

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Tom's Foods Ltd., U.S. District Court, M.D. Georgia, 1975-2 Trade Cases ¶60,416, (Jul. 1, 1975)

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United States v. Tom's Foods Ltd.

1975-2 Trade Cases ¶60,416. U.S. District Court, M.D. Georgia, Columbus Division. Civil Action No. 75-28-COL. Entered July 1, 1975. (Competitive impact statement and other matters filed with settlement: 40 *Federal Register* 16859). Case No. 2449, Antitrust Division, Department of Justice.

Sherman Act

Customer Restrictions—Prices—Snack Foods Manufacturer—Agreements with Competitors and Distributors—Consent Decree.—A manufacturer of snack foods was prohibited by a consent decree from agreeing with any competitor to restrict or interfere with the sale of such products to distributors or to restrict, fix, or interfere with the prices paid by distributors for such products. For a period of ten years, the manufacturer was barred from agreeing with any distributor to restrict or interfere with purchases of snack food products by any distributor from any other manufacturer or to restrict, fix, or interfere with prices for such purchases.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Gerald A. Connell, Robert J. Ludwig, Gary M. Cohen, and Larry R. Patton, Dept. of Justice, Washington, D. C, C. Nathan Davis, Asst. U. S. Atty., Macon, Ga.

For defendant: Rober J. Fulgency and Albert W. Stubbs, Columbus, Ga.

Final Judgment

OWENS, D. J.: Plaintiff, United States of America, having filed its complaint herein on April 8, 1975 and the parties hereto, 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 admission by either party in respect to any issue;

Now, Therefore, before any testimony has been taken herein and upon consent of the parties hereto, it is hereby,

Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

This court has jurisdiction over the subject matter of this action and of the parties hereto. The Complaint states claims upon which relief may be granted against the defendant under Section 1; of the Act of Congress of July 2, 1890, as amended (15 U. S. C. Section 1), commonly known as the Sherman Act.

II

[Definitions]

As used in this Final Judgment

(A) "Distributor" shall mean any person who buys "snack foods" or other products for resale.

(B) "Snack Foods" shall mean food products which are intended for immediate consumption or away-from-home eating and include, but are not limited to, such items as candies, peanut items, baked goods, potato chips, pretzels and sandwiches.

(C) "Manufacturer" shall mean any person manufacturing and/or selling or offering to sell snack foods or other products to Distributors.

(D) "Person" shall mean any partnership, firm, corporation, individual or any other business or legal entity.

III

[*Applicability*]

The provisions of this Final Judgment applicable to the defendant shall also apply to each of its directors officers, agents, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Sales to Distributors*]

The defendant, Tom's Foods Ltd., is enjoined and restrained from:

(A) Entering into, adhering to, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any Manufacturer that directly or indirectly,

(1) restricts, prevents, limits or interferes with the sale of any product to any Distributor; or

(2) restricts, limits, fixes, stabilizes or interferes with the price, price discounts, or other terms or conditions for the sale of any product to any Distributor.

(B) The provisions of Section IV(A) above shall not apply to those products manufactured by another Manufacturer under Tom's Foods Ltd. trademarks solely for sale to Tom's Foods Ltd.

V

[*Agreements with Distributors*]

The defendant, Tom's Foods Ltd., is enjoined and restrained, for a period of ten years following the date of entry of this Final Judgment, from:

(A) Entering into, adhering to, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any Distributor that, directly or indirectly,

(1) restricts, prevents, limits or interferes with the purchase of snack foods by any Distributor from any other Manufacturer, or

(2) restricts, limits, fixes, stabilizes or interferes with the price, price discounts, or other terms or conditions for the purchase of snack foods by any Distributor from any other Manufacturer.

VI

[*Notice*]

(A) The defendant is directed and ordered to provide within sixty (60) days from the date of entry of this Final Judgment, by registered mail, all current Distributors and Manufacturers (to the extent known to the defendant) with a letter containing the following statement:

As a result of a Consent Judgment entered by the United States District Court for the Middle District of Georgia in *United States v. Tom's Foods Ltd.* Civil No... .., each distributor is free to select any manufacturer or supplier of snack food products for resale, and to determine the quantity, price or kind of each product he will purchase without interference from Tom's Foods Ltd.

Manufacturers and suppliers are free to offer to distributors any product, or any price discount or promotion for any product, without the approval of Tom's Foods Ltd., except for these products bearing the Tom's Foods Ltd. trademark that they manufacture solely for sale to Tom's.

(B) The defendant is directed and ordered to file with the Court and serve upon plaintiff, within ninety (90) days from the date of entry of this Final Judgment, a report stating the manner of its compliance with the provisions of paragraph A of this Section VI.

VII

[*Compliance*]

For the purposes of determining or securing compliance with the 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, made to its principal office, be permitted, subject to any legally recognized claim of privilege, (a) access during the office hours of defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession, custody, or control of defendant relating to any matters contained in this Final Judgment and (b) subject to the reasonable convenience of defendant, but without restraint or interference from it, to interview officers, directors, agents, or employees of the defendant, who may have counsel present, regarding any such matter. Upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit 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 VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch, 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.

VIII

[*Reports*]

For a period of five (5) years from the date of entry of this Final Judgment, defendant shall submit annually on the anniversary date of this Final Judgment a written report to the plaintiff setting forth the steps taken during the preceding year to inform its officers, directors, agents and employees of its and their obligations under this Final Judgment.

IX

[*Retention of Jurisdiction*]

Jurisdiction is retained for the purpose of enabling either 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 modification, construction or carrying out of this Final Judgment, for the enforcement of compliance therewith, and the punishment of violations thereof. Entry of this Final Judgment is in the public interest.