

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Jantzen Inc.; Catalina, Inc.; Cole of California, Inc.; and Rose Marie Reid., U.S. District Court, D. Oregon, 1966 Trade Cases ¶71,887, (Oct. 21, 1966)

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United States v. Jantzen Inc.; Catalina, Inc.; Cole of California, Inc.; and Rose Marie Reid.

1966 Trade Cases ¶71,887. U.S. District Court, D. Oregon. Civil No. 64-111. Entered October 21, 1966. Case No. 1784 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Competition—Swimwear—Consent Judgment.—Four swimwear manufacturers were prohibited under the terms of a consent decree from agreeing with like manufacturers regarding the sale of swimwear to fix prices, establish price breaks for retail clearance sales, persuade retailers to maintain suggested or preticketed prices, exchange information as to retailers' pricing policies or refuse to sell swimwear to any retailer or class of retailer.

Price Fixing—Resale Agreements—Swimwear—Consent Judgment.—Manufacturers of swimwear were prohibited from exchanging information regarding retail pricing, refusing for four years to sell to retailers because of their pricing policies, requiring retailers to remove brands or labels of the manufacturers' products unless being sold in violation of fair trade rights, agreeing with retailers on price break dates, exchanging information with manufacturers or retailers (for three years) on price break dates, or agreeing with retailers to fix prices in the sale of swimwear.

Resale Price Fixing—Fair Trade Exception—Seasonal Applicability—Swimwear—Consent Decree.—Provisions of a consent decree prohibiting swimwear manufacturers from refusing to deal with retailers because of their pricing policies or requiring them to maintain prices or remove labels or agreeing with them on price breaks did not prohibit the manufacturers from establishing or enforcing fair trade agreements, except that, for a period of three years, such agreements could not be enforced between July 1 and August 31 of each year; at some point between April 15 and June 1 of each of the three years, the manufacturers were required to notify each retailer selling swimwear pursuant to fair trade of his right to sell swimwear free and clear of the agreement.

For the plaintiff: D. F. Turner, Assistant Attorney General; Gordon B. Spivack, W. D. Kilgore, Jr., Charles D. Mahaffie, Jr., and Hugh P. Morrison, Jr., Attorneys, Department of Justice.

For the defendants: Manley B. Strayer, for Jantzen, Inc.; Arthur S. Vosburg, Kaye, Scholer, Fierman, Hays & Handler, New York, N. Y., by Milton Handler for Catalina, Inc. and Cole of California, Inc.

Final Judgment

SOLOMON, D. J.: The plaintiff, United States of America, having filed its complaint herein on March 10, 1964, the defendants having filed answers, and the parties hereto 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 evidence or an admission by any party hereto 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 the consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims for relief against the defendants under Section 1 of the Act of Congress of July 2, 1890, as amended,

entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act.

II

[*Definitions*]

As used in this Final Judgment, "swimwear" shall mean any garment designed primarily to be worn by female adults and junior misses while swimming.

III

[*Applicability*]

The provisions of said Final Judgment applicable to a defendant shall also apply to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with the defendant who receive actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment, the defendant and its parent and their subsidiaries and their officers, directors, employees and subsidiaries, when acting in such capacity, shall be deemed to be one person.

IV

[*Price Fixing*]

Each defendant is enjoined and restrained from entering into, adhering to, maintaining, enforcing or claiming any rights under any agreement, plan or program with any manufacturer of swimwear to:

- (A) Fix, stabilize or maintain prices for the sale of swimwear to any third person;
- (B) Establish any price break date or time for the beginning or conducting of retail clearance sales of swimwear;
- (C) Maintain or not maintain retail prices for swimwear for any particular period of time;
- (D) Induce, persuade or coerce any retailer to maintain any suggested or pre-ticketed retail price for any swimwear;
- (E) Exchange information or advice as to any retailer's pricing or selling policies for swimwear;
- (F) Refuse to sell swimwear to any retailer or class or type of retailer.

V

[*Price Fixing*]

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

- (A) Seeking from or giving to any manufacturer of swimwear information regarding the pricing or selling policy of any retailer of swimwear or any information as to whether sales of swimwear are being made to any particular retailer;
- (B) Refusing, for a period of four (4) years from the date of entry of this Final Judgment, to continue to sell swimwear to any retailer because of the pricing policy of such retailer;
- (C) Coercing or requiring any retailer to remove any valid and accurate brand or label of defendant from any swimwear unless being sold in violation of fair trade rights;
- (D) Entering into any agreement, combination or conspiracy with any retailer or group of retailers for the establishment of any price break date for the sale of swimwear;
- (E) Suggesting to or discussing with any manufacturer of swimwear the timing for the establishment of any price break date for the sales of swimwear;

(F) For a period of three (3) years from the date of entry of this Final Judgment, suggesting to or discussing with any retailer of swimwear the timing for the establishment of any price break date for the sale of swimwear;

(G) Entering into any agreement, combination or conspiracy with any retailer or group of retailers to fix, stabilize or maintain any prices for the sale of any swimwear to any third person.

VI

[*Fair Trade—Seasonal Applicability*]

Subsections (B), (C), (D), and (G) of Section V above shall not prohibit any defendant from establishing, claiming, maintaining or enforcing any rights arising out of any agreement lawful under applicable “fair trade” legislation except that, for a period of three (3) years from the date of entry of this Final Judgment, the defendant may not enforce or attempt to enforce any such rights from July 1 through August 31 of each of those three years, and defendant is ordered to notify at some point during the period April 15 and June 1 of each of the three years, each retailer selling swimwear pursuant to fair trade of his right to sell swimwear free and clear of such agreement.

VII

[*Publication of Decree*]

Each defendant is ordered and directed within thirty (30) days from the date of entry of this Final Judgment to insert in the national trade paper in which the defendants regularly advertise swimwear an advertisement setting forth the fact of entry of this Final Judgment and summarizing the terms, such advertisement to be in form and content satisfactory to the plaintiff.

VIII

[*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 upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division upon reasonable notice to a defendant made to its principal office be permitted, subject to any legally recognized privilege:

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

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

For the purpose of securing compliance with this Final Judgment, a defendant upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports relating to any of the matters contained in this Final Judgment. No information obtained by the means provided 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 to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX

[*Jurisdiction Retained*]

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, or the modification or termination of any of the provisions thereof or for the enforcement of compliance therewith, and for the punishment of violations of any of the provisions contained herein.