telescope market.

Scarborough said ultimately Orion's counsel is leading the jury "down the wrong path" by showing price comparisons between different telescopes without showing the product sales volume.

"It is not evidence of overcharging," he said. "It doesn't tell anything at all."

Scarborough explained that Ningbo Sunny's largest customer is Synta, so Synta's entity, Celestron, "naturally gets big discounts" and "that's just the way the world works." He said companies like Amazon and Walmart give their large customers volume discounts all the time.

"That may make the world tough for small businesses, but that is the world we live in and it's not an antitrust violation," he said.

Scarborough said Ningbo Sunny bought Meade because Meade was going to close its doors, and the other potential buyers wouldn't have saved it from shutting down. Since it acquired Meade, the company has doubled its revenues from $7 million to $14 million, Scarborough said.

Scarborough also criticized Orion's damages estimate, arguing that it is "pulled out of thin air" and based on a "smoke and mirrors analysis." He added that Ningbo Sunny shouldn't be blamed for Orion's inability to source from suppliers.

"They're completely divorced from any realistic measure," he said.

Scarborough said damages shouldn't be awarded in the case at all, because the company isn't liable for the claims. But if any damages are awarded, he argued, they should be minimal and at most no more than about $500,000 for the total amount the company earned in indirect sales of Orion's products.

The jury will begin its deliberations Friday morning.

Orion is represented by Noah Hagey, Matthew Borden, Ronald Fisher and Jeffrey Theodore of BraunHagey & Borden LLP.

Ningbo Sunny is represented by Michael Scarborough, Thomas Dillickrath, Leo Caseria, Dylan Ballard and Joy Siu of Sheppard Mullin Richter & Hampton LLP.

The case is Optronic Technologies Inc. v. Ningbo Sunny Electronic Co. Ltd. et al., case number 5:16-cv-06370, in the U.S. District Court for the Northern District of California.

--Editing by Bruce Goldman.