

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Arizona Pharmaceutical Association, Maricopa County Pharmaceutical Association, and Tucson Pharmaceutical Association., U.S. District Court, D. Arizona, 1963 Trade Cases ¶70,614, (Jan. 22, 1963)

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United States v. Arizona Pharmaceutical Association, Maricopa County Pharmaceutical Association, and Tucson Pharmaceutical Association.

1963 Trade Cases ¶70,614. U.S. District Court, D. Arizona. Civil 3367-Phx. Entered January 22, 1963. Case No. 1538 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Selling Prices—Pharmaceutical Associations—Consent Judgment.— Three pharmaceutical associations were each prohibited by a consent judgment from combining or conspiring to establish and maintain uniform consumer prices for prescription drugs; entering into agreements to fix prices, terms or conditions for the sale of prescription drugs; formulating, issuing or distributing pricing schedules for prescription drugs; compelling any person to adhere to prescription pricing schedule, or policing drug prices.

For the plaintiff: Lee Loevinger, Assistant Attorney General, Harry G. Sklarsky, William D. Kilgore, Jr., Stanley E. Disney, and Anthony E. Desmond, Attorneys, Department of Justice.

For the defendants: Shimmel, Hill, Kleindienst & Bishop and Rouland W. Hill, Moeur & Jones and Anthony O. Jones, Hanson, Hanson and Cobb and Arthur B. Hanson, by Donald M. Meyers and Anthony O. Jones.

Final Judgment

LING, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on June 21, 1960, and the defendants, Arizona Pharmaceutical Association, Maricopa County Pharmaceutical Association and Tucson Pharmaceutical Association, having appeared by their attorneys, and the said plaintiff and defendants having each consented to the entry of this Final Judgment herein, without admission by any party in respect to any issue herein.

Now, therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein, and upon consent as aforesaid of the parties hereto, it is hereby,

Ordered, adjudged and decreed as follows:

I

[Sherman Act]

The complaint states a claim 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.

This Court has jurisdiction of the subject matter hereof and the parties hereto, and the parties have consented to the Final Judgment as hereinafter set forth.

II

[Definitions]

As used in this Final Judgment:

(a) “Legend drug” is a medication for treatment of humans, sold to fill a prescription written by a physician or other person duly licensed to prescribe for the treatment of human ailments, and federal law requires that when such legend drugs are dispensed in a pharmacy for human consumption, that such drugs be dispensed by a registered pharmacist and only upon a prescription. Legend drugs are referred to in the plain tiff’s complaint as “prescription drugs.”

(b) “Pharmacist” is an individual duly licensed by the Board of Pharmacy of the State of Arizona to prepare, compound and dispense physicians’ prescriptions and to sell drugs, medicines and poisons at retail.

(c) A “prescription pricing schedule” is a document or list published and/or distributed through several different media and by numerous persons or organizations and is used as a guide or formula in pricing prescriptions by many pharmacists throughout the United States.

(d) A “prescription” is an order for drugs or medicines or combinations or mixtures thereof, written or signed by a duly licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions intended for the treatment or prevention of disease to man or animals and includes orders for drugs or medicines or combinations or mixtures thereof transmitted to pharmacists through word of mouth, telephone, telegraph or other means of communication by a duly licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions in the State of Arizona and intended for the treatment or prevention of disease in man or animals.

(e) “Person” is any individual, firm, partnership, corporation, association, trustee or any other business or legal entity.

III

[*Applicability*]

The provisions of this judgment shall apply to the defendants, their officers, directors, agents, members and employees, and other persons in active concert or participation with the defendants or who receive actual notice of this judgment by personal service or otherwise.

IV

[*Practices Prohibited*]

Defendants, Arizona Pharmaceutical Association, Maricopa County Pharmaceutical Association, and Tucson Pharmaceutical Association, are hereby enjoined and restrained from:

(a) Combining or conspiring to establish and maintain uniform consumer prices for legend drugs in the State of Arizona;

(b) Entering into, adhering to, maintaining or furthering any agreement, understanding, plan, or conspiracy (1) to fix, determine, maintain or suggest prices, terms or conditions for the sale of legend drugs, or (2) to formulate, adopt, issue, distribute, recommend or suggest the use by any pharmacist or any other person of any prescription pricing schedule or other list, formula, guide, schedule, or method for pricing legend drugs;

(c) Advocating, suggesting, urging, inducing, compelling”, or in any other manner influencing or attempting to influence any person to use or adhere to any prescription pricing schedule or schedules, or any other lists, formula, guide, schedule or method for pricing legend drugs;

(d) Policing or making individual contact with any pharmacist or other person or devising or putting into effect any procedure to ascertain, determine, fix, influence or suggest the price at which any legend drug is or may be sold by any pharmacist.

[*Permissive Provisions*]

Nothing in subsections (b), (c) or (d) of this Section IV shall be construed to restrain any pharmacy owner or pharmacist member of the defendant Associations or any other associations from requiring his employees to sell prescription drugs at prices, and upon terms and conditions of sale, established by such pharmacy owner or pharmacist in pharmacies owned or operated by said pharmacist or pharmacy owner.

At any time, any agency of the United States or of the State of Arizona may, upon grounds of undue hardship to it, and without having standing as a party herein, petition this Court for an order enabling defendant Associations to negotiate and enter into a contract for the sale of prescription drugs where the price of such prescription drugs will be paid for by the petitioning agency. Such petition may be in the form of a letter to the Court with copies to be served on both the plaintiff and defendants herein. The matter will then be set for hearing at which time the petitioning agency may produce witnesses and other evidence in support of its petition. Plaintiff and defendants will be permitted to be heard and make objections to any such proposed negotiation or contract. Permission by this Court to enter into any such contract shall not be considered an adjudication as to the legality or illegality of such contract under the antitrust laws, nor shall it be deemed to bar or estop the plaintiff from attacking the legality of any such contract under the antitrust laws generally.

V

[*Compliance*]

(a) Defendants Arizona Pharmaceutical Association, Maricopa County Pharmaceutical Association, and Tucson Pharmaceutical Association are ordered and directed, within 30 days after the entry of this Final Judgment, to serve by mail upon each of their members a conformed copy of this Final Judgment. Said defendants are further ordered and directed to thereupon file an affidavit with the clerk of this court that it has done so, which affidavit shall set forth the name and address of each person so served;

(b) Defendants Arizona Pharmaceutical Association, Maricopa County Pharmaceutical Association, and Tucson Pharmaceutical Association, are ordered and directed to furnish a copy of this Final Judgment upon each new member thereof at the time of acceptance of such membership and to obtain from each such member, and keep for ten years in their files, a receipt there for signed by each such new member.

VI

[*Inspection*]

For the purpose of securing compliance with this Final Judgment, 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, and on reasonable notice to the defendants, and subject to any legally recognized privilege, be permitted:

(a) Reasonable access during the office hours of the defendants to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendants, relating to any matters contained in this Final Judgment; and

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

VII

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of the Final Judgment, for the modification or vacating of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violation thereof.