

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Abrasive Grain Association, Norton Company, American Abrasive Company, The Carborundum Company, The Exolon Company, General Abrasive Company, Inc., U.S. District Court, W.D. New York, 1948-1949 Trade Cases ¶62,329, (Nov. 16, 1948)

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United States v. Abrasive Grain Association, Norton Company, American Abrasive Company, The Carborundum Company, The Exolon Company, General Abrasive Company, Inc.

1948-1949 Trade Cases ¶62,329. U.S. District Court, W.D. New York. Civil No. 3672. November 16, 1948.

Sherman Antitrust Act

Consent Judgment—Combinations in Restraint of Trade—Acts Enjoined.—A consent judgment entered in an action against an abrasive grain manufacturer and five corporate members charging a combination and conspiracy to fix prices in restraint of trade and commerce enjoins the defendants from entering into combinations or agreements with manufacturers of artificial abrasive grain to fix periods of time for which offers and obligations to buy and sell shall be made or entered into, to fix or maintain prices or other terms of sale, to establish or adhere to price lists, and to classify purchasers or distributors with the purpose or effect of affecting prices paid by them or of discrimination in respect to them. When grain is sold on a uniform delivered price basis, each defendant manufacturer is ordered to grant to the purchaser the option of taking delivery at the place either of manufacture or storage of said grain at its delivered price less the actual cost of the mode of transportation which such manufacturer would normally use from the actual shipping point if such option were not exercised. The defendant association is ordered to abolish its code of fair competition, and the manufacturer defendants are ordered to issue individual price lists on the basis of independent review of costs and prices.

For plaintiff: Herbert A. Bergson, Assistant Attorney General; George L. Grobe, United States Attorney; Sigmund Timberg, Manuel M. Gorman, Gerald J. McCarthy, Richard B. O'Donnell, Special Assistants to the Attorney General.

For defendants: Thomas Penney, Jr., Penney, Penney, Buerger & Siemer, Buffalo, N. Y.; Hale & Dorr, Lawrence E. Green, Joseph N. Webb, E. Shayn, Boston Mass.; Francis T. Findlay, Findlay, Argy & Hackett, Niagara Falls, N. Y.; Edward A. Montgomery, Niagara Falls, N. Y.; Webster, Sheffield & Horan, New York, N. Y.; Charles W. Schol, Buffalo, N. Y.; Stobbs, Stockwell & Tilton, George R. Stobbs, Worcester, Mass.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on December 15, 1947, and all the defendants having appeared and filed their answers to such complaint denying the substantive allegations thereof; and all parties hereto by their attorneys herein having severally consented to the entry of this final Judgment herein without trial or adjudication of any issue of fact or law herein and without admission by any defendant in respect of any such issue;

NOW, THEREFORE, before any testimony has been taken herein, and without adjudication of any issue of fact or law herein, and upon the consent of all the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

[*Jurisdiction*]

The Court has jurisdiction of the parties to this judgment; and for the purposes of this judgment and proceedings for the enforcement thereof, the Court has jurisdiction of the subject matter hereof; and the complaint states a cause of action against defendants and each of them under [Section 1 of the Sherman Act](#) (15 U. S. C. § 1).

[*Terms Defined*]

II

When used in this judgment the following terms have the meaning assigned respectively to them below:

A. "Artificial abrasive grain" means grain manufactured from silicon carbide or aluminum oxide, and any variety, type, or grade of such grain.

B. "Subsidiary" means a company in excess of 50% of the voting stock of which is held by another company.

C. "Parent" means any company owning in excess of 50% of the voting stock of any other company.

[*Applicability*]

III

The provisions of this judgment applicable to the defendants apply to their successors, officers, directors, agents, employees, and to any other persons acting under, through, or for such defendants.

[*Acts Enjoined*]

IV

Each of the defendants is hereby perpetually enjoined and restricted from entering into, adhering to, maintaining, or furthering any combination, conspiracy, agreement or understanding with any manufacturer of artificial abrasive grain:

A. To fix, determine, designate, or adhere to periods of time during which or for which offers, sales, contracts for sales, and obligations to buy and sell artificial abrasive grain shall be made or entered into with, or required of, others.

B. To fix, determine, establish or maintain prices, pricing, systems, discounts, or other terms or conditions of sale for artificial abrasive grain.

C. To establish, maintain, or adhere to any price lists or price quotations, or any other means of determining or fixing price lists or price quotations, or any other terms or conditions of sale or purchase of artificial abrasive grain to be quoted to or by, or required of or by, others.

D. To circulate or exchange, directly or indirectly, any price lists, or price quotations, with or among any manufacturer of artificial abrasive grain in advance of the publication, circulation, or communication of such price lists or price quotations to its purchasers and distributors.

E. To classify purchasers or distributors with the purpose or effect of affecting prices paid by them or of discrimination in respect to them; or to maintain or adhere to any such classification of purchasers or distributors, or to any lists, formulae or other means for such classification.

V

Each defendant herein is hereby enjoined from circulating or exchanging, directly or indirectly, any price lists, or price quotations, with or among any manufacturer of artificial abrasive grain in advance of the publication, circulation, or communication of such price lists or price quotations to its purchasers and distributors.

[*Delivered Price*]

VI

Each defendant manufacturer is hereby ordered:

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Whenever such manufacturer sells artificial abrasive grain on a uniform delivered price basis, to grant the purchaser the option of taking delivery at the place either of manufacture or storage of said grain at its delivered price less the actual cost of the mode of transportation which such manufacturer would normally use from the actual shipping point if such option were not exercised.

[*Code Ordered Abolished*]

VII

The defendant Association is hereby ordered to abolish its code of fair competition at its next regular meeting which shall in no event be later than February 1, 1949; and defendant manufacturers are hereby enjoined and restrained from renewing or reviving said code of fair competition.

[*Issuance of Price Lists*]

VIII

When, for the first time following the entry of this judgment, the third printing of the Bureau of Labor Statistics Monthly Wholesale Price Index for All Commodities Other than Farm Products or Foods for a given month is lower than the corresponding index published six months preceding and there has been a decline in said Monthly Wholesale Price Index for each of three consecutive months, each defendant manufacturer shall individually review its selling prices of artificial abrasive grain on the basis of its individual cost figures and individual judgment as to profits, and issue a new price list (or, where no price list has in the past been issued, issue new prices) on the basis of such independent review.

[*Relationship Not Affected*]

IX

Nothing contained herein shall be deemed to adjudicate, determine, or affect the legality or illegality of any agreement involving solely relationships between:

- A. A defendant manufacturer and its subsidiaries.
- B. A defendant manufacturer or its subsidiaries and a parent.
- C. Subsidiaries of any such manufacturer or their subsidiaries.

X

Nothing in this judgment shall prevent any defendant from availing itself of the benefits of (a) The Act of Congress of April 10, 1918, commonly called the Webb-Pomerene Act, or (b) The Act of Congress of 1937, commonly called the Miller-Tydings proviso to Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies."

[*Inspection for Compliance Purposes*]

XI

For the purpose of securing compliance with this judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or any Assistant Attorney General, and on reasonable notice to any defendant manufacturer, be permitted, subject to any legally recognized privilege, (a) reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, relating to any matters contained in this judgment, and (b) subject to the reasonable convenience of such defendant, and without restraint or interference, to interview officers and employees of such defendant, who may have counsel present, regarding any such matters. For the purpose of securing compliance with this judgment any defendant upon the written request of the Attorney General, or an Assistant Attorney

General, shall submit such reports with respect to any of the matters contained in this judgment as from time to time may be necessary for the purpose of enforcement of this judgment. No information obtained by means permitted in this paragraph shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department except in the course of legal proceedings for the purpose of securing compliance with this judgment in which the United States is a party or as otherwise required by law.

[*Jurisdiction Retained*]

XII

Jurisdiction of this action is retained for the purpose of enabling any of the parties to this judgment to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this judgment, for the modification or termination of any of the provisions thereof, for the enforcement of compliance therewith and punishment of violations thereof.