

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Pittsburgh Area Pontiac Dealers, Inc., U.S. District Court, W.D. Pennsylvania, 1978-2 Trade Cases ¶62,233, (Jul. 24, 1978)

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United States v. Pittsburgh Area Pontiac Dealers, Inc.

1978-2 Trade Cases ¶62,233. U.S. District Court, W.D. Pennsylvania, Civil Action No. 77-1125, Entered July 24, 1978, (Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 10641).

Case No. 2609, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Price Advertising: Automobile Dealers: Permissible Price Advertising: Consent Decree.—

An automobile dealers association was barred by a consent decree from fixing prices of automobiles and from participating, for a period of ten years, in any price advertising or survey related to prices charged for the sale of automobiles. However, the association was permitted to advertise the manufacturer's suggested retail price of automobiles so long as it was clearly identified as such in each advertisement and to advertise an average price based upon past transactions or current prices, provided that the average price was determined by an independent surveyor, in a confidential manner; that it was clearly identified as an average price; and that the dealers surveyed were not aware of the use to be made of the solicited price information.

For plaintiff: Hugh P. Morrison, Jr., Deputy Asst. Atty. Gen., William E. Swope, John W. Clark, James R. Weiss, and Robert W. Widler, Attys., Dept. of Justice. **For defendant:** John R. Luke, Pittsburgh, Pa.

Final Judgment

Wilson, D. J.: Plaintiff, United States of America, having filed its complaint herein on September 28, 1977 and defendant, Pittsburgh Area Pontiac Dealers, Inc., having appeared by its counsel, and both parties by their respective attorneys having consented to the making and entry of this Final Judgment without admission by any party in respect to any issue;

Now, Therefore, before any testimony has been taken herein, 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*]

This Court has jurisdiction over the subject matter of this action and the parties hereto. The complaint states claims upon which relief may be granted against the defendant under [Section 1 of the Sherman Act](#) (15 U. S. C. §1).

II

[*Definitions*]

As used in this Final Judgment:

(A) "Person" shall mean any individual, partnership, firm, association, corporation or other business or legal entity;

(B) "Defendant" means the defendant Pittsburgh Area Pontiac Dealers, Inc.

III

[*Applicability*]

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

IV

[*Price Fixing*]

The defendant is hereby enjoined from adopting, following or participating in any plan, practice, program or device which has among its purposes or effects fixing, maintaining or stabilizing prices at which Pontiac automobiles will be sold.

V

[*Price Advertising; Surveys*]

For a period of ten (10) years following the date of entry of this Final Judgment, the defendant is enjoined and restrained from, directly or indirectly:

- (A) Entering into any agreement or understanding with any other person, or adopting, participating in or adhering to any plan, practice or program, the purpose or effect of which is to advertise the sale price of a Pontiac automobile or fix the advertised price of a Pontiac automobile; or
- (B) Conducting, publishing, distributing, participating in or adhering to any survey which in any manner relates to current prices charged or proposed or future prices to be charged for the sale of Pontiac automobiles.

VI

[*Permitted Advertising*]

Nothing in Section V of this Final Judgment shall be construed to prevent the defendant from:

- (A) Participating in a plan, practice, program or device to advertise the manufacturer's suggested retail price so long as it is clearly identified as such in each advertisement; or
- (B) Participating in a plan, practice, program or device to advertise an average price based upon (1) actual past transactions compiled from the records of each of the dealers surveyed, or (2) prices at which automobiles are currently being offered for sale; Provided (a) that the average price is determined by a market survey conducted by an independent person, and that all information compiled in determining the average price is retained as confidential by the surveyor, and (b) that in each such advertisement the advertised price is clearly identified as an average price, from which individual dealers may vary, which was arrived at by an independent market survey. Provided Further that, where alternative (2) of this section is used, a reasonable effort shall be made to assure that the dealers surveyed are not aware of the purpose or use to be made of the solicited price information at the time of such solicitation.

VII

[*Notice*]

Defendant is ordered and directed:

- (A) Within thirty (30) days from the entry of this Final Judgment, to send a copy of this Final Judgment to each of its members;

(B) For a period of ten (10) years from the date of entry of this Final Judgment, to serve a copy of this Final Judgment upon all of its new members at such time as they become members;

(C) To file with this Court and serve upon the plaintiff within sixty (60) days after the date of entry of this Final Judgment an affidavit as to the fact and manner of compliance with subsection (A) of this Section VII.

VIII

[*Inspections*]

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted:

(1) Access during office hours of the defendant to inspect and copy 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, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees and agents of the defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section VIII 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 United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents which is of a type described in Rule 26(c) (7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

IX

[*Retention of Jurisdiction*]

Jurisdiction is retained by this Court 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, for the modification of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

X

[*Public Interest*]

Entry of this Final Judgment is in the public interest.