

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Idaho State Pharmaceutical Association, Inc., U.S. District Court, D. Idaho, 1963 Trade Cases ¶70,689, (Apr. 5, 1963)

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United States v. Idaho State Pharmaceutical Association, Inc.

1963 Trade Cases ¶70,689. U.S. District Court, D. Idaho, Southern Division. Civil Action No. 3654. Entered April 5, 1963.

## Sherman Act

**Price Fixing—State Pharmaceutical Association—Prescription Drugs—Consent Judgment.**—A state pharmaceutical association was prohibited by the terms of a consent judgment from fixing prices for prescription drugs, formulating and distributing prescription pricing schedules, urging members to adhere to prescription pricing schedules, and contacting pharmacists to fix prescription drug prices.

For the plaintiff: Lee Loevinger, Assistant Attorney General, Harry G. Sklarsky, William D. Kilgore, Jr., Lyle L. Jones, Don H. Banks, Gilbert Pavlovsky, Attorneys, Department of Justice, and Sylvan A. Jeppesen, United States Attorney.

For the defendant: Moffatt, Thomas, Barrett and Blanton, by Willis C. Moffatt, for Idaho State Pharmaceutical Association, Inc.

## Final Judgment

CLARK, Judge. [ *In full text*]: Plaintiff, United States of America, having filed its complaint herein on March 6, 1961, and defendant having appeared through its attorneys, and the parties through their respective attorneys having consented to the entry of this final judgment, without any admission by any party in respect to the facts or issues herein, and without trial or adjudication of any fact or law:

Now, therefore, it is hereby ordered, adjudged and decreed as follows:

### I.

#### [ *Sherman Act* ]

This court has jurisdiction of the subject matter hereof and of the parties hereto. The amended complaint states a claim 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 herein:

- (a) "Prescription 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;
- (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.

III.

**[ Applicability ]**

The provisions of this Final Judgment applicable to defendant Idaho State Pharmaceutical Association, Inc. shall apply to such defendant, its officers, directors, agents, members and employees, committees of defendant, and other persons in active concert or participation with said defendant Association who shall receive actual notice of this Final Judgment by personal service or otherwise.

IV.

**[ Practices Prohibited ]**

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

- (a) Entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program (i) to fix, determine, maintain or suggest prices or other items or conditions for the sale of prescription drugs, (ii) 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 prescription drugs;
- (b) 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 list, formula, guide, schedule or method for pricing prescription drugs;
- (c) 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 prescription drug is or may be sold by any pharmacist

**[ Permissive Provisions ]**

Nothing in this section IV shall be construed to restrain any pharmacy owner member of defendant Association from requiring his employees to sell prescription drugs at prices, and upon terms and conditions of sale, established by such pharmacy owner in pharmacies owned or operated by said pharmacy owner.

At any time, any agency of the United States or of the State of Idaho may, upon grounds of undue hardship to it, and without having standing as a party herein, petition this court for an order enabling defendant Association 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 the defendant 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 defendant 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) Defendant Association is ordered and directed, within 30 days after the entry of this Final Judgment, to serve by mail upon each of its members a conformed copy of this Final Judgment. Said defendant is 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) Defendant Association is ordered and directed to furnish a copy of this Final Judgment to 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 its files, a receipt therefor 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 defendant, and subject to any legally recognized privilege, be permitted:

- (a) Reasonable access during the office hours of defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendant relating to any matters contained in this Final Judgment; and
- (b) Subject to the reasonable convenience of the defendant, and without restraint or interference from it, to interview officers and employees of defendant (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.