

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Curtis Circulation Co., Inc., Select Magazines, Inc., and National Magazine Service, Inc., U.S. District Court, D. New Jersey, 1967 Trade Cases ¶72,279, (Dec. 15, 1967)

United States v. Curtis Circulation Co., Inc., Select Magazines, Inc., and National Magazine Service, Inc. 1967 Trade Cases ¶72,279. U.S. District Court, D. New Jersey. Civil Action No. 611-65. Entered December 15, 1967. Case No. 1855 in the Antitrust Division of the Department of Justice.

Clayton and Sherman Acts

Joint Venture—Book Distribution Subsidiary—Prohibition—Consent Decree.—Two national distributors of magazines, paperback books and children's books were barred by a consent decree from simultaneously having an interest in a jointly owned subsidiary, and, if the three firms do not comply within two years, liquidation of the subsidiary would be required. Additionally, the two distributors were barred from acquiring interests in each other or in other national distributors or wholesalers, and from having common personnel with each other or with other distributors or wholesalers.

Exclusive Dealing—Book Distribution—Restrictions on Wholesalers and Dealers— Consent Decree.

—Two national distributors of magazines, paperback books and children's books were barred by a consent decree from combining with each other or with other national distributors to restrict wholesalers or dealers, to refuse to sell or to impose conditions on discounts or promotional allowances resulting in treatment preferential to the two or discriminatory against publications not distributed by the two, and from contributing to the costs of wholesalers' or dealers' racks unless the contributions are without restrictions, limitations or conditions. Additionally, the firms are individually barred from restraining wholesalers or dealers from allocating space on any rack except where the rack has been provided without cost or entirely paid for by the distributor, from threatening to refuse or refusing to sell because of wholesalers' refusals to adhere to space or display requirements, from influencing or attempting to influence wholesalers to refuse to sell any publications to any dealers, and from providing or maintaining dealers' racks for the firms' books unless, at the same time, there remain in the dealers' premises racks for other national distributors' books as specified by the dealers.

Refusal to Deal—Book Distributors Acting as Wholesalers—Availability of Wholesale Facilities to Other Distributors—Consent Decree.—Two national distributors of magazines, paperback books and children's books, when acting as wholesalers for other national distributors, were barred by a consent decree from denying wholesaling facilities to other distributors' publications except for policies applied without discrimination to national distributors generally, from discriminating against the publications of any national distributor, and from hindering or restricting dealers in their handling of other distributors' publications.

For the plaintiff: Donald F. Turner, Asst. Atty. Gen.; Baddia J. Rashid, William D. Kilgore, Norman H. Seidler, John D. Swartz, Bernard A. L. Friedman and Harry N. Burgess, Attorneys, Dept. of Justice.

For the defendants: Wilbur H. Haines, Jr., of Pepper, Hamilton & Scheetz and Frank C. O'Brien of Pitney, Hardin, & Scheetz for Curtis Circulation Co. and National Magazine Service, Inc.; J. Bay Robinson of Whitman, Ransom & Kipp and Frederick B. Lacey of Shanley & Fisher for Select Magazines, Inc.

Final Judgment

SHAW, J.: The plaintiff, United States of America, having filed its complaint herein on June 9, 1965, and each of the defendants having appeared and filed their several answers 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 with respect to any such issue;

Now, Therefore, before the taking of any testimony 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

[*Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and of the parties 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," commonly known as the Sherman Act, as amended, and under Section 7 of the Act of Congress of October 15, 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 business or legal entity;
- (b) "Curtis" means the defendant Curtis Circulation Company;
- (c) "Select" means the defendant Select Magazines, Inc.;
- (d) "NMS" means the defendant National Magazine Service, Inc.;
- (e) "Publications" means magazines, paperback books and children's books but shall not include magazines sold by subscription;
- (f) "National distributor" means any person to whom any publisher sells or consigns publications for sale or delivery to wholesalers, or any person otherwise engaged by any publisher to distribute, sell or consign publications to wholesalers throughout the United States;
- (g) "Wholesaler" means any person who purchases, or takes on consignment, publications from any national distributor for resale and distribution to dealers, or any person who otherwise receives publications for sale and distribution to dealers within a particular area or areas;
- (h) "Dealer" means any person who sells publications to consumers from places of business such as newsstands, drug stores, food stores, stationery stores and transportation stations;
- (i) "Racks" means any self-service shelving, bins, stands, pockets or other fixtures located at any dealer's premises on which publications are displayed for sale;
- (j) "Space" means the area on racks occupied by a publication or publications;
- (k) "Display" means the placement of a publication on racks in relation to particular other publications and the proportion of its cover visible as a result of such placement, as well as the location within the premises of dealer of the racks;
- (l) "Space or display requirement" means a request, made by a national distributor or publisher, to a wholesaler or dealer, for particular percentages of space or particular displays for any of their publications.

III

[*Applicability*]

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

otherwise. The provisions of this Final Judgment shall be applicable only to the United States, its territories and possessions.

IV

[Notification]

The defendants are each 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 or distribution of publications on a national, regional or other basis;

(2) Within ninety (90) days after the date of 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) Forthwith to mail a copy of this Final Judgment to each wholesaler to whom such defendant, on the date of entry of this Final Judgment is selling publications; and thereafter, for a period of five (5) years after the date of entry of this Final Judgment to any other wholesaler who purchases publications from such defendant;

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

V

[Mutual Interests]

(A) Two (2) years after the date of entry of this Final Judgment, defendants Curtis and Select are each enjoined and restricted from, simultaneously, owning or controlling, directly or indirectly, in any manner whatsoever, any financial, or other interest in defendant NMS or any successor thereof;

(B) Defendants Curtis and Select are ordered and directed to file with this Court and serve upon the plaintiff, within one (1) year after the date of entry of this Final Judgment, a report setting forth (1) the manner in which such defendants propose to comply with subsection (A) above, and (2) the actions then taken, if any, by such defendants to bring about compliance with subsection (A) above;

(C) In the event compliance with subsection (A) above cannot otherwise be accomplished by defendants Curtis and Select within the two (2) year period therein provided for, then and in that event, defendants Curtis, Select and NMS are jointly, and severally, ordered and directed, within said two (2) year period, to take all necessary and appropriate actions to dissolve and liquidate defendant NMS.

VI

[Acquisitions Between Defendants]

Except as permitted by Section V of this Final Judgment,

(A)(1) Defendant Curtis is enjoined and restrained from:

(a) Acquiring or holding, directly or indirectly, any control of, or any financial or other interest in defendant Select; and

(b) Knowingly permitting any of its officers, directors, agents or employees to serve, at the same time, as an officer, director, agent or employee of defendant Select.

(2) Defendant Select is enjoined and restrained from:

(a) Acquiring or holding, directly or indirectly, any control of, or any financial or other interest in defendant Curtis; and

(b) Knowingly permitting any of its officers, directors, agents or employees to serve, at the same time, as an officer, director, agent or employee of defendant Curtis.

(3) The provisions of subsections (A)(1)(a) and (2) (a) of this Section VI shall apply for a period of ten (10) years after the date of entry of this Final Judgment; and thereafter for an additional period of ten (10) years, except that defendants Curtis or Select may be relieved from the restrictions of subsections (A)(1)(a) and (2) (a) at any time during such additional period with the consent of the plaintiff or upon approval of this Court after notice to the plaintiff and upon establishing to the satisfaction of this Court that the effect thereof will not substantially lessen competition or tend to create a monopoly in the distribution and sale of publications in the United States.

(B) Defendants Curtis and Select are jointly and severally enjoined and restrained for a period of ten (10) years from acquiring or holding, directly or indirectly, any control of, or any financial or other interest in any other national distributor or in any wholesaler in which any other national distributor has any like or similar control or financial or other interest; and

(C) Each of the defendants Curtis and Select is enjoined and restrained for a period of ten (10) years from knowingly permitting any of its officers, directors, agents or employees to serve, at the same time, as an officer, director, agent or employee of any other national distributor, or of any wholesaler in which any other national distributor has any control or any financial or other interest.

VII

[*Joint Acts*]

(A) Each of the defendants Curtis and Select is enjoined and restrained, as a national distributor, from directly or indirectly acting jointly or in concert with the other defendant or any other national distributor by 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 the purpose or effect of which is to:

(1) Hinder, restrict, or limit any wholesaler or dealer in the purchase, promotion, space, display or sale of any publication purchased from any source;

(2) Refuse to sell any publication to any wholesaler or dealer;

(3) Sell, or offer to sell, any publication to any wholesaler or dealer or grant or offer to grant any discount, promotion or other allowance, term or condition relating to the sale of any publication on or accompanied by any condition or requirement that

(a) The wholesaler or dealer give preferential treatment or space on racks to any particular publication or publications;

(b) The wholesaler or dealer discriminate against publications not distributed or sold by any defendant;

(c) The wholesaler or dealer agree to devote or allocate any specific amount or percentage of space on racks or display to any particular publication or publications;

(4) Provide or contribute to the cost of racks for use by a wholesaler or dealer unless such racks are provided or contributed to without any restriction, limitation, or condition whatsoever upon such wholesaler or dealer.

(B) Nothing contained in this Section VII shall be construed to prohibit defendants Curtis and Select jointly or in concert with each other or with any other national distributor or distributors from providing or contributing to the cost of racks for use by wholesalers or dealers providing such racks are provided or contributed to without any restriction, limitation or condition whatsoever upon any such wholesaler or dealer.

VIII

[*Wholesalers and Dealers*]

Each of the defendants Curtis and Select is enjoined and restrained, as a national distributor, from directly or indirectly:

- (A) Hindering, controlling or restricting, or attempting to hinder, control or restrict, the exercise by any wholesaler or dealer of his right to allocate space on any rack except where such rack has been provided, without cost, to such wholesaler or dealer by such defendant or where the cost thereof has been paid entirely by such defendant;
- (B) Except as provided in subsection (A) above, refusing or threatening to refuse to sell to any wholesaler any publication which such wholesaler is willing to purchase and distribute as a wholesaler because of the failure or refusal of such wholesaler to adhere to or observe any space or display requirement;
- (C) Influencing or attempting to influence any wholesaler to refuse or threaten to refuse to sell any publication to any dealer;
- (D) Providing or contributing to the cost of, or maintaining in the premises of any dealer, any rack to be used for publications distributed by such defendant unless, at the same time, there remains such area in the premises of the dealer as he may specify for racks for publications of other national distributors.

IX

[*Acting as Wholesalers*]

In any area where any defendant shall distribute publications for any national distributor, as a wholesaler, or through a wholesaler in which such defendant has an interest or control, each such defendant is enjoined and restrained as a wholesaler or through such wholesaler from:

- (A) Denying wholesaling facilities to the publications of any national distributor except for policies applied without discrimination to national distributors generally;
- (B) Discriminating against the publications of any national distributor;
- (C) Hindering, controlling or restricting or attempting to hinder, control or restrict the exercise by any dealer of his right to allocate space on any rack except where such rack has been provided, without cost, to such dealer by a national distributor or by such defendant or where the cost thereof has been paid entirely by a national distributor or by such defendant acting for a national distributor, provided that, at the same time, there remains such area in the premises of the dealer as he may specify for racks for publications of other national distributors.
- (D) Except as provided in subsection (C) above, refusing or threatening to refuse to sell to any dealer any publication which such dealer is willing to purchase and sell because of the failure or refusal of such dealer to adhere to or observe any space or display requirement;
- (E) Distributing the publication of any other defendant until either (1) the expiration of a period of one year from the entry of such wholesaling defendant into wholesaling in said area, or (2) three national distributors, not defendants herein, have transferred wholesale distribution of their publications in said area to such wholesaling defendant.

X

[*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 any Defendant, made to its principal office, be permitted: (1) reasonable 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, who may have counsel present, regarding any such 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 written reports under oath, if so requested, 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 X 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.

XI

[*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 or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.