

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Tobacco and Candy Jobbers Association, Inc.; Commission House Drivers and Employees Union, Local #400, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers; The Anter Brothers Company; H. Katovsky, Inc.; Safier's, Inc.; Zell Co.; Robert Greene, and Max M. Cohen., U.S. District Court, N.D. Ohio, 1954 Trade Cases ¶67,798, (Jun. 29, 1954)

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United States of America v. Tobacco and Candy Jobbers Association, Inc.; Commission House Drivers and Employees Union, Local #400, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers; The Anter Brothers Company; H. Katovsky, Inc.; Safier's, Inc.; Zell Co.; Robert Greene, and Max M. Cohen.

1954 Trade Cases ¶67,798. U.S. District Court, N.D. Ohio, Eastern Division. Civil No. 28293. Dated June 29, 1954. Case No. 1096 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decree—Types of Practices Enjoined—Price Fixing—Restraint of Trade.—An association of tobacco and candy jobbers, its members, and a labor union local consented to the entry of a decree prohibiting the maintenance or furthering of any contract, combination, conspiracy, or plan with any other person (1) to adopt or maintain a plan or device, including the collection or dissemination of price lists, to fix prices, profit margins, markups, discounts, or other sales terms, (2) to refuse to sell candy, cigarettes, or other tobacco products to any person or class of persons, (3) to restrict or prevent any persons from purchasing or selling such merchandise, and (4) to influence or attempt to influence third persons in regard to prices, profit margins, markups, discounts, or other sales terms.

Consent Decree—Types of Practices Enjoined—Control of Prices—Dissemination of Price Information.—A consent decree restrained an association of tobacco and candy jobbers, its members, and a labor union (1) from controlling or attempting to control, through the defendant labor union or otherwise, prices, profit margins, pricing systems, markups, discounts, or other sales terms to be charged or used in the sale of candy, cigarettes, and other tobacco products, (2) from restricting or preventing any purchase or sale of such merchandise from or to any other person, and (3) from disseminating price lists containing or purporting to contain prices, profit margins, pricing systems, markups, discounts, or other sales terms determined by agreement between two or more jobbers and/or subjobbers.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General, Worth Rowley, Special Assistant to the Attorney General, Sumner Canary, United States Attorney, Robert B. Hummel, W. D. Kilgore, Jr., Harry N. Burgess, Lester P. Kaufmann, Edward J. Masek, and Harry E. Pickering.

For the defendants: William H. Rosenfeld, Alfred Palay, Robert C. Knee, Ralph Vince, Fred Mandel, and Aaron A. Weiser.

Final Judgment

CHARLES J. MCNAMEE, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on June 20, 1951, and the defendants having appeared and filed their respective answers to such complaint denying the substantive allegations thereof, and all parties hereto by their attorneys herein having severally consented to the entry of this final judgment without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of any such issue:

Now, therefore, before any testimony has been taken and without adjudication of any issue of fact or law herein, and upon consent of all the parties hereto, it is hereby: ordered, adjudged, and decreed, as follows:

I.

[*Jurisdiction*]

The Court has jurisdiction of the subject matter hereof and the parties hereto, and the complaint states a cause of action against the defendants and each of them under Section 1 of the Act of Congress of July 2, 1890, commonly known as the Sherman Act (15 U. S. C. Sec. 1) as amended.

II.

[*Definitions*]

As used in this final judgment:

(A) The term “person” means an individual, partnership, corporation or other legal entity;

(B) The term “jobber” means any person engaged in the business of buying candy, cigarettes and other tobacco products directly from the manufacturers thereof for sale to subjobbers and retailers;

(C) The term “subjobber” means any person engaged in the business of buying cigarettes from jobbers and buying other tobacco products and candy either from the manufacturers thereof or from jobbers, for sale to retailers;

(D) The term “retailer” means any person engaged in the business of buying candy, cigarettes and other tobacco products for sale to consumers;

(E) The term “candy” means any and all types of candy, including, but not limited to, bar, bulk, boxed and packaged candy and chewing gum;

(F) The term “other tobacco products” means any and all products whose basic ingredient is tobacco including, but not limited to, cigars, chewing tobacco, smoking tobacco and snuff but excluding cigarettes.

III.

[*Applicability*]

The provisions of this final judgment applicable to any defendant shall apply to such defendant, its subsidiaries, members, officers, agents, directors, servants and employees and to those persons in active concert or participation with them who shall receive actual notice of this final judgment by personal service or otherwise.

IV.

[*Price Fixing and Restraint of Trade Enjoined*]

The defendants are jointly and severally enjoined and restrained from entering into, maintaining or furthering, or claiming any rights under, any contract, combination, conspiracy, agreement, understanding, plan or program with any other person:

(A) To adopt, maintain or adhere to any plan, program or device, including specifically the collection, preparation, distribution or dissemination of price lists among themselves or with any other person, the purpose or effect of which is to fix, determine, establish, maintain or stabilize prices, profit margins, pricing systems, markups, discounts or other terms Or conditions of sale to be charged or used by any jobber, subjobber, retailer or any other person for candy, cigarettes or other tobacco products;

(B) To refuse to sell candy, cigarettes or other tobacco products to any person or any class of persons;

(C) To hinder, restrict, limit or prevent any person, including specifically any sub-jobber, from purchasing or selling candy, cigarettes or other tobacco products;

(D) To influence, or attempt to influence any third person with respect to the price or prices, profit margins, pricing systems, markups, discounts or other terms or conditions of sale to be charged or used by such third person for the sale of candy, cigarettes or other tobacco products.

V.

The defendants are jointly and severally enjoined and restrained from directly or indirectly:

(A) Controlling or attempting to control, through the defendant Union or otherwise, the prices, profit margins, pricing systems, markups, discounts or other terms or conditions of sale to be charged or used by any person for the sale of candy, cigarettes or other tobacco products.

(B) Restricting, or preventing, or attempting to restrict or prevent, any person, including specifically any subjobbers, from purchasing or selling candy, cigarettes or other tobacco products from or to any other person;

(C) Distributing or disseminating, in any manner, any price list or purported price list, containing or purporting to contain prices, profit margins, pricing systems, markups, discounts or other terms or conditions of sale determined by agreement between two or more jobbers and/or subjobbers for the sale of candy, cigarettes or other tobacco products.

VI.

[*Publication of Terms of Decree*]

(A) Defendant Association is ordered and directed to furnish to each of its present and future members a copy of this Final Judgment;

(B) Defendant Local #400 is ordered and directed to furnish a copy of this Final Judgment to each of its present and future officers and to each of its present members engaged in the sale of candy, cigarettes or other tobacco products.

(C) Defendants Association and Local #400 are each ordered and directed to maintain a record of all persons to whom a copy of this Final Judgment is furnished as required in subsections A and B of this Section.

VII.

[*Inspection and Compliance*]

For the purpose of securing compliance with this judgment, and for no other purpose, 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 any defendant, made to its principal office, be permitted subject to any legally recognized privilege, (a) reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, minutes, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, relating to any matters contained in this judgment, and (b) subject to the reasonable convenience of such defendant, and without restraint or interference from it, to interview officers and employees of such defendant, who may have counsel present, regarding any such matters, and (c) upon like request the defendants shall submit such reports with respect to any of the matters contained in this judgment as from time to-time may be necessary for the purpose of enforcement of this judgment; provided, however, that no information obtained by the means permitted in this paragraph shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment or as otherwise required by law.

VIII.

[*Retention of Jurisdiction*]

Jurisdiction of this action is retained for the purpose of enabling any of the parties to this 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 judgment, for the modification or termination of any of the provisions thereof, for the enforcement of compliance therewith and the punishment of violations thereof.