

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Western Winter Sports Representatives Association, Inc., U.S. District Court, N.D. California, 1962 Trade Cases ¶70,418, (Aug. 31, 1962)

United States v. Western Winter Sports Representatives Association, Inc.

1962 Trade Cases ¶70,418. U.S. District Court, N.D. California, Southern Division. Civil No.40567. Entered August 31, 1962. Case No. 1652 in the Antitrust Division of the Department of Justice.

Sherman Act

Trade Association—Solicitation Rights—Sales Representatives—Sporting Goods— Consent Judgment.—An association of manufacturer's sales representatives for winter sports goods was prohibited from restricting or regulating the right of a manufacturer's representative to solicit business at any rate of commission acceptable to him or the right of a person to solicit employment or enter into an agency agreement with any manufacturer or wholesaler.

Trade Association—Participation in Trade Shows—Consent Judgment.—An association of manufacturer's sales representatives for winter sports goods was prohibited by a consent judgment from restricting participation in its trade shows, limiting invitations to its shows to certain retailers, preventing competing manufacturer's representatives from exhibiting at trade shows, and discriminating unreasonably among exhibitors participating or seeking to participate in a trade show or in the assessment of expenses, rents, advertising charges, and other costs of a trade show.

For the plaintiff: Lee Loevinger, Assistant Attorney General, Harry G. Sklarsky, W. D. Kilgore, Jr., Lyle L. Jones, Marquis L. Smith, and William B. Richardson, Attorneys, Department of Justice, and Cecil F. Poole, United States Attorney (by Charles Elmer Collett), Acting United States Attorney.

For the defendant: Jesse Feldman, of Feldman, O'Donnell & Waldman, and Ricardo J. Hecht.

Final Judgment

ZIRPOLI, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on March 7, 1962, the defendant having appeared generally and having waived service of process, and the parties hereto 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 any admission by or estoppel of any party as to any such issue:

Now, therefore, it is ordered, adjudged and decreed as follows:

I

[Sherman Act]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim for relief against defendant Association under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

[Definitions]

As used herein:

- (A) "Defendant Association" shall mean the defendant Western Winter Sports Representatives, Association, Inc.;
- (B) "Winter sports goods" shall mean any articles of clothing, equipment and gear which are used in connection with active ice and snow sports, including, but not limited to, ski suits, ski pants, stretch pants, socks, parkas,

jackets, sweaters, gloves and mittens, caps and headwear, goggles, eyeglasses, after-ski-wear, ski boots, skis and ski parts and accessories, ski poles and parts, ski racks and carriers, ski waxes and lacquers, ski packs and rucksacks, mountain boots, boot trees, water repellent, ice skates and shoes, hockey equipment and gear, toboggans and sleds, resort news guides and instruction books (not including solicitation of advertisements therein), locks and equipment, ski games and motion pictures;

(C) "Person" shall mean any individual, firm, partnership, corporation, association or other business or legal entity;

(D) "Manufacturer" shall mean any person engaged in the manufacture of winter sports goods. A manufacturer normally sells to wholesalers, importers or retailers, either through its own salesmen or through manufacturers' representatives;

(E) "Manufacturers' representative" shall mean any person engaged in business as a selling agent on a commission basis for two or more principals who are generally manufacturers or importers of winter sports goods;

(F) "Wholesaler" shall mean any person engaged in the business of purchasing winter sports goods from a manufacturer thereof for resale to retailers;

(G) "Importer" shall mean any wholesaler who purchases winter sports goods produced by manufacturers located in foreign countries;

(H) "Retailer" shall mean any person engaged in the business of purchasing winter sports goods for resale to users of said goods;

(I) "Trade show" shall mean any trade show at which winter sports goods are exhibited to retailers in hotels, auditoriums, and other public meeting places. Examples of "trade shows" are those known as "Western Winter Sports Market Weeks," sponsored, directed and controlled by defendant Association, and currently held annually in April and May in Seattle, Washington; Denver, Colorado; and Los Angeles and San Francisco, California.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to defendant Association, its members,, officers, directors, agents, employees, successors and assigns, and to those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Solicitation Rights*]

Defendant is enjoined and restrained from adopting, participating in, maintaining, or enforcing any bylaw, rule, regulation, contract, agreement, understanding, plan or program in concert with any of its members or any other person having the purpose or effect of:

(A) Restricting, regulating or limiting the right of any manufacturers' representative to solicit any line at any rate of commission acceptable to such manufacturers' representative;

(B) Restricting, regulating or limiting the right of any person to solicit employment from or an agency agreement with any manufacturer, wholesaler or importer; or

(C) Determining which retailers should or should not be entitled or permitted to purchase winter sports goods from manufacturers' representatives or others.

V

[*Trade Show Restrictions*]

Defendant is enjoined and restrained from:

- (A) Prohibiting or regulating the issuance by any exhibitor of invitations to retailers to attend any trade show;
- (B) Prohibiting or restricting the attendance at any trade show of any retailers holding such an invitation in writing;
- (C) Refusing; to accept as an exhibitor or otherwise preventing any manufacturer, wholesaler, importer or manufacturers' representative, their officers and employees, from exhibiting and selling a line or lines of winter sports goods at any trade show, except a manufacturer, wholesaler, importer or manufacturers' representative, their officers and employees, whose same line or lines of winter sports goods are to be or are being exhibited at that particular trade show by a member of defendant Association who is a manufacturers' representative;
- (D) Discriminating unreasonably between or among exhibitors participating or seeking to participate in a trade show in the allocation of space, exhibitor listings and advertisements;
- (E) Charging or assessing any exhibitor at any trade show other than his pro rata share of the costs involved in the planning, promotion and operation of said trade show; provided that in any proceeding brought to enforce this subsection (E), the burden shall be on the defendant Association to establish that any such charge or assessment was the pro rata share of the costs involved in the planning, promotion and operation of the trade show involved;
- (F) Discriminating unreasonably between or among exhibitors in the assessment of expenses, rents, advertising charges and other costs of said show; provided that in any proceeding brought to enforce this sub section. (F) the burden shall be on the defendant Association to establish that any such assessment was reasonable and non discriminatory.

VI

[*Bylaws*]

Defendant is ordered to rescind all of its bylaws, code of ethics, rules and regulations which contravene or conflict in any way with the provisions of this Final Judgment.

VII

[*Notice of Judgment*]

Defendant is ordered and directed:

- (A) Within 30 days after the entry of this Final Judgment, to serve by mail upon each of its members a conformed copy of this Final Judgment. Said defendant is further ordered and directed to thereupon file an affidavit with the clerk of this court that it has done so, which affidavit shall set forth the name and address of each person so served;
- (B) To furnish a copy of this Final Judgment to each new member of defendant Association at the time of acceptance of such membership, and obtain from each such new member and keep for ten years in its files, a receipt therefor, signed by each such new member;
- (C) To publish annually in one or more western winter sports publications such information as will enable exhibitors and potential exhibitors properly and seasonably to make application to exhibit at trade shows sponsored each year by defendant Association.

VIII

[*Inspection and Compliance*]

On written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, and subject to any legally recognized

privilege and with the right of such defendant to have counsel present, duly authorized representatives of the Department of Justice, for the purpose of securing compliance with this Final Judgment, shall be permitted:

(A) Access, during 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;

(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 such written request defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section VIII 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 plaintiff except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX

[*Jurisdiction Retained*]

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 carrying out of this Final Judgment, for the amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.