

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Kahn's Bakery, Inc., Mead Foods, Inc. and Rainbo Baking Co. of El Paso., U.S. District Court, W.D. Texas, 1977-2 Trade Cases ¶61,664, (Aug. 19, 1977)

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United States v. Kahn's Bakery, Inc., Mead Foods, Inc. and Rainbo Baking Co. of El Paso.

1977-2 Trade Cases ¶61,664. U.S. District Court, W.D. Texas, El Paso Division, Civil No. EP-75-CA-106, Entered August 19, 1977, (Competitive impact statement and other matters filed with settlement: 42 *Federal Register* 28629).

Case No. 2456, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Bakery Products: Consent Decree.— Three Texas baking companies were enjoined by a consent decree from entering into any agreements to fix prices, rig bids or to exchange information as to the sale of any bread products. Each company must submit, for a period of five years and simultaneously with each bid or price list relating to the sale of bread products, an affidavit stating that bid or price change was not the result of an agreement in violation of the decree.

Department of Justice Enforcement: Consent Decree: Baking Industry: Damages.— Among the terms of a consent decree settling a price fixing case against three Texas baking companies was a provision ordering each company to pay \$36,667 for a total amount of damages of \$110,001.

Exchange of Information: Bakery Products: Consent Decree.— Three Texas baking companies were enjoined by a consent decree, for a period of ten years, from exchanging information as to prices, terms or conditions of the sale of bread products; from communicating information concerning future prices, terms or conditions of such sales and any consideration of changes or revisions, and from requesting any information of that type. The companies were also enjoined from participating or belonging to any trade association that engaged in activities inconsistent with any terms of the decree.

Exchange of Information: Permitted Activities: Bakery Products: Consent Decree.— Three Texas baking companies that were enjoined by a consent decree from exchanging price information as to the sale of bread products were not prohibited from communicating information in relation to any bona fide purchase or sale transaction between the companies or from transmitting price lists regularly issued in the course of business that had been previously circulated to the trade. The decree would not prohibit the companies from submitting a bona fide joint bid or quotation which had been requested by the purchaser.

For plaintiff: John H. Shenefield, Acting Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Dwight B. Moore, Dennis R. Bunker, and Gerald W. Connor. **For defendants:** John B. Luscombe, for Kahn's Bakery, Inc.; Richard Munzinger, for Mead Foods, Inc., and Sam Sparks, for Rainbo Baking Co. of El Paso.

Final Judgment

Wood, D. J.: Plaintiff, United States of America, having filed its Complaint herein on June 3, 1975, and defendants Kahn's Bakery, Incorporated, Mead Foods, Incorporated and Rainbo Baking Company of El Paso, 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, without admission by any party in respect to any such issue, and without this Final Judgment constituting evidence with respect to any such issue;

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

Ordered, Adjudged and Decreed as follows:

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I

[Jurisdiction]

This Court has jurisdiction of the subject matter hereof and the parties consenting hereto. The Complaint states claims against the defendants upon which relief may be granted 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," (15 U. S. C. §1), commonly known as the Sherman Act, as amended.

II

[Definitions]

As used in this Final Judgment:

- (A) "Person" shall refer to any individual, corporation, partnership, firm, association or other business or legal entity;
- (B) "Bread products" shall refer to both standard and variety breads, buns and rolls made and sold by the defendants; and
- (C) "El Paso area" shall refer to the city and county of El Paso, Texas and neighboring cities of Las Cruces, Silver City and Deming, New Mexico.

III

[Applicability]

The provisions of this Final Judgment applicable to each of the defendants shall also apply to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise, but shall not apply to activities between a defendant, its officers, directors, agents or employees and its parent or subsidiary companies, or affiliated corporations in which 50% or more of the voting stock is owned by a defendant's parent or subsidiary companies or which is in fact controlled by the defendant or such defendant's parent or subsidiary companies.

IV

[Bid Rigging; Price Fixing]

Each defendant is enjoined and restrained from entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program with any other person, directly or indirectly, to:

- (A) Submit collusive or rigged bids or quotations or to allocate to any defendant, grouping of defendants, or to any other person or persons, any such bids or quotations for the sale of any bread products;
- (B) Fix, determine, maintain or stabilize prices, discounts or other terms or conditions for the sale of any bread products to any third person (provided, however, that negotiations for, entering into, or carrying out any bona fide sales transaction involving a defendant and any other person who is acting as a purchasing agent or group buying representative on behalf of any third person shall not be construed as a violation of this Final Judgment).

V

[Exchange of Information]

Each defendant is enjoined and restrained from, directly or indirectly:

(A) For a period of ten (10) years from the date of entry of this Final Judgment, communicating to any other defendant prices or terms or conditions upon which bread products are then being sold or offered for sale by said defendant;

(B) Communicating to any other defendant information concerning:

(1) Future prices at which, or terms or conditions upon which, bread products will be sold or offered for sale by said defendant;

(2) Consideration by said defendant of changes or revisions in the prices at which, or the terms or conditions upon which, said defendant sells or offers to sell bread products;

(C) Requesting from any other defendant any information of a type which said defendant could not communicate to such other defendant without violating paragraphs (A) and (B) of this Section V.

(D) Joining, participating in, or belonging to any trade association, organization, or other group with knowledge that any of the activities thereof are inconsistent with any term of this Final Judgment.

VI

[Exchange of Information; Permission]

(A) Without limiting the provisions of Section IV hereof, nothing in Section V hereof shall prohibit (1) the communication of information by a defendant to another defendant in the course of, and related to, negotiating for, entering into, or carrying out a bona fide purchase or sale transaction between such defendants; or (2) the transmission, without additional comment or explanation, to another defendant, upon its request, of the transmitting defendant's bread products price list, or any change therein, regularly issued in the course of business, which price list, or said change, had been previously released and circulated to the trade generally, if such transmission is made on or after the effective date of the prices included in such price list, or said change therein.

(B) This Final Judgment shall not be deemed to prohibit any defendant from formulating or submitting with any other defendant a bona fide joint bid or quotation, when the submission of such joint bid or quotation has been requested by the purchaser.

VII

[Certification; Affidavit of Compliance]

Each defendant is ordered and directed:

(A) For a period of five (5) years from and after the date of entry of this Final Judgment to furnish simultaneously with each bid or quotation required to be sealed which is submitted by it for the sale of any bread products in the El Paso area, a certification, in substantially the form set forth in Appendix A attached hereto, by an official of such defendant knowledgeable about and having authority to determine the price or prices bid or quoted, that said bid or quotation was not the result, directly or indirectly, of any agreement, understanding, plan or program between such defendant and any other person selling any bread products, which would violate Section IV of this Final Judgment;

(B) For a period of five (5) years from and after the date of entry of this Final Judgment at the time of every succeeding change in its published price lists and/or discount sheets relating to the sale of bread products in the El Paso area to independently and individually certify by affidavit signed by the official responsible for such decision, that said change was independently arrived at by said defendant and was not the result of an agreement or understanding with any other person engaged in the sale of bread products, which would violate Section IV of this Final Judgment; and further that each defendant retain in its files the aforesaid certifications which shall be made available to plaintiffs for inspection upon reasonable written demand;

(C) Within sixty (60) days after the date of entry of this Final Judgment to furnish a copy thereof to its directors, officers, plant managers and sales managers who have pricing responsibility in connection with the sale of bread products in the El Paso area; and

(D) Within ninety (90) days after the date of entry of this Final Judgment to file an Affidavit of Compliance with the Court, copy to plaintiff's counsel, reciting the steps taken to comply with the provisions of Section VII(C) of this Final Judgment.

VIII

[*Inspection; Reports*]

For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:

- (1) Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any of the matters contained in this Final Judgment; and
- (2) Subject to the reasonable convenience of such defendant, and without restraint or interference from it, to interview officers, employees and agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VIII 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 United States, except in the course of legal proceedings in which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents which is of a type described in Rule 26(c) (7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

IX

[*Settlement; Payments*]

The defendants, in full settlement of any and all plaintiff's claims for damages arising in any way as a result of the conduct charged in paragraphs 2 through 14, inclusive, in the complaint in this case shall pay to plaintiff the aggregate sum of \$110,001. Said payment shall begin on August 1, 1978 and shall be made in equal annual installments for a period of six (6) consecutive years. If each such annual payment is not made in full on or before the date due, interest shall accrue on the unpaid balance from the due date and shall continue until such payment is completed, at an annual rate equal to the statutory rate then in effect for unsecured loans in the State of Texas. Each defendant shall be severally liable for and shall pay the following individual sums:

Kahn's Bakery, Incorporated	\$36,667
Mead Foods, Incorporated	\$36,667
Rainbo Baking Company of El Paso	\$36,667

X

[Retention of Jurisdiction]

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 or for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

XI

Entry of this Final Judgment is in the public interest.