

U. S. v. AMERICAN CONE AND WAFER CO.

FINAL DECREE.

This cause coming on to be heard at this term, the petitioner moved for the entry of a decree, whereupon, with the consent of the defendant, declared in open court, it is ordered, adjudged, and decreed as follows:

Defendant, The American Cone and Wafer Company, is a corporation organized and existing under the laws of the State of Ohio, engaged in the business of manufacturing in the city of Dayton in that State and of selling and shipping hollow cones of pastry for containing ice cream, commonly called ice cream cones, to jobbers throughout the United States, who resell and reship the cones to retailers both within and without the respective States into which they are shipped by the defendant. The above described sales and resales, shipments, and re-shipments, constitute trade and commerce among the several States of the United States.

The defendant is engaged in a combination with the said jobbers to procure their adherence to uniform prices fixed by defendant for resales of the aforesaid cones, in restraint of the above-described trade and commerce in such cones among the several States, in violation of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies" (26 Stat. 209).

For the purpose of bringing about and carrying out the said unlawful combination the defendant employs the following means:

(a) Communicating to the jobbers, in contracts, lists, schedules, and notices, resale prices fixed by defendant. (A copy of one of such lists is hereto annexed, marked Exhibit A.)

(b) Securing written agreements from the jobbers to adhere strictly to such resale prices. (A copy of such an agreement is annexed hereto, marked Exhibit B.)

(c) Investigating the jobbers for the purpose of discovering failure on the part of any of them to adhere to such resale prices.

UNITED STATES v. THE AMERICAN CONE AND
WAFER COMPANY.

IN THE DISTRICT COURT OF THE UNITED STATES,
SOUTHERN DISTRICT OF OHIO.

Equity No. 155.

THE UNITED STATES OF AMERICA, PETITIONER,
VS.

THE AMERICAN CONE AND WAFER COMPANY,
DEFENDANT.

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(d) Notifying jobbers discovered in such failure of such discovery. (A copy of such a notice is hereto annexed, marked Exhibit C.)

(e) Securing statements and agreements, from jobbers so discovered and notified, to in future adhere to the resale prices fixed by defendant. (A copy of such statement and agreement is hereto annexed, marked Exhibit D.)

(f) Refusing to sell the cones to jobbers failing to adhere to the resale prices fixed by defendant while selling them freely to jobbers adhering to such prices.

Wherefore the defendant, its officers, directors, agents, and employees, and all persons acting in their behalf, are hereby perpetually enjoined and prohibited from further directly or indirectly adhering to, engaging in, or carrying out the above-described combination in restraint of trade and commerce among the several States or any combination of like character and effect with any persons whatsoever, and in particular from employing any of the means described above, or any similar means, for the purpose of bringing about or carrying out any such combination.

It is further ordered that defendant pay the costs of this proceeding.

HOLLISTER,

United States District Judge.

AUGUST 3, 1918.

EXHIBIT A.

RE-SALE PRICES
FOR MCLAREN'S "REAL CAKE" CONES.

Season 1918—(Prices Subject to Change).

\$6.50 per thousand In lots of 1,000 or more.

.70 per hundred In lots less than 1,000.

(2% discount may be allowed for cash.)

The above are the *minimum* prices at which jobbers may sell McLaren's "Real Cake" cones for delivery from January 1, '18 to October 1, '18, inclusive.

Our standardization of re-sale prices is *your protection* against price cutting on one of your most profitable lines. Please do not hesitate to report to us in detail any violation of the above prices that may come to your notice. All such information will have our careful attention, and will be treated in the strictest confidence.

THE AMERICAN CONE AND WAFER COMPANY,
Dayton, Ohio.

August 25, 1917.

(This re-sale price list cancels all similar lists previously issued.)

EXHIBIT B.

BOOKING FOR MCLAREN'S "REAL CAKE" CONES.

Season 1918.

THE AMERICAN CONE AND WAFER COMPANY,
Dayton, Ohio.

GENTLEMEN:

Please enter ^{my}_{our} order for approximately. M McLaren's "Real Cake" cones for the 1918 season, price to be \$5.00 per M, f. o. b. your factory or shipping stations *less freight*. Terms 2% 10 days, net 30 days—subject to approval.

As an opening order ship ^{me}_{us} M McLaren's "Real Cake" Cones on. , 1918. Balance to be ordered out on or before October 1, 1918.

NOTE.—Opening shipping order is required without exception.

It is understood that ^I_{we} will be protected from an increase in price up to and including the number of cones specified above, and that ^I_{we} will get the benefit of

any reduction in the price quoted herein that may be made during the period of this contract.

It is further understood that the number of cones ordered is merely an estimate of ^{my}_{our} requirements of McLaren's "Real Cake" cones for a normal season and that there is no obligation to buy the exact amount specified.

RE-SALE PRICES: I ^{we} agree to adhere strictly, without exception, to the minimum re-sale prices which you may prescribe for these cones during the period of this contract.

(Signed) _____

Street Address _____

City _____

Date _____

(Original.)—To be sent to THE AMERICAN CONE AND WAFER COMPANY, Dayton, Ohio.

August 25, 1917.

EXHIBIT C.
IMPORTANT NOTICE.

Dayton, Ohio, _____, 191____.

To _____

GENTLEMEN:

We have been advised that McLaren's _____ Ice Cream Cones are being sold in your territory for less than the minimum selling prices shown on price list herewith.

A copy of this list accompanies each invoice that leaves this office. However, it is possible that for some reason or

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other these lists have not reached your desk, or that your salesmen are selling for less than our minimum prices without your knowledge or instructions to do so.

Please fill in and return to us immediately the perforated section below for our record.

THE AMERICAN CONE AND WAFER COMPANY,

Per _____.

Remarks _____

EXHIBIT D.

City and date _____, 191____.

THE AMERICAN CONE AND WAFER COMPANY,
Dayton, Ohio.

GENTLEMEN:

The lowest prices at which we have been selling McLaren's _____ Ice Cream Cones are _____ per hundred in lots less than 1,000 and _____ per hundred in lots of 1,000 or more, _____ per cent discount for cash. We have carefully noted that the lowest prices at which we may sell these goods are _____ per hundred in lots less than 1,000 and _____ per hundred in lots of 1,000 or more, 2 per cent discount for cash.

Our salemen have been instructed accordingly, and we will see that in the future your cones are not sold for less than these prices.

Remarks _____

(Signed), _____

Per _____