

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Lima News, Freedom Newspapers, Inc., Raymond C. Holies, Clarence H. Hoiles, and E. Roy Smith., U.S. District Court, N.D. Ohio, 1965 Trade Cases ¶71,609, (Nov. 30, 1965)

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United States v. The Lima News, Freedom Newspapers, Inc., Raymond C. Holies, Clarence H. Hoiles, and E. Roy Smith.

1965 Trade Cases ¶71,609. U.S. District Court, N.D. Ohio, Western Division. Civil No. 64-178. Entered November 30, 1965. Case No. 1827 in the Antitrust Division of the Department of Justice.

Sherman and Clayton Acts

Monopoly—Newspaper Advertising and Circulation Rates—Consent Decree.—A newspaper would be prohibited by a consent judgment from reducing circulation or advertising rates or offering any substantially greater premiums for of one year following publication of a competing newspaper or until any competing newspaper reaches a paid circulation of 10,000 for a three-month period, whichever even occurs first.

Monopoly—Newspaper Business—Operating at a Loss—Consent Decree.—A newspaper would be prohibited by a consent judgment from operating at a loss for the purpose of eliminating a competing newspaper, and in any suit brought to enforce the judgment, if it is established that the newspaper has operated at a loss, a prima facie case of a violation shall be established.

Monopoly—Newspaper Business—Exclusive Dealing and Price Discrimination—Consent Decree.—A newspaper would be prohibited by a consent judgment from conditioning the acceptance of advertising on not advertising in a competing newspaper or from discriminating against advertisers which use a competing newspaper.

Monopoly—Newspaper Business—Enforcement of Covenant Not to Compete—Consent Decree.—A newspaper would be prohibited by a consent judgment from claiming any rights under covenants not to compete received from another newspaper and the individuals which operated it.

Acquisitions—Newspaper Business—Consent Decree.—A newspaper would be prohibited by a consent judgment from acquiring, directly or indirectly, any assets of or interest in a competing newspaper or other newspaper published and circulated in the town in which it operated.

For the plaintiff: Donald F. Turner, Assistant Attorney General, William D. Kilgore, Jr., Gordon B. Spivack, Norman H. Seidler, Frank B. Moore, and Paul Y. Shapiro, Attorneys, Department of Justice

For the defendants: Latham & Watkins, by Max L. Gillam, Los Angeles, Calif., Fuller, Seney, Henry & Hodge, by Thomas L. Dalrymple, Toledo, Ohio.

Before Schnackenberg, Kiley, and Swygert, Circuit Judges.

Final Judgment

YOUNG, District Judge: Plaintiff, United States of America, having filed its complaint herein on November 19, 1964; the defendants having appeared and filed their answer denying the substantive allegations thereof; and the plaintiff and said defendants 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 any admission by any party with respect to any such issue.

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of all of the parties hereto,

It is hereby ordered, adjudged and decreed as follows:

I.

[*Sherman and Clayton Acts*]

This Court has jurisdiction of the subject matter hereof, and of all parties hereto. The complaint states claims upon which relief may be granted against said defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890, as amended, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act; and under Section 7 of the Act of Congress of October 15, 1914, as amended, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act.

II.

[*Definitions*]

As used in this Final Judgment:

- (a) "The News" refers to the newspaper published in Lima, Ohio, by the defendant partnership;
- (b) "Milline rate" is the price charged, less discounts, for a line of local display, classified, or national advertising per one million papers of paid circulation;
- (c) "Circulation rates" refers to the price paid by the reader for the newspaper either by subscription, for home or mail delivery, or for single copies; and
- (d) "Competing newspaper" refers to any daily newspaper of general circulation published and circulated in Lima, Ohio, other than the News.

III.

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its subsidiaries, directors, agents, employees, successors and assigns, and to all persons in active concert or participation with a defendant who receive actual notice of this Final Judgment by personal service or otherwise. Paragraph IV of this Final Judgment shall cease to have any force or effect whatsoever on January 1, 1986.

IV.

[*Practices Prohibited*]

For a period of one year after the date of first publication of any existing or new competing newspaper, or until any such competing newspaper reaches a paid circulation of 10,000 for a three-month period, whichever event first occurs, each of the defendants is enjoined and restrained from directly or indirectly:

- (a) Reducing the circulation rates of the News which are or were in force on the date defendants first learn or learned that publication of a competing newspaper is or was planned;
- (b) Offering any substantially greater quantity of premiums, combinations, special offers, or other forms of circulation rates' discounts than were offered by the News in the one year preceding any such date of first publication; and
- (c) Reducing milline rates of the News below the milline rates charged by such competing newspaper.

V.

[*Operating at Loss*]

Each of the defendants is enjoined and restrained from participating in any plan, scheme, arrangement, or course of conduct to operate the News, directly or indirectly, at a loss with the purpose of eliminating a competing newspaper. In any suit brought before January 1, 1976 to enforce the provisions of this Paragraph V, if it is established that the News has operated at a loss a *prima facie* case of violation shall be established. However, it shall be a complete defense to the charge of violating this Section that such loss or losses resulted

from forces or conditions beyond the control of the defendants. Examples of forces or conditions beyond defendants' control include, but are not limited to, the following:

- (a) Losses caused, after the expiration of the injunctive period specified in Paragraph IV above, by the reduction in good faith of News advertising and/or subscription rates to meet the rates charged by a competing newspaper.
- (b) Losses resulting from increased operating costs incurred in good faith to meet competitive forces or conditions.

VI.

[*Exclusive Dealing*]

Each of the defendants is enjoined and restrained from:

- (a) Selling or accepting advertisements for publication on the express or implied condition that the advertiser refrain from advertising in a competing newspaper or any other newspaper published and circulated in Lima, Ohio; and
- (b) Discriminating against or refusing to accept the advertisements of any person or company because said person or company has advertised, advertises, or proposes to advertise in a competing newspaper or any other newspaper published and circulated in Lima, Ohio.

VII.

[*Enforcement of Negative Covenant*]

Defendants are enjoined and restrained from claiming any rights under the following agreements:

- (a) The agreement entitled "Covenant Not to Compete" executed by defendant Freedom Newspapers, Inc., on behalf of the defendant Lima News partnership and by the Lima Citizen Publishing Company, and nine individuals, dated January 3, 1964; and
- (b) The agreement entitled "Covenants Against Competition" executed by defendant Freedom Newspapers, Inc., and E. R. McDowell, dated September 3, 1963.

VIII.

[*Acquisitions*]

Defendants are enjoined and restrained from directly or indirectly acquiring any assets of or interest in a competing newspaper or any other newspaper published and circulated in Lima, Ohio.

IX.

[*Notification*]

The defendants are ordered upon entry of this Final Judgment to:

- (a) Mail a copy of this Final Judgment within sixty (60) days to each person who has placed advertising (other than transient, classified or legal) with the News in the year preceding the date of entry of this Final Judgment, and to each natural person who is a party to the agreements referred to in Paragraph VII of this Final Judgment;
- (b) File with this Court, with a copy to the plaintiff herein, a report of compliance with this Paragraph IX thirty (30) days following completion of the requirements of (a) above.

X.

[*Inspection and Compliance*]

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 at its or his principal office, be permitted:

(a) 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 any defendant relating to any matters contained in this Judgment; and

(b) To interview officers or employees of the defendants who may have counsel present regarding any such matters, subject to the reasonable convenience of said defendants, and without restraint or interference from them.

Upon such written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, said defendants shall submit such records or reports 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.

No information obtained by the means provided in this Paragraph X 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.

XI.

[*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 or for the punishment of violations thereof.