

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Ward Baking Company; Fleischmann's Vienna Model Bakery; (Frankford-Quaker Grocery Co.); Leo Rossi Baking Company; Schulz Baking Company; and Stroehmann Brothers Company., U.S. District Court, E.D. Pennsylvania, 1964 Trade Cases ¶¶71,173, (Aug. 21, 1964)**

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United States v. Ward Baking Company; Fleischmann's Vienna Model Bakery; (Frankford-Quaker Grocery Co.); Leo Rossi Baking Company; Schulz Baking Company; and Stroehmann Brothers Company.

1964 Trade Cases ¶¶71,173. U.S. District Court, E.D. Pennsylvania. Civil Action No. 31666. Entered August 21, 1964. Case No. 1687 in the Antitrust Division of the Department of Justice.

**Sherman Act**

**Price Fixing—Bakery Products—Consent Judgment.**—A retailer-owned cooperative food wholesaler would be prohibited under the terms of a consent judgment from agreeing with any manufacturer, distributor or seller of bakery products to allocate territories or customers, fix or maintain prices of bakery products, communicate or exchange price information, or from inducing or coercing its member stores to refuse to purchase bakery products from any third person.

For the plaintiff: William H. Orrick, Jr., Assistant Attorney General, Harry G. Sklarsky, William D. Kilgore, Jr., Donald G. Balthis, John E. Sarbaugh, Walter L. Devany, Carl J. Melone, and Richard M. Walker, Attorneys, Department of Justice, Antitrust Division, Department of Justice, Philadelphia, Pa.

For the defendant: Lloyd J. Schumacher for Frankford-Quaker Grocery Co. and Francis L. Van Dusen, United States District Judge.

**Final Judgment**

VAN DUSEN, Judge: Plaintiff, United States of America, having filed its complaint herein on June 29, 1962; the defendant Frankford-Quaker Grocery Co. having appeared; and the plaintiff and the defendant Frankford-Quaker Grocery Co., by their respective attorneys, having severally 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 either party consenting 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, it is hereby

Ordered, adjudged and decreed as follows:

I

[ *Sherman Act*]

This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto. The complaint states a claim upon which relief may be granted against the defendant Frankford-Quaker Grocery Co. under Section 1 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) "Bakery products" means bread and bread rolls;
- (B) "Private label bakery products" means bread and bread rolls bearing private labels of Frankford and sold solely through Frankford's member stores;
- (C) "Person" means any individual, partnership, firm, corporation, association, trustee, or any other business or legal entity;
- (D) "Frankford" means defendant Frankford-Quaker Grocery Co., a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, owned by its member retail grocery stores, and operating as a retailer-owned cooperative food wholesaler that sells to its member stores; and
- (E) "Member store" means a food retailer owning an interest in Frankford.

### III

#### [ *Applicability* ]

The provisions of this Final Judgment applicable to the defendant Frankford shall apply to each of its subsidiaries, successors, assignees, directors, officers, employees, and agents, and to all other persons in active concert or participation with such defendant who shall receive actual notice of this Final Judgment by personal service or otherwise. Frankford is ordered and directed to take such steps as are reasonably appropriate to procure compliance by its subsidiaries, officers, directors, employees, and agents with the terms of this Final Judgment. For the purpose of this Final Judgment, Frankford and its subsidiaries, directors, officers, employees, and agents, or any of them when acting in such capacity, shall be deemed to be one person. Except in the application of Section VI herein, Frankford and its member stores shall be deemed to be one person.

### IV

#### [ *Fixing Prices, Allocating Markets* ]

Defendant Frankford 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 manufacturer, distributor, or seller of bakery products to:

- (A) Allocate or divide territories, markets, fields or customers for the manufacture, distribution, or sale of any bakery products;
- (B) Fix or maintain prices or any terms or conditions for the sale of any bakery product to any third person;
- (C) Exchange information concerning prices or other terms or conditions of sale (other than information released to the trade generally) at or upon which any bakery product is to be sold to any third person;
- (D) Hinder, restrict, limit or prevent any person from purchasing any bakery product from, or selling any bakery product to any third person; or
- (E) Hinder, restrict, limit or prevent any third person from manufacturing, distributing or selling any bakery product for resale.

Provided, however, that nothing in this Section IV shall be construed to approve or prohibit the entry of Frankford into lawful agreements with respect to the purchase or sale of private label bakery products.

### V

#### [ *Trade Association Activity* ]

Defendant Frankford is enjoined and restrained from directly or indirectly:

- (A) Communicating to or exchanging with any manufacturer, distributor or seller of bakery products any prices for bakery products, or any terms or conditions for sale of bakery products, except with or after the release of such information to the trade generally, or except as part of bona fide purchase or sale negotiations;

(B) Becoming or 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 other organization are being carried on in a manner which, if the association or other organization were a consenting defendant herein, would violate any of the provisions of this Final Judgment;

(C) Threatening, coercing, or attempting to coerce any person to refrain from selling or to refuse to sell any bakery product to any other person; provided, however, that nothing in this subparagraph (C) shall be construed to prevent Frankford from taking lawful steps to protect its property rights in private bakery products;

(D) Threatening to discontinue or discontinuing the sale of any bakery product to any other person for the purpose of reducing, preventing, hindering, eliminating, or suppressing competition;

(E) Threatening to discontinue or discontinuing purchasing any bakery product from any other person for the purpose of reducing, preventing, hindering, eliminating, or suppressing competition; and

(F) Threatening to put any person out of the business of manufacturing, distributing, or selling any bakery product.

## VI

### [ *Refusal to Deal* ]

Defendant Frankford is enjoined and restrained, from directly or indirectly:

(A) Inducing, compelling, or coercing, or attempting to induce, compel, or coerce any member store to refuse to purchase bakery products from any third person;

(B) Restricting or limiting the persons to whom any member store will sell bakery products; or

(C) Compelling any member store to adhere to any prices, terms, or conditions in the sale of bakery products to any third person.

## VII

### [ *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 defendant Frankford made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Reasonable access during the office hours of defendant Frankford to all books, ledgers, accounts, correspondence, memoranda and other records and documents in its possession or under its control relating to any matters contained in this Final Judgment, with the right of defendant Frankford to have counsel present; and

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

Defendant Frankford, upon, written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, 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 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

### [ *Jurisdiction Retained* ]

Jurisdiction is retained by this Court for the purpose of enabling either of the parties consenting 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 thereof, and for the enforcement of compliance therewith and the punishment of the violations thereof.