

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Johnson & Johnson., U.S. District Court, D. New Jersey, 1966 Trade Cases ¶71,712, (Apr. 18, 1966)

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United States v. Johnson & Johnson.

1966 Trade Cases ¶71,712. U.S. District Court, D. New Jersey. Civil Action No. 840-64. Entered April 18, 1966. Case No. 1820 in the Antitrust Division of the Department of Justice.

## Sherman and Clayton Acts

### **Exclusive Dealing—Preferential Treatment—First Aid and Baby Products—Consent Judgment—A**

manufacturer of first aid and baby toiletry products was prohibited by a consent judgment from entering into or enforcing any contract or program requiring a distributor to refrain from or restrict the purchase or display of competitive products ; from refusing to enter into any franchise on the ground that the distributor has failed to refrain from or restrict the purchase or display of competitive products; and from selling to distributors on the condition that the distributor buy other products or his total Requirements from the manufacturer, give preferential rack space to the manufacturer's products, discriminate against products not produced by the manufacturer, or agree to devote any specific amount of rack or display space to the manufacturer's products.

**Department of Justice Enforcement—Consent Judgment—Notice of Judgment—A** manufacturer of first aid and baby toiletry products was required by a consent judgment to serve a copy of the judgment upon each member of its board of directors and each of its sales executives or officers, to mail a copy to its distributors, and to publish a statement concerning the judgment in a trade publication.

For the plaintiff: Donald F. Turner, Gordon B. Spivack, William D. Kilgore, Jr., Harry G. Sklarsky, John D. Swartz, William J. Elkins, Edward F. Corcoran, Ronald E. Sommer, Charles F. B. McAleer and Robert J. Ludwig, Attorneys, Department of Justice.

For the defendant: Royall, Koegel & Rogers, Wylls S. Newcomb, George S. Frazza and Harry Heher, Jr.

## Final Judgment

ARTHUR S. LANE, District Judge: Plaintiff, United States of America, having filed its complaint herein on September 17, 1964, and defendant, Johnson & Johnson, having filed its answer thereto denying the substantive allegations thereof; 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 any party in respect to any such issue;

Now therefore, before the taking of any testimony and upon said consent of the parties hereto, it is hereby Ordered, adjudged and decreed as follows:

I

[ *Sherman and Clayton Acts*]

This Court has jurisdiction of the subject matter hereof and the parties hereto. The complaint states claims against defendant upon which relief may be granted under Sections 1 and 2 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, and under Section 3 of the Act of Congress of October 14, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, as amended.

II

[ *Definitions*]

As used in this Final Judgment:

- (A) "Person" means any individual, corporation, partnership, association, firm or other legal or business entity;
- (B) "Defendant" means Johnson & Johnson,, a corporation organized and existing under the laws of the State of New Jersey;
- (C) "Food store" means any retail outlet in the United States (such as a grocery store or self-service supermarket) which is substantially engaged in the retail sale of food;
- (D) "Products" means any, some or all of the following first aid or baby toiletry articles when sold in food stores: adhesive bandages, adhesive tape, gauze bandages, gauze pads, sterile cotton and sterile cotton balls, first aid kits, baby powder and baby oil;
- (E) "J & J Products" means Products manufactured or sold by defendant;
- (F) "Distributor" means any person regularly engaged in the business of purchasing Products from the manufacturers thereof for resale in food stores.
- (G) "Racks" means self-service shelving located in food stores on which Products are displayed for sale.

III

[ *Applicability*]

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

IV

[ *Notice of Judgment*]

Defendant is ordered and directed: (A)(1) Forthwith to serve a copy of this Final Judgment upon (a) each member of its Board of Directors, and (b) each of its executives and principal officers having responsibility for the sale of J & J Products on a national, regional or divisional basis;

(2) Within ninety (90) days after the date of the entry of this Final Judgment, to file with this Court, and serve upon the plaintiff, an affidavit setting forth the fact and manner of its compliance with the foregoing subparagraph (1) including the names, titles and addresses of the persons so served;

(B)(1) Forthwith to mail a copy of this Final Judgment to each distributor to whom defendant, on the date of this Final Judgment and for a period of one year prior thereto, is selling or has sold, J & J Products; and thereafter, for a period of five (5) years after the date of entry of this Final Judgment to any other distributor who purchases J & J Products from defendant;

(2) To publish, within sixty (60) days from the date of entry hereof, a statement in a prominent section of *Super Market News*, setting forth the fact of entry, and the provisions of Section V and VI of this Final Judgment, and to furnish to plaintiff a copy of such edition of *Super Market News*.

(C) For a period of five (5) years after the date of the entry of this Final Judgment, to furnish, without cost, to any person so requesting a copy of this Final Judgment.

V

[ *Distributor Agreements*]

Defendant is enjoined and restrained from directly or indirectly:

(A) Entering into, adhering to, maintaining, enforcing or claiming any rights under, or seeking to create or obtain, any contract, agreement, understanding, combination, plan or program with any distributor wherein or whereby such distributor agrees or promises to refrain from, limit or restrict the purchase, promotion, display or sale of Products not manufactured by defendant.

(B) Refusing to enter into, cancelling or threatening to cancel any franchise, contract, agreement or understanding with any distributor for the purchase, distribution, promotion, display or sale of J & J Products on the ground that such distributor has failed or refused to enter into or adhere to any franchise, contract, agreement, understanding, combination, plan or program as described in paragraph V(A) herein.

(C) Selling or offering to sell any J & J Product or Products, or granting or offering to grant any discount, promotion or other allowance or other term or condition relating to the sale of any J & J Product or Products, on or accompanied by any condition or requirement that

(1) the distributor buy any other J & J Product or Products or combination thereof, or any, some or all of his requirements from defendant;

(2) the distributor give preferential treatment or rack space to J & J Products;

(3) the distributor discriminate against Products not manufactured or sold by defendant;

(4) the distributor agree to devote any specific amount or percentage of rack or display space to any J & J Product or Products.

(D) Interfering with, controlling, restricting or attempting to interfere with, control or restrict the right of any distributor to allocate his rack space in accordance with his own independent judgment.

(E) Refusing to sell J & J Products to any distributor because of his failure or refusal to display, or to agree to display J & J Products, on racks owned or controlled by him or because of his failure or refusal to purchase any one or more J & J Products.

Provided, however, that nothing contained in this Final Judgment shall prohibit defendant from offering to distributors for limited periods of time, special promotions relating to the purchase or display of any of its Products, or any combination thereof, at prices or terms of sale more favorable than those otherwise offered by defendant in the ordinary course of its business, provided that:

(1) defendant shall not condition any such special promotion upon the purchaser's agreement not to purchase Products manufactured by persons other than defendant and such special promotion is not offered for the purpose of inducing distributors to curtail their purchases of Products other than J & J Products;

(2) the purchase or refusal to purchase any such special promotional Products by any distributor shall not affect the prices or terms of sale at which such distributor purchases J & J Products in the ordinary course of business and shall not affect or alter in any way the business relationship between said distributor and the defendant; and

(3) nothing in this proviso shall be deemed to permit any act or conduct otherwise unlawful under the Sherman Act or [Section 3 of the Clayton Act](#).

## VI

### [ *Business Policies* ]

Defendant is enjoined and restrained from refusing to sell J & J Products to any distributor, or altering its business relations with any distributor because of such distributor's complaints or criticism with respect to any business policy or practice followed by defendant which is referred to or dealt with in this Final Judgment.

## VII

### [ *Inspection and Compliance* ]

For the purpose of securing compliance with this Final Judgment, and subject to any legally recognized privilege, 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: (1) access during regular office hours to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant relating to any of the subject matters contained in this Final Judgment, and (2) subject to the reasonable convenience of defendant, and without restraint or interference from it, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters; and, upon such request, defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment. 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 of plaintiff, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

## VIII

### [ *Jurisdiction Retained* ]

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.