

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No. C80-1894
v.)	
)	Judge George W. White
HAWTHORN MELLODY, INC.;)	
HILLSIDE DAIRY COMPANY, INC.,)	Filed: 11-30-81
)	
Defendants.)	Entered: 2-22-82

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on October 10, 1980, and plaintiff and 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, corporation, partnership, firm, association or other business or legal entity;

(B) "fluid milk" means pasteurized milk in fluid form that is fit for human consumption;

(C) "dairy" means any person which processes raw milk into fluid milk and other dairy products or sells and distributes fluid milk and other dairy products to customers such as grocery stores, restaurants, hotels, schools, hospitals, government entities, and home delivery purchasers;

(D) "Northeastern Ohio" means the area encompassed by Cuyahoga, Lake, Lorain, and Summit Counties.

(E) "Hawthorn Melody, Inc." means a Delaware Corporation organized on October 16, 1968, which changed its name to HM Liquidating, Inc. and sold its assets and the right to use its name, "Hawthorn Melody Inc.", to HAS Acquisition Corp. on August 11, 1981.

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 entering into, adhering to, participating in, maintaining, furthering, enforcing, or claiming, either directly or indirectly, any rights under any contract, agreement, understanding, arrangement, plan, program, combination, or conspiracy with any dairy to determine, establish, fix, raise, stabilize, maintain, or adhere to wholesale prices or other terms or conditions for the sale of fluid milk.

V

Each defendant is enjoined and restrained from, directly or indirectly:

(A) Communicating to any dairy any information concerning the costs, future costs or anticipation of changes or revisions in the costs of fluid milk or other dairy products in Northeastern Ohio;

(B) Communicating to any dairy any information concerning the present wholesale or any future prices or terms or conditions of sale at which fluid milk or other dairy products are or may be sold in Northeastern Ohio, or consideration of changes or revisions in any prices or terms and conditions of sale of such products in Northeastern Ohio;

(C) Requesting from any person any information that said defendant could not communicate without violating subsections (A) or (B) hereof.

VI

Nothing in Sections IV or V of this Final Judgment shall prohibit any defendant from:

(A) Communicating information to or obtaining information from any person in the course of, and related to, negotiation for, entering into, or carrying out a bona fide purchase or sale transaction with such person;

(B) Engaging in bona fide joint collective bargaining or bona fide collective bargaining through a common agent in the course of labor negotiations.

VII

Nothing in Section V of this Final Judgment shall prohibit defendant Hillside Dairy Company, Inc., its successors or its assigns, from being a member of Quality Checkd Dairy Products Association and participating in those activities of Quality Checkd Dairy Products Association which are not prohibited by law.

VIII

Each defendant is ordered and directed to:

(A) Furnish a copy of this Final Judgment within thirty (30) days after the date of its entry to each of its officers and directors and to each other person (excluding salesman-truck drivers) who has any responsibility for the pricing or sale of fluid milk in Northeastern Ohio;

(B) Furnish a copy of this Final Judgment to each successor to any person described in subsection (A) hereof within thirty (30) days after each such successor assumes such position;

(C) Obtain from each such person furnished a copy of this Final Judgment pursuant to subsections (A) and (B) hereof a signed receipt therefor, which receipt shall be retained in the defendant's files;

(D) Attach to each copy of this Final Judgment furnished pursuant to subsections (A) and (B) hereof a statement, in substantially the form set forth in Appendix A attached hereto, advising each person of his obligations and of such defendant's obligations under this Final Judgment, and of the criminal penalties which may be imposed upon him and upon such defendant for violation of this Final Judgment;

(E) Hold, within seventy-five (75) days after the date of entry of this Final Judgment, a meeting or meetings of the persons described in subsection (A) hereof, at which meeting such persons shall be instructed concerning the defendant's and their obligations under this Final Judgment. Similar meetings shall be held at least once a year, which meetings shall also be attended by those persons described in subsection (B) hereof;

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

(G) File with this Court and serve upon the plaintiff, within ninety (90) days after the date of entry of this Final Judgment, an affidavit as to the fact of its compliance with subsections (A), (C), (D), (E), and (F) hereof.

IX

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 the manufacture and sale of fluid milk, that the acquiring party agrees to be bound by the provisions of this Final Judgment and to file such agreement with the Court.

X

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 X 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 ten (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.

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

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

XIII

Entry of this Final Judgment is in the public interest.

Dated: 2/22/82

/s/ Judge George W. White
UNITED STATES DISTRICT JUDGE

APPENDIX A

Notice

Re: United States v. Hawthorn Melody, Inc.,
and Hillside Dairy Company, Inc.,
Civil Action No. C 80-1894 (N.D. Ohio)

Attached hereto is a copy of a Final Judgment entered
_____, 1981 in the captioned case. We are
required to provide this to you. You should read it carefully.
The provisions of the Final Judgment contained in Sections IV
and V apply to you. If you violate these provisions, you may
subject the company to a fine and you may also subject yourself
to a fine and imprisonment.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

-----X
UNITED STATES OF AMERICA,

Plaintiff,

v.

HAWTHORN MELLODY, INC.;
HILLSIDE DAIRY COMPANY, INC.,


Defendants.
-----X

Civil Action No. C80-1894

Judge George W. White

AGREEMENT TO BE BOUND BY THE
PROVISIONS OF THE FINAL JUDGMENT

On August 11, 1981, HAS Acquisition Corp. acquired from Fuqua Industries the assets of defendant Hawthorn Mellody, Inc., together with the right to use the Hawthorn Mellody name. After acquiring the assets, HAS Acquisition Corp. changed its name to Hawthorn Mellody, Inc. (hereinafter "new Hawthorn Mellody"). The new Hawthorn Mellody, a Delaware corporation which was incorporated on February 18, 1981, hereby represents to this Court, through its undersigned attorney, that it agrees to be bound by the provisions of the proposed Final Judgment that is being filed concurrently in this case and submits to the jurisdiction of this Court for that purpose.



SILAS SPENGLER
Spengler Carlson Gubar Brodsky
& Rosenthal