

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Union Carbide Corporation., U.S. District Court, W.D. Missouri, 1964 Trade Cases ¶71,227, (Oct. 9, 1964)

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United States v. Union Carbide Corporation.

1964 Trade Cases ¶71,227. U.S. District Court, W.D. Missouri, Western Division. Civil Action No. 12881. Entered October 9, 1964. Case No. 1544 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Antifreeze—Consent Judgments.—A manufacturer of antifreeze was prohibited under the terms of a proposed consent judgment from entering into fair trade contracts for one year, appointing agents to sell the product at the manufacturer's pre-designated price for three years or from, agreeing with distributors to restrict customer selection or to maintain resale prices.

For the plaintiff: William H. Orrick, Jr., Assistant Attorney General, William D. Kilgore, Jr., Harry G. Sklarsky, Earl A. Jinkinson, Robert L. Eisen, Harold E. Baily, and Joseph E. Paige, Attorneys, Department of Justice.

For the defendant: Richard H. Gregory, Jr., for Union Carbide Corp.

Final Judgment

OLIVER, District Judge: Plaintiff, United States of America, having filed its complaint herein on June 28, 1960; defendant having filed an answer to such complaint on September 27, 1960, denying the substantive allegations thereof; and plaintiff and defendant 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 defendant 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

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 defendant 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

As used in this Final Judgment:

- (A) " 'Prestone' brand anti-freeze" means an ethylene glycol base anti-freeze produced and marketed by defendant under the trade mark "Prestone"
- (B) "Person" means any individual, partnership, corporation, or any other business or legal entity;
- (C) "Agent" means any person selling for or on behalf of defendant "Prestone" brand anti-freeze from stock consigned to it;
- (D) "Distributor" means any person purchasing "Prestone" brand anti-freeze from, the defendant for resale;
- (E) "Fair trade contract" means any resale price maintenance contract, or supplement thereto, pursuant to which the resale price of "Prestone" brand anti-freeze is lawfully fixed, established or maintained under the fair trade

laws of any state, territory or possession and the Act of Congress of August 17, 1937, commonly called the Miller-Tydings Act, or the Act of Congress of July 14, 1952, commonly called the McGuire Act.

III

The provisions of this Final Judgment applicable to the defendant shall apply also to its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with the defendant who shall have received actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment the defendant and its officers, directors, agents, employees and subsidiaries, when acting in such capacity, shall be deemed to be one person.

IV

The defendant is enjoined:

(A) For a period of one (1) year from entering into fair trade contracts in the distribution of "Prestone" brand anti-freeze under fair trade laws now in effect;

(B) For a period of three (3) years from appointing agents to sell "Prestone" brand anti-freeze to persons at prices designated by defendant;

(C) From entering into, maintaining, adhering to or enforcing any combination, contract, agreement or understanding with a distributor of "Prestone" brand anti-freeze limiting or restricting such distributor in the selection of his customers;

(D) From entering into, maintaining, adhering to or enforcing any combination, contract, agreement or understanding with a distributor fixing or maintaining the price for the sale of "Prestone" brand anti-freeze to any third person.

Subject to the terms of subsections (A) and (B) above, this Section IV shall not be deemed to prohibit the defendant from engaging in any practices which any present or future act of Congress makes lawful.

V

Within sixty (60) days after the date of the entry of this Final Judgment, defendant shall mail to each person with whom defendant then has existing contractual relations for the marketing of "Prestone" brand anti-freeze a true copy of this Final Judgment; and shall file with this Court and serve upon the plaintiff, within one hundred and twenty (120) days after the date of the entry of this Final Judgment, a report of compliance with this section.

VI

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