

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Southwestern Peanut Shellers Assn., U.S. District Court, N.D. Texas, 1973-1 Trade Cases ¶74,273, (Jan. 29, 1973)

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United States v. Southwestern Peanut Shellers Assn.

1973-1 Trade Cases ¶74,273. U.S. District Court, N.D. Texas, Dallas Division. Civil Action No. 3-6028-C. Entered January 29, 1973. Case No. 2264, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing—Peanut Shellers—Brokerage Services—Consent Decree.—Southwestern peanut shellers were barred by a consent decree from agreeing commissions or fees to be paid to brokers of shelled peanuts, the amount or percentage by which contract prices for shelled peanuts will be changed in the event of a change in delivery time or on account of damaged, split or broken peanuts; or the use of credit in sales of shelled peanuts. However, after ten years, the defendants would not be barred from incorporating in recommended trading rules a schedule suggesting percentages or amounts for contract reductions based upon split or broken peanuts or a provision suggesting that sales of shelled peanuts shall be for cash unless otherwise agreed by the parties to the transaction, so long as the rule states that it may be freely adopted, modified or disregarded by the parties to the transaction. By-laws would have to be consistent with the judgment. Boycotting brokers was barred.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Gerald A. Connell, Bernard M. Hollander, Samuel B. Prezis, Robert J. Ludwig, D. Bruce Pearson, and Charles S. Stark, Antitrust Div., Dept. of Justice. **For defendant:** W. B. West, III.

Final Judgment

TAYLOR, D. J.: Plaintiff, the United States of America, having filed its complaint herein on June 30, 1972, and plaintiff and defendant 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:

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, 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 a claim upon which relief may be granted against the 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

[*Applicability*]

The provisions of this Final Judgment applicable to defendant shall apply to such defendant, its successors, subsidiaries, assigns, officers, directors, agents, servants, employees and members, and to all other persons and organizations in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise.

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III

[*Commissions, Discounts, Credit*]

The defendant, whether acting unilaterally or in concert or agreement with any other person, is enjoined and restrained:

(A) From fixing, establishing, or maintaining, from urging, recommending, or suggesting, and from publishing or distributing any schedule, form of contract, or other recommendation concerning:

- (1) the commission or fee to be paid to brokers of shelled peanuts;
- (2) the amount or percentage by which contract prices for shelled peanuts will be changed in the event of a change in delivery time or on account of damaged, split or broken peanuts; or
- (3) the use of credit in sales of shelled peanuts.

Provided, however, that upon the expiration of a ten year period which shall commence upon the date of entry of this final judgment, the defendant shall not be prohibited from incorporating in its recommended trading rules, or otherwise publishing and distributing

- (1) a schedule suggesting percentages or amounts by which contract prices may be reduced in the event of damaged, split or broken peanuts; or
- (2) a provision suggesting that sales of shelled peanuts shall be for cash unless otherwise agreed by the parties to the transaction,

so long as any such rule, schedule or provision expressly states that it may be freely adopted, modified or disregarded by the parties to the transaction.

(B) From adopting, adhering to, maintaining, enforcing, or claiming any rights under any by-law, rule, regulation, plan or program which restricts or limits, or purports to restrict or limit the right of any of its members to determine, in accordance with his own business judgment:

- (1) the commission or fee to be paid to brokers of shelled peanuts;
- (2) the amount or percentage by which contract prices for shelled peanuts will be changed in the event of a change in delivery time, or on account of damaged, split or broken peanuts; or
- (3) the use of credit in sales of shelled peanuts.

(C) From boycotting any broker of shelled peanuts, or requiring, urging or requesting any of its members not to do business with any broker of shelled peanuts.

IV

[*Amendment of By-laws*]

(A) The defendant is ordered and directed within ninety (90) days from the date of entry of this Final Judgment to amend its by-laws, rules, and regulations by eliminating therefrom any provision which is contrary to or inconsistent with any provision of this Final Judgment.

(B) Upon amendment of its by-laws, rules and regulations as aforesaid, defendant is thereafter enjoined and restrained from adopting, adhering to, enforcing or claiming any rights under any by-law, rule or regulation which is contrary to or inconsistent with any of the provisions of this Final Judgment.

V

[*Notification*]

Defendant is ordered and directed to mail within sixty (60) days after the date of entry of this Final Judgment, a copy thereof to each of its members and to each broker of shelled peanuts known to defendant and within one

hundred twenty (120) days from the aforesaid date of entry to file with the Clerk of this Court, an affidavit setting forth the fact and manner of compliance with this Section V and Section IV(A) above.

VI

[*Reports*]

Defendant is ordered to file with the Plaintiff on each anniversary date of the entry of this Final Judgment for a period of ten years, a report setting forth the steps it has taken during the prior year to advise defendant's appropriate officers, directors and employees of its and their obligations under this Final Judgment.

VII

[*Inspection and Compliance*]

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, 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 defendant relating to any of the 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.

For the purpose of determining or securing compliance with this Final Judgment, 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 relating to any of the matters contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided in this Section 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.

VIII

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