

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Southern California Marble Association; Vermont Marble Company; Musto-Keenan Company; Hilgartner Marble Company; Los Angeles Marble & Tile Company, Inc.; Long Beach Marble & Tile Company; Westco Co., Ltd.; Southwest Onyx and Marble Co.; Stanley Bruner; B. V. Collins; A. J. Grimes; T. M. Howard; J. W. Fisher; Joseph B. Keenan; Edward G. Pollak; Guido J. Musto; J. R. Wesselne; R. J. Broxholme; Louis H. Daprich; Andrew H. Hilgartner; John W. Broxholme; Oliver H. Halsell., U.S. District Court, S.D. California, 1940-1943 Trade Cases ¶56,089, (Nov. 12, 1940)

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United States of America v. Southern California Marble Association; Vermont Marble Company; Musto-Keenan Company; Hilgartner Marble Company; Los Angeles Marble & Tile Company, Inc.; Long Beach Marble & Tile Company; Westco Co., Ltd.; Southwest Onyx and Marble Co.; Stanley Bruner; B. V. Collins; A. J. Grimes; T. M. Howard; J. W. Fisher; Joseph B. Keenan; Edward G. Pollak; Guido J. Musto; J. R. Wesselne; R. J. Broxholme; Louis H. Daprich; Andrew H. Hilgartner; John W. Broxholme; Oliver H. Halsell.

1940-1943 Trade Cases ¶56,089. U.S. District Court, S.D. California, Central Division, November 12, 1940. Civil No. 1254-H.

Civil proceedings commenced by the United States under the Sherman Anti-Trust Act against defendant marble association and defendant members thereof are terminated by entry of a consent decree. Among the practices forbidden by the decree are: limiting or pro-rating business; fixing prices, by meetings or otherwise, for the sale and installation of marble in the Southern California area; distributing data in such form as to indicate the relationship of the sales or installations of a single dealer to the total sales and installations in the Southern California area; creating or operating a bid depository; disseminating information as to future prices to be charged; discriminating in prices or terms of sale, directly or indirectly, against any marble dealer in the Southern California area.

William Fleet Palmer, Acting United States Attorney, Tom C. dark, Alfred C. Ackerson, and James E. Harrington, Special Assistants to the Attorney General, Attorneys consenting to the decree for the United States.

Laurence Cobb; Glenn Behymer; Willis Sargent; H. P. Babson; Barker & Keithly (by Harry A. Keithly); Phillip N. McCaughan; Lee T. Mullen; Glenn H. Munkelt; Forgy, Reinhaus & Forgy, Attorneys consenting to the decree for the Defendants.

Before Hollzer, District Judge.

Decree

This cause coming on to be heard on the 12th day of Nov., 1940, and the Defendants having waived process and service and having appeared herein.

And counsel for the Defendants and said Defendants, and each of them, having consented to the making and entering of this Decree upon condition that neither such consent nor this Decree shall constitute nor be evidence or admission that the Defendants, or any of them, have violated any statute of the United States of America; and the United States, by counsel, having consented to the entry of this Decree, and to each and every provision thereof, and having moved for this injunction;

And it appearing by virtue of the consents of said Defendants, and the acceptance of the same by the Plaintiff, it is unnecessary to proceed with the trial of the action or to take testimony therein or to make findings of fact or to adjudicate the issues presented by the pleadings;

Now, therefore, before any testimony has been taken and without any findings of fact or adjudication of the issues and upon the consent of all the parties hereto, it is hereby ordered and decreed as follows:

[*Jurisdiction*]

1. That the Court has jurisdiction of the subject matter hereof and of all the parties hereto, for the purposes of this Decree and the proceedings for enforcement thereof, and for no other purposes, and that the complaint states a cause of action against the Defendants under the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," and acts amendatory thereof and supplemental thereto....

[*Terms Defined*]

2. That the following terms as used in this decree shall have the following meanings:

- (a) "Marble business" shall mean the purchasing, importing, selling, cutting, polishing, sizing and installing of marble or any one or more of said activities;
- (b) "Marble dealer" shall mean any person, firm or corporation engaged in the marble business;
- (c) "Southern California area" shall mean that part of the State of California lying South of the City of Bakersfield, California.

[*Practices Enjoined*]

3. That the Defendants, and each of them, and all of their respective officers, directors, agents, servants, employees, and all persons acting or authorized to act on behalf of the defendants, or any of them, be and they hereby are, perpetually enjoined and restrained from carrying out or continuing, directly or indirectly, expressly or impliedly, any combination or conspiracy to restrain interstate trade and commerce in violation of the aforesaid Act of Congress in marble, as alleged in the complaint herein, and from entering into or carrying out, by any means whatsoever, any combination or conspiracy of like character or effect, and more particularly, (but the enumeration following shall not detract from the inclusiveness of the foregoing) from conspiring or agreeing, among themselves or with other marble dealers to engage in any of the following specified acts and practices, or from doing, performing, or agreeing upon, entering upon, or carrying out among themselves or in conjunction with others any of the following acts or things:

- (a) Curtailing, limiting, restricting, or other wise controlling the amount of marble business which any marble dealer may obtain or perform in the Southern California area;
- (b) Fixing, controlling, or affecting the price to be charged for the polishing, cutting, sizing, sale and installation of marble in the Southern California area;
- (c) Formulating, promoting, or taking part in any plan, the object or effect of which is to prorate the available marble business in the Southern California area among the Defendants or among any of them and other marble dealers in said area;
- (d) Collecting, compiling, or comparing data respecting sales, orders, purchases, or deliveries of marble for the purpose of enabling or compelling marble dealers to adhere to any prorationing or division of available business among marble dealers in the Southern California area;
- (e) Distributing purchase, sale, installation or price data in such form as to indicate the relationship of the sales or installation of any individual marble dealer to the total sales and installation of marble in the Southern California area during any period of time;

- (f) Sponsoring, calling, holding, or participating in any meeting or conference held, for the purpose of raising, lowering, fixing, establishing, maintaining, or stabilizing prices for the sale and installation of marble in the Southern California area;
- (g) Creating, operating, or participating in the operation of any bid depository or of any scheme, plan, or device designed to maintain or to fix the price of marble or marble installation or to limit competition in bidding, for marble or marble installations, or having the effect of limiting the free choice of the awarding authority in securing a bona fide competitive bid on any given project;
- (h) Exchanging or disseminating information concerning or relating to future prices to be charged for the sale or installation of marble in the Southern California area;
- (i) Recommending, advising, or suggesting the raising, lowering, fixing, establishing, maintaining, or stabilizing of prices to be charged for the sale and installation of marble in the Southern California area;
- (j) Persuading, influencing, or coercing any marble dealer to refuse to accept work involving the polishing, cutting, sizing and preparation of marble for use in the Southern California area from any other marble dealer;
- (k) Discriminating in the price or other conditions of sale of marble for use in the Southern California area to any marble dealer;
- (l) Persuading or influencing, by threats or otherwise, any marble producer, jobber, or distributor, or their agents, or representatives to discriminate against any marble dealer with regard to the terms or conditions of sale of marble in the Southern California area;
- (m) Attempting to prevent contractors from dealing with individual marble dealers or to prevent individual marble dealers from engaging in the marble business in the Southern California area;

[Access to Records]

4. That for the purpose of securing compliance with this Decree, but for no other purpose, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General or an Assistant Attorney General, be permitted access within the office hours of the Defendants to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or control of Defendants relating to any of the matters contained in this Decree; that any authorized representative of the Department of Justice shall, subject to the reasonable convenience of the Defendants, be permitted to interview officers or employees of the Defendants without interference, restraint, or limitation by Defendants relating to any of the matters contained in this Decree, provided that such officers and agents may have counsel present if they so desire.

Any information obtained by the means permitted in this paragraph shall not be divulged by any representatives of the Department of Justice to any person other than a duly authorized representative of the Department of Justice except in the course of legal proceedings in which the United States is a party, or as otherwise required by law.

[Work Completed Outside United States]

5. That nothing herein contained shall restrain or prohibit or be construed to restrain or prohibit, any Defendant from doing any act or entering into any agreement not providing for the purchasing, importing, selling, cutting, polishing, sizing, and installing of marble for use in the United States, which is entirely completed outside the United States; nor shall anything contained herein be construed to prohibit any act or arrangement expressly authorized by the Act of April 10, 1918, commonly known as the "Webb Export Trade Act."

[Compiling and Dissemination of Statistics]

6. That nothing contained in this Decree shall prevent the Defendants, or any of them, or their respective officers, managers, agents, servants, or employees, or any person authorized to act for or on behalf of them, from establishing or compiling, by concerted action or otherwise, among themselves or with any other marble

dealers, standards for marble with respect to sizes, dimensions, colors, quality, or statistical data pertaining to the conditions or operation of the industry, provided that the compiling, or use of such information and statistics does not discriminate against any competitor or have the effect of restraining or preventing the sale or installation of marble in the Southern California area; and provided no such standards for marble shall forbid the production or sale of nonstandard for marble which is identified as such.

[Arrangements Authorized by Legislation]

7. That nothing in this Decree shall apply to arrangements or agreements authorized by any applicable legislation of the United States.

[Jurisdiction Retained]

8. That jurisdiction of this cause be, and it is hereby, retained for the purpose of enforcing, construing, and modifying the terms of this Decree upon the application of the Plaintiff or any of the Defendants.