

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Ward Baking Company, American Bakeries Company, Derst Baking Company, Flowers Baking Company, Inc., and Southern Bakeries Company., U.S. District Court, M.D. Florida, 1965 Trade Cases ¶71,520, (Sept. 1, 1965)

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United States v. Ward Baking Company, American Bakeries Company, Derst Baking Company, Flowers Baking Company, Inc., and Southern Bakeries Company.

1965 Trade Cases ¶71,520. U.S. District Court, M.D. Florida, Jacksonville Division. Civil No. 4735-Civ.-J. Entered September 1, 1965.

Sherman Act

Price Fixing—Bakery Products—Consent Judgment.—Manufacturers of bakery products were prohibited by a proposed consent judgment from fixing prices, submitting rigged bids, or allocating customers in the sale of bakery products to the United States or its instrumentalities. Each manufacturer, except one, was also prohibited from fixing prices or rigging bids in the States of Georgia and Florida.

For the plaintiff: Henry M. Stuckey, Department of Justice, Antitrust Division, Washington, D. C.

For the defendants: Ulmer, Murchison, Kent, Ashby & Ball, Jacksonville, Florida, Davisson F. Dunlap for Ward Baking Co.; Kent and Spalding, Atlanta, Georgia, Charles L. Gowen, for American Bakeries Co.; Davisson F. Dunlap, Attorney in Fact for John B. Miller, Hitch, Miller, Beckmann & Simpson, Savannah, Georgia, for Derst Baking Co.; Ulmer, Murchison, Kent, Ashby & Ball, Jacksonville, Florida, by John W. Ball, for Flowers Baking Company, Inc.; Hansell, Post, Brandon & Dorsey, Atlanta, Georgia, by John H. Boman, Jr., for Southern Bakeries Co.

Final Judgment—Count II

[Final judgment]: Plaintiff, United States of America, having filed its complaint herein in two Counts on July 21, 1961, and Final Judgment having been entered on Count I of the complaint and the parties by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any of the issues of fact or law herein and before the taking of any testimony; it is hereby

Ordered, adjudged and decreed upon Count II of the complaint as follows:

I

This Court has jurisdiction of the subject matter hereof and of the parties consenting thereto and Count II of the complaint states a claim upon which relief may be granted against the defendants 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

The provisions of this Final Judgment applicable to any defendant shall apply also to each of its subsidiaries, successors, assigns, officers, directors, agents and employees, and to all other persons in active concert or participation with them who shall have received actual notice of this Final Judgment by personal service or otherwise

III

Each of the defendants is enjoined and restrained from directly or indirectly entering into, adhering to, or claiming or maintaining any right under any contract, agreement, arrangement, understanding, plan or program with any other person to:

- (A) Establish, maintain, stabilize or fix prices or other terms or conditions for the sale of any bakery products to the United States of America, its agencies or instrumentalities;
- (B) Submit noncompetitive, collusive or rigged bids, or quotations for supplying any bakery products to the United States of America, its agencies or instrumentalities; or
- (C) Allocate, divide or rotate the business of supplying any bakery products to the United States of America, its agencies or instrumentalities.

IV

Each of the defendants, except Derst Baking Company of Savannah, Georgia, is enjoined and restrained in the States of Georgia and Florida for a period of three years from the date hereof, from directly or indirectly entering into, adhering to, or claiming or maintaining any right under any contract, agreement, arrangement, understanding, plan or program with any other person to:

- (A) Establish, maintain, stabilize or fix prices or other terms or conditions for the sale of any bakery products to any third person;
- (B) Submit noncompetitive, collusive or rigged bids, or quotations for the sale of bakery products;

V

Each defendant is enjoined and restrained from directly or indirectly disclosing to or exchanging with any seller of bakery products the intention to submit or not submit a bid or quotation for supplying bakery products to United States of America, its agencies or instrumentalities, the fact that such a bid or quotation has or has not been submitted or made, or the content or terms of any such bid or quotations.

VI

Each defendant is ordered and directed for a period of five years after the date of entry of this Final Judgment, to submit a sworn statement in the form set forth in the Appendix hereto with each bid for bakery products submitted to any governmental agency of the United States of America (unless such installation requires the submission of a different type of sworn statement to the same effect), such sworn statement to be signed by the person actually responsible for the preparation of said bid.

VII

For the purpose of securing compliance with this Final Judgment duly authorized representatives of the Department of Justice shall during the times of the respective injunctions herein granted, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted, subject to any legally recognized privilege:

- (A) Reasonable access during the office hours of said defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant, relating to any matters contained in this Final Judgment; and
- (B) Subject to the reasonable convenience of said defendant, and without restraint or interference, to interview officers and employees of said defendant, who may have counsel present, regarding such matters contained in this Final Judgment.

Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the said defendant shall submit such written reports with respect to any of the matters contained in

this Final Judgment as may from time to time be necessary and requested for the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section 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 for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law. The provisions of the foregoing Section VII shall not apply to Derst Baking Company with respect to the injunction granted in Section IV hereof.

VIII

Jurisdiction is retained 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 modification of any of the provisions thereof, for the enforcement of compliance therewith, and punishment of violations thereof.