

[Trade Regulation Reporter - Trade Cases \(1932 - 1992\), United States v. Arnold, Schwinn & Co.; Schwinn Cycle Distributors Association; and the B. F. Goodrich Company., U.S. District Court, N.D. Illinois, 1962 Trade Cases ¶70,445, \(Oct. 3, 1962\)](#)

Federal Antitrust Cases

Trade Regulation Reporter - Trade Cases (1932 - 1992) ¶70,445

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United States v. Arnold, Schwinn & Co.; Schwinn Cycle Distributors Association; and the B. F. Goodrich Company.

1962 Trade Cases ¶70,445. U.S. District Court, N.D. Illinois, Eastern Division. Civil Action No. 59 C 489. Entered October 3, 1962. Case No. 1405 in the Antitrust Division of the Department of Justice.

Headnote

Sherman Act

Sales Restrictions—Designated Outlets for Resale—Bicycles—Consent Judgment.—A manufacturer also engaged in the distribution of other products through company-owned and independently-owned stores was prohibited by a consent judgment from agreeing with a bicycle manufacturer to confine sales of the manufacturer's products to such stores. Also, the manufacturer-distributor was prohibited from limiting the persons to whom its outlets may sell but allowed to unilaterally restrict its sales to its outlets.

Resale Price Fixing—Fair Trade—Policing of Prices—Refusal to Deal—Consent Judgment.—A manufacturer also engaged in the distribution of other products through company-owned and independently-owned stores was prohibited by a consent judgment from agreeing with a bicycle manufacturer to fix resale prices, report any person's failure to adhere to such prices, or refuse to do business with any person who fails to observe such prices. For a three-year period, the manufacturer-distributor was prohibited from enforcing or initiating any fair trade program and issuing any resale price list prepared by the bicycle manufacturer. Also, the manufacturer-distributor was required to notify its outlets that suggested prices issued by it are solely for the information of the outlet and that the outlet has complete freedom to charge whatever price it may independently determine.

For the plaintiff: Lee Loevinger, Harry G. Sklarsky, Harry N. Burgess, Earl A. Jinkinson and Joseph A. Prindaville, Jr.

For the defendants: Kirkland, Ellis, Hudson, Chaffetz & Masters, by E. Houston Harsha, for B. F. Goodrich Co.

Final Judgment

PERRY, District Judge [*In full text*]: The plaintiff United States of America having filed its Complaint herein on March 25, 1959; defendant, The B. F. Goodrich Company, having filed its Answer thereto, and the plaintiff and defendant The B. F. Goodrich Company having consented to the entry of this Final Judgment, it is hereby

Ordered, adjudged and decreed as follows:

I

[*Sherman Act*]

This Final Judgment is entered before the taking of any testimony, without trial or adjudication of any issue of fact or law herein and without any estoppel of, except as to the specific relief herein contained, or admission by any party as to any such issue. The Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims upon which relief may be granted against the defendant under Section 1 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly, known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

- (A) "BFG" shall mean the defendant The B. F. Goodrich Company, with its principal place of business in Akron, Ohio.
- (B) "Schwinn" shall mean the defendant Arnold, Schwinn & Co., with its factory and main office in Chicago, Illinois.
- (C) "Wholesale distributor" shall mean any person (other than BFG, any of its subsidiaries, or any independently owned BFG wholesale outlet) engaged in the purchase from Schwinn of Schwinn products for resale primarily to retail dealers.
- (D) "Retail dealer" shall mean any person (other than BFG, any of its subsidiaries, or any independently owned BFG retail outlet) engaged in the sale of Schwinn products primarily to consumers.
- (E) "Person" shall mean any individual, partnership, firm, corporation, association, or other business or legal entity.
- (F) "Schwinn product" shall mean any bicycle, bicycle part or accessory (i) manufactured by defendant Schwinn, or (ii) manufactured by any other person but which bears any label, trademark or trade name owned or controlled by Schwinn.
- (G) The term "BFG outlet" shall mean any BFG operated or any independently owned and operated retail or wholesale establishment which has been designated by BFG as a BFG tire dealer and which purchases auto and home supply products from BFG.
- (H) The terms "fair trade contract" and "fair trade agreement" shall mean a formal, written document, signed by Schwinn or BFG, relating to the sale or resale of Schwinn products and providing that the buyer will not resell such Schwinn products except at the prices set by Schwinn or BFG.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to B. F. G, its officers, directors, agents and employees, and to each of its subsidiaries, successors and assigns, and to all other persons in active concert or participation with BFG who receive actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment are not applicable to activities of BFG or its subsidiaries, successors or assigns outside the United States which do not affect the domestic or foreign commerce of the United States.

IV

[*Prohibited Agreements*]

Defendant BFG is enjoined and restrained from directly or indirectly, entering into, adhering to, maintaining, or enforcing any rights under, any contract, agreement, combination or understanding, with defendant Schwinn or with any other person to:

- (A) Confine BFG's sales of Schwinn products to BFG outlets only;

(B) Fix, determine, establish or maintain prices, terms or conditions for the sale of any Schwinn product to any third person; provided, that, subject to the provisions of Section V of this Final Judgment, nothing contained in this Final Judgment shall be construed to prohibit defendant BFG from exercising or performing such lawful rights or obligations as it may have pursuant to the Act of Congress of August 17, 1937, commonly called the Miller-Tydings Act, or the Act of Congress of July 14, 1952, commonly called the McGuire Act, or any other legislation which may be enacted by the Congress subsequent to the date of this Final Judgment which has the purpose or effect of permitting or authorizing resale price maintenance;

(C) Report to Schwinn any information concerning any person's asserted failure to adhere to prices, terms or conditions advertised, established, or suggested by Schwinn for the sale of Schwinn products, or concerning the asserted sale by such person of any Schwinn product to any retailer not designated by Schwinn as being an authorized retailer;

(D) Decline or refuse to do business with, or threaten to decline or otherwise refuse to do business with, any person who fails to observe or agree to observe prices, terms or conditions advertised, established, or suggested by Schwinn for the sale of any Schwinn product or who resells, or has resold any Schwinn product to any retailer not designated by Schwinn as being an authorized retailer.

V

[*Individual Practices*]

(A) Nothing in this Final Judgment shall be construed to prevent BFG from unilaterally and without any consultation or agreement with any other person, restricting its sales of Schwinn products to BFG outlets.

(B)(1) As long as defendant BFG shall sell any Schwinn product to any independently owned BFG outlet, BFG is ordered and directed to offer to sell, and⁴ upon BFG's normal and customary prices, terms and conditions to sell, any Schwinn product to any and all such outlets (including specifically and independently owned BFG wholesale outlet);

(2) As long, during the next three years, as defendant BFG shall sell any Schwinn product to any BFG commercial account, BFG is ordered and directed to make fair traded as well as non-fair traded Schwinn products available for sale to all such accounts.

(C) BFG is enjoined and restrained from directly or indirectly:

(1) Reporting to Schwinn any information concerning any person's failure to adhere to prices, terms or conditions advertised, established, or suggested by Schwinn for the sale of any Schwinn product or concerning the sale by any such person of any Schwinn product to any retailer not designated by Schwinn as being an authorized retailer.

(2) Declining or refusing to do business with, or threatening to decline or otherwise refuse to do business with any person who fails to observe or agree to observe prices, terms or conditions advertised, established or suggested by Schwinn for the sale of any Schwinn product, or who resells, or has resold any Schwinn product to any retailer not designated by Schwinn as being an authorized dealer.

(3) Limiting or restricting or attempting to limit or restrict, the persons, or classes of persons, to whom any independently owned BFG outlet, BFG commercial account, or retail dealer, may sell any Schwinn product.

(D) Defendant BFG is enjoined and restrained for a period of three years from enforcing or attempting to enforce any presently existing fair trade contract relative to any Schwinn product to which defendant BFG is a party, or by which it is affected.

(E) Defendant BFG is enjoined and restrained for a period of three years from itself initiating any fair trade resale price maintenance contract covering any Schwinn product.

(F) Defendant BFG is enjoined and restrained from communicating with any independently owned BFG outlet, BFG commercial account, or retail dealer, concerning the price or prices, terms or conditions at which such

outlet, account, or retail dealer must sell or should have sold any non-fair traded Schwinn product or the persons or classes of persons to whom it must or must not sell any such non-fair traded Schwinn product.

(G) Defendant BFG is enjoined and restrained for a period of three years from issuing any advertising and promotional material, including any price list, containing suggested consumer resale prices for any Schwinn product which has been prepared by Schwinn; provided, however, that nothing contained in this subparagraph (G) shall prohibit or restrain BFG from furnishing or issuing to BFG outlets advertising and promotional materials independently prepared by defendant BFG for distribution and dissemination to BFG outlets, and provided also that BFG shall also mail to each independently owned BFG outlet, within thirty days after the entry of this Final Judgment, a copy of a letter in the form attached hereto as Exhibit A.

VI

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to BFG made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during the office hours of the defendant, to all of the books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant which relate to any matters contained in this Final Judgment.

(B) Subject to the reasonable convenience of BFG and without restraint or interference from BFG, to interview officers or employees of BFG, who may have counsel present, regarding any such matters.

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, BFG shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section VI 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 plaintiff except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VII

[*Notice*]

(A) Defendant BFG is ordered and directed to serve by mail, thirty days after the entry of this Final Judgment, upon defendant Arnold, Schwinn & Co., defendant Schwinn Cycle Distributors Association, and each independently owned BFG retail and wholesale outlet, a conformed copy of this Final Judgment, and said defendant shall thereupon file with the Clerk of this Court an affidavit of compliance with paragraph VII of this Judgment.

(B) Defendant BFG is ordered and directed, for a period of three (3) years, to furnish a conformed copy of this Final Judgment to any person requesting the same.

VIII

[*Jurisdiction Retained*]

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 and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Exhibit A

On>, 1962, The B. F. Goodrich Company and the United States consented to the entry of a Final Judgment against the B. F. Goodrich Company in *United States v. Arnold, Schwinn & Co., et al.*, Civil Action No. 59 C 489 (N. D. Ill.), a copy of such Final Judgment being enclosed herewith for your information and guidance. Subject to the provisions of Paragraph V(G) of this Judgment, The B. F. Goodrich Company is permitted to continue to provide you with product catalogs containing suggested list prices for Schwinn products. However, the Company wishes to emphasize that such suggested list prices are solely for your information and that you retain complete freedom, insofar as The B. F. Goodrich Company is concerned, to charge whatever prices for Schwinn products as you may independently determine. This statement of the Company's policy does not, of course, relieve you from whatever obligations you may have under the Fair Trade laws in respect to companies other than The B. F. Goodrich Company.

We shall also continue to sell to you, on your request, advertising and promotional materials and flyers which specify the prices at which Schwinn products are currently being sold in retail stores owned by The B. F. Goodrich Company. You are, of course, completely free to order or not to order such advertising materials, and the use of such advertising materials is completely discretionary with you.

Sincerely yours,
The B. F. Goodrich Company