

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.) Civil Action No. C-30-61
UTAH PHARMACEUTICAL ASSOCIATION,)
Defendant.)

FINAL JUDGMENT

1 Plaintiff, United States of America, having filed its complaint
2 herein on March 7, 1961; defendant Utah Pharmaceutical Association
3 having filed its answer to said complaint on August 4, 1961; the
4 matter having been tried on November 21 and 22, 1961; and the court
5 having filed its memorandum decision on January 3, 1962;

6 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
7 as follows:

I

8 This court has jurisdiction of the subject matter and of the
9 parties hereto. Defendant has combined and conspired with its officers,
10 directors and members and with various local pharmaceutical associations
11 to restrain trade and commerce in the sale of prescription drugs in
12 violation of section 1 of the Act of Congress of July 2, 1890, entitled
13 "An Act to protect trade and commerce against unlawful restraints and
14 monopolies," commonly known as the Sherman Act, as amended.

II

15 As used herein:

16 (a) "Prescription drug" is a medication for treatment of humans,
17 sold to fill a prescription written by a physician or other person
18 duly licensed to prescribe for the treatment of human ailments;

(b) "Pharmacist" is an individual duly licensed to fill prescriptions written for the treatment of human ailments;

(c) "Prescription pricing schedule" is a formula or price list designed for use in computing prices to be charged for prescription drugs;

(d) "Person" is any individual, firm, partnership, corporation, association, trustee or any other business or legal entity.

三三

9 The provisions of this decree shall apply to defendant Utah
10 Pharmaceutical Association, its officers, directors, agents, members
11 and employees, and other persons in active concert or participation
12 with said defendant who shall receive actual notice of this decree by
13 personal service or otherwise.

IV

15 Defendant is hereby perpetually enjoined and restrained from,
16 directly or indirectly:

17 (a) Continuing to carry out the combination and conspiracy to
18 restrain the sale of prescription drugs as found herein, or any like
19 or similar combination or conspiracy to restrain trade and commerce in
20 the sale of prescription drugs, or any combination or conspiracy having
21 a like or similar purpose or effect;

22 (b) Entering into, adhering to, maintaining or furthering any
23 contract, agreement, understanding, plan or program (i) to fix,
24 determine, maintain or suggest prices or other terms or conditions for
25 the sale of prescription drugs, (ii) to formulate, adopt, issue, distri-
26 bute, recommend or suggest the use by any pharmacist or any other
27 person of any prescription pricing schedule or other list, formula,
28 guide, schedule, or method for pricing prescription drugs;

29 (c) Advocating, suggesting, urging, inducing, compelling, or in
30 any other manner influencing or attempting to influence any person to
31 use or adhere to any prescription pricing schedule or schedules or any
32 other list, formula, guide, schedule or method for pricing prescription
drugs:

7 Nothing in sub-sections (b), (c), or (d) of this section IV shall
8 be construed to restrain any pharmacy owner member of defendant Asso-
9 ciation from requiring his employees to sell prescription drugs at
10 prices, and upon terms and conditions of sale, established by such
11 pharmacy owner in pharmacies owned or operated by said pharmacy owner.

12 At any time, any agency of the United States or of the State of
13 Utah may, upon grounds of undue hardship to it, and without having
14 standing as a party herein, petition this court for an order enabling
15 defendant Association to negotiate and enter into a contract for the
16 sale of prescription drugs where the price of such prescription drugs
17 will be paid for by the petitioning agency. Such petition may be in
18 the form of a letter to the court with copies to be served on both the
19 plaintiff and defendant herein. The matter will then be set for hearing
20 at which time the petitioning agency may produce witnesses and other
21 evidence in support of its petition. Plaintiff and defendant will be
22 permitted to be heard and make objections to any such proposed negoti-
23 ation or contract. Permission by this court to enter into any such
24 contract shall not be considered an adjudication as to the legality or
25 illegality of such contract under the antitrust laws, nor shall it be
26 deemed to bar or estop the plaintiff from attacking the legality of any
27 such contract under the antitrust laws generally.

V

29 Defendant Association is hereby ordered and directed to dissolve
30 its committee on Prescription Pricing, Wages and Hours, and is enjoined

1 and restrained from forming, appointing, or maintaining such committee
2 or any similar committee.

3 VI

4 (a) Defendant Utah Pharmaceutical Association is ordered and
5 directed, within 30 days after the entry of this final judgment, to
6 serve by mail upon each of its members a conformed copy of this final
7 judgment. Said defendant is further ordered and directed to thereupon
8 file an affidavit with the clerk of this court that it has done so,
9 which affidavit shall set forth the name and address of each person so
10 served;

11 (b) Defendant Utah Pharmaceutical Association is ordered and
12 directed to furnish a copy of this final judgment ~~upon~~ each new member
13 thereon at the time of acceptance of such membership and to obtain
14 from each such member, and keep for ten years in its files, a receipt
15 therefor signed by each such new member.

16 VII

17 For the purpose of securing compliance with this final judgment,
18 duly authorized representatives of the Department of Justice shall,
19 upon written request of the Attorney General or the Assistant Attorney
20 General in charge of the Antitrust Division, and on reasonable notice
21 to the defendant, and subject to any legally recognized privilege,
22 be permitted:

23 (a) Reasonable access during the office hours of the defendant
24 to all books, ledgers, accounts, correspondence, memoranda, and other
25 records and documents in the possession or under the control of the
26 defendant, relating to any matters contained in this final judgment;
27 and

28 (b) Subject to the reasonable convenience of the defendant, and
29 without restraint or interference from it, to interview officers and
30 employees of the defendant (who may have counsel present) regarding
31 such matters.

VIII

2 Jurisdiction is retained for the purpose of enabling any of the
3 parties to this final judgment to apply to the court at any time for
4 such further orders and directions as may be necessary or appropriate
5 for the construction or carrying out of the final judgment, for the
6 modification or vacating of any of the provisions thereof, and for the
7 enforcement of compliance therewith and the punishment of violation thereof.

8 Dated: January 31, 1962

/s/ A. Sherman Christenson

United States District Judge