

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Hawaii Retail Druggists Association., U.S. District Court, D. Hawaii, 1963 Trade Cases ¶70,914, (Nov. 19, 1963)

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United States v. Hawaii Retail Druggists Association.

1963 Trade Cases ¶70,914. U.S. District Court, D. Hawaii. Civil No. 2064. Entered November 19, 1963. Case No. 1688 in the Antitrust Division of the Department of Justice.

## Sherman Act

**Price Fixing—Selling Prices—Retail Druggists Association—Consent Judgment.**— An association of retail druggists and its members was prohibited under the terms of a consent judgment from entering into, adhering to maintaining any understanding, combination or conspiracy to fix resale prices for drugs or related products, to urge, induce or compel any drug manufacturer or supplier to enter into fair trade contracts, increase or enforce fair trade prices, or refuse to sell to any pharmacy or pharmacists, or to boycott any manufacturer or supplier of any drug or related product.

For the plaintiff: William H. Orrick, Jr., Harry G. Sklarsky, W. D. Kilgore, Jr., Lyle L. Jones, Herman T. F. Lum, Raymond S. Carlson, Carl L. Steinhouse, and Don H. Banks.

For the defendant: Wallace S. Fujiyama.

## Final Judgment

TAVARES, District Judge [ *In full text*]: Plaintiff, United States of America, having filed its complaint herein on June 29, 1962, and the defendant, by its attorneys, having appeared and 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 with respect to any such issue, and the Court having considered the matter and being duly advised;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein and upon such consent, 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 complaint states a claim upon which relief may be granted against defendant Hawaii Retail Druggists Association 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) "Person" shall mean any individual, partnership, corporation, association, trustee, or other business or legal entity;

(B) "Drug products" shall mean medications for the treatment of human ailments sold at retail to consumers either with or without a physician's prescription.

- (C) "Related goods" shall mean toiletries, cosmetics and all sundry drugstore items;
- (D) "Manufacturer or supplier" shall mean any person who produces or sells drug products or related goods to retail druggists and drugstores, including manufacturers, distributors and jobbers of such products and goods;
- (E) "Fair trade contract" shall mean an agreement between a. manufacturer or supplier and a retail druggist fixing the price of drug products or related goods pursuant to the Fair Trade Laws of the State of Hawaii;
- (F) "Fair trade price" shall mean the price or prices set by a manufacturer or supplier by means of a fair trade contract or contracts for resale to the consuming public.

**III**

**[ Applicability ]**

The provisions of this Final Judgment applicable to defendant Hawaii Retail Druggists Association shall apply to defendant, its officers, directors, committees, agents, employees and successors, and to those persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise.

**IV**

**[ Fair Trade ]**

Defendant is restrained from entering into, adhering to or maintaining any understanding, combination or conspiracy with any of its members or any other person to:

- (A) Fix, establish, maintain or stabilize prices for the sale of any drug product or related goods to any third person;
- (B) Urge, induce, compel or coerce any manufacturer or supplier of any drug product or related goods to enter into fair trade contracts, to increase or to enforce fair trade prices, or to refuse to sell to any pharmacy or pharmacist;
- (C) Boycott or threaten to boycott any manufacturer or supplier of any drug product or related goods.

**V**

**[ Enforcing Adherence ]**

Defendant is restrained from:

- (A) Formulating, adopting distributing, recommending, advocating or suggesting the use by any pharmacist, druggist or any other person of any pricing schedule or other price list, formula, guide, schedule or method for pricing any drug product or related goods;
- (B) Advocating, suggesting, urging, inducing, compelling or in any other manner influencing or attempting to influence any manufacturer or supplier to enter into fair trade contracts or to increase or to enforce fair trade prices;
- (C) Policing or making individual contact with any pharmacist or other person or devising or putting into effect any procedure to ascertain whether or not any person is charging fair trade prices or any other prices or level of prices in Hawaii;
- (D) Combining or conspiring to restrain the sale or distribution of any drug product or related goods;
- (E) Expelling from membership or refusing to admit to membership, any druggist for or on account of any practice or policy concerning prices of any drug product or related goods.

**VI**

**[ Price Policy Committee]**

Defendant is ordered to dissolve its Price Policy Committee and is restrained from forming, appointing or maintaining such committee or any similar committee.

**VII**

**[ Service on Members]**

(A) Defendant 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 is ordered and directed to furnish a copy of this Final Judgment to each new member thereof at the time of acceptance of such new membership and to obtain from each such member, and keep a receipt therefor signed by each such new member in the files of defendant for the duration of his membership.

**VIII**

**[ Inspection and Compliance]**

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 said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendants relating to any 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 officers and employees of said defendant (who may have counsel present) regarding such matters.

Upon written request, defendant shall submit such written reports to the Department of Justice with respect to matters contained in this Final Judgment as from time to time may be necessary to the enforcement of said Final Judgment. No information obtained by the means provided in this Section VIII 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 plaintiff, except in the course of legal proceedings to which the United States is a party, 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 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.