

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America, Plaintiff, v. Washington Wholesale Grocers Association, American Wholesale Grocery, Matchett-Macklem Company, Merchants Wholesale Grocery Co., National Grocery Company, Pacific Fruit and Produce Company, Inc., Pacific Grocery Company, Western States Grocery Company, Tacoma Grocery Co., West Coast Grocery Company, Younglove Grocery Company, Horace V. X. Wright, Clair Macklem, William O. McKenzie, James Matchett, Norman Parke, Otto Guthman, W. F. Shipley, Geo. W. Fowler, A. Gordon Stephenson, Robert H. Hyde, Norton R. Younglove, W. Fred Lee., U.S. District Court, W.D. Washington, 1940-1943 Trade Cases ¶56,230, (Aug. 10, 1942)**

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United States of America, Plaintiff, v. Washington Wholesale Grocers Association, American Wholesale Grocery, Matchett-Macklem Company, Merchants Wholesale Grocery Co., National Grocery Company, Pacific Fruit and Produce Company, Inc., Pacific Grocery Company, Western States Grocery Company, Tacoma Grocery Co., West Coast Grocery Company, Younglove Grocery Company, Horace V. X. Wright, Clair Macklem, William O. McKenzie, James Matchett, Norman Parke, Otto Guthman, W. F. Shipley, Geo. W. Fowler, A. Gordon Stephenson, Robert H. Hyde, Norton R. Younglove, W. Fred Lee.

1940-1943 Trade Cases ¶56,230. U.S. District Court, W.D. Washington, Northern Division, Civil action No. 538. August 10, 1942.

**Wholesale grocers enter into a consent decree enjoining them from agreeing to fix prices, fix mark-ups, circulate false rumors as to scarcity, classify dealers for the purpose of discrimination, fix allocations of business, circulate false or volunteer statements to impair credit standing or business reputation of any grocer, circulate or compile any suggested price list, or prevent anyone from engaging in the distribution of any grocery product or from selling to or buying from anyone. The wholesale grocers are enjoined by consent from holding meetings to discuss prices or allocations of business or for the purpose of maintaining a program to prevent anyone from engaging in the distribution of any grocery product; from circulating false rumors as to scarcity; and from circulating false statements to impair the credit standing or business reputation of any member of the industry. Defendants consent to dissolve and liquidate defendant trade association. The decree does not prohibit certain cooperative advertising activities and certain other specified activities.**

Entered by John C. Bowen, U. S. District Judge.

For the complainant: Francis Biddle, Attorney General; Thurman Arnold, Assistant Attorney General; J. Charles Dennis, U. S. Attorney; Charles S. Burdell, Special Assistant to the Attorney General; John A. Burns, Gareth M. Neville, Special Attorneys, Department of Justice.

**Final Judgment**

The Complainant, United States of America, having filed its complaint herein on July 1, 1942, and all parties having severally consented to the entry of this final decree herein without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of any such issue,

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

Ordered, adjudged and decreed as follows:

I

[ *Jurisdiction* ]

That the Court has jurisdiction in the subject matter hereof and of all the parties hereto, and that the complaint states a cause of action against defendants and each of them for violation of [Sections 1 and 3 of the Sherman Act](#) and the acts amendatory thereof, and supplemental thereto.

II

[ *Definitions* ]

As used in this decree:

- (a) The phrase “grocery products” refers to all foodstuffs and groceries, including fresh and packaged fruits and vegetables, dairy products, meats and bakery products and all other articles generally obtainable from retail grocery establishments.
- (b) The term “jobbers” refers to individuals and companies engaged in the business of selling and distributing grocery products to retailers.
- (c) The term “Western Washington territory” means all that part of the State of Washington lying west of the Cascade Mountains.
- (d) The term “jobbing business” means the business of selling and distributing grocery products to retailers.
- (e) The term “retailers” means those companies and individuals which engage in the business of selling and distributing grocery products to consumers.
- (f) the term “successor” shall refer to an individual, firm, or corporation engaged in the jobbing business, as hereinabove defined, and to which there has been a succession from a defendant herein.

III

[ *Activities Enjoined* ]

Each of the defendants and each of their directors, officers, agents, employees, subsidiaries and successors and all persons acting or claiming to act under, through, or for them, or any’ of them, is hereby enjoined and restrained, in connection with the conducting of a jobbing business, from entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program with any other defendant or jobber, or a representative thereof, to do or attempt to do or to induce others to do the following things, or any of them, in the Western Washington territory, as hereinabove defined, or in the Territory of Alaska;

- (1) Determine, fix, maintain or adhere to prices for any grocery product;
- (2) Fix, determine, maintain, make uniform or prevent changes in mark-ups or amounts to be added to or included in prices for any grocery product;
- (3) Circulate false rumors or false assertions that supplies of any grocery product are scarce or limited;
- (4) Classify or designate any individual or company as entitled, or as not entitled, to purchase deal in, or distribute any grocery product or as an individual or company, to be discriminated in favor of or against, or to coerce, compel, advise or persuade any manufacturer, distributor or other person, to refrain from selling or distributing to, or to discriminate in favor of or against any individual or company in the sale or distribution of any grocery product ;
- (5) Fix, determine, designate or maintain channels of distribution or allocations of business for any grocery product

- (6) Circulate or disseminate false, unfounded, or volunteer statements to impair, or concerning, the credit standing or business reputation of any member or prospective member of the grocery industry or of any officer or employee of such a member or prospective member;
- (7) Circulate, issue, adopt or compile any suggested price list for grocery products;
- (8) Prevent, hinder or discourage any individual or company from engaging in the distribution or sale of any grocery product, or from selling any grocery product to, or buying any grocery product from, any individual or company.

#### IV

Each of the defendants and each of their directors, officers, agents, employees, subsidiaries and successors and all persons acting under, through, or for them, or any of them is hereby enjoined and restrained, in connection with the conducting of a jobbing business, from doing, attempting to do, or inducing others to do the following things, or any of them, in the Western Washington territory, as hereinabove defined, or in the Territory of Alaska:

- (1) Sponsor, call, hold or participate in any meeting or conference for the purpose of securing adherence to, or discussing, agreeing upon', or maintaining prices, terms and conditions of sale, amounts to be included in or deducted from prices, or allocations of business by jobbers, or for the purpose of maintaining or furthering any contract, agreement, plan, program or other concerted action to prevent, hinder, or discourage any individual or company from engaging in the distribution or sale of any grocery product, or for the purpose of maintaining or furthering any activity prohibited by section III;
- (2) Circulate false rumors of false assertions that supplies of any grocery product are scarce or limited;
- (3) Circulate or disseminate false or founded statements to impair, or concerning, the credit standing or business reputation of any member or prospective member of the grocery industry or of any officer or employee of such a member or prospective member.

#### V

##### [ Association to be Dissolved]

Each of the defendants and each of their directors, officers, agents, employees, subsidiaries and successors and all persons acting under, through, or for them or any of them shall forthwith take such steps as are necessary to dissolve and liquidate defendant Washington Wholesale Grocers Association.

#### VI

##### [ Activities Not Prohibited]

- (a) Nothing contained herein shall be deemed to affect activities which are otherwise lawful within a wholesale sponsored voluntary chain, or within a retailer owned wholesale group, or within jobber owned or controlled retail outlets, and nothing in this decree shall be deemed to prohibit a defendant wholesale sponsored voluntary chain or defendant retailer owned wholesale group or defendant jobber owned or controlled retail outlets from engaging in such cooperative advertising activities as may be otherwise lawful. This provision shall not be deemed to pass upon the legality of the activities of wholesale sponsored voluntary chains, retailer owned wholesale groups, or jobber owned or controlled retail outlets, nor the legality of cooperative advertising.
- (b) Nothing contained in this decree shall apply to the conduct of the individual business of any defendant ; nor shall this decree prohibit any purchase or sale of grocery products by a defendant from or to another defendant or from or to another jobber; nor shall anything in this decree apply to any agreement or action taken between a defendant and any of its subsidiaries, or between the subsidiaries of any defendant, or between a defendant and its parent corporation, or between a defendant corporation and any corporation affiliated with it through common ownership of a majority of the voting stock of both corporatoin, or between any such affiliated corporations of a defendant corporation.

## VII

### *[ Department of Justice to Have Access to Records; Reports]*

For the purpose of securing compliance with this Decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or art Assistant Attorney General, and on reasonable notice to the defendants made to the principal office of the defendants, be permitted subject to any legally recognized privilege (1) access, during the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendants, relating to any matter contained in this Decree, (2) without restraint or interference from the defendants to interview officers or employees of the defendants, who may have counsel present, regarding any such matters, and (3) to require the defendants, on such written request, to submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this Decree; provided, however, that information obtained by the means permitted in this paragraph 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.

## VIII

### *[ Jurisdiction Retained]*

(a) 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, and for the punishment of violations thereof.

### *[ No Implication That Restraint Is Warranted]*

(b) The above decree is entered without implication by the Court that, in the absence of consent by the defendants, the underlying facts legally warrant judicial restraint of the activities enjoined by the decree.