

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Kurtz Bros.; Bardeen's, Inc.; Garrett-Buchanan Company; J. L. Hammett Company; Kurtz Bros. Eastern Division, Inc.; L. B. Herr and Son; Peckham, Little, and Co., Inc.; Roberts and Meek, Inc.; and Webster Paper and Supply Co., Inc., U.S. District Court, E.D. Pennsylvania, 1964 Trade Cases ¶71,177, (Aug. 21, 1964)

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United States v. Kurtz Bros.; Bardeen's, Inc.; Garrett-Buchanan Company; J. L. Hammett Company; Kurtz Bros. Eastern Division, Inc.; L. B. Herr and Son; Peckham, Little, and Co., Inc.; Roberts and Meek, Inc.; and Webster Paper and Supply Co., Inc.

1964 Trade Cases ¶71,177. U.S. District Court, E.D. Pennsylvania. Civil Action No. 31654. Entered August 21, 1964. Case No. 1680 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Collusive Bidding—School Supplies—Consent Judgment.—Sellers of school supplies would be prohibited under the terms of a consent judgment from directly or indirectly enforcing any right under a price-fixing contract, entering into any agreement or understanding to fix prices, exchanging information concerning prices, submitting collusive bids, exchanging terms or conditions' of bids, and allocating customers or markets with other sellers of school supplies. Sellers of school supplies also would be required to certify upon request of a customer that prices being offered to that customer were arrived at independently and to furnish a copy of this final judgment to prior customers who bought pursuant to sealed bids.

For the plaintiff: Donald G. Balthis, John E. Sarbaugh, John J. Hughes, Richard M. Walker, Stewart J. Miller, Antitrust Division, Department of Justice, Philadelphia, Pa.; Drew J. T. O'Keefe, United States Attorney, Philadelphia, Pa.; Nicholas deB. Katzenbach, Acting Attorney General, Department of Justice, Washington, D. C; Harry G. Sklarsky, Department of Justice, Washington, D. C; and Lee Loevinger, Federal Communications Commission, Washington, D. C.

For the defendants: Nochem S. Winnet, Fox, Rochschild, O'Brien & Frankel, Philadelphia, Pa., for Roberts & Meek, Inc.; Herbert A. Fogel, Richard W. Thorington, David F. Maxwell, Obermayer, Rebmann, Maxwell & Hippel, Philadelphia, Pa., for Bardeen's, Inc.; W. Bradley Ward, Edward W. Mullinix, Schnader, Harrison, Segal & Lewis, Philadelphia, Pa., for Garrett-Buchanan Co.; Albert W. Schiffrrin, Meltzer & Schiffrrin, Philadelphia, Pa.; for Webster Paper & Supply Co., Inc.; Charles F. Herr, Appel, Ranck, Herr & Appel, Lancaster, Pa. for L. B. Herr & Son; Langdon W. Harris, III, Philadelphia, Pa., for Kurtz Bros., Eastern Division, Inc. and Kurtz Bros.; and Henry T. Reath, and Duane, Morris & Heckscher, Philadelphia, Pa., for J. L. Hammett Co.; Robert C. Vincent, McGovern, Vincent, Connelly, & Soil, New York, N. Y. for Bopetro, Inc.

Final Judgment

Wood, District Judge: Plaintiff, United States of America, having filed its complaint herein on June 28, 1962, and defendants Kurtz Bros., Bardeen's, Inc., Garrett-Buchanan Company, J. L. Hammett Company, Kurtz Bros. Eastern Division, Inc., L. B. Herr and Son, Peckham, Little, and Co., Inc., Roberts and Meek, Inc., and Webster Paper and Supply Co., Inc., (hereinafter sometimes referred to as "defendants") having appeared by their attorneys, and the parties by their attorneys having consented to the entry of this Final Judgment pursuant to a stipulation entered into July 17, 1964, without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence or admission by any party in respect to any issue of fact or law herein;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of all the parties hereto, it is hereby ordered, adjudged, and decreed as follows:

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter hereof and of each party hereto. The complaint states a claim for relief against the defendants 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

[*Definitions*]

As used in this Final Judgment:

- (A) "Awarding authority" means (1) any State, city, county, township, school district, school board, board of education, and any other public authority that purchases product for public educational institutions, and (2) any purchaser of product for use in or resale by private and parochial educational institutions;
- (B) "Person" means any awarding authority, individual, partnership, firm, corporation, association, trustee, governmental body or agency thereof, or any other business or legal entity;
- (C) "Product" means any, some, or all school supplies customarily used in educational institutions and which are classified in the trade as general, art, and duplicating supplies. This term does not include specialty items such as duplicating machines, typewriters, and tape recorders, nor furniture and equipment used in classrooms, offices, libraries, cafeterias, kitchens, and auditoriums; and
- (D) "Seller of product" means any person, other than an awarding authority as herein defined, engaged in the manufacture or sale of product.

III

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its subsidiaries, successors and assignees, and to their respective officers, directors, agents, servants, and employees, and to all other persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise. For the purposes of this Final Judgment each defendant and its subsidiaries, officers, directors, agents, servants, and employees or any of them shall be deemed to be one person.

IV

[*Copies of Final Judgment*]

Each defendant is ordered and directed to take the following steps for the purpose of procuring compliance with the terms of this Final Judgment; provided, however, that proof of compliance with the following steps shall not be deemed to be the exclusive steps for procuring compliance:

- (A) For the period of ten years following the effective date of this Final Judgment to deliver a true and complete copy of this Final Judgment (1) to each present and future member of its Board of Directors; (2) to each of its present and future officers; (3) to each of its present and future department heads, managers, sales managers, and also to any other present or future employee having responsibility for establishing or quoting prices or terms or conditions for the sale of product; and
- (B) To comply with paragraph (A) of this Section IV, each defendant shall:

(1) Within sixty days from the effective date of this Final Judgment deliver a true and complete copy of this Final Judgment to each individual who, during such sixty-day period, holds a position requiring delivery of a copy of this Final Judgment as provided by paragraph (A), and within ninety days after the effective date of this Final Judgment, serve upon the plaintiff an affidavit signed by its chief executive officer setting forth the name and title of each individual to whom a copy of this Final Judgment was delivered, and the fact and manner of delivery as provided for in this subparagraph (1); and

(2) As to each individual who attains a position included in paragraph (A) of this Section IV more than sixty days after the effective date of this Final Judgment, deliver a true and complete copy of this Final Judgment to each such individual within sixty days after such individual attains such position, and within thirty days after the end of any calendar year in which it takes the action required by this subparagraph (2), serve upon the plaintiff an affidavit signed by its chief executive officer setting forth the name and title of each individual to whom a copy of this Final Judgment was delivered, and the fact and manner of the delivery as provided for in this subparagraph (2).

V

[Price Fixing, Market Allocation]

Each of the defendants is enjoined and restrained from directly or indirectly entering into, adhering to, enforcing, or claiming or maintaining any right under any contract, agreement, arrangement, understanding, plan, or program with any seller of product in the United States to:

- (A) Allocate or divide territories, markets, fields, or customers for the manufacture or sale of product; provided, however, that, other than as stated in paragraph VI (F) herein, nothing contained in this Final Judgment is intended or shall be construed to approve or prohibit the granting or receiving of lawful distributorships or distributorship contracts;
- (B) Fix or maintain prices, pricing methods, or any terms or conditions for the sale of product to any third person;
- (C) Exchange information (other than information released to the trade generally, including but not limited to awarding authorities) concerning prices, pricing methods, or terms and conditions of sale at or upon which product is to be sold to any third person;
- (D) Submit noncompetitive, collusive, or rigged bids or quotations for supplying product to any third person;
- (E) Bid or quote, refrain from bidding or quoting, or communicate to the other an intention to bid or quote or refrain from bidding or quoting, or communicate to the other the terms or conditions of any bid or quote on product to be sold to any third person;
- (F) Restrict, limit, prevent, or hinder any person from purchasing product from any third person; and
- (G) Restrict, limit, prevent, or hinder any person from selling product to any third person.

VI

[Exchanging Information with Other Sellers]

Each defendant is enjoined and restrained from directly or indirectly:

- (A) Communicating to or exchanging with any seller of product any prices, pricing methods, or terms or conditions of sale applicable to product except with or after the release of such prices, pricing methods, or terms or conditions of sale to the trade generally, including but not limited to awarding authorities, except in connection with bona fide purchase or sale negotiations;
- (B) Advising any seller of product of the identity of any specific customer to whom or to which, or the area or territory in which the defendant has bid or quoted or intends to bid or quote on product, except in connection with bona fide purchase or sale negotiations;

(C) Advising any seller of product of the identity of any specific customer to whom or to which, or the area or territory in which the defendant has refrained from bidding or quoting or intends to refrain from bidding or quoting on product;

(D) Continuing to be a member of or participating in the activities of any association or other organization with knowledge that any of the activities of such association or such other organization are being carried on in a manner which if such association or such other organization were a consenting defendant herein would violate any of the provisions of this Final Judgment;

(E) Coercing or attempting to coerce any person to restrict, limit, prevent, or hinder the sale of any product to any seller of product; and

(F) Entering into, adhering to, enforcing, or claiming or maintaining any right under any contract, agreement, arrangement, understanding, plan, or program with any other defendant in this proceeding, or with The A. C. Company, Baltimore, Maryland, or The Paul M. Adams Company, Baltimore, Maryland (defendants in *United States v. f. L. Hammett Company, et al.*, Civil No. 31655, in the United States District Court for the Eastern District of Pennsylvania), or with any person who has ownership or control in common with either of the said two companies or with any defendant to allocate or divide territories, markets, fields, or customers for the sale of product.

VII

[Certification of Prices]

Each defendant is ordered and directed for a period of five years from the effective date of this Final Judgment to certify by the affidavit of a responsible corporate officer in January of each year that any changes in published prices, terms, or conditions of sale of product occurring in the preceding twelve months were independently arrived at by said defendant and were not the result of any agreement or understanding with any seller of product; and retain in its files for ten years the aforesaid affidavits which shall be furnished to plaintiff upon written demand therefor.

VIII

[Notices]

(A) Each defendant is ordered and directed to send a copy of this Final Judgment not later than one hundred and eighty days following the effective date of this Final Judgment to each of the awarding authorities in the States of Delaware, New Jersey, Pennsylvania, and the following counties in the State of New York: Albany, Broome, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Nassau, Oneida, Onondage, Orange, Oswego, Otsego, Putnam, Rensselaer, Rockland, St. Lawrence, Saratoga, Schenectady, Schoharie, Suffolk, Sullivan, Tioga, Ulster, Warren, Washington, and Westchester to which or to the predecessors of which sales of product pursuant to sealed bids have been made by such defendant in the year 1960 or 1961;

(B) Each defendant is ordered and directed for a period of five years following the effective date of this Final Judgment to submit a statement, in the form substantially as Set forth in Appendix A hereto, with each sealed bid or information price quotation for product submitted to any awarding authority in response to an invitation to bid or quote which requests such statement, which statement shall be sworn to by the person preparing the same whenever the awarding authority requests that it be in the form of an affidavit; provided that said statement is not required to be submitted if the said information price quotation is for product whose net price is lower than five hundred dollars.

IX

[Fair Trade Contracts]

Nothing in this Final Judgment shall be deemed to prohibit a defendant from entering into and enforcing any rights arising out of lawful "fair trade" contracts.

X

[*Inspection and Compliance*]

For the purpose of determining or securing compliance with this Final Judgment, 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, and on reasonable notice to any defendant made to its principal office, be permitted, subject to any legally recognized privilege and with the right of any such defendant to have counsel present:

(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 matter contained in this Final Judgment; and

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

Each, defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice made to its principal office, shall submit such written reports, under oath if that is requested, with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment. No information obtained by the means provided in this section shall be divulged by any representative of the Department of Justice to any person except a duly authorized representative of the Executive Branch of the United States 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.

XI

[*Jurisdiction Retained*]

Jurisdiction of this cause 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 of or carrying out of this Final Judgment or for the modification or termination of any of the provisions thereof and for the enforcement of compliance therewith and for the punishment of violations thereof.

Appendix A

Statement

The undersigned hereby certify to their best knowledge and belief that

1. The bid or quotation to> (Name of the recipient of bid)> dated>had not been prepared by>(Name of defendant) in collusion with any seller of school supplies; and
2. The prices and terms and conditions of said bid or quotation have not been communicated by the undersigned nor by any employee or other person acting on behalf of>(Name of defendant) to any otherseller of school supplies and will not be communicated to any such seller prior to the official opening of said bid.

Dated:

.....>
.....>

Signature of Person Responsible for Preparation of Bid

.....>

Signature of Person Supervising the above Person (where feasible)