

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. The E. F. MacDonald Company., U.S. District Court, S.D. Ohio, 1959 Trade Cases ¶69,584, (Dec. 30, 1959)

United States of America v. The E. F. MacDonald Company.

1959 Trade Cases ¶69,584. U.S. District Court, S.D. Ohio, Western Division. Civil No. 2429. Dated December 30, 1959. Case No. 1489 in the Antitrust Division of the Department of Justice.

Combinations and Conspiracies—Sherman Antitrust Act—Consent Decree—Boycotts—Contracts to Refrain from Selling.—A corporation engaged in incentive planning was ordered by a consent decree to cancel all existing contracts that require its suppliers to refrain from selling to any incentive planner other than the corporation. The corporation was also prohibited from entering into any such contracts.

For the plaintiff: Robert A. Bicks, Acting Assistant Attorney General, Hugh K. Martin, United States Attorney, and George D. Reycraft, William D. Kilgore, Jr., Robert B. Hummel, Norman H. Seidler, Robert M. Dixon, and Stewart J. Miller, Attorneys, Dept. of Justice.

For the defendant: Shaman, Winer, Shulman & Ziegler; Dow, Lohnes & Albertson; and Hollabaugh & Jacobs.

Final Judgment

LESTER L. CECIL, Circuit Judge, sitting by designation [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on December 30, 1959, and defendant, The E. F. MacDonald Company, by its attorneys, having appeared and denied the substantive allegations thereof, and plaintiff and defendant having severally consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein without admission in respect to any issue:

Now, Therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as Follows:

I.

[Jurisdiction]

The Court has jurisdiction of the subject matter herein and the parties hereto. The complaint states a claim upon which relief may be granted against the defendant, The E. F. MacDonald Company, 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) "MacDonald" means the defendant, The E. F. MacDonald Company, an Ohio corporation;
- (b) "Incentive planner" means a person, corporation or other concern engaged in devising, installing and administering incentive programs for business concerns, which programs, utilizing merchandise prizes as rewards, are generally designed and conducted for the purpose of increasing sales, production or achieving other desirable business objectives for the benefit of the subscribing company by stimulating and encouraging employees and/or distributors of the subscribing company to greater effort;
- (c) "Supplier of merchandise for prizes" means a manufacturer, distributor, or any other person or concern which sells merchandise to incentive planners for use as rewards in incentive programs.

III.

[*Applicability*]

The provisions of this Final Judgment shall apply to MacDonald, its domestic subsidiaries, successors and assigns, and to each of its officers, directors, agents and employees, and to all other persons in active concert or participation with MacDonald who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV.

[*Boycotts*]

(A) MacDonald is ordered and directed to cancel and terminate, within sixty (60) days after entry of this Final Judgment, any provisions of all existing contracts, agreements or understandings between it and any suppliers of merchandise for prizes, whereby any of such suppliers has agreed to refrain from selling merchandise for prizes to any incentive planner other than MacDonald.

(B) MacDonald is enjoined and restrained from entering into, enforcing or claiming any rights under any contract, agreement or understanding with any supplier of merchandise for prizes, which has the purpose or effect of requiring said supplier to refrain from selling any merchandise for prizes to any other incentive planners.

(C) MacDonald is ordered and directed to give, within sixty (60) days after the entry of this Final Judgment, written notice of the terms of subsection (B) above to all suppliers from whom it has regularly purchased merchandise for prizes within the past year.

V.

[*Enforcement and Compliance*]

For the purpose of securing compliance with this 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 MacDonald at its principal office, be permitted, subject to any legally recognized privilege, (a) reasonable access, during office hours, to all books, ledgers, correspondence, memoranda and other records and documents in the possession or under the control of MacDonald, relating to any of the matters contained in this Final Judgment, and (b) subject to the reasonable convenience of MacDonald, and without restraint or interference from it, to interview regarding any such matters officers and employees of MacDonald, who may have counsel present.

Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, MacDonald 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 enforcement of this Final Judgment. No information obtained by the means provided in this Section V 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 the plaintiff except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VI.

[*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.