

[Trade Regulation Reporter - Trade Cases \(1932 - 1992\), United States v. Wolverine World Wide, Inc., U.S. District Court, D. New Mexico, 1972 Trade Cases ¶74,025, \(Jul. 10, 1972\)](#)

Federal Antitrust Cases

Trade Regulation Reporter - Trade Cases (1932 - 1992) ¶74,025

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United States v. Wolverine World Wide, Inc.

1972 Trade Cases ¶74,025. U.S. District Court, D. New Mexico. Civil Action No. 9186. Entered July 10, 1972. Case No. 2194, Antitrust Division, Department of Justice.

Headnote

Sherman Act

Resale Price Fixing—Shoes—Fair Trade—Consent Decree.—A consent decree prohibited a manufacturer of shoes from agreeing with retailers to fix the resale price of shoes, refusing to sell shoes to any other retailer because of his prices, or from restricting” the advertising of prices lower than those suggested by the manufacturer. The decree prohibits the manufacturer from coercing any retailer to adhere to prices, encouraging the policing of prices, or conditioning advertising allowances on price adherence. For a period of five years the decree prohibits the manufacturer from refusing to sell to dealers who do not follow suggested prices or from suggesting retail prices unless it is clearly stated that such prices are suggested prices only. No fair trading is allowed for a one-year period. After the one-year period the manufacturer is required to notify each dealer of the extent to which the manufacturer's right to enforce fair trading is abrogated or impaired.

For plaintiff: Walker B. Comegys, Acting Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer and Harry Burgess, Antitrust Div., Dept. of Justice, Washington, D. C, Victor R. Ortega, U. S. Atty., Albuquerque, N. M., Lawrence W. Somerville and Richard E. Neuman, Antitrust Div., Dept. of Justice, Los Angeles, Cal.

For defendant: R, Malcolm Cumming, of Warner, Norcross & Judd, Grand Rapids, Mich. and Rodney, Dickason, Sloan, Akin & Robb, by Jackson G. Akin, Albuquerque, N. M.

Final Judgment

PAYNE, D. J.: The Plaintiff, United States of America, having filed its complaint herein on October 19, 1971, the Defendant having filed its Answer denying the substantive allegations of the complaint, and the parties hereto 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 an admission by any party hereto 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 the 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 this action and of the parties hereto. The complaint states claims for relief upon which relief may be granted against the Defendant under Section 1 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.

II

[*Definitions*]

As used in this Final Judgment:

- (a) "Defendant" shall mean the Defendant Wolverine World Wide, Inc., a corporation organized and existing under the laws of the State of Delaware.
- (b) "Person" shall mean an individual, partnership, firm, corporation, association, or other business or legal entity.
- (c) "Shoes" shall mean any men's, women's or children's footwear.
- (d) "Wolverine shoes" shall mean, shoes manufactured by or for Wolverine and sold by it to retailers under Wolverine's labels.
- (e) "Retailer" shall mean any person who sells shoes to users.
- (f) "Wolverine" shall mean the Defendant Wolverine World Wide, Inc.

III

[*Applicability*]

The provisions of this Final Judgment applicable to the Defendant shall also apply to each of its officers, directors, agents, employees, successors, and assigns, and to all persons in active concert or participation with the Defendant who receive actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment, the Defendant and its officers, directors, employees, and subsidiaries, when acting in such capacity, shall be deemed to be one person. Except for sales to any agency or instrumentality of the Plaintiff wherever located, the provisions of this Final Judgment are applicable to Wolverine shoe sales only in the United States.

IV

[*Agreement to Fix Prices*]

Defendant Wolverine is enjoined and restrained from entering into, adhering to, maintaining, enforcing, soliciting, or claiming any rights under any combination, conspiracy, agreement, plan or program with any retailer to:

- (a) Fix, establish, maintain, or adhere to prices for the sale of Wolverine shoes at retail;
- (b) Refuse to sell Wolverine shoes to any other retailer because of the price or prices at which such other retailer sells such shoes at retail;
- (c) Restrict the advertising or display of Wolverine shoes at prices lower than those suggested by Wolverine.

V

[*Enforcement of Resale Prices*]

Wolverine is enjoined and restrained from directly or indirectly:

- (a) Urging, compelling or coercing any retailer to establish, adopt, or adhere to any minimum or suggested retail price, markup, or margin of profit, or to otherwise police or enforce adherence thereto by any of the following means:
 - (i) attempting to persuade such retailer to discontinue deviations from prices suggested by Wolverine.
 - (ii) communicating with such retailer concerning variances between such retailer's prices and the retail prices of other customers of Wolverine.

(iii) communicating with any such retailer who is deviating from prices suggested by Wolverine and calling attention to Wolverine's policy to sell its shoes only to retailers who adhere to its suggested prices.

(b) Encouraging or suggesting to retailers that they report to Wolverine any deviations from suggested price by other retailers;

(c) Informing or implying to any retailer, who has complained or reported price cutting or advertising below suggested retail prices by any Wolverine dealer, that Wolverine will or may take any action to obtain compliance with Wolverine's pricing practices;

(d) Taking any action to mediate or resolve disputes between its retailers with respect to allegations that one or more of its retailers are not following suggested retail prices;

(e) Conditioning advertising allowances by Wolverine to retailers on adherence by retailers to retail prices desired by Wolverine.

VI

[*Refusal to Deal*]

Wolverine is enjoined and restrained, for a period of five (5) years from the date of the entry of this Final Judgment, from directly or indirectly:

(a) Refusing to sell Wolverine shoes to any person who is or becomes a retail customer of Wolverine, because such retail customer has sold Wolverine shoes at prices below Wolverine's suggested retail prices.

(b) Suggesting to any person who is a retail customer of Wolverine that Wolverine may refuse to sell its shoes to such person for reasons based in whole or in part upon the prices at which such person sold, or proposes to sell, Wolverine shoes.

(c) Suggesting retail prices to retailers for the sale of Wolverine shoes unless such suggestion, where written, contains a statement in a clear and bold type, to the effect that the prices are suggested prices only, and that any retailer is free to sell Wolverine shoes at such prices as he may individually determine.

VII

[*Fair Trade*]

Defendant is ordered and directed:

(a) For a period of one (1) year from the date of the entry of this Final Judgment to refrain from exercising such legal rights, if any, which it may have under the Miller-Tydings Act, as amended.

(b) Nothing contained in this Final Judgment shall prevent the Defendant from availing itself of such rights, if any, as it may have pursuant to the Miller-Tydings Act, as amended by the Maguire Act, upon the expiration of one (1) year from the date of the entry of this Final Judgment; Provided, However, that before the Defendant may fair-trade Wolverine's shoes in any State or Territory, it shall first identify each such State or Territory, in writing, to each of its retailers and distributors. In the event that the Defendant's right to fair-trade Wolverine shoes in any State or Territory should be abrogated or impaired, Defendant is ordered and directed to notify forthwith each of its dealers and distributors of that fact, together with all information pertinent thereto, as will adequately advise each retailer and distributor of the extent of such abrogation or impairment.

VIII

[*Notification of Retailers*]

Within sixty (60) days after the date of the entry of this Final Judgment, Defendant shall mail to each retailer of Wolverine branded shoes a true copy of this Final Judgment, together with a copy of the letter attached hereto as Exhibit A, (modified as necessary to reflect differences in divisional and brand names) and shall file with this Court and serve upon the Plaintiff within one hundred twenty (120) days after the date of the entry of this Final

Judgment a report of compliance with this paragraph. For purposes of this section, Wolverine branded shoes shall mean Hush Puppies, Bates or Bates Floaters.

IX

[*Complaining Retailers*]

For a period of five (5) years after the date of this Judgment, in the event Wolverine shall receive complaints from any of its retailers that another retailer of Wolverine shoes is cutting prices, in any response made to such complaining retailer, Wolverine shall advise such complaining retailer that Wolverine cannot enforce any retail prices and shall call attention to this Final Judgment.

X

[*Compliance Reports*]

For a period of ten (10) years from the date of entry of this Final Judgment, Wolverine is ordered to file with the Plaintiff, on each anniversary date of this Final Judgment, a report setting forth the steps Defendant has taken during the prior year to advise Wolverine's appropriate officers, directors and employees of their obligation under this Final Judgment.

XI

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final 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 Defendant, made to its principal office, be permitted, subject to any legally recognized privilege:

(a) Reasonable access, during the office hours of Defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or 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 the officers and employees of Defendant, who may have counsel present, regarding any such matters.

Upon written request, the Defendant shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means provided in this Paragraph XII 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.

XII

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

Exhibit A

(To All Hush Puppies® Dealers)

As you may be aware, the United States filed a civil action on October 19, 1971, in the United States District Court for the District of New Mexico naming Wolverine World Wide, Inc., as a defendant and charging a violation

of Section 1 of the Sherman Antitrust Act arising out of Wolverine's pricing policies. On, 1972, this case was settled by the entry of a Final Judgment to which both the United States and Wolverine World Wide, Inc. consented.

Pursuant to the terms of this Consent Judgment, Wolverine informs you that prices suggested by Wolverine are suggested prices only, and you are free to sell Wolverine shoes at such prices as you may individually determine. Wolverine does not request and will in no way seek assurance or an agreement from you as to the maintenance of retail prices at which you will offer Hush Puppies® or Wolverine Brand shoes and boots for resale.

A copy of the Final Judgment is enclosed and your particular attention is called to Paragraph VI therein.

Wolverine World Wide, Inc.