

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Ross Trucking, Inc., Standard Fruit and Steamship Co., and Castle & Cooke, Inc., U.S. District Court, E.D. New York, 1973-1 Trade Cases ¶74,409, (Apr. 17, 1973)

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United States v. Ross Trucking, Inc., Standard Fruit and Steamship Co., and Castle & Cooke, Inc.
1973-1 Trade Cases ¶74,409. U.S. District Court, E.D. New York. 70 Civ. 1228. Entered April 17, 1973. Case No. 2131, Antitrust Division, Department of Justice.

Sherman Act

Tying Arrangements—Transportation and Bananas—Consent Decree.—A trucking firm was barred by at consent decree from participating with any banana importer in any plan that would require banana buyers to use the firm as its transport agent. However, for purchases of quantities of 300 boxes or less, the firm could be designated as trucker. Coercion of any banana buyer to use the firm to transport bananas or the attempt to prevent free choice of transport agent is also prohibited.

Final Judgment as to Ross Trucking, Inc.

ZAVATT, D. J.: The Original Complaint having been filed on September 28, 1970 and the Supplemental Complaint having been filed on October 2, 1972, the plaintiff and the defendant Ross Trucking, Inc. by their respective attorneys, 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 admission by any party with respect to any issue of fact or law 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 of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I.

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of the action and of the parties hereto. The Original Complaint and the Supplemental Complaint state claims upon which relief may be granted against the defendant Ross Trucking, Inc. 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) "Ross" means Ross Trucking, Inc. and each of its subsidiaries and affiliates.

(B) "Banana Importer" means any person engaged in whole or in part in the business of importing bananas into the United States, or of selling unripened bananas, imported into the United States, to jobbers or supermarkets.

(C) "Jobber" means any person engaged in whole or in part in the business of buying bananas, ripening the bananas, and selling them to wholesalers or retailers for resale.

(D) "Port of New York" means the various piers, docks, and related port facilities in the States of New York and New Jersey lying on or adjacent to the Hudson River south of Spuyten Duyvil Junction, the East River, The Narrows, Newark Bay, Kill Van Kull and Arthur Kill.

(E) "Boxes" means any containers holding approximately 95 to 115 bananas and weighing approximately 40 to 45 pounds.

(F) "Person" means any individual, partnership, corporation or other legal or business entity.

III.

[*Applicability*]

The provisions of this Final Judgment shall apply to Ross, its subsidiaries, successors and assigns, and to each of their respective officers, directors, agents and employees, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

[*Trucking Services*]

Except upon the written consent of the Department of Justice or, after 60 days notice, upon a showing to this Court that it will not unreasonably lessen competition or tend to create a monopoly in the trucking of bananas, Ross is enjoined and restrained from, directly or indirectly:

(A) Entering into or participating in any contract, agreement, understanding, plan or arrangement with any banana importer under which any jobber, supermarket or other person, located anywhere in the United States, is required to hire or use Ross to transport bananas, or is deprived of the option of taking delivery of bananas from such banana importer by its own truck or the truck of any person of its choosing;

(B) Coercing, compelling or requiring or attempting to coerce, compel or require any jobber, supermarket or other person, located anywhere in the United States, to hire or use Ross to transport bananas; and

(C) Preventing, hindering or impeding, or attempting to prevent, hinder or impede any jobber, supermarket or other person, located anywhere in the United States, from using its own truck or the truck of any person of its choosing to transport bananas.

Provided, however, that this Final Judgment shall not prohibit Ross from entering into or participating in any contract, agreement, understanding, plan or arrangement with any banana importer under which jobbers, supermarkets and other persons which seek to transport bananas in quantities of 300 boxes or less, or their equivalent weight, from the Port of New York, are required to hire or use Ross.

V.

[*Notification*]

(A) Ross is ordered and directed, within 60 days from the date of entry of this Final Judgment, to mail to each jobber and supermarket for which it transports bananas, a conformed copy of this Final Judgment.

(B) Ross is ordered and directed, within 90 days from the date of entry of this Final Judgment to file with the Clerk of this Court and to mail to the plaintiff, an affidavit setting forth the fact and manner of compliance with subsection (A) of this Section V.

VI.

[*Reports*]

For a period of 10 years from the date of entry of this Final Judgment, Ross is ordered to file with the plaintiff on each anniversary date of this Final Judgment, a report setting forth the steps it has taken during the prior year to advise its appropriate officers, directors and employees of its and their obligations under this Final Judgment.

VII.

[*Inspection and Compliance*]

For the purpose of securing or determining compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, 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 Ross made to its principal office, be permitted (a) access during the office hours of Ross to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Ross, relating to any of the matters contained in this Final Judgment and (b) subject to the reasonable convenience of Ross and without restraint or interference from it, to interview officers or employees of Ross, who may have counsel present, regarding any such matters.

Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, Ross shall submit such reports in writing to the Department of Justice with respect to any matters contained in this Final Judgment as from time to time may be requested.

No information obtained by the means provided in this Section VII 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, for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII.

[*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, or for the modification of any of the provisions thereof, and for the enforcement of compliance therewith, and punishment of violations thereof.