

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The H. E. Koontz Creamery, Inc.; National Dairy Products Corp.; Green Spring Dairy, Inc.; Cloverland Farms Dairy, Inc.; Royal Farms Dairy, Inc.; High's of Baltimore, Inc., U.S. District Court, D. Maryland, 1967 Trade Cases ¶72,267, (Dec. 12, 1967)

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United States v. The H. E. Koontz Creamery, Inc.; National Dairy Products Corp.; Green Spring Dairy, Inc.; Cloverland Farms Dairy, Inc.; Royal Farms Dairy, Inc.; High's of Baltimore, Inc.

1967 Trade Cases ¶72,267. U.S. District Court, D. Maryland. Civil Action No. 14308. December 12, 1967. Case No. 1728 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Milk—Consent Decree.—Milk distributors were prohibited by a final consent judgment from entering into an agreement with any other distributor to fix prices, exchange price information, or submit rigged bids. The judgment enjoined each distributor from communicating price information to another distributor before such information is made known to the trade or the public, unless in connection with a bona fide sale or purchase transaction.

For the plaintiff: Donald F. Turner, Asst. Atty. Gen.; Baddia J. Rashid, W. D. Kilgore, Jr., Charles D. Mahaffie, Jr., Edna Lingreen and Sinclair N. Gearing, Attorneys, Dept. of Justice.

For the defendants: M. William Adelson for H. E. Koontz Creamery, Inc.; John T. Chadwell and J. Cookman Boyd, Jr. for National Dairy Products Corp.; Ambler H. Moss for Green Spring Dairy, Inc.; Nathan Patz for Cloverland Farms Dairy, Inc. and Royal Farms Dairy, Inc.; Robert F. Skutch for High's of Baltimore, Inc.

Final Judgment

THOMSEN, D. J.: The United States of America, having filed its complaint herein on December 21, 1962, each of the defendants having appeared and filed its answer to such complaint in which each denied the substantial allegations of the complaint, the parties by their respective attorneys having consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence or an admission or adjudication by any party hereto 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 consent of the parties, it is hereby

Ordered, Adjudged and Decreed as follows:

I.

[*Jurisdiction*]

The Court has jurisdiction of the subject matter hereof and of all the parties hereto; 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.

[*Definitions*]

As used in this Final Judgment,

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- (A) "Milk" means all processed milk sold by distributors for consumption as whole milk (including types known as plain, selected, homogenized, and homogenized Vitamin D), skim milk, chocolate milk, or chocolate milk drink;
- (B) "Milk products" means certain processed products, other than milk, derived from raw milk, butterfat or milk solids, and distributed by defendant milk distributors as part of their fluid milk distribution, namely, sour cream, table cream, whipping cream, cottage cheese, yogurt, buttermilk and any new products of similar nature to those designated which might hereafter be so distributed;
- (C) "Person" means any individual, partnership, corporation, or other legal entity;
- (D) "Distributor" means a person engaged in the business of processing raw milk purchased from producers or others and bottling, selling, and distributing milk to customers for consumption or for resale;
- (E) "Baltimore metropolitan area" means the geographical area consisting of the City of Baltimore and all or parts of Baltimore, Carroll, Hartford, Howard, and Anne Arundel Counties, all in the State of Maryland.

III.

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall also apply to each of its subsidiaries, successors, assigns, representatives, officers, directors, agents, and employees, and to all other persons in active concert or participation with it who have received actual notice of this Final Judgment by personal service or otherwise, but shall not apply to transactions solely between any defendant and its subsidiaries.

IV.

[*Price Fixing*]

(A) Each defendant is enjoined and restrained from entering into, adhering to or furthering any contract, agreement or understanding with any distributor to:

- (1) Fix, establish or maintain any prices, discounts, deposits, differentials or other terms or conditions for the sale or delivery of any milk or milk products to any third person in the Baltimore metropolitan area;
- (2) Exchange information concerning prices, discounts, deposits, differentials or other terms or conditions for the sale or delivery of any milk or milk products to any third person in the Baltimore metropolitan area;
- (3) Submit noncompetitive, collusive or rigged bids or quotations for supplying any milk or milk products in the Baltimore metropolitan area;
- (4) Bid or quote, refrain from bidding or quoting or communicate an intention to bid or quote or to refrain from bidding or quoting on any milk or milk product to be sold to any third person in the Baltimore metropolitan area;

(B) Each defendant is enjoined and restrained from communicating to or exchanging with any distributor any prices, discounts, deposits, differentials or other terms or conditions for the sale or delivery of any milk or milk products in the Baltimore metropolitan area except with or after the release of such information to the trade generally or to the public or except in connection with a bona fide purchase or sale negotiation between the defendant and the purchaser or seller involved.

V.

[*Compliance and Inspection*]

For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to any defendant made to its principal office, be permitted:

(A) Reasonable access, during the office hours of the defendant and in the presence of counsel if such defendant so chooses, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or control of said defendant relating to any matters contained in this Final Judgment;

(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 any such matters contained in this Final Judgment.

Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, any defendant shall submit within a reasonable time such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be requested. 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.

VI.

[*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, for the modification thereof, for the enforcement of compliance therewith or for the punishment of violations thereof.

VII.

This Final Judgment is entered without costs to any of the parties.