

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The White-Haines Optical Company, et al., U.S. District Court, S.D. Ohio, 1950-1951 Trade Cases ¶62,882, (Jun. 22, 1951)

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United States v. The White-Haines Optical Company, et al.

1950-1951 Trade Cases ¶62,882. U.S. District Court, S.D. Ohio. Eastern Division. No. 2167, Dated June 22, 1951.

Sherman Antitrust Act

Consent Decree—Ophthalmic Goods—Dispensing—Rebates and Price Fixing.—A consent decree, naming optical companies and individual oculists as defendants, enjoins the optical companies from making any form or rebate to any refractionist or oculists connected with the dispensing of optical goods or services and enjoins the oculists from accepting from any dispenser of optical goods and services any payment arising out of the dispensing of such goods and services to any patient of such oculists Any agreement by the defendant to fix the price of optical goods or services to be charged to consumers is prohibited.

For the plaintiff: H. G. Morison, Assistant Attorney General; Sigmund Timberg and Willis L. Hotchkiss, Special Assistants to the Attorney General; and Harry R. Talan, Special Attorney.

For the defendants: Henry S. Ballard and Howard Dresbach, for the White-Haines Optical companies.

Final judgment

WILKIN, District Judge: [*In full text*]

Plaintiff, United States of America, filed its complaint herein on May 4, 1948. Thereafter, the corporate defendants and the defendant individual doctors appeared and filed their answers to the amended complaint, denying the substantive allegations thereof and any violations of law.

Subsequent to the filing of the complaint, the corporate defendants secured the incorporation under the laws of the State of Delaware of The White-Haines Company, which has succeeded to a portion of the dispensing business which had been done by the original corporate defendants. On March 21, 1950, leave of Court having first been obtained, plaintiff filed a supplemental complaint relating to The White-Haines Company and naming it as a defendant by reason of its having succeeded to a portion of the dispensing business of the original corporate defendants.

On February 14, 1950, the Court entered an order directing the defendant class doctors, whose names were set forth in an exhibit attached to said order, to appear and show cause why such doctors should not be bound by any judgment entered in this case (a copy of such order omitting the list of names is attached hereto as Exhibit 1) [not reproduced]. Exhibit 2, also attached hereto [not reproduced], sets forth the names of each defendant class doctor who either received mailing and service of the aforesaid orders and failed to show cause why he should not be bound by any judgment entered in this cause or who submitted himself to the jurisdiction of this Court and agreed to be bound by such judgment whether after trial or by consent of the parties.

Each of the corporate defendants, defendant individual doctors and the defendant successor hereby consents to the entry of this final judgment. The consent of each defendant individual doctor is made both as an individual and as a representative of the defendant class doctors as hereinafter defined.

Now, therefore, upon such consents, no testimony having been taken, and without any finding or adjudication of fact or as to past specific transactions, or any admission by reason of such consents or this judgment, excepting only the statements hereinabove set forth, which are made solely for the purpose of this proceeding; it is hereby:

Ordered, adjudged and decreed as follows:

[*Sherman Antitrust Act*]

I. This Court has jurisdiction of the subject matter and of all defendants named in the complaint, including the defendant class doctors named in Exhibit 2 [not reproduced] and the defendant successor named in the supplemental complaint; any agreement, understanding and concert of action, whether written or oral, express or implied, of the type charged in the complaint, involving payment by any corporate defendant directly or indirectly, to any of the defendant individual doctors or to defendant class doctors, or to any agent, representative, employee or designee of any such doctor, of the whole or any part of the purchase price of ophthalmic goods collected by any such corporate defendant (whether or not as agent or purported agent of such doctor) from any one or more patients of any such doctor, and whether in the form of, or described or regarded as a rebate, credit, credit balance, gift, dividend, or participation or share in profits, or otherwise, is hereby adjudged to be in violation of [Section 1 of the Sherman Act](#); and the complaint and the supplemental complaint state a cause of action under [Section 1 of the Sherman Act](#) (15 U. S. C, Sec. 1), upon which relief may be granted.

[*Definitions*]

II. Wherever used in this judgment:

(a) "Corporate defendants" means The White-Haines Optical Company, an Ohio corporation; The White-Haines Optical Company, a delaware corporation; and the white-haines optical company, a michigan corporation, and their respective successors, assigns, officers, directors, agents, employees and representatives, and each and every other person acting or claiming to act under, through, or for such defendant, excluding, however, the defendant individual doctors, the defendant class doctors and the defendant successor, as hereinafter respectively defined.

(b) "Defendant individual doctors" means those oculists named in the complaint as individual defendants and as representatives of the defendant class doctors and each person acting or claiming to act under, through, or for any such defendant individual doctor.

(c) "Defendant class doctors" means those oculists whose names are listed in exhibit 2 attached hereto [not reproduced], and each person acting, or claiming to act, under, through, or for any such doctor.

(d) "Defendant successor" means the white-haines company, a delaware corporation, and each person acting or claiming to act under, through, or for such defendant.

(e) "Person" means an individual, proprietorship, partnership, association, joint stock company, business trust, corporation, or any other business organization or enterprise.

(f) "Ophthalmic goods" means ophthalmic lenses, lens blanks, spectacle frames, mountings, eyeglasses, spectacles, and component parts or combinations of any of these articles sold or offered for sale within the united states, its territories and possessions, and as so defined does not include sunglasses or industrial safety equipment not containing lenses ground to prescription.

(g) "Dispensing" means the sale within the united states, its territories and possessions, to consumers of ophthalmic goods, particularly of spectacles and parts thereof, and of repair parts and services in connection therewith, and/or the measurement of facial characteristics for spectacles and the fitting and adjustment of such spectacles to the face.

(h) "Dispenser" means one who engages in dispensing. The term shall not be deemed to apply to a refractionist who engages in dispensing in his own professional offices (either himself or through a bona fide employee) to his own patients only.

(i) "Consumer" means any person who wears spectacles, or any patient for whom spectacles have been prescribed by a refractionist.

[*Rebates Prohibited*]

III. Each defendant individual doctor and defendant class doctor is hereby perpetually enjoined:

(a) From accepting, directly or indirectly, or designating any other person to thus accept, from any dispenser (whether such dispenser acts or purports to act as an agent of the doctor, or otherwise), any payment arising out of or connected with dispensing to any patient of such defendant doctor, whether such payment is in the form of, or is described or regarded as, a rebate, credit, credit balance, gift, dividend, participation in or share in profits, or otherwise;

(b) Entering into or participating in any plan, arrangement, or scheme whereby said defendant doctor receives from any dispenser (whether such dispenser acts or purports to act as agent of the doctor or otherwise) directly or indirectly in any form (including any of the forms and methods referred to above) any payment arising out of or connected with dispensing to any patient of such defendant doctor.

IV. Each of the corporate defendants and the defendant successor is hereby perpetually enjoined from making, directly or indirectly, any payment to any refractionist (including any oculist), or any agent, representative, employee or designee of any refractionist, arising out of or connected with dispensing, whether or not such payment is in the form of, or is described or regarded as, a rebate, credit, credit balance, gift, dividend, participation in or share in profits, or otherwise; and whether such payment constitutes an individual transaction, or is part of any plan or program.

[Price Fixing Prohibited]

V. The corporate defendants, each of the defendant individual and class doctors, and the defendant successor are hereby perpetually enjoined from entering into any agreement, understanding or concert of action with any other person or persons, fixing or attempting to fix the consumer price to be charged for ophthalmic goods or services, and from dictating, prescribing, controlling or interfering with, or attempting to dictate, prescribe, control, or interfere with the consumer prices charged or to be charged by any other person or persons for such ophthalmic goods or services, provided, however, that nothing contained in this judgment shall be deemed to prevent or restrain any of the defendants, after the expiration of ten years from the date of this judgment, from making such suggestions or making and enforcing such agreements as to prices as may then be lawful.

[Notice of Judgment]

VI. The plaintiff shall mail a copy of this judgment to each member of the defendant class doctors whose name is set forth in exhibit 2 [not reproduced], attached hereto and made a part hereof. Such mailing shall be by franked envelope to the last known address of each of such defendant class doctors, and the plaintiff, after making such mailing, shall file an affidavit of mailing with the Clerk of this Court. The plaintiff may transmit with such mailing a letter, in a form to be approved by the Court, covering the transmission of such judgment and explaining the application of the judgment to the doctor.

[Inspection and Compliance]

VII. For the purpose of securing compliance with this judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall upon written request of the Attorney General or an Assistant Attorney General and on reasonable notice to any defendant made to its principal office be permitted, subject to any legally recognized privilege: (1) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this judgment and (2) subject to the reasonable convenience of said defendant and without restrain or interference from it to interview such defendant, or officers or employees thereof, who may have counsel present, regarding any such matters; provided, however, that no information obtained by the means provided in this paragraph shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment or as otherwise required by law.

[Jurisdiction Retained]

VIII. Jurisdiction of this Court is retained for the purpose of enabling any of the parties to this decree 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 put of this decree, for the modification thereof, or the enforcement of compliance therein and for the punishment of violations thereof.