

Chinese Telescope Co. Hit With \$16.8M Antitrust Verdict

By **Dorothy Atkins**

Law360 (November 26, 2019, 7:22 PM EST) -- A California federal jury on Tuesday found that Chinese telescope seller Ningbo Sunny Electronic Co. Ltd. suppressed competition and conspired to fix the price of consumer telescopes in the U.S. in violation of federal antitrust laws, concluding that it owes \$16.8 million in damages to rival Orion Telescopes & Binoculars.

After two days of deliberating, an eight-member jury found Zhejiang, China-based Ningbo Sunny liable for violating the Sherman Act and the Clayton Act by forming a monopoly over the domestic consumer telescope market between 2013 and 2018. Plaintiff Orion had sought about \$40 million in damages, but the jury concluded that Ningbo Sunny owed \$16.8 million for the violations.

Orion's lead counsel, Noah Hagey of BraunHagey & Borden LLP, told Law360 Tuesday damages are trebled under the Sherman Act; the final judgment will likely be closer to \$50 million. Hagey added that they hope the verdict will help rebuild the competitive telescope industry and serve as a warning to other overseas manufacturers who collude to set prices and control product supply.

"Orion has bravely led the charge against supplier collusion, and its example should serve as a path forward for other brands beset by this sort of unlawful conduct," Hagey said.

Representatives and counsel for the defendants didn't immediately respond Tuesday to requests for comment.

The verdict wraps a weekslong trial in San Jose, California, in a lawsuit that the California-based Orion filed against Ningbo Sunny and its subsidiaries in November 2016. The suit doesn't name Ningbo Sunny's alleged co-conspirator, Synta Technology Corp.'s U.S. telescope-maker subsidiary Celestron because Celestron settled claims against it beforehand.

During the trial, Hagey **argued** that over the past decade Ningbo Sunny has taken "complete and total domination" of the telescope business, 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.

Hagey said Ningbo Sunny bought an independent telescope distributor, Meade Instruments Corp., in 2013, despite the Federal Trade Commission's concerns that it would become a monopoly that owns the manufacturing, distribution and sales conglomerate. Meanwhile, the company overcharged Orion 30% to 83% for comparable Synta Celestron products, he said.

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 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."

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 Orion 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 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 also pointed out that companies like Amazon and Walmart give their large customers volume discounts all the time, but that doesn't mean they've violated the law.

But on Tuesday, the jury sided with Orion and found Ningbo Sunny 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.

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 Jack Karp.

Update: This story has been updated to include comment from Orion's counsel.