

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 NASSAU-SUFFOLK PHARMACEUTICAL)
 SOCIETY, INC.,)
)
 Defendant.)

CIVIL NO. 63 C 1207

ENTERED: December 9, 1963

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint, and the defendant, Nassau-Suffolk Pharmaceutical Society, Inc., having appeared by its attorneys, and the said plaintiff and defendant having each consented to the entry of this Final Judgment herein, without admission by any party in respect to any issue herein;

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

ORDERED, ADJUDGED AND DECREED as follows:

I

The complaint states a claim against the defendant 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. This Court has jurisdiction of the subject matter hereof and the parties hereto.

II

As used in this Final Judgment:

(A) "Prescription" is an order for drugs or medicines or combinations or mixtures thereof, written, signed or authorized by a duly licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions intended for the treatment or prevention of disease in man or animals;

(B) "Prescription drug" is a drug or medicine or a combination or mixture thereof sold to fill a prescription;

(C) "Nonprescription drug" is a drug or medicine or a combination or mixture thereof which can legally be sold without a prescription;

(D) "Drug products" include both prescription drugs and nonprescription drugs;

(E) "Related goods" are toiletries, cosmetics and all sundry drugstore items;

(F) "Druggist" or "drugstore" is any person engaged in the business of selling at retail, prescription drugs, nonprescription drugs and related goods;

(G) "Pharmacist" is an individual duly licensed to prepare, compound and dispense prescriptions;

(H) "Manufacturer" is any person engaged in the business of manufacturing or producing drug products, chemicals or related goods;

(I) "Fair trade price" is the price set by the manufacturer for resale to the consuming public in accordance with the Fair Trade Laws of the State of New York;

(J) "Person" is any individual, firm, partnership, corporation, association, trustee or any other business or legal entity.

III

The provisions of this Final Judgment applicable to defendant, Nassau-Suffolk Pharmaceutical Society, Inc., shall apply to the defendant, its officers, directors, governors, agents and employees, committees of defendant, and other persons in active concert or participation with the defendant who receive actual notice of this judgment by personal service or otherwise. This Final Judgment shall not be deemed to apply to any practice of the defendant with respect to prescription drugs if that practice by the defendant is prohibited in the Final Judgment entered in United States v. Nassau-Suffolk Pharmaceutical Society, Inc., Civil _____, _____, 1963.

IV

Defendant Nassau-Suffolk Pharmaceutical Society, Inc., is hereby enjoined and restrained from directly or indirectly:

(A) Combining or conspiring to stabilize and maintain resale prices of drug products or related goods;

(B) Entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program to fix, determine, maintain or suggest prices or other terms or conditions for the sale of drug products or related goods;

(C) Inducing, compelling, coercing or in any other manner influencing or attempting to influence any person to sell drug products or related goods at any fixed, minimum or maximum price;

(D) Shopping, investigating, policing, threatening, warning or making individual contact with any druggist, pharmacist or other person or devising or putting into effect any procedure to ascertain, determine, fix, influence or suggest the price at which any drug products or related goods are or may be sold by any druggist or pharmacist;

(E) Advocating, suggesting, urging, inducing, compelling, coercing or in any other manner influencing or attempting to influence any manufacturer to enforce fair trade prices for the products of such manufacturer;

(F) Notifying or otherwise advising any manufacturer of sales of its products at less than fair trade prices or threatening, warning or advising any druggist that it will do so;

(G) Instigating or instituting lawsuits to maintain fair trade prices, recommending or suggesting attorneys or paying legal fees or expenses or collecting evidence therefor, or threatening or warning any druggist that it will do so.

Nothing in this Section IV shall be construed to restrain any pharmacist or druggist member of defendant Society from requiring his employees to sell drug products or related goods in drugstores owned or operated by such pharmacist or druggist at prices, and upon terms and conditions of sale, established by such pharmacist or druggist or at fair trade prices.

V

Defendant Nassau-Suffolk Pharmaceutical Society, Inc., is ordered and directed:

(A) Within sixty (60) days after the entry of this Final Judgment, to serve by mail upon each of its members a conformed copy of this Final Judgment. Said defendant is further ordered and directed to thereupon file an affidavit with the clerk of this Court that it has done so, which affidavit shall set forth the name and address of each person so served;

(B) To furnish a copy of this Final Judgment to, or to serve same by registered or certified mail return receipt requested upon, each new member thereof at the time of acceptance of such membership

and to obtain and keep in its files so long as he or she remains a member, a receipt therefor signed by each such new member or a registered or certified mail receipt for each such Final Judgment served by mail.

VI

For the purpose of securing compliance with this Final Judgment, 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 the defendant, and subject to any legally recognized privilege, be permitted:

(A) Reasonable access during the office hours of the defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, relating to any matters contained in this Final Judgment; and

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

Upon such written request, defendant shall submit such written reports to the Department of Justice with respect to matters contained in this Final Judgment as from time to time may be necessary to the enforcement of said Final Judgment. No information obtained by the means provided in this Section VI 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 is a party, or as otherwise required by law.

VII

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment 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 out of this Final Judgment, for the modification or vacating of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violation thereof.

Dated this 9th day of December, 1963.

/s/ WALTER BRUCHHAUSEN
United States District Judge