

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)
)
)
Petitioner,) Supplemental to
) Civil Action No. 56-15748
v.)
) Hon. Paul V. Gadola
FTD CORPORATION; FLORISTS')
TRANSWORLD DELIVERY, INC.;) Civil Contempt Of Judgment
and FTD ASSOCIATION,)
)
Respondents.) Filed: 8/2/95

STIPULATION

It is stipulated by and between the undersigned parties by their respective attorneys, that:

1. Respondents will publish at their expense a notice in the form attached hereto as Exhibit A in the first feasible issue of FTD Family and provide a copy of said notice to operators of other floral wire clearinghouses in the United States, and file proof of such publication with the Court; and an order in the form attached hereto as Exhibit B, directing such publication, may be filed and entered by the Court forthwith, without further notice to any party or other proceedings.

2. A proposed Enforcement Order in the form attached hereto as may be filed and entered by the Court, upon the request of any party or by the Court sua sponte, at any time more than seventy (70) days after the last mailing of the notices required by paragraph 1 of this Stipulation and without further notice to any party or other proceedings, provided that Petitioner has not withdrawn its consent, which it may do at any time before entry of the proposed Enforcement Order, by filing notice of the withdrawal of its consent with the Court and serving a copy of said notice upon each Respondent.

3. In the event Petitioner withdraws its consent, or if the proposed Enforcement Order is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, the making of it shall be without prejudice to any party in this or any other proceedings, and it shall not thereafter be used in this or any other action, or for any other purposes.

Dated: August 2, 1995

FOR THE PETITIONER
UNITED STATES OF AMERICA

_____/S/_____
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Assistant Attorney General
Antitrust Division

_____/S/_____
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____/S/_____
Joel I. Klein
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____/S/_____
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____/S/_____
L. Michael Wicks (P 24457)
Assistant United States
Attorney
Eastern District of Michigan

FOR RESPONDENTS FTD CORPORATION
and FLORISTS' TRANSWORLD DELIVERY,
INC.

____/s/_____
John M. Nannes
Skadden, Arps, Slate,
Meagher & Flom

1440 New York Avenue, N.W.
Washington, DC 20005-2111
(202) 371-7400

FOR RESPONDENT FTD ASSOCIATION

____/s/_____
Kenneth J. McIntyre
Dickinson, Wright, Moon,
Van Dusen & Freeman
500 Woodward Avenue, Suite 4000
Detroit, Michigan 48226-3425
(313) 223-3556

IT IS SO ORDERED

Date: August 2, 1995

____/S/_____
United States District Judge

EXHIBIT A

UNITED STATES DISTRICT COURT
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)	
Respondents.)	Filed:

TAKE NOTICE that on August 2, 1995, the United States filed a Petition for an Order to Show Cause Why The Respondents Should Not be Found in Civil Contempt and that Respondents have responded by consenting to the entry of a proposed Enforcement Order, to which the United States has tentatively consented, which would resolve this matter.

On June 1, 1956, the United States filed in this Court a civil action against Florists' Telegraph Delivery Association ("FTD"), the largest flowers-by-wire association in the United States which then accounted for over 87 percent of all wire service orders. The Complaint alleged that FTD violated Section 1 of the Sherman Act by imposing an exclusive membership restriction by which its member florists were prohibited from belonging to any

other flowers-by-wire association. This exclusive membership restriction had allegedly given FTD a dominant position among wire associations and denied the public the benefit of competition. The Final Judgment, entered by this Court against FTD upon consent the day the complaint was filed, terminated the exclusive membership restriction and permanently enjoined FTD from, inter alia, engaging in practices that had the purpose or effect of limiting membership in FTD to those not affiliated with other flowers-by-wire clearinghouse associations. On August 1, 1966, the United States filed a second civil action against Florists' Transworld Delivery Association, Civil Action No. 66-28784, which was also resolved by a consent judgment.

On November 8, 1990, upon a stipulation between FTD and the United States, this Court entered a Modified Final Judgment ("MFJ") which provided that FTD could not engage in any course of conduct, practice or policy which had the purpose or effect of restricting or limiting its membership to florists who were not members of any other wire association.

In 1994, the floral businesses of FTD were sold to Respondent Florists' Transworld Delivery, Inc. ("FTDI"), a subsidiary of Respondent FTD Corporation, and the trade association activities of FTD were assumed by Respondent FTD Association ("FTDA"). The United States alleges that a program to offer special benefits to

florists who are members of only FTDA violated the terms of the MFJ. As a result of negotiations between the United States and Respondents, the parties have agreed upon a proposed Enforcement Order that would resolve the Petition by consent without any admission or determination of wrongdoing by Respondents.

The United States and Respondents have filed with the Court memoranda setting forth reasons why they believe that entry of the proposed Enforcement Order would be in the public interest. Copies of the Petition, the MFJ, the Stipulation containing the United States' tentative consent and the proposed Enforcement Order, the memoranda of the parties, and all further papers filed with the Court in connection with this matter will be available for inspection at Room 200, Antitrust Division, Department of Justice, 325 7th Street, N.W., Washington, D.C. 20530 (telephone: (202) 514-2481), and at the Office of the Clerk of the United States District Court for the Eastern District of Michigan, 231 West Lafayette Street, Detroit, Michigan 48226 (telephone: (313) 226-7200). Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments to the United States regarding the proposed order. Such comments must be received within the sixty-day period established by Court Order, and will

be filed with the Court by the United States. Comments should be addressed to Christopher J. Kelly, Acting Chief, Civil Task Force I, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Room 400, Washington, D.C. 20530 (telephone: (202) 514-8348).

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**ORDER DIRECTING PUBLICATION OF NOTICE
OF PETITION AND PROPOSED ENFORCEMENT ORDER**

The United States having filed a Petition for an Order to Show Cause Why The Respondents Should Not be Found in Civil Contempt, Respondents having responded thereto, the parties having determined to resolve this matter by entry of a proposed Enforcement Order, to which the United States has tentatively consented, and Petitioner having proposed, and Respondents having agreed, that notice of the Petition and the proposed Enforcement Order and of Petitioner's tentative position be published at Respondents' expense, and that all interested persons be given an opportunity to submit comments concerning the proposed Enforcement Order, and it appearing to the Court desirable to invite such comments, and in consideration of the Stipulation of the parties dated August 2, 1995, it is

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ENFORCEMENT ORDER

This matter came before the Court upon the Petition of the United States for an Order to Show Cause Why The Respondents Should Not be Found In Civil Contempt, which was filed on August 2, 1995, seeking enforcement of the Modified Final Judgment ("MFJ") entered in this action on November 8, 1990. Petitioner and Respondents, having agreed upon a resolution of this matter, the following Order is entered without any admission or determination of wrongdoing by Respondents and without any findings or adjudication with respect to any issue of fact or law arising from the Petition:

1. Respondents are directed forthwith to comply with the MFJ;

2. All "FTD Only" florists will be notified on or before August 4, 1995, that the "FTD Only" benefits program will be terminated effective September 1, 1995, provided that FTDI may allow "FTD Only" florists to return Thanksgiving and Christmas holiday products that have been ordered prior to August 4, 1995;

3. Respondents are henceforth enjoined and restrained from offering any financial incentives or financial rewards to any FTDA member or user of the FTDI clearinghouse that are conditioned upon terminating or forgoing membership or participation in any competing wire association, or other entity or mechanism that transmits or facilitates wire orders;

4. Within thirty (30) days of the entry of this Order, Respondents shall modify the terms of their Mutual Support Agreement in accordance with the attachment to this Order;

5. Not later than thirty (30) days after the entry of this Order, Respondents FTD Corp., FTDI and FTDA shall each establish a compliance committee, which shall each include participation of at least one attorney;

6. Not later than ten (10) days after a person begins performance of his or her duties as a new officer and management employee of a Respondent, the Respondent shall provide that person

with a copy of the MFJ and a written directive regarding compliance therewith, and obtain an executed certificate acknowledging receipt thereof;

7. Not later than sixty (60) days after the entry of this Order, Respondents shall distribute to each officer and management employee: (a) a copy of this Order and a written directive setting forth Respondent's policies regarding compliance with the Order; (b) a description of the procedures to be followed to comply with this Order, including identification of the members of the applicable compliance committee and the procedures to be followed by the applicable compliance committee; and (c) an admonition that non-compliance with the MFJ and this Order will result in disciplinary action, which may include dismissal and may result in conviction for contempt and imprisonment or fine;

8. Respondents shall take disciplinary action against any person under their respective control who refuses or fails to comply with the MFJ or this Order;

9. A daily fine of up to \$5,000 may be imposed upon a Respondent that fails timely to carry out the requirements of paragraphs 2, 4, 5 and 7 above; and

10. This Order and the MFJ shall terminate by their own terms and without further action of the Court on August 1, 2005.

ORDERED, ADJUDGED and DECREED that the Enforcement Order be and hereby is entered.

Date: _____, 1995

United States District Judge

MODIFICATION TO MUTUAL SUPPORT AGREEMENT NOT ATTACHED.
[NOT ON OUR SYSTEM]