

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Wilson & Geo. Meyer & Co., and Sunshine Garden Products, Inc., U.S. District Court, N.D. California, 1961 Trade Cases ¶70,020, (May 4, 1961)

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United States v. Wilson & Geo. Meyer & Co., and Sunshine Garden Products, Inc.

1961 Trade Cases ¶70,020. U.S. District Court, N.D. California, Southern Division. Civil No. 38606. Dated May 4, 1961. Case No. 1484 in the Antitrust Division of the Department of Justice.

Sherman Act

Consent Decree—Canadian Peat Moss—Territorial Restrictions—Quotas—Price Fixing.—A consent decree signed by distributors for joint sales agencies representing groups of Canadian and domestic peat moss prohibits the distributor from acting as representatives for joint sales agencies or as exclusive distributors for more than one producer, allocating territories for sales of Canadian peat moss, fixing annual quotas, restricting territories or re-sale prices for jobbers and dealers, and granting “exclusive purchase” discounts. *Purchases* (other than on a restrictive basis) from producers generally would be permitted, as would valid quantity discounts with general notice. The defendants may exercise fair trade price rights only under the Miller-Tydings Act during the first 10 years following the decree; thereafter, they may fair trade under the Maguire amendment.

For the plaintiff: Lee Loevinger, Assistant Attorney General, Lyle L. Jones, W. D. Kilgore, Jr., Marquis L. Smith, George H. Schueller, and Franklin Knock, Attorneys Department of Justice.

For the defendants: Moses Lasky of Brobeck, Phleger & Harrison.

Final Judgment

SWEIGERT, District Judge [In full text]: The plaintiff, United States of America, having filed its complaint herein on October 21, 1959; and the defendants having appeared by their attorneys and having filed their answers to the complaint denying its substantive allegations and any violations of law; and the plaintiff and the defendants, by their respective attorneys, having severally consented to the entry of this Final Judgment without any admission by any party with respect to any issue herein, and the Court having considered the matter and being duly advised:

Now, therefore, before any testimony has been taken herein, and upon the consent of the plaintiff and defendants hereto,

It is hereby ordered, adjudged and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims for relief against the defendants under the antitrust laws of the United States.

II

As used herein:

- (a) “Defendants” means Wilson & Geo. Meyer & Co. and Sunshine Garden Products, Inc,
- (b) “Canadian peat moss” means peat moss produced from bogs located in the Province of British Columbia, Canada.
- (c) “Person” means any individual, partnership or corporation.
- (d) “Producer” means a person who produces Canadian peat moss. For the purposes of this Final Judgment, Western Peat Company Limited and Industrial Peat Products, Ltd. shall be deemed to be but one single

producer as long as at least 51%, in the aggregate, of the stock of one is owned by the other and/or officers, employees and directors of the other.

(e) "Distributor" means a person who purchases Canadian peat moss from producers for resale to jobbers.

(f) "Jobber" means a person who purchases peat moss from distributors for resale to dealers.

(g) "Dealer" means a person who purchases peat moss from jobbers for resale to users.

(h) "Agreement of Exclusive Distributorship" means an agreement or understanding between a distributor and a producer whereby the producer agrees not to sell Canadian peat moss to any person other than the distributor in a specified portion of the United States.

(i) "Western States" means the area covered by the States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming.

III

The provisions of this Final Judgment applicable to defendants shall apply to each defendant and its officers, agents, servants, employees and attorneys, 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

Defendants, and each of them, effective July 1, 1961, are enjoined from entering into or adhering to any agreement or understanding with producers or any common sales agency of producers, or claiming any rights under any such agreement or understanding to which defendants or either is a party:

(a) To select or determine what other persons should act as distributors, jobbers and dealers in the United States;

(b) To allocate sales territories in the United States between or among distributors, jobbers, dealers, or any of them;

(c) To fix, establish or stabilize prices at which others resell Canadian peat moss as distributors, jobbers, or dealers.

Nothing in subdivisions (a) or (b) of this Section IV shall be construed as preventing a defendant from entering into, adhering to, or claiming any rights under, an agreement of exclusive distributorship not prohibited by Section V of this Final Judgment. Nothing in subdivision (c) of this Section IV or in Section VI hereof shall prohibit a defendant, during the ten years following the entry of this decree, from exercising such lawful rights as it may have under the Miller-Tydings Act, and after such ten-year period, from exercising such lawful rights as it may have under the Maguire Fair Trade Amendment.

V

Defendants, and each of them, effective July 1, 1961, are enjoined from:

(a) Acting as a distributor for Canadian Peat Moss, Ltd., or for any other common sales agency of two or more producers;

(b) Entering into, or continuing to act under, any agreement of exclusive distributorship with more than one producer or with respect to Canadian peat moss produced by other than said producer. This subdivision V (b) shall not prohibit any defendant from purchasing peat moss from one or more other producers providing such other producer or producers are, from year to year, contractually free to sell peat moss of their production to persons other than the defendant;

(c) Selling under the trademark "Sunshine Brand," for a period of five years following the entry of this Final Judgment, Canadian peat moss produced by Atkins & Durbrow, Ltd., Acme Peat Products, Ltd., North American Peat Co., and their respective successors and assigns;

(d) Entering into any agreement or understanding limiting or restricting the sales territory or geographical area in the United States in which they or either of them may or will sell Canadian peat moss; provided that nothing in subdivisions (b) or (d) of this Section V shall prevent either defendant from accepting from Western Peat Company, Limited, an exclusive license to use the trademark "Sunshine," in the Western States, or any part thereof.

VI

Defendants, and each of them, are enjoined from:

- (a) Entering into any agreement with any jobber or dealer (1) by which the quantity of peat moss said jobber or dealer agrees to buy from a defendant is expressed in terms of total annual requirements or any particular percentage of total annual requirements, (2) by which said jobber or dealer agrees to resell peat moss at a price designated by any defendant, or (3) by which said jobber or dealer agrees to limit his sales of peat moss to a designated territory;
- (b) Forcing any jobber or dealer to resell peat moss at a price designated by any defendant by refusing to sell him or by threatening him with refusal to sell him any brand of peat moss or any products;
- (c) Forcing any jobber or dealer to limit his sales of peat moss to a designated territory by refusing to sell him or by threatening him with refusal to sell him any brand of peat moss or any products; and
- (d) Granting any discount or rebate to any jobber or dealer on condition that said jobber or dealer purchase his total annual requirements or any particular percentage of his total annual requirements of peat moss from any defendant.

Nothing in this Section VI shall prevent a defendant from suggesting to a jobber or other vendee of said defendant a resale price with respect to peat moss, or from granting nondiscriminatory discounts to its customers based upon the quantity of peat moss purchased, provided said quantity discounts have been first announced generally to the trade.

VII

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to their principal office, be permitted, subject to any legally recognized privilege:

(a) Access, during office hours of defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants relating to any matters contained in this Final Judgment;

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

Upon such written request, defendants 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 VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department 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.

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 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.