

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Philadelphia Radio & Television Broadcasters Association; Independence Broadcasting Company; Max M, Leon, Inc.; Pennsylvania Broadcasting Company; Seaboard Radio Broadcasting Corporation, Triangle Publications, Inc.; WCAU Incorporated; WJMJ Broadcasting Corporation; Wm. Penn Broadcasting Company; and L. M. C. Smith., U.S. District Court, E.D. Pennsylvania, 1958 Trade Cases ¶69,217, (Dec. 5, 1958)**

United States v. Philadelphia Radio & Television Broadcasters Association; Independence Broadcasting Company; Max M, Leon, Inc.; Pennsylvania Broadcasting Company; Seaboard Radio Broadcasting Corporation, Triangle Publications, Inc.; WCAU Incorporated; WJMJ Broadcasting Corporation; Wm. Penn Broadcasting Company; and L. M. C. Smith.

1958 Trade Cases ¶69,217. U.S. District Court, E.D. Pennsylvania. Civil Action No. 21138. Filed December 5, 1958. Case No. 1300 in the Antitrust Division of the Department of Justice.

**Sherman Antitrust Act**

**Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing—Agreements to Fix Prices of Radio Broadcasting Time.**—Radio stations and their trade association were prohibited by a consent decree from entering into or adhering to any agreement which has the purpose or effect or requiring or causing a radio station to maintain its published rates, prices, discounts, or other terms or conditions for the sale of radio broadcasting time.

**Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing—Information Exchange and Price Lists.**—Radio stations were enjoined by a consent decree from circulating or exchanging any price list, rate card, or price quotation for radio broadcasting time among or with any other radio station or any trade association of radio stations, in advance of the publication or circulation of such list, card, or quotation to the general public or to purchasers of radio broadcasting time.

**Combinations and Conspiracies—Consent Decree—Practices Enjoined—Trade Association Activities—Association Membership As Means of Trade Restraint.**—Radio stations were prohibited by a consent decree from organizing, becoming a member of, or participating in the activities of any trade association or other organization, the activities of which violate or are inconsistent with any provision of the decree.

**Combinations and Conspiracies—Consent Decree—Practices Enjoined—Trade Association Activities—Filing Sales Contracts With Association.**Radio stations were prohibited by a consent decree from submitting to, filing, or depositing with their trade association or any other association any contract or agreement for the sale of radio broadcasting time entered into with any purchaser.

**Department of Justice Enforcement and Procedure—Consent Decree—Specific Relief—Dissolution—Filing Certificate of Dissolution With Court.**—A radio and television broadcasters' association was ordered by a consent decree to file with the court a certified copy of a certificate of dissolution issued to it by the Secretary of the State of Delaware. The association was also directed to take no action which has the purpose of setting aside, withdrawing, or revoking such certificate of dissolution.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; and Charles L. Whittinghill, W. D. Kilgore, Jr., William L. Maher, and Walter L. Devany, III, Attorneys, Department of Justice.

For the defendants: Lawrence D. Biele, for Philadelphia Radio & Television Broadcasters Association and Seaboard Radio Broadcasting Corporation; Nochem S. Winnet, of Fox, Rothschild, O'Brien & Frankel, for Pennsylvania Broadcasting Company; Francis W. Sullivan, for Seaboard Radio Broadcasting Corporation; Marcus Manoff, for Independence Broadcasting Company; Harold E. Kohn, for Triangle Publications, Inc.; Philip H. Strubing, for L. M. C. Smith; Thomas P. Mikell, for WJMJ Broadcasting Corporation; Arthur Littleton, for WCAU Incorporated; and Bernard M. Borish, for Wm. Penn Broadcasting Company, all of Philadelphia, Pa.

## Final Judgment

### [ Consent Decree]

BERNARD M. BORISH, District Judge [ *In full text*]: Plaintiff, United States of America, having filed its complaint herein on August 3, 1956, and the defendants having appeared and filed their answers to such complaint denying the substantive allegations thereof; the parties by their attorneys having consented to the entry of this Final Judgment herein without trial or adjudication of any issue of fact or law herein, and without admission in respect to any such issue; and this Court having considered the matter and being duly advised;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issues of fact or law herein, and upon consent of all parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

### I

#### [ Jurisdiction]

The Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states a claim for relief against the defendants under Section 1 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

### II

#### [ Definitions]

As used in this Final Judgment:

- (A) "Defendant Association" means the defendant Philadelphia Radio & Television Broadcasters Association;
- (B) "Defendant radio stations" means all the defendants and each of them, including L. M. C. Smith, except the defendant Association;
- (C) "Radio broadcasting time" means the period allotted by radio stations to individual advertisers for broadcasting over their particular stations; and
- (D) "Published rates" means those prices for the sale of radio broadcasting time which a radio broadcasting station disseminates by written media such as rate cards, or which are transmitted by it for inclusion in one or more compilations of rates used for reference by the advertising and radio broadcasting industries.

### III

#### [ Applicability]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its officers, directors, agents, employees, subsidiaries, successors, and assigns, and to all other persons in active concert or participation with a defendant who receives actual notice of this Final Judgment by personal service or otherwise, but shall not apply to transactions solely between a defendant radio station and a subsidiary thereof owning and operating a radio broadcasting station or to transactions solely between a defendant radio station and another radio broadcasting station when both are wholly owned and operated by the same person or corporation.

### IV

#### [ Price-Fixing Agreements]

The defendants are jointly and severally enjoined and restrained from entering into or adhering to any contract, agreement, understanding, plan, or program with each other or with any other broadcasting station, which

has the purpose or effect of requiring or causing a radio station to maintain, adhere to or not deviate from its published rates, prices, discounts, or other terms or conditions for the sale of radio broadcasting time.

## V

### [ Trade Association Activities]

Each defendant radio station is enjoined and restrained from:

- (A) Circulating or exchanging, directly or indirectly, any price list, rate card, or price quotation for radio broadcasting time, with or among any other radio station or representative thereof, or any trade association of radio stations, in advance of the publication, circulation, or communication of such list, card, or quotation to the general public or to purchasers of radio broadcasting time;
- (B) Submitting to, filing, or depositing with defendant Association or any other association any contract or agreement for the sale of radio broadcasting time entered into with any purchaser or representative thereof; and
- (C) Organizing, becoming members of or participating, directly or indirectly, in the activities of any trade association or other organization, the activities of which violate or are inconsistent with any provision of this Final Judgment.

## VI

### [ Specific Relief]

The defendant Association having, *pendente lite*, filed with the Secretary of the State of Delaware articles of dissolution and said Secretary having issued to such defendant a certificate of such, dissolution, this defendant is ordered and directed:

- (A) Within thirty (30) days following the entry of this Final Judgment to file with this Court a certified copy of the certificate of dissolution as issued by the Secretary of the State of Delaware; and
- (B) To take no action, either directly or indirectly, which has as its purpose the setting aside, withdrawal, or revocation of such certificate of dissolution.

## VII

### [ Inspection and Compliance]

For the purpose of securing compliance with this Final Judgment, 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 any defendant made to its principal office, be permitted, subject to any legally recognized privilege,

- (A) access during the office hours of defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendant relating to any matters contained in this Final Judgment; and
- (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.

Upon such written request, the defendant shall submit such information in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings in 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 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, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.