

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Memphis Retail Appliance Dealers Association, Inc.; C. D. Akers & Sons Hardware & Furniture Co., Inc. (also known as C. D. Akers & Sons, Inc.); Home Equipment Company; Wallace Johnston Appliances, Inc.; Sam Fortas House Furnishing Company, Inc.; Ace Appliance Company; Hollis Appliance Company; and Ben Gruber, doing business as Gruber Appliance Company., U.S. District Court, W.D. Tennessee, 1957 Trade Cases ¶68,704, (Apr. 25, 1957)

[Click to open document in a browser](#)

United States v. Memphis Retail Appliance Dealers Association, Inc.; C. D. Akers & Sons Hardware & Furniture Co., Inc. (also known as C. D. Akers & Sons, Inc.); Home Equipment Company; Wallace Johnston Appliances, Inc.; Sam Fortas House Furnishing Company, Inc.; Ace Appliance Company; Hollis Appliance Company; and Ben Gruber, doing business as Gruber Appliance Company.

1957 Trade Cases ¶68,704. U.S. District Court, W.D. Tennessee, Western Division. Civil Action No. 3016. Filed April 25, 1957. Case No. 1308 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Fixing Resale Prices and Limitations on Trade-In Allowances—Boycotting—Retail Appliance Dealers and Trade Association.—An association of retail appliance dealers was prohibited by a consent decree from entering into any understanding or plan to (1) fix or maintain manufacturers' suggested retail list prices on appliances, (2) fix or maintain maximum limitations on trade-in allowances for used appliances, (3) boycott or otherwise refuse to do business with any person, or (4) refuse to advertise appliances at prices lower than the manufacturer's list prices, or refuse to advertise fixed trade-in allowances for used appliances. Retail appliance dealers were prohibited from combining with each other or with any other retail appliance dealer to take any action, through the association or any other association, to do any of the acts prohibited above.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Amendment of Association's By-Laws—Self Enforcement Provision.—A retail appliance dealers' association was ordered by a consent decree to (1) cancel and revoke any provision of its by-laws, rules, and regulations which is inconsistent with any provision of the decree, (2) serve upon each of its present members a copy of the decree, (3) institute such proceedings as may be necessary to amend its by-laws so as to incorporate therein a provision of the decree 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 it and other defendants are bound, (4) furnish to all its present and future members a copy of its by-laws, as amended, and (5) expel from membership any member who violates the provisions of its by-laws containing the provision of the decree when it has knowledge of such violation.

For the plaintiff: Victor R. Hansen, Assistant Attorney General, and W. D. Kilgore, Jr., Baddia J. Rashid, Philip L. Roache, Jr., Harry N. Burgess, Charles F. B. McAleer, and Stanley R. Mills, Jr., Attorneys, Department of Justice.

For the defendants: Hal Gerber, Memphis, Tenn., and Abe Fortas, of Arnold, Fortas & Porter, Washington, D. C.

Final Judgment

MARION S. BOYD, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on November 1, 1956, 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

©2018 CCH Incorporated and its affiliates and licensors. All rights reserved.

Subject to Terms & Conditions: http://researchhelp.cch.com/License_Agreement.htm

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) "Defendant Association" means the defendant Memphis Retail Appliance Dealers Association (MRADA);
- (B) "Defendant retail dealers" means all of the defendants and each of them, except the Defendant Association;
- (C) "Defendants" means the Defendant Association and the defendant retail dealers;
- (D) "Person" means any individual, partnership, firm, corporation, association, or other business or legal entity;
- (E) "Appliances" means gas and electrical equipment used primarily in the home such as refrigerators, home freezers, ranges, television sets, room air conditioners, fans, water heaters, radios, washers, ironers, vacuum cleaners, clothes dryers, dishwashers, disposals and similar items.

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 such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

[*Practices Enjoined*]

The Defendant Association is hereby enjoined and restrained from entering into, maintaining or furthering, or claiming any rights under, any contract, combination, conspiracy, agreement, understanding, plan or program to:

- (a) Fix, establish, or maintain manufacturers' suggested retail list prices on appliances;
- (b) Fix, establish, or maintain maximum limitations on trade-in allowances for used appliances;
- (c) Boycott or otherwise refuse to do business with any person;
- (d) Refuse to advertise appliances at prices lower than the manufacturer's list prices, or refuse to advertise fixed trade-in allowances for used appliances.

V.

[*Action Through Association*]

The defendant retail dealers are hereby enjoined and restrained from combining, conspiring, or agreeing with each other or with any other retail appliance dealer to take any action through the defendant association, any successor thereto or any other association with the intent, purpose, or effect of doing any of the acts or things prohibited by Section IV of the judgment, *Provided* that nothing in this final judgment shall prevent any retailer defendant from exercising any rights it may have pursuant to the Act of Congress of August 17, 1937, commonly called the Miller-Tydings Act, or the Act of Congress of July 14, 1952, commonly called the McGuire Act, and the laws of the State of Tennessee relating to resale price maintenance in effect pursuant thereto and consistent therewith; *Provided further* that nothing in this final judgment shall be construed to prevent any defendant retail dealer from unilaterally exercising his right to select the distributors, dealers, consumers, or other persons with whom he will deal.

VI.

[*Notice of Judgment*]

Each Defendant is hereby ordered and directed to give notice of the terms of this Final Judgment to its officers, directors, and employees and to take such steps as are necessary to cause such persons to comply with said terms.

VII.

[*Amendment of By-Laws*]

Defendant Association is ordered and directed:

- (a) To cancel and revoke any provision of its by-laws, rules, and regulations which is inconsistent with any of the provisions of this Final Judgment;
- (b) 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;
- (c) To institute forthwith and to complete within thirty (30) days from entry of this Judgment such proceedings as may be appropriate and necessary to amend its bylaws so as to incorporate therein Section IV 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;
- (d) To furnish to all its present and future members a copy of its by-laws as amended in accordance with subsection (a) of this Section VII;
- (e) To expel promptly from membership any present or future member of the defendant association who shall violate the provisions of its by-laws which shall incorporate Section IV of this Judgment when the said defendant association shall have knowledge of such violation.

VIII.

[*Inspection and Compliance*]

For the purpose of securing compliance with the 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 such 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 VIII 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.

IX.

[*Jurisdiction Retained*]

Jurisdiction of this cause is retained by this Court 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.