

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. National Unit Distributors, Inc., Ramona Distributing Co., Inc., Beaconsfield China Co., Inc., La Mode China Co., Inc., Harry Bloomberg, Peter Groper, Julius Bloomberg, Harry L. Wolk., U.S. District Court, D. Massachusetts, 1940-1943 Trade Cases ¶56,292, (Nov. 5, 1943)

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United States v. National Unit Distributors, Inc., Ramona Distributing Co., Inc., Beaconsfield China Co., Inc., La Mode China Co., Inc., Harry Bloomberg, Peter Groper, Julius Bloomberg, Harry L. Wolk.

1940-1943 Trade Cases ¶56,292. U.S. District Court, D. Massachusetts. Civil Action No. 2514, November 5, 1943.

In an action under the Sherman Anti-Trust Act, defendant distributors of dinnerware consent to a decree enjoining them from entering into any agreement with any other distributor or with any manufacturer, wholesaler, or retailer, to fix prices for dinnerware sold to or by any other person; from entering into any agreement, under the Newspaper Sales Promotional Plan, to secure an exclusive right for defendants to distribute two or more patterns of dinnerware, to secure the exclusive right for defendants to distribute any pattern of any dinnerware for a period longer than 44 weeks (or for a period longer than the Newspaper Sales Promotional Plan campaign, whichever period is shorter) or for an area beyond the limits of the territory of the Newspaper Sales Promotional Plan campaign (or for an area beyond the limits of the Newspaper Retail Trading Area of a newspaper used in such campaign, whichever area is smaller), to secure the exclusive right for defendants to distribute any pattern of dinnerware in any territory in which such pattern has been sold by any person, or for the advertising of any dinnerware, offered for sale in connection with the Newspaper Sales Promotional Plan, exclusively for defendants, or not to advertise for any other person; from entering into any agreement for the distribution of any dinnerware exclusively to, through, or for defendants, not to sell to, through or for any other person, or to discriminate against any other person; from entering into any agreement with any other company not to compete in, through or by the Newspaper Sales Promotional Plan; from coercing any person to deal or refrain from dealing with any other person; from threatening or maintaining any suit based on a claim of exclusive right to any method of distributing dinnerware; and from claiming that any copyright includes an exclusive right to use any method of distributing dinnerware.

For plaintiff: Wendell Berge, Assistant Attorney General; Edmond J. Ford and Holmes Baldrige, Special Assistants to the Attorney General.

For defendants: Henry E. Foley.

FORD, J.: The United States of America having filed its complaint herein on the 5th day of November, 1943, against the defendants named herein, and all of the defendants having appeared severally and filed their answers to such complaint, denying the substantive allegations thereof, and all the parties hereto by their respective attorneys herein having severally consented to the entry of this final decree herein without trial and without admission by the defendants in respect to any issue except that a controversy to which this decree is applicable exists and that the Court has jurisdiction:

Now, therefore, before any testimony has been taken herein and on consent of all of the parties hereto, and the Court, being advised and having considered the matter it is hereby

Ordered and decreed as follows:

I

[*Jurisdiction and Cause of Action*]

Such controversy between the parties exists, and the Court has jurisdiction of the subject matter hereof and of all the parties hereto; the complaint states a cause of action against the defendants and each of them under the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies" and the acts amendatory thereof and supplemental thereto.

II

[Definitions]

The following words used in this decree shall be taken to have the following meanings:

(1) "Dinnerware" shall mean dishes, articles and fittings customarily used for the setting of a table where meals are served, including not only chinaware and flatware, but also glassware and such cutlery and other implements for serving and containing food as are from time to time used in households in setting and fixing the table for the serving of meals.

(2) "Newspaper Sales Promotional Plan" shall mean a scheme, plan or method for the sale and distribution of dinnerware involving delivery from time to time by installments of units and pieces of dinnerware promoted by advertising through newspapers or other printed matter, theatres or radio broadcasting, and as a part of which a coupon is from time to time issued which, upon presentation to certain redeeming stations (herein included in the term "retailer") permits the bearer thereof to purchase units, pieces, and parts of dinnerware at prices and in methods established as a part of the plan, and any substantially similar scheme, plan or method;

(3) "Affiliated defendant" shall, as to each corporate defendant, mean the corporate defendants which are under the same common control and management and whose respective Issued and outstanding stock of each class, to the extent of at least 75%, is under common ownership, so long as such common control, management and ownership continues;

(4) "Newspaper Retail Trading Area" shall mean that, area in which a newspaper, used in good faith as an advertising medium for a Newspaper Sales Promotional Plan campaign, circulates and in which area local, merchants seek by advertising in said newspaper to reach the general trade for sales in the ordinary course of retail business.

III

[Acts Enjoined]

Each of the defendants and each of their successors, subsidiaries, directors, officers, employees and agents and all persons acting or claiming to act under, through or for them, or any of them, are hereby enjoined and restrained from doing, attempting to do, or inducing others to do the following things or any of them:

A. Entering into, enforcing or adhering to any contract, agreement, understanding, plan or arrangement with any other distributor or with any manufacturer, wholesaler, or retailer of dinnerware, to fix, adhere to or maintain price for any dinnerware sold or to be sold to or by any other person, or the terms or conditions for sale of any dinnerware to or by any other person;

B. Entering into, enforcing or adhering to any contract, agreement, understanding, plan or arrangement, in the course of the conduct of business under the Newspaper Sales Promotional, Plan or pertaining thereto, with any other distributor or with any manufacturer, wholesaler, retailer, newspaper or other advertising medium,

(1) to secure or exercise an exclusive right for the defendants or any one or more of the defendants, to distribute, or to control any part of the channels of distribution or the sources of supply for, two or more patterns or decorative designs of dinnerware or for any other type or kind of dinnerware;

(2) to secure or exercise the exclusive right for the defendants or any one or more of the defendants to distribute, or to control any part of the channels of distribution or the sources of supply for, any pattern or decorative design of any dinnerware (a) for a period longer than forty-four weeks or for a period longer

than the Newspaper Sales Promotional Plan campaign for the selling of the dinnerware of such pattern or decorative design, whichever period is shorter or (b) for an area beyond the limits of the territory of the Newspaper Sales Promotional Plan campaign or for an area beyond the limits of the Newspaper Retail Trading Area of a newspaper to be used or used in such campaign, whichever area is smaller;

(3) to secure or exercise the exclusive right for the defendants or any one or more of the defendants to distribute, or to control any part of the channels of distribution or the sources of supply for, any pattern or decorative design of dinnerware in any area or territory in which such pattern or decorative design has been, or is at the time of the making of the contract, being sold or offered for sale by any corporation, company, firm or person;

(4) for the advertising by any newspaper or other advertising medium of any dinnerware, offered for sale or advertised under or in connection with the Newspaper Sales Promotional Plan, exclusively for the defendants or any of the defendants; or not to advertise for any other person under any plan, method or program for the sale or distribution of dinnerware;

C. Entering into, enforcing or adhering to any contract, agreement, understanding, plan or arrangement (except as otherwise provided under subsections B (1), (2) and (3) of this Section III with respect to a particular pattern or decorative design of dinnerware) in the course of the conduct of business under the Newspaper Sales Promotional Plan or pertaining thereto, the any other distributor or with any manufacturer, wholesaler, retailer, newspaper or other advertising medium,

(1) for the handling, distribution or sale of any dinnerware to any retailer, distributor, manufacturer or wholesaler, exclusively to, through or for, as the case may be, the defendants or any of the defendants;

(2) not to sell, distribute or handle dinnerware to, through or for any other person under any plan, method or program;

(3) to discriminate against or refuse to deal with any other person.

D. Entering into, enforcing or adhering to any contract, agreement, understanding, plan or arrangement with any non-affiliated defendant or with any other corporation, company or firm, or any director, officer, employer or agent of such non-affiliated defendant or other corporation, company or firm, directly or indirectly, whether in connection with the purchase of stock or assets or otherwise, not to compete in, through or by the Newspaper Sales Promotional Plan.

E. Coercing or compelling, by means of threats, intimidation, bribes or other means, any person to deal or refrain from dealing in dinnerware with any other person.

F. Threatening, instituting or maintaining any suit or proceeding based on a claim of exclusive right to any method, plan or program of marketing or distributing dinnerware.

G. Claiming or asserting that any copyright grants or includes an exclusive right to use or license to use any method, program or plan of marketing or distributing dinnerware.

IV

[Access to Records, Interviews and Reports]

For the purpose of securing compliance with this decree and for no other purpose, representatives of the Department of Justice, on written request of the Attorney General of the United States or an Assistant Attorney General thereof, and on reasonable notice to any one of the defendant corporations made to any officer or director of said corporation, shall be permitted during office hours of such defendant corporation, access to all books, ledgers, accounts, correspondence, memoranda, or other records and documents in the possession of or under the control of such defendant, relating to any matter contained in this decree, and fully to inspect the same and make copies thereof. Without restraint or interference from any defendant, such representatives may interview officers, directors, and employees of the defendant corporations. Each of the defendant corporations on written request of the Attorney General of the United States or an Assistant Attorney General thereof shall

submit such reports in respect of any matters as from time to time may be reasonably necessary for the proper enforcement of this decree; *Provided, however,* that the information so obtained shall not be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings for the purpose of securing compliance with this decree in which the United States is a party or as otherwise required by law.

V

[*Jurisdiction Retained*]

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this decree 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 this decree, for the modification or termination of any of the provisions thereof, for the enforcement of compliance therewith, or for the punishment of violations thereof.

VI

[*Nothing to Restrict or Prohibit War Activities*]

Nothing in this decree shall be construed to restrict or prohibit in any way any action taken by any defendant, its successors, subsidiaries, officers or employees, in good faith and within the fair intendment of the letter of the Attorney General of the United States to the General Counsel of the Office of Production Management, dated April 29, 1941 (a copy of which is attached hereto as Exhibit "A"), [reported at ¶ 1151, and omitted here], or with any amendment or amplification thereof by the Attorney General, or in accordance with any arrangement of similar character between the Attorney General and any national defense agency in effect at the time, provided such letter or arrangement has not at the time of such action been withdrawn or cancelled with respect thereto.