

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Wohl Shoe Co., Nordstrom's Albuquerque, Inc., Paris Shoe Stores, and Penobscot Shoe Co., U.S. District Court, D. New Mexico, 1973-2 Trade Cases ¶74,633, (Sept. 5, 1973)

Federal Antitrust Cases

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United States v. Wohl Shoe Co., Nordstrom's Albuquerque, Inc., Paris Shoe Stores, and Penobscot Shoe Co. 1973-2 Trade Cases ¶74,633. U.S. District Court, D. New Mexico. Civil Action No. 9187. Entered September 5, 1973. Case No. 2193, Antitrust Division, Department of Justice.

Headnote

Sherman Act

Resale Price Fixing—Shoes—Consent Decree.—A shoe company was prohibited by a consent decree from selling to retailers on condition that they adhere to suggested resale prices or compelling them to adopt any minimum or suggested retail price or markup; from selling to any retail dealer because it adheres to a particular price or markup or refusing to sell because the dealer does not adhere; and from informing or implying to any retail dealer who has complained or reported price cutting or advertising below prices charged by competitors that the company will take action to obtain compliance. For five years, in the event the company receives complaints from retailers, it must advise the complaining retailers that it cannot enforce any retail prices.

For plaintiff: Thomas E. Kaupcr, Asst. Atty. gen., Baddia J. Rashid, Charles F. B. McAleer, Attys., Dept. of Justice, Victor R. Ortega, Albuquerque, N. M.

For defendants: Edwin S. Taylor, of Bryan, Cave, McPheeters & McRoberts, St. Louis, Mo., John Quinn, of Standley, Witt & Quinn, Santa Fe, N. M., for Wohl Shoe Co.; Charles E. Buffon, Tinnin, Danfelter & Martin, Albuquerque, N. M., John H. Schafer, of Covinton & Burling, Washington, D. C., dene Carter, of Rudman, Rudman & Carter, Bangor, Me., for Penobscot Shoe Co.

Final Judgment as to Penobscot Shoe Co.

PAYNK, D. J.: Plaintiff, United States of America, having filed its Complaint herein on October 19, 1971, all the defendants herein having appeared and severally filed their answers thereto denying the substantive allegations of the Complaint, and the parties hereto by their respective attorneys having each 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 with respect to any such issue; and this Court having determined pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay in entering a Final Judgment as to all of the plaintiff's claims asserted in such Complaint against defendant Penobscot Shoe Company.

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 herein and of the parties hereto. The Complaint states claims upon which relief may be granted against the consenting defendant 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," as amended (15 U. S. C. §1), commonly known as the Sherman Act.

II

[Definitions]

- (a) "Person" shall mean any individual, partnership, corporation, firm, association or other business or legal entity.
- (b) "Defendant" shall mean Penobscot Shoe Company.
- (c) "Retail dealer" shall mean any person (other than Penobscot) engaged in the business of selling shoes at retail to customers.
- (d) "Suggested retail price(s)" shall mean any specific suggested retail price on shoes or any markup or formula for pricing shoes at retail, which a manufacturer communicates to retail dealers either in writing or orally.
- (e) "Customer" shall mean a purchaser of shoes at retail from a retail dealer.
- (f) "Shoes" shall mean any men's, women's or children's footwear, excluding hosiery.

III

[Applicability]

The provisions of this Final Judgment applicable to defendant shall apply to such defendant and to each of its subsidiaries, successors and assigns, and to each of its officers, directors, partners, agents and employees, when acting in such capacities, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

[Prices]

Defendant is enjoined and restrained in connection with its sale, or offering for sale, of shoes throughout the United States from entering into, adhering to, maintaining, furthering, or enforcing, directly or indirectly any agreement, understanding, plan or program with any person to:

- (A) Raise, fix, stabilize, or maintain prices, markups, or other terms or conditions at which shoes are offered for sale by any retail dealer to its customers;
- (B) Induce, compel, or coerce any person to establish, adopt, issue, adhere to, or to police or enforce adherence to prices, markups, terms or conditions at which shoes shall be sold or offered for sale by any retail dealer to its customers.

V

[Prices]

Defendant is enjoined and restrained in connection with its sale, or offering for sale, of shoes throughout the United States from directly or indirectly:

- (A) Selling to any retail dealer of shoes on the condition or pursuant to any agreement, plan or program that the retail dealer will adhere to any suggested resale prices or markups;
- (B) Compelling or coercing or attempting to compel or coerce any retail dealer to establish, adopt, or adhere to any minimum or suggested retail price or markup, or to otherwise police or enforce adherence thereto by any means.

VI

[*Prices*]

Defendant is enjoined and restrained for a period of five years from the date of the entry of this judgment in connection with its sale, or offering for sale, of shoes throughout the United States from directly or indirectly:

(A) Selling shoes to any retail dealer because the retail dealer adheres to any particular resale price or markup.

(B) Refusing to sell shoes to any retail dealer because the retail dealer fails to adhere to any particular resale price or markup.

(C) Informing or implying to any retail dealer, who has complained or reported price cutting or advertising below retail prices charged or advertised by any competing retail dealer, that defendant will or may take any action to obtain compliance with any suggested price or markup.

VII

[*Enforcement*]

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

VIII

[*Reports*]

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

IX

[*Inspection and Compliance*]

For the purpose of securing or determining compliance with this Final Judgment and subject to any legally recognized privilege, 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:

(A) Access during reasonable office hours of defendant, who may have counsel present, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in possession or under the control of defendant relating to any of the matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of defendant, and without restraint or interference from it, to interview officers or employees of defendant, who may have counsel present, regarding any such matters; and upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such reports in writing, under oath if so requested, with respect to the matters contained in this Final Judgment, as may from time to time be reasonably requested.

No information obtained by means permitted in this Section IX 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 the Final Judgment, or as otherwise required by law.

X

[*Retention of Jurisdiction*]

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