

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
 :
 Plaintiff, :

v. :

DANILOW PASTRY CO., INC., :
 DAN-SAN PASTRY SHOP, INC., :
 d/b/a BROADWAY PASTRY SHOP, :
 KREMO BAKING CO., INC., :
 R.K. BAKING CORP., :
 ACME CAKE CO., INC., :
 WENS CAKE DISTRIBUTING CORP., :
 MRS. MAC'S BAKING CO., INC., :
 TEMTEE DONUTS, INC., :

Defendants. :

82 Civ. 3696 (EW)
Filed: April 5, 1983
Entered: October 11, 1983

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FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on June 4, 1982, and plaintiff and the defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or any admission by any party with respect to any such issue:

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED, and DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against each defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

As used in this Final Judgment:

(a) "person" means any individual, partnership, corporation, or other legal or business entity.

(b) "pastry" means baked or fried, fresh, sweet goods made primarily from flour, shortening, sugar and dairy products and includes, but is not limited to, danish, doughnuts, muffins, cookies, coffee cakes, layer cakes and pies.

(c) "wholesale bakery" means a person engaged, in whole or in part, in the business of making any of the items defined as pastry for sale to jobbers, to other persons that sell pastry to jobbers, to institutional caterers, or to restaurants, luncheonettes, hospitals, schools, office cafeterias, or other businesses that resell pastry directly to the consumer.

(d) "jobber" means a person, not a wholesale bakery or employed by a wholesale bakery, who is engaged, in whole or in part, in the business of distributing pastry to restaurants, luncheonettes, hospitals, schools, office cafeterias, or other businesses that resell pastry directly to the consumer.

III

This Final Judgment applies to the defendants and to their officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Each defendant is enjoined and restrained from directly or indirectly entering into, adhering to, participating in, maintaining, furthering, enforcing, or claiming any right under any contract, agreement, understanding, plan, program, combination or conspiracy with any other defendant or any other wholesale bakery or any jobber or any union to fix, establish, raise, lower or maintain prices, discounts, or other terms or conditions for the sale of pastry.

V

Each defendant is enjoined and restrained from communicating to, requesting from or exchanging with any

other defendant or any other wholesale bakery or any jobber any information concerning actual or proposed prices, discounts, terms or conditions of sale, or actual or proposed pricing policies, or any consideration or contemplation of changes therein, for the sale of pastry.

VI

Nothing contained in this Final Judgment shall prohibit any defendant from engaging in any transaction or communication with any person in connection with an actual or proposed bona fide purchase or sale of pastry from or to such person.

VII

(A) Each defendant shall advise each of its officers who has management responsibility for the sale of pastry and each of its employees who has responsibility for or authority over the establishment of prices for pastry of his obligations and of such defendant's obligations under this Final Judgment.

(B) Each defendant is ordered and directed to:

(1) furnish a copy of this Final Judgment to each of the persons described in subsection (A) hereof within thirty (30) days after the date of the entry of this Final Judgment;

(2) furnish a copy of this Final Judgment to each person who in the future shall have

any of the responsibilities described in subsection (A) hereof within 30 days of his obtaining such responsibilities;

(3) obtain from each of those persons furnished a copy of this Final Judgment pursuant to subsections (B)(1) or (2) hereof, a signed receipt therefor, which receipt shall be retained in the defendant's files for at least until the termination of this Final Judgment;

(4) attach to each copy of this Final Judgment furnished to each of those persons described in subsections (A) and (B)(2), a statement advising each such person of his obligations and of such defendant's obligations under this Final Judgment, and of the penalties which may be imposed upon him and upon such defendant for violation of this Final Judgment;

(5) hold within sixty (60) days after the date of entry of this Final Judgment, a meeting of the persons described in subsections (A) and (B)(2) hereof, at which meeting such persons shall be instructed concerning their obligations and such defendant's obligations under this Final

Judgment. Similar meetings shall be held at least once a year for a period of five (5) years from the date of entry of this Final Judgment;

(6) establish and implement a plan for monitoring compliance by the persons described in subsections (A) and (B)(2) hereof with the terms of this Final Judgment; and

(7) file with this Court, and serve upon plaintiff within ninety (90) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subsections (A), (B)(1), (3), (4), (5) and (6) hereof.

VIII

Each defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of the assets used by it in its pastry business, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court and serve upon plaintiff its consent to be bound by this Final Judgment.

IX

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:

(1) access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees and agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

X

This Final Judgment shall terminate ten (10) years from the date of its entry.

XI

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply

to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XII

Entry of this Final Judgment is in the public interest.

Dated: October 11, 1983

/s/ Judge Edward J. Weinfeld
UNITED STATES DISTRICT JUDGE