

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Chas. Pfizer & Co., Inc., U.S. District Court, W.D. Missouri, 1966 Trade Cases ¶71,643, (Jan. 17, 1966)

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United States v. Chas. Pfizer & Co., Inc.

1966 Trade Cases ¶71,643. U.S. District Court, W.D. Missouri, Western Division. Civil Action No. 15290-1. Entered January 17, 1966. Case No. 1833 in the Antitrust Division of the Department of Justice.

Price Fixing—Resale Prices—Cosmetics—Consent Decree.—A cosmetics manufacturer was prohibited by a consent judgment from prescribing wholesale or retail prices for its cosmetics. Fair trading was permitted in appropriate states, but even then would be suspended for one year if relief against fair trading should be obtained in a similar action pending against another cosmetic manufacturer.

Price Fixing—Resale Prices—Refusal to Sell—Cosmetics—Consent Decree.—A cosmetics manufacturer was prohibited by a consent judgment from refusing to sell, or threatening to refuse to sell, to retailers or wholesalers because of the prices at which the wholesaler or retailer has sold the cosmetics.

For the plaintiff: F. Russell Millin and William H. Orrick Jr., Assistant Attorney General, Washington, D. C. and Robert L. Eisen, Department of Justice, Chicago, Ill.

For the defendant: Watson, Ess, Marshall & Enggas, and Simpson, Thacher & Bartlett, New York, N. Y.

Final Judgment

OLIVER, District Judge: The plaintiff, United States of America, having filed its complaint herein on December 7, 1964, 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

This court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims for relief 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

As used in this Final Judgment:

- (A) "Defendant" shall mean the defendant Chas. Pfizer & Co., 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) "Retailer" shall mean any person who purchases cosmetics for resale to consumers.
- (D) "Wholesaler" shall mean any person who purchases cosmetics for resale to retailers.

(E) "Cosmetics" shall mean any and all products intended to be applied to the human body or any part thereof for the purpose of cleansing, beautifying, or altering the appearance thereof, whether intended for use by either men or women.

(F) "Coty cosmetics" shall mean cosmetics sold or offered for sale by the Coty Division of defendant or hereafter transferred from said Division to any other Division, department, subsidiary or affiliate of defendant; and any and all cosmetics embodying in whole or in part trade names or trademarks owned or used by Coty Inc., at the time of its acquisition by defendant, or used by the Coty Division of defendant after said acquisition.

III

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. The provisions of this Final Judgment are applicable to Coty cosmetic sales only in the United States.

IV

Subject to the provisions of paragraph VI, the defendant is enjoined and restrained from entering into, adhering to, maintaining, enforcing, or claiming any rights under, any combination, conspiracy, contract, or agreement with any person engaged in the sale of Coty cosmetics to:

(A) Fix, establish, maintain, or adhere to prices in the sale of Coty cosmetics to any third person.

(B) Refuse to sell Coty cosmetics to any third person because of the price or prices at which such third person has sold such cosmetics.

V

For a period of five years after entry of this Final Judgment, except in States where the defendant legitimately fair trades its Coty cosmetics under State fair trade laws, defendant is enjoined and restrained from refusing to sell or threatening to refuse to sell Coty cosmetics to any retailer or wholesaler because of the price or prices at which such retailer or wholesaler has sold such cosmetics. Provided, however, that the defendant may refuse to sell to any retailer or wholesaler for any legitimate reason other than the price at which said retailer or wholesaler has sold Coty cosmetics.

VI

Nothing contained in this Final Judgment shall be deemed to prohibit the defendant from availing itself of such rights, or performing such obligations, if any, as it may have arising under any present or future act of Congress, including the Miller-Tydings Act and the McGuire Act. Provided, however, that if, and at such time as, a Final Judgment shall become effective in the case of *United States v. Revlon, Inc.*, Civil Action No. 62 Civ. 2219 (S. D. N. Y.), which contains a similarly onerous provision of at least the same duration, the defendant shall thereupon be enjoined for a period of one year from entering into or enforcing fair trade contracts in the distribution of Coty cosmetics under fair trade laws then in effect.

VII

Within sixty (60) days after the date of the entry of this Final Judgment defendant shall mail to each of its Coty cosmetics customers a true copy of this Final Judgment 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 section.

VIII

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For the purpose of securing compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division upon reasonable notice to defendant made to its principal office be permitted subject to any legally recognized privilege:

(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 control of said defendant relating to any of the matters contained in this Final Judgment; and

(B) Subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview the officers and employees of said defendant who may have counsel present, regarding any such matters.

For the purpose of securing compliance with this Final Judgment, the defendant upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports, under oath if so requested, with respect to any of the matters contained in this Final Judgment. No information obtained by the means provided in this section VIII 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 to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX

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 enforcement of compliance therewith, and for the punishment of violations of any of the provisions contained herein.