

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Lowell Fuel Oil Dealer Associates, Inc.; E. A. Wilson Co., Inc.; McGoohan Fuel and Appliance Co., Inc.; George E. Gagnon; Herbert Carragher; Walter C. Wilson Jr.; John S. McGoohan; John C. Linehan; Max Gardner; and Wesley Inglis., U.S. District Court, D. Massachusetts, 1955 Trade Cases ¶68,090, (Jul. 1, 1955)

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United States v. Lowell Fuel Oil Dealer Associates, Inc.; E. A. Wilson Co., Inc.; McGoohan Fuel and Appliance Co., Inc.; George E. Gagnon; Herbert Carragher; Walter C. Wilson Jr.; John S. McGoohan; John C. Linehan; Max Gardner; and Wesley Inglis.

1955 Trade Cases ¶68,090. U.S. District Court, D. Massachusetts. Civil Action No. 55-586-W. Dated July 1, 1955. Case No. 124.9 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing —Fuel Oil Dealers and Trade Association.—Fuel oil dealers, a trade association, and certain of its officials were prohibited by a consent decree from entering into any conspiracy (1) to fix or maintain prices, profit margins, discounts, allowances, or other conditions of sale, or (2) to influence any person with respect to prices, profit margins, markups, discounts, or other conditions of sales to be charged or used by any person. The defendants were further enjoined from distributing any price list to any person engaged in the fuel oil business which purports to indicate any prevailing, standard or established price of fuel oil.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Boycotts-r-Restrictions on Sales.—Fuel, oil dealers, a trade association, and certain of its officials were enjoined by a consent decree from entering into any conspiracy (1) to refuse to purchase or sell fuel oil from or to any person or class of persons, (2) to hinder or prevent any person from purchasing or selling fuel oil from or to any person, or (3) to compel any bulk plant or tank truck dealer to use any seal, sign, or device for the purpose of identifying such dealer as a member of the trade association. The defendants were further prohibited from restricting or preventing any person from purchasing or selling fuel oil from or to any other person, provided that nothing shall prevent an individual defendant from unilaterally exercising its right of customer selection.

Department of Justice Enforcement and Procedure—Consent Decrees-r-Specific Relief —Enforcement —Trade Association.—An association of fuel oil dealers was ordered in a consent decree (1) to admit to membership any bona fide bulk plant or tank truck dealer making written application therefor, (2) to cancel and revoke any provision of its by-laws and regulations which is inconsistent with the provisions of the consent decree, (3) to serve a copy of the consent decree upon each of its present members, (4) to institute and complete such proceedings as may be necessary to amend its by-laws so as to incorporate therein specified provisions of the consent decree and require as a condition of membership that all members be bound thereby in the same way that the defendants are bound, (5) to furnish all of its present and future members a copy of its by-laws as amended, and (6) to expel from membership any member who shall violate the provisions of its by-laws incorporating the provisions of the decree when the association shall have knowledge of such: violation.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; Anthony Julian, United States Attorney; William D. Kilgore, Jr., Worth Rowley, and Richard B. O'Donnell, Special Assistants to the Attorney General; and William J. Elkins and John J. Galgay, Trial Attorneys.

For the defendants: Paul R. Foisey, Warren Farr, and; Ropes, Gray, Best, Coolidge & Rugg.

Final Judgment

WYZANSKI, District Judge [In full text] The plaintiff, United States of America, having filed its complaint herein on [July 1, 1955], and each of the defendants having appeared herein, and the plaintiff and the defendants, by their respective attorneys, 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 admission by the defendants in respect of any such issue;

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

Ordered, adjudged, and decreed as follows:

I

[*Sherman Act*]

The Court has jurisdiction of the subject matter herein and all the parties hereto. The complaint states a claim against the defendants and each of them 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:

- (A) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.
- (B) "Fuel oil" means that oil commonly used for heating plants of dwellings and places of business and shall be deemed to include No. 1 and No. 2 oil, so called.
- (C) "Bulk plant dealer" means persons engaged in the business of purchasing fuel oil from distributors for resale to tank truck dealers or consumers or to both.
- (D) "Tank truck dealer" means persons engaged in the business of purchasing fuel oil from bulk plant dealers for resale to consumers.
- (E) "Defendant Association" means the defendant Lowell Fuel Oil Dealer Associates, Inc.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any defendant shall apply to each such defendant and to his or its officers, agents, servants, employees, subsidiaries, successors and/assigns, and to all persons in active concert or participation with any defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

[*Practices Enjoined*]

The defendants are jointly and severally enjoined and restrained from entering into, maintaining or furthering; or claiming any rights under, any contract, combination, conspiracy, agreement, understanding, plan or program among themselves or with any other person:

- (a) to fix, establish, stabilize or maintain prices, profit margins, discounts, allowances, or other terms and conditions of sale of fuel oil to third persons;
- (b) to refuse to purchase or sell fuel oil from or to any person or any class of persons;
- (c) to hinder, restrict, limit or prevent any person from purchasing or selling fuel oil from or to any person;

(d) to influence, or attempt to influence any third person with respect to the price or prices, profit margins, markups, discounts, or other terms and conditions of sales to be charged or used, by such third person for the sale of fuel oil;

(e) to compel any bulk plant or tank truck dealer to use any seal, sign or device for the purpose of identifying such dealer as a member of the defendant Association.

V

The defendants are jointly and severally enjoined and restrained from directly or indirectly:

(a) controlling or attempting to control through the defendant Association or otherwise, the prices, profit margins, markups, discounts or other terms or conditions of sale to be charged or used by any other person engaged in the fuel oil business for the sale of said fuel oil;

(b) restricting or preventing, or attempting to restrict or prevent, any person from purchasing or selling fuel oil from or to any other person, provided that nothing herein shall be construed to prevent an individual defendant from unilaterally exercising its right of customer selection;

(c) distributing or disseminating, in any manner, any price list or price bulletin to any person engaged in the fuel oil business which purports to indicate any prevailing, standard, or established price of fuel oil, except in connection with the bona fide purchase or sale of fuel oil from or to such other person.

VI

[*Trade' Association Provisions*]

Defendant Association is ordered and directed:

(a) to admit to membership any bona fide bulk plant or tank truck dealer making written application therefor, provided, however, such dealer may be subsequently dropped from membership for failure to pay dues;

(b) to cancel and revoke any provision of its by-laws, rules and regulations, including Paragraph 8 of its Rules & Regulations relating to sales of fuel oil below "established prices," which is inconsistent With the provisions of this Final Judgment;

(c) within thirty (30) days after the entry hereof to serve by mail upon each of its present members a conformed copy of this Final Judgment and to file with this Court and with the Attorney General or the Assistant Attorney General in Charge of the Antitrust Division, proof by, affidavit of service upon each such member;

(d) to institute forthwith and to complete within three months from entry of this Judgment such proceedings as may be appropriate and necessary to amend its bylaws so as to incorporate therein Sections IV and V of this Judgment and require as a condition of membership or retention of membership that, all present and future members be bound thereby in the same way that the defendants herein are now bound;

(e) to furnish to all its present and future members a copy of its by-laws as amended in accordance with subsection (d) of this Section VI;

(f) to expel promptly from membership any present or future member of the defendant who shall violate the provisions of its by-laws incorporating Sections IV and V of this Judgment when the said defendant shall have knowledge of such violation.

VII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final judgment, duly authorized representatives of the department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division; and on reasonable notice to any defendant, be permitted, subject to any legally-recognized privilege, (a) reasonable access, during the office hours of such defendant, to all books, ledgers,

accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this Final Judgment, and (b) subject to the reasonable convenience of any defendant, and without restraint or interference, to interview officers and employees of such defendant who may have counsel present, regarding any such matters. For the purpose of securing compliance with this Final Judgment, any defendant, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means permitted in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department except in the course of legal proceedings for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

VIII

[*Jurisdiction Retained*]

Jurisdiction of this Court 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 this Final Judgment, for the modification or termination of any of the provisions thereof, for the enforcement of compliance therewith and punishment of violations thereof.