

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Ward Baking Company; Fleischmann's Vienna Model Bakery; Frankford-Quaker Grocery Company; (Leo Rossi Baking Company); (Schulz Baking Company); and (Stroehmann Brothers Company)., U.S. District Court, E.D. Pennsylvania, 1964 Trade Cases ¶71,119, (Jun. 26, 1964)

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

1964 Trade Cases ¶71,119. U.S. District Court, E.D. Pennsylvania. Civil Action No. 31666. Entered June 26, 1964. Case No. 1687 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Bread—Consent Judgment.—Three bakeries were prohibited under the terms of a consent judgment from agreeing with each other or other competitors to allocate markets, fix prices, exchange price information, or hinder, limit or restrict any person from purchasing or selling bakery products.

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. McClone, and Richard M. Walker, Attorneys, Department of Justice, Antitrust Division, Philadelphia, Pa.

For the defendants:

Final Judgment

VAN DUSEN, Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on June 29, 1962, and defendants Stroehmann Brothers Company, Schulz Baking Company, and Leo Rossi Baking Company (hereinafter sometimes referred to as “consenting defendants”) having appeared and filed their respective answers denying the material allegations thereof, and the parties having consented to the entry of this Final Judgment pursuant to a stipulation entered into 5/26/64 without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or admission by any party 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, 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 each consenting defendant. The complaint states a claim for relief against each consenting defendant 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; and

(B) "Person" means any individual, partnership, firm, corporation association, trustee, or any other business or legal entity.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to each consenting defendant, its subsidiaries, successors, and assignees, and to its directors, officers, employees, and agents, and to all other persons in active concert or participation with such consenting defendant who shall receive actual notice of this Final Judgment by personal service or otherwise. Each consenting defendant 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, each consenting defendant and its subsidiaries, directors, officers, employees, and agents, or any of them when acting in such capacity, shall be deemed to be one person.

IV

[*Price Fixing, Division of Markets*]

Each consenting defendant 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 product; provided, however, that nothing in this sub-paragraph (A) shall be construed to approve or prohibit the entry by a consenting defendant into lawful distribution agreements with respect to the sale of its bakery products, or into lawful trade-mark licensing agreements with respect to the manufacture, distribution, or sale of trade-mark 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; except as may result from any lawful purchase or sales agreements, without more; or
- (E) Hinder, restrict, limit or prevent any third person from manufacturing, distributing or selling any bakery product for resale; except as may result from any lawful purchase or sales agreements, without more.

V

[*Exchange of Price Information*]

Each consenting defendant is enjoined and restrained from directly or indirectly:

- (A) Communicating to or exchanging with (1) any manufacturer 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; or (2) any distributor or seller of bakery products, other than such defendant's own customers, any prices for 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;
- (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

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

- (A) Reasonable access during the office hours of a consenting defendant 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 such consenting defendant to have counsel present; and
- (B) Subject to the reasonable convenience of a consenting defendant and without restraint or interference from it, to interview its officers or employees, who may have counsel present, regarding any such matter.

Each consenting defendant, 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 VI 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 any 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.