

1965

Flinco, Inc., A Utah Corporation v. The Goodyear  
Tire & Rubber Comp Any, A Foreign Corporation  
: To Be Inserted In The Brief of Plaintiff-Appellant  
As Pages Following Page 18

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc1](https://digitalcommons.law.byu.edu/uofu_sc1)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors..Peter W. Billings and G. Kenneth Handley, JR.; Attorneys for Respondent.

---

#### Recommended Citation

Legal Brief, *Flinco v. Goodyear Tire*, No. 10322 (1965).  
[https://digitalcommons.law.byu.edu/uofu\\_sc1/4804](https://digitalcommons.law.byu.edu/uofu_sc1/4804)

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (cases filed before 1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

IN THE SUPREME COURT OF THE

STATE OF UTAH

---

FLINCO, INC., a Utah Corporation, )

Plaintiff-Appellant, )

vs. )

Case No. 1032

THE GOODYEAR TIRE & RUBBER )  
COMPANY, a Foreign Corporation, )

Defendant-Respondent.)

---

TO BE INSERTED IN THE BRIEF  
OF PLAINTIFF-APPELLANT  
AS PAGES FOLLOWING PAGE 18

---

DWIGHT L. KING  
2121 South State Street  
Salt Lake City, Utah  
Attorney for Plaintiff-Appellant

PETER W. BILLINGS and  
G. KENNETH HANDLEY of  
FABIAN & CLENDENIN  
800 Continental Bank Building  
Salt Lake City, Utah  
Attorneys for Defendant-Respondent

UNIVERSITY OF UTAH

OCT 15 1965

LAW LIBRARY

Since the United States Supreme Court decision in Standard Oil v. U.S., supra., there have been a number of Circuit Court decisions which concern themselves with the type of transactions before this court. Tying the sale of tires, batteries and accessories to the sale of gasoline by the oil companies and the tires, batteries and accessories distributor is common, and universally condemned. No case approves attempts to market sellers product to the exclusion of other competing brands. Where this exclusive aspect has been one of the conditions and understandings whether, "express and tacit, oral and written--that they not deal in commodities sold by competitors", it has been condemned. (See Lessig v. Tidewater Oil Company, 327 F.2d 450, 9C.C., February 17, 1964.)

Since the Lessig decision and the Standard Oil case, supra., the Federal Trade Commission has specifically condemned a tying agreement on tires, batteries and accessories, which Goodyear Tire & Rubber Company attempted to operate under. (See Goodyear Tire & Rubber Company v. Federal Trade Commission, 331 F.2d 394, 7C.C., April, 1964.)

A third decision which plaintiff believes the court should consider is Osborn v. Sinclair Refining Company, Pa. 6 F.2d 832, 4C.C., 1960.) This case involved a retail dealer being cancelled because of his failure to sell sufficient of the T.B.A. product the gas company was sponsoring. It involves a factual situation similar to the case at bar. The gas station owner was handling two brands of tires which seemed to be the basic cause for his termination.

In Lessig v. Tidewater, supra., the Circuit Court reverses the Trial Court on facts very similar to plaintiff's case. It held that the evidence relating to exclusive dealing arrangement and termination of distribution contracts for failure to abide by their exclusive requirement was sufficient to require submission to the jury.

It is respectfully submitted that these new cases are helpful in the understanding of the way in which the exclusive and tying contract constitutes a scheme and device to limit competition in the products the manufacturer or wholesaler is distributing.

18c

RESPECTFULLY SUBMITTED this 4th day of October, 1965.

---

DWIGHT L. KING  
Attorney for Plaintiff-Appellant  
2121 South State Street  
Salt Lake City, Utah