

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Ehrenreich Photo-Optical Industries, Inc., U.S. District Court, E.D. New York, 1966 Trade Cases ¶71,892, (Oct. 31, 1966)

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United States v. Ehrenreich Photo-Optical Industries, Inc.

1966 Trade Cases ¶71,892. U.S. District Court, E.D. New York. No. 66-C-929, Entered October 31, 1966. Case No. 1915 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Photographic Products—Consent Judgment.—A distributor of photographic products was prohibited under the terms of a consent decree from agreeing with anyone to fix prices, impose restrictions on resale, or refuse to sell its products to others; from placing limits as to persons to whom its products may be resold or refusing to deal with anyone because of persons to whom resale is made.

For the plaintiff: Donald F. Turner, Assistant Attorney General, Gordon B. Spivack, William D. Kilgore, Jr., John D. Swartz, and Eugene Margolis, Attorneys, Department of Justice.

For the defendant: Alvin A. Licht of LeBoeuf, Lamb & Leiby.

Final Judgment

MISHLER, D. J.: Plaintiff, United States of America, having filed its complaint herein on September 29, 1966, and the parties having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or an admission by either party with respect to any such issue;

Now, therefore, without the taking of any testimony and without trial or adjudication of any fact or law herein, and upon the consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims for relief against the defendant under Section 1 of the Act of Congress of July 2, 1890 (15 U. S. C. §1), as amended, commonly known as the Sherman Act.

II

[*Definition*]

As used in this Final Judgment:

(A) "Defendant" shall mean Ehrenreich Photo-Optical Industries, Inc. and any corporation or other legal entity owned or controlled by Ehrenreich Photo-Optical Industries, Inc.;

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

(C) "Photographic products" shall mean cameras, lenses, projectors and accessories thereof, and film processing equipment, except lenses, projectors and film processing equipment intended for commercial or industrial use.

III

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[*Applicability*]

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

IV

[*Price Fixing*]

The defendant is enjoined and restrained from, directly or indirectly:

(A) Entering into, adhering to, maintaining, enforcing or claiming any rights under any contract, agreement, understanding, plan or program with any person to:

- (1) Fix, establish, limit or restrict the price or prices, terms or conditions for the sale of any photographic products to any other person;
- (2) Restrict or limit any person, or persons from reselling any photographic products to any other person;
- (3) Boycott, or otherwise refuse to sell any photographic products to any person or class or group of persons.

(B) Imposing or attempting to impose any limitation, condition or restriction as to the persons to whom, photographic products with which, prices at which, or terms and conditions on which, any person may resell defendant's photographic products;

(C) Refusing to sell or threatening to refuse to sell to any person who was or is appointed a dealer of the defendant because of the persons to whom, photographic products with which, prices, terms or conditions of sale on which, said person resold or resells defendant's photographic products;

(D) In any manner restricting, limiting or preventing, or attempting to restrict, limit or prevent any person from:

- (1) Selling or offering to sell any photographic products at any price, or upon any terms or conditions such person may individually determine; or
- (2) Selling or offering to sell any photographic products to any other person or persons, or to any group or class of persons;

(E) Refusing to honor the warranty on defendant's photographic products sold by it when such products are purchased from any retailer.

Nothing contained in this Section IV of this Final Judgment shall prevent defendant from availing itself of the benefits, if any, accruing to it by virtue of the Act of Congress of August 17, 1937, commonly known as the Miller-Tydings Act, or the Act of Congress of July 14, 1952, commonly known as the McGuire Act, upon the expiration of one (1) year after the date of entry of this Final Judgment.

V

[*Contract Cancellation and Notice*]

(A) Defendant is ordered and directed, within ninety (90) days from the date of entry of this Final Judgment, to

- (1) Cancel each provision of every contract to which it may be a party which is contrary to, or inconsistent with, any provision of this Final Judgment;
- (2) Remove from all its sales literature, salesmen's manuals, and similar documents, any language which is contrary to or inconsistent with any provision of this Final Judgment;
- (3) Mail to each of its retailers known to it a conformed copy of this Final Judgment together with a letter which includes a statement substantially identical to Exhibit A attached hereto and made a part hereof;

(4) Publish a conformed copy of this Final Judgment in Photo Dealer, Photographic Trade News, Photo Marketing, and Photo Weekly commencing with issues published within 60 days subsequent to the date of entry of this Final Judgment.

(B) Defendant is ordered and directed, for a period of one (1) year from the date of entry of this Final Judgment to mail to each new retailer appointed by it, not later than thirty (30) days after the date of such retailer's appointment, a conformed copy of this Final Judgment together with a letter which includes a statement substantially identical to Exhibit A attached hereto and made a part hereof.

(C) Defendant is ordered and directed to file with this Court and serve upon the plaintiff, within one hundred twenty (120) days from the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with subsection (A) of this Section V.

VI

[*Inspection and Compliance*]

For the purpose of determining and securing compliance with this Final Judgment, and for no other purpose, 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 defendant made to defendant's principal office, be permitted, subject to any legally recognized privilege:

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

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

Upon such written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such written reports with respect to the matters contained in this Final Judgment.

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

VII

[*Jurisdiction Retained*]

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 or 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 thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.

Exhibit "A"

In accordance with the terms of a decree entered by the United States District Court for the Eastern District of New York in Brooklyn, New York, with the consent of the parties, terminating the Government's civil antitrust lawsuit against Ehrenreich Photo-Optical Industries, Inc., we are sending this notice to you and to other retailers in the United States who handle Ehrenreich photographic products.

The decree provides, among other things, that:

(1) We cannot enter into any agreement with you which prevents you from selling Ehrenreich photographic products to any customer you choose, at any price you determine; and

(2) We cannot enter into any agreement with you or anyone else which prevents us from selling Ehrenreich photographic products to any other person.

A copy of the Court's decree is enclosed.