

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Ward Baking Company; (Fleischmann's Vienna Model Bakery); Frankford Grocery Company; Leo Rossi Baking Company; Sohulz Baking Company; and Stroehmann Brothers Company., U.S. District Court, E.D. Pennsylvania, 1964 Trade Cases ¶71,008, (Mar. 2, 1964)

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

1964 Trade Cases ¶71,008. U.S. District Court, E.D. Pennsylvania. Civil Action No. 31666. Entered March 2, 1964. Case 1687 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Bread—Consent Judgment.—A bakery was prohibited under the terms of a consent judgment from agreeing with 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., Harry G. Sklarsky, William D. Kilgore, Jr., Donald G. Balthis, John E. Sarbaugh, Walter L. Devany, Carl J. Melone, and Richard M. Walker.

For the defendant: K. Robert Conrad for Fleischmann's Vienna Model Bakery.

Final Judgment

VAN DUSEN, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on June 29, 1962; the defendant Fleischmann's Vienna Model Bakery having appeared and filed its answer to the complaint denying the material allegations thereof; and the plaintiff and the defendant Fleischmann's Vienna Model Bakery, 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 Fleischmann's Vienna Model Bakery 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. The making and entry of this Final Judgment shall be without prejudice to the plaintiff seeking other, further and different relief against the remaining defendants in this action.

II

[*Definitions*]

As used in this Final Judgment:

(A) "Bakery products" means bread and bread rolls;

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

(C) "Fleischmann's" means defendant Fleischmann's Vienna Model Bakery, a corporation organized and existing under the laws of the State of Pennsylvania.

III

[*Applicability*]

The provisions of this Final Judgment applicable to the defendant Fleischmann's 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.

IV

[*Price Fixing, Division of Markets*]

Defendant Fleischmann's 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;

(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 any third person;

(E) Hinder, restrict, limit or prevent any person from selling any bakery product to any third person; and

(F) Hinder, restrict, limit or prevent any third person from manufacturing, distributing or selling any bakery product for resale.

V

[*Exchange of Price Information*]

Defendant Fleischmann's is enjoined and restrained from directly or indirectly:

(A) Communicating to or exchanging with any manufacturer, distributor or seller of any bakery product, any prices applicable to any bakery product, except with or after the release of such prices to the trade generally, or except in connection with bona fide purchase or sale negotiations;

(B) 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 the provisions of this Final Judgment;

(C) Threatening, coercing, inducing, or attempting to induce any person to refrain from selling any bakery product to any other person, or to refuse to sell any bakery product to any other person;

(D) Threatening to discontinue or discontinuing selling any bakery product to any other person in order to reduce, prevent, hinder, eliminate, or suppress 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 defendant Fleischmann's made to its principal office, be permitted, subject to any legally recognized privilege:

(A) 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 matters contained in this Final Judgment; and

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

Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendant Fleischmann's 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.

VII

[*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.