

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Arnold Bakers, Inc., et al., U.S. District Court, E.D. Pennsylvania, (Aug. 3, 1970)

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United States v. Arnold Bakers, Inc., et al.

1970 Trade Cases ¶73,188. U.S. District Court, E.D. Pennsylvania. Civil Action No. 31665. Entered August 3, 1970. Case No. 1686 in the Antitrust Division of the Department of Justice.

Sherman Act

Conspiracy—Bakery and Distributors—Prices, Customers and Territories—Fair Trading—Consent Decree.—A bakery and class defendant wholesalers and subdistributors were prohibited by a consent decree from confining territories, fixing prices, restricting customers and refusing to sell competing products. The decree suspended fair trading for a year.

Injunctive Relief—Covenant Not to Compete with Sold Business—Consent Decree.—A consent decree was not to be deemed to prohibit any defendant, in connection with the sale of any business of distributing the products of a defendant bakery, from entering into a covenant not to engage in the type of business and to the extent of the business that was the subject of the sale.

Government Enforcement—Defendant Class Actions—Wholesalers and Subdistributors—Consent Decree.—A consent decree covered classes of wholesalers and subdistributors of bakery products. The classes were defined in a motion for an order determining that the action be maintained as a class action and in an accompanying affidavit.

For the plaintiff: Louis C. Bechtle, Philadelphia, Pa.

For the defendants: Robert W. Sayre, Philadelphia, Pa., for Plains Distributors, Inc., Robert A. Laurie, Wm. F. Scott and Ronald A. Sherwood; H. Francis DeLone, Philadelphia, Pa., for Arnold Bakers, Inc., and Arnold Bread Sales Corp.; Daniel Mungall, Jr., Philadelphia, Pa., for Edward J. Ksanskak, Gerald J. Perreault, Edmond Toder, George A. Brown and Samuel R. Sollars.

Final Judgment

LORD, D. J.: Plaintiff, United States of America, having filed its complaint herein on June 29, 1962; each of the defendants specifically named in the complaint having appeared and filed their several answers denying the material allegations thereof; and the parties hereto, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, with out admission by any party hereto with respect to any such issue, and without this Final Judgment constituting evidence or an admission by any party hereto with respect to any such issue;

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 the parties hereto as aforesaid, the Court having duly entered An Order Determining That This Action be Maintained As A Class Action under Rule 23(b)(1) Fed. R. Civ. P., it is hereby

Ordered, Adjudged, and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under Sections 1 and 3 of the Act of Congress of July 2, 1890, as amended, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act.

II

[*Definitions*]

As used in this Final Judgment:

- (A) “Arnold” means Arnold Bakers, Inc., a corporation organized and existing under the laws of the State of New York, with its principal place of business at Greenwich, Connecticut;
- (B) “Wholesaler” means any person engaged in the purchase of Arnold Products from Arnold for resale;
- (C) “Subdistributor” means any person engaged in the purchase of Arnold Products from a wholesaler for resale;
- (D) “Person” means an individual, partnership, firm, corporation, association, or other business or legal entity;
- (E) “Arnold Products” means all fresh bread, rolls, and other bakery products, and each of them, produced and sold by Arnold; and
- (F) “Defendants” means Arnold and all wholesalers and subdistributors of Arnold Products, including those persons who are members of the class denominated as wholesalers and the class denominated as subdistributors pursuant to plaintiff’s Motion of February 1, 1967 under Fed. R. Civ. P. 23.

III

[*Applicability—Class Action*]

The provisions of this Final Judgment shall apply to all persons specifically named as defendants in the complaint and to all persons included in and constituting (a) members of that class consisting of all the wholesalers of Arnold Products and (b) members of that class consisting of all the subdistributors of Arnold Products, as described in plaintiff’s Motion, dated February 1, 1967, for an order determining that this action be maintained as a class action and in the accompanying affidavit therewith and to each of the subsidiaries, successors, and assigns of such persons and to their respective directors, officers, agents, servants, and employees, and to all other persons in active concert or participation with any of said persons who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

[*Prices, Territories, Customers*]

Defendants are jointly and severally enjoined and restrained from, directly or indirectly:

- (A) Entering into, maintaining, adhering to, enforcing, or claiming any rights under any contract, agreement, or understanding with any persons or classes of persons purchasing Arnold Products to fix, establish, limit, or restrict the territories in which, or the persons or classes of persons to whom, or the prices at which such products may be resold; provided, however, that after the expiration of a period of one year from the date of entry of this Final Judgment nothing in subsections IV (A) and IV (B) shall prevent or be deemed to prohibit any defendant from lawfully exercising such rights, if any, as it may have arising under Fair Trade laws then in effect; and provided further that nothing in subsections IV (A) and IV (B) shall prevent the imprinting on any Arnold Product the retail price suggested by Arnold or requested by a retailer.
- (B) Selling or offering to sell Arnold Products to any person or classes of persons upon any condition or understanding which fixes, establishes, limits, or restricts the persons or classes of persons to whom, or the territory within which, or the prices at which such products may be resold;
- (C) Selling or offering to sell, resell, or distribute Arnold Products to any persons or classes of persons upon any condition or understanding that the purchaser or prospective purchaser or distributor refrain from selling products, goods, or merchandise other than Arnold Products; and
- (D) Refusing to continue to sell Arnold Products to any person or classes of persons for resale because such person or classes of persons sells products, goods, or merchandise other than Arnold Products.

V

[*Covenant Not to Compete*]

Nothing in this Final Judgment shall be deemed to prohibit any defendant, in connection with the sale of any business of distributing Arnold products, from entering into a covenant not to engage in the type of business and to the extent of the business which is the subject of the sale.

VI

[*Notification*]

(A) Within thirty (30) days after the date of entry of this Final Judgment, defendant Arnold is ordered and directed to send by certified mail to each wholesaler and subdistributor of Arnold Products a conformed copy of this Final Judgment and, within thirty (30) days thereafter, to file with this Court and serve upon plaintiff an affidavit as to the fact and manner of its compliance with this subsection;

(B) Defendant Arnold is ordered and directed, for a period of one year from the date of entry of this Final Judgment, to send by certified mail to each person becoming a wholesaler or subdistributor during that year a conformed copy of this Final Judgment; to be mailed within thirty (30) days after such person becomes a wholesaler or subdistributor;

(C) All defendants are ordered and directed, within ninety (90) days from the date of entry of this Final Judgment, to take all necessary action to effect cancellation of each provision of every contract, agreement, or understanding which is contrary to or inconsistent with any provision of this Final Judgment;

(D) Within one hundred and twenty (120) days from the date of entry of this Final Judgment, defendant Arnold and each defendant wholesaler shall file with this Court and serve upon plaintiff an affidavit as to the fact and manner of their compliance with subsection C of this Section VI. Said affidavits shall include a true and correct copy of every contract, agreement, or understanding whereby Arnold Products are then being sold or distributed, provided, however, to the extent that any such contracts, agreements, or understandings are of the same or substantially in the same form, Arnold and each defendant wholesaler need furnish only one copy of a representative contract, agreement, or understanding, together with a list of all other parties to all the said contracts, agreements, or understandings; and

(E) Thereafter, at least once every three months during the five succeeding years, defendant Arnold and each defendant wholesaler shall notify the plaintiff by letter of each new contract, agreement, or understanding whereby Arnold products are to be sold or distributed (setting forth the names and addresses of the parties thereto and the date thereof), and shall furnish plaintiff with a true and correct copy, verified by affidavit, of each such contract, agreement, or understanding which is not the same or substantially the same form as any of those previously furnished to plaintiff.

VII

[*Compliance and Inspection*]

(A) 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, and on reasonable notice to any defendant made to its principal offices, be permitted, subject to any legally recognized privilege:

(1) 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 any defendant as relate to any matters contained in this Final Judgment; and

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

(B) Any defendant, on the written request of the Attorney General or the Assistant Attorney General in Charge of the Antitrust Division, shall submit such reports in writing, under oath if requested, with respect to any matters contained in this Final Judgment as may from time to time be requested for the purpose of determining or securing compliance with this Final Judgment; and

(C) No such information obtained by the means provided 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 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.

VIII

[*Retention of Jurisdiction*]

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 or directions as may be necessary or appropriate for the construction of or carrying out of this Final Judgment or for the amendment or modification of any of the provisions contained herein, and for the purpose of enabling the plaintiff to apply to this Court for the enforcement of compliance there with and for the punishment of the violation of any of the provisions contained herein.