

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Sherwin-Williams Co., The Martin-Senour Co., John Lucas & Co., Inc., W. W. Lawrence & Co., The Lowe Brothers Co., Acme Quality Paints, Inc., and Rogers Paint Products, Inc., U.S. District Court, N.D. Ohio, 1961 Trade Cases ¶70,179, (Jan. 8, 1962)

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United States v. The Sherwin-Williams Co., The Martin-Senour Co., John Lucas & Co., Inc., W. W. Lawrence & Co., The Lowe Brothers Co., Acme Quality Paints, Inc., and Rogers Paint Products, Inc.

1961 Trade Cases ¶70,179. U.S. District Court, N.D. Ohio, Eastern Division. Civil No. 34728. Entered January 8, 1962. Case No. 1410 in the Antitrust Division of the Department of Justice.

Sherman Act

Resale Price Fixing—Coercing Jobbers or Retailers to Maintain Prices—Price Lists— Consent

Judgment.—A paint manufacturer and six affiliated companies have been prohibited by a consent judgment from coercing or inducing jobbers or retailers to charge specified prices in the sale of any “Kem” paint products, and from distributing to jobbers or retailers suggested prices at which such products should be sold to any third person. However, they could distribute to jobbers and retailers the prices at which they sell the products at wholesale or retail, so long as they state that the prices are those which they charge and are not suggested prices to be charged by others.

Resale Price Fixing—Enforcement Policies—Refusal to Deal—Consent Judgment—A paint manufacturer and six affiliated companies have been prohibited by a consent judgment from refusing to sell to any person because of the prices at which such person sold any “Kem” paint product, inducing jobbers to refuse to sell to any retailer because of the prices at which such retailer sold these products, refusing to sell to any jobber because he sold these products to any particular retailer or class of retailer, and designating to jobbers the retailers who should not be sold these products. However, the manufacturers could recommend that retailers should be of a type which normally handles paint products and should be capable of rendering adequate service.

Final Judgment

MCNAMEE, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on August 13, 1958; defendants having filed an answer to such complaint denying the substantive allegations thereof; and plaintiff and defendants having by their respective attorneys consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without any admission by plaintiff or said defendants in respect to any such issue,

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 signatory hereto as aforesaid, it is hereby ordered, adjudged and decreed, as follows:

I.

[Jurisdiction]

This court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim upon which relief against the defendants may be granted 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) "Kem Products" means a latex base interior paint called Super Kern-Tone, an alkyd interior enamel called Kem-Glo, a clear gloss varnish called Lin-X, and products used in their application, such as brushes, rollers, trays, and tinting colors bearing the designation "Kern," and including similar products sold for the above uses which incorporate the word "Kem." in the trade name or trademarks.
- (B) "Person" means any individual, partnership, corporation, or any other business or legal entity.
- (C) "Prices" means prices, discounts, and terms and conditions of sale.

III.

[Applicability]

The provisions of this Final Judgment shall apply to each defendant and to each of their subsidiaries, successors, assigns, officers, directors, employees, and agents, and to those persons in active concert or participation with the defendants who receive actual notice of this Final Judgment by personal service or otherwise, but shall not apply to transactions solely between any such defendants or solely between any such defendant and its subsidiaries and the officers, directors, agents, or employees of such subsidiaries. The term "subsidiary" as used in this paragraph means a company in which one or more of the defendants owns the controlling interest.

IV.

[Resale Prices]

Each of the defendants is enjoined from:

- (A) Compelling, persuading, coercing, or inducing jobbers, or retailers to charge specified prices in the sale of any Kem Products;
- (B) Distributing to jobbers or retailers suggested prices at which Kem Products should be sold to any third person, provided that: this subsection (B) shall not prohibit any defendant from distributing to jobbers and retailers the prices at which said defendant sells Kem Products at wholesale or retail, and bearing on the face thereof a clear statement that such prices are the prices charged by said defendant and are not intended to suggest prices to be charged by others;
- (C) Refusing to sell to any person, be cause of the prices at which such person has sold or advertised any Kem Products, or proposes to sell or advertise any Kem Products;
- (D) Compelling, persuading, coercing, or inducing jobbers to refuse to sell to any retailer, because of the prices at which such retailer proposes to sell or advertise, or has sold or advertised, any Kem Products;
- (E) Refusing to sell to any jobber be cause such jobber has sold or proposes to sell any Kem Products to any particular retailer or class or type of retailer;
- (F) Designating to jobbers the retailers who should not be sold Kem Products, whether by publishing or circulating lists or descriptions of eligible or ineligible dealers, or by any other means, provided that this subsection (F) shall not prohibit any defendant from merely advising and recommending that retailers should be of a type which ordinarily handles paint products and should be capable of rendering adequate service to the public.

V.

[Notice of Judgment]

Within sixty (60) days of the entry of this Final Judgment, the defendants shall mail a copy of this Final Judgment, together with a letter in the form annexed hereto as Exhibit A or Exhibit B (as may be appropriate) to each person who is a retailer or jobber customer of any of the defendants, to each person formerly a retailer or jobber (as identified upon a list to be furnished by the plaintiff to the defendants) and will furnish sufficient copies to each jobber for the retailer customers of such jobber together with a request that a copy be mailed to each customer and within thirty (30) days after such mailing, to file with this Court, with a copy to the plaintiff herein, a report of compliance with this Section V.

VI.

[Inspection and Compliance]

(A) For the purpose of securing compliance with this Final Judgment, 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 to its principal offices, be permitted subject to any legally recognized privilege:

1. Access during the office hours of said 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;
2. Subject to the reasonable convenience of said defendant, and without restraint or interference from it, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters.

(B) Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, said defendant shall submit such records in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment;

(C) No information obtained by the means provided in 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 in which the United States 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 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 amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Exhibit A (Retailer Letter)

Enclosed is a copy of a Federal Court injunction which terminated the above entitled case on January 8, 1962. As a retailer who is selling or has sold Kem Products, you are entitled to receive the enclosed copy of this decree and this explanatory letter. In particular, your attention is called to Paragraph IV of the Court's order.

Among other things, this decree prohibits Sherwin-Williams Co. and each of its subsidiaries from telling you, or any other Kem Products retailer, the price at which you should sell any Kem Products. Accordingly, you are advised that you are free to set your own prices for these products, free of control from us.

Sincerely yours,

Exhibit B (Jobber Letter)

Enclosed is a copy of a Federal Court injunction which terminated the above entitled case on January 8, 1962. As a jobber who is selling or has sold Kem Products, you are entitled to receive the enclosed copy of this decree and this explanatory letter. In particular, your attention is called to Paragraph IV of the Court's order.

Among other things, this decree prohibits Sherwin-Williams Co. and each of its subsidiaries from telling you, or any other Kem Products jobber the price at which you should sell any Kem Products, or the persons to whom you should sell any Kem Products. Accordingly, you are advised that you are free to select your own customers and set your own prices for these products, free of control from us. We do, however, advise and recommend that retailers should be of a type which ordinarily handles paint products and should be capable of rendering adequate service to the public.

Sincerely yours,