

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Utah-Idaho Sugar Co., and California and Hawaiian Sugar Co., U.S. District Court, N.D. California, 1978-2 Trade Cases ¶62,237, (Sept. 13, 1978)

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United States v. Utah-Idaho Sugar Co., and California and Hawaiian Sugar Co.

1978-2 Trade Cases ¶62,237. U.S. District Court, N.D. California, Civ. No. 74-2676 SC, Entered September 13, 1978, (Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 27252).

Case No. 2431, Antitrust Division, Department of Justice.

## Sherman Act

**Refusal to Deal: Agreements to Refuse to Sell: Private Label Sugar: Consent Decree.**— Two sugar refiners were barred by a consent decree from entering or participating in any concerted refusal to sell private label sugar.

**For plaintiff:** John H. Shenefield, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Anthony E. Desmond, Christopher S. Crook, and Glenda R. Hermanovich, Attys., Dept. of Justice. **For defendants:** James F. Kirkham, of Pillsbury, Madison & Sutro, San Francisco, Cal., for Utah-Idaho Sugar Co.; Brobeck, Phleger & Harrison, San Francisco, Cal., for California and Hawaiian Sugar Co.

## Final Judgment

Peckham, D. J.: Plaintiff, United States of America, having filed its complaint herein on December 19, 1974 and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment in the above-captioned case, without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or admission by any party with respect to any issues of fact or law herein:

Now, Therefore, without any testimony being taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent of all parties hereto, it is hereby Ordered, Adjudged, and Decreed:

### I

#### [ *Jurisdiction* ]

This Court has jurisdiction of the subject matter herein and the parties hereto. The complaint states a claim upon which relief may be granted against the defendants under Section I of the Act of Congress of July 2, 1890, commonly known as the Sherman Act, as amended (15 U. S. C. §1).

### II

#### [ *Definitions* ]

As used in this Final Judgment:

- (A) "Person" means any individual, partnership, firm, corporation, association, or any other business or legal entity;
- (B) "Refined sugar" means any grade or type of refined dry or liquid sugar derived from sugar beets or raw cane sugar;
- (C) "Refiner" means any company engaged in the processing of sugar beets or the refining of raw cane sugar into, and the sale of, refined sugar;

(D) "Private label sugar" means refined sugar packed by a refiner for resale to the general public as sugar, and sold under the brand name of a non-refiner purchaser and which does not reveal the identity of the refiner of the sugar on the package.

### III

#### **[ Applicability ]**

The provisions of this Final Judgment shall apply to the defendants and to each of their respective officers, directors, agents and employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them, including brokers, jobbers and sugarbeet grower representatives, who shall receive actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall apply to acts or transactions of any defendant occurring within, or affecting any acts or transactions within, the States of Washington, Oregon, Utah, Idaho and Wyoming (west of the town of Rawlins).

### IV

#### **[ Private Label Sugar ]**

Each refiner defendant is enjoined and restrained from entering into, adhering to, participating in, maintaining, enforcing or claiming any right under any agreement, contract, understanding, or combination reached directly with any other refiner or indirectly through any intermediary, including but not limited to brokers, sugarbeet grower representatives and sugar cane grower representatives, to refrain from selling private label sugar.

### V

#### **[ Notice to Employees ]**

Each refiner defendant is ordered and directed for a period of ten (10) years:

(A) Within sixty (60) days from the entry of the Final Judgment to (1) serve a copy of this Final Judgment upon each of its officers, directors, agents and employees who have any responsibility for the sale of refined sugar, and (2) obtain a written statement from each such person evidencing his receipt of the Final Judgment, such statement to be retained in the files of the President of each defendant for a period of ten (10) years from the date of service;

(B) Within sixty (60) days after each new officer, director, agent or employee having any responsibility for the sale of refined sugar becomes employed by a defendant, that defendant shall serve a copy of the Final Judgment on that person and obtain a written statement evidencing his receipt of the Judgment, such statement to be retained in the files of the President of each defendant for a period of ten (10) years from the date of service;

(C) Within ninety (90) days from the entry of this Final Judgment, to serve upon plaintiff and to file with the Court, an affidavit concerning the fact and manner of compliance with Subsection (A) of this Section V.

### VI

#### **[ Notice to Brokers ]**

Each refiner defendant is ordered and directed to:

(A) Within sixty (60) days of entry of this Final Judgment to (1) serve by certified mail, return receipt requested, a copy of this Final Judgment upon each broker who, within the past five years has sold its refined sugar, and (2) retain the certified mail receipts evidencing the mailing of the Final Judgment, such receipts to be retained in the files of the President of each defendant for a period of ten (10) years from the date of mailing;

(B) Serve by certified mail for a period of 10 years, return receipt requested, a copy of this Final Judgment upon each of its future brokers at the time the broker begins selling its refined sugar, and (2) retain the certified mail

receipts evidencing the mailing of the Final Judgment, such receipts to be retained in the files of the President of each defendant for a period of ten (10) years from the date of mailing;

(C) Within ninety (90) days from the entry of this Final Judgment, to serve upon the United States and to file with the Court, an affidavit concerning the fact and manner of compliance with Subsection (A) of this Section VI, including the identity of the brokers served.

## VII

For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:

- (1) Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating 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, employees and agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents 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, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law. If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under 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 such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which that defendant is not a party.

## VIII

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 or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

## IX

Entry of this Final Judgment is in the public interest.