

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Federated Department Stores, Inc., d/b/a I. Magnin & Co., and Saks & Co., d/b/a Saks Fifth Avenue., U.S. District Court, N.D. California, 1978-1 Trade Cases ¶62,129, (Mar. 10, 1978)

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United States v. Federated Department Stores, Inc., d/b/a I. Magnin & Co., and Saks & Co., d/b/a Saks Fifth Avenue.

1978-1 Trade Cases ¶62,129. U.S. District Court, N.D. California, Civil No. 76-858 RHS, Entered March 10, 1978, (Competitive impact statement and other matters filed with settlement: 42 *Federal Register* 59125, 43 *Federal Register* 9659).

Case No. 2516, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Exchange of Information: Women's Clothing Industry: Consent Decree.— A women's clothing retailer was enjoined by a consent decree from fixing prices or markups, and from acting to coerce or attempt to influence others to adhere to any suggested price or markup in connection with any women's clothing offered for sale at retail. The defendant was also enjoined from exchanging information as to prices, price changes, markups, or markup changes, and as to any third person's refusals to adhere to, or to change prices or markups. The decree barred the defendant from soliciting, accepting or offering lists of actual or proposed prices or markups involving other retailers; and any list promulgated and offered to any manufacturer should be labeled as confidential.

Department of Justice Enforcement and Procedure: Consent Decree: Administrative Provisions: Notice of Compliance: Applicability of Provisions.— A women's clothing retailer was required, under the terms of a consent decree, to advise its officers and employees, for a period of ten years, of the obligations under the decree. On each anniversary of the decree, during that period, defendant was also required to report all steps taken to discharge its obligations. The provisions of the decree applied solely to a division of the defendant or its successors and successors should be required by the defendant to consent to be bound by the decree.

For plaintiff: John H. Shenefield, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Anthony E. Desmond, David W. Raub, Glenda R. Jermanovich, and Elizabeth B. Wurzburg, Attys., Dept. of Justice. **For defendants:** Jerome I. Chapman of Arnold & Porter, Washington, D. C.

Final Judgment

SCHNACKE, D. J.: Plaintiff, United States of America, having filed its complaint herein on April 28, 1976, and Defendant Federated Department Stores, Inc., doing business as I. Magnin & Co., having appeared by its attorneys, and the Plaintiff and the Defendant, 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 and without this Final Judgment constituting evidence or an admission by any party with respect to any such issue;

Now, Therefore, before the taking of any testimony and upon the consent of the parties hereto, it is hereby, Ordered, Adjudged and Decreed as follows:

I.

[Jurisdiction]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a claim upon which relief may be granted against the Defendant under Section I of the Sherman Act (15 U. S. C. §1).

II.

[Definitions]

As used in this Final Judgment:

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

(B) "Women's clothing" means dresses, suits, coats, separates, sportswear, and other items of outerwear intended to be worn by women, but excluding shoes, furs, millinery, and accessories.

(C) "Markup" means the difference between the cost price of an item and its retail price.

(D) "Operation" means a division or component portion of Federated Department Stores, Inc. which sells women's clothing at retail.

III.

[Applicability]

The provisions of this Final Judgment shall apply solely:

(A) To each of the following operations of Defendant:

(1) The I. Magnin & Co. division of the Defendant; or

(2) Any operation of the Defendant in any form (including but not limited to subsidiary, branch or division) which shall at any time succeed to the business of the I. Magnin & Co. division, whether by transfer of stock or assets, reorganization or otherwise; and

(3) Any operation of the Defendant which engages in the business of selling women's clothing under a trade name incorporating the words "I. Magnin" or any variation thereof.

(B) To each officer, director, agent, employee, subsidiary, successor or assign of each operation specified in Part III (A) above;

(C) To all other persons in active concert or participation with any of those specified in Part III(A) or III(B) above who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

[Successors]

The Defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of the assets used in any operation specified in Part III(A) above, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court, and serve upon the Plaintiff, its consent to be bound by this Final Judgment.

V.

[Price Fixing]

(A) The Defendant is enjoined and restrained from entering into, adhering to, maintaining, furthering or enforcing, directly or indirectly, any agreement, understanding, plan or program with any other person to raise, fix, stabilize or maintain prices, markups or other terms or conditions at which women's clothing is offered for sale at retail.

(B) The Defendant is enjoined and restrained from acting, either unilaterally or in concert with any other person, directly or indirectly, to induce, coerce or attempt to influence any other retailer to adhere to any manufacturer's suggested or other retail prices or markups for any women's clothing offered for sale at retail.

VI.

[Price Information]

(A) The Defendant is enjoined and restrained from communicating directly or indirectly to any other retailer of women's clothing information concerning:

- (1) The actual or proposed prices, price changes, markups, or markup changes of any women's clothing Defendant offers or proposes to offer for sale at retail;
- (2) The actual or proposed prices, price changes, markups or markup changes of any women's clothing offered or proposed to be offered for sale at retail by any person other than the Defendant;
- (3) Any third person's refusal to adhere to or intention not to adhere to any manufacturer's suggested or other retail prices or markups for any women's clothing offered or proposed to be offered for sale at retail;
- (4) Any third person's refusal to change or intention not to change its prices or markups for any women's clothing offered or proposed to be offered for sale at retail.

(B) The Defendant is enjoined and restrained from:

- (1) Soliciting or accepting from any person any list of actual or proposed prices or markups pertaining to any women's clothing where the Defendant knows or has reason to believe that the list was promulgated by any retailer other than the Defendant;
- (2) Offering to any person any list of actual or proposed prices or markups pertaining to any women's clothing for the purpose of dissemination to any retailer other than Defendant.

(C) Any written list of actual or proposed prices or markups pertaining to women's clothing which is promulgated and offered to any manufacturer of women's clothing by any operation specified in Part III (A) above shall contain the following legend at the top of each page thereof: "Confidential--Not for distribution to any retailer outside of Federated Department Stores, Inc."

(D) Nothing in this Final Judgment shall apply to any communications from the Defendant to the general public concerning prices or markups, nor, except as provided in Part VII below, to any communications or transactions concerning prices, markups or any other subject solely between or among any employees of Federated Department Stores, Inc.

VII.

[Notice]

The Defendant is ordered and directed to:

(A) Distribute a copy of this Final Judgment to each of its Directors and, for a period of ten (10) years from the date of entry of this Final Judgment, take affirmative steps (including, but not limited to, distribution of this Final Judgment, written directives setting forth corporate compliance policies and meetings to review the terms and obligations of this Judgment) to advise each of its officers, merchandise managers, buyers, assistant buyers, store managers and other employees having managerial or supervisory responsibility for the purchasing or pricing of women's clothing offered for sale at retail (i) by any operation specified in Part III (A) above and (ii) by the Bullock's Northern California division of the Defendant or any operation that succeeds to the business thereof, of their obligations under this Final Judgment and of the criminal penalties for engaging in conduct prohibited in Parts V and VI of this Final Judgment.

(B) Within sixty (60) days after receipt from the attorney for the Plaintiff, following the entry of this Final Judgment, of a written listing of the names and mailing addresses of persons offering women's clothing for sale at retail in Northern California, distribute a conformed copy of this Final Judgment to each person so listed.

(C) For a period of ten (10) years from the date of entry of this Final Judgment, on each anniversary date thereof, file with this Court and mail to the Plaintiff an affidavit of the person responsible for the performance of the Defendant's obligations under Subsection (A) of this Part VII setting forth all steps that Defendant has taken during the preceding year to discharge such obligations.

(D) Within ninety (90) days after receipt of the written listing provided for in Subsection (B) of this Part VII, file with this Court and mail to the Plaintiff an affidavit setting forth the manner of compliance with that Subsection.

VIII.

[Inspection]

(A) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, the Defendant shall permit duly authorized representatives of the Department of Justice, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant at its principal office, subject to any legally recognized privilege:

(1) Access, during the regular business hours of Defendant, who may have counsel present, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the Defendant which relate to any matters contained in this Final Judgment;

(2) Subject to the reasonable convenience of the Defendant, and without restraint or interference from it, to interview any officers or employees of Defendant, who may have counsel present, regarding any matters contained in this Final Judgment.

(B) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, the Defendant shall submit such reports in writing, under oath if so requested, with respect to any matters contained in this Final Judgment as may from time to time be requested in writing by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division.

(C) No information obtained by the means provided in this Part VIII shall be divulged by a 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, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at any time information or documents are furnished by Defendant to Plaintiff, and Defendant represents and identifies in writing the material in any such information or documents of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by Plaintiff to Defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the Defendant is not a party.

IX.

[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 and directions as may be necessary or appropriate for the construction of or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.

X.

[Public Interest]

Entry of this Final Judgment is in the public interest.