

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Southern California Gas Company, Southern Counties Gas Company, Leo J. Meyberg Co., O'Keefe & Merritt Company, Barker Bros. Corporation, Broadway Department Store, Inc., J. W. Robinson Co., Bullock's, Inc., The May Co., Fifth Street Building (Inc.), Dohrmann Commercial Co., Los Angeles Furniture Co., Coast Music Co., Eastern-Columbia, Inc., Retail Furniture Dealers Association of Southern California, K. S. Long, W. C. Gaffers, F. M. Banks, Norman R. McKee, W. C. Sues, Fred G. Abbey, Daniel P. O'Keefe, R. C. Ferber, L. Earn, E. L. Glancy, F. F. Brown, W. E. Fairchild, E. P. Barker, Ben Piatt, G. W. Guth, Phil Battelle, William Stanley Keir, William J. Miller., U.S. District Court, S.D. California, 1940-1943 Trade Cases ¶56,226, (May 7, 1942)

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United States of America v. Southern California Gas Company, Southern Counties Gas Company, Leo J. Meyberg Co., O'Keefe & Merritt Company, Barker Bros. Corporation, Broadway Department Store, Inc., J. W. Robinson Co., Bullock's, Inc., The May Co., Fifth Street Building (Inc.), Dohrmann Commercial Co., Los Angeles Furniture Co., Coast Music Co., Eastern-Columbia, Inc., Retail Furniture Dealers Association of Southern California, K. S. Long, W. C. Gaffers, F. M. Banks, Norman R. McKee, W. C. Sues, Fred G. Abbey, Daniel P. O'Keefe, R. C. Ferber, L. Earn, E. L. Glancy, F. F. Brown, W. E. Fairchild, E. P. Barker, Ben Piatt, G. W. Guth, Phil Battelle, William Stanley Keir, William J. Miller.

1940-1943 Trade Cases ¶56,226. U.S. District Court, S.D. California, Central Division. Civil action No. 2231-Y. May 7, 1942.

In a civil action under the Sherman Anti-Trust Act, defendant manufacturers of refrigerators entered into a consent decree enjoining them: from combining with other manufacturers to fix wholesale or retail prices, terms, or conditions of sale, to induce any retailer to maintain suggested prices, to refuse to sell to any retailer or otherwise to discriminate against or in favor of any retailer, or to investigate prices charged by any retailer; from combining with any retailer to establish terms and conditions of sale other than minimum prices to be charged for new refrigerators, to refuse to sell to any retailer or to discriminate against any retailer; and from refusing to sell to any retailer because of deviation from prices or terms set by other manufacturers, or discriminating against any retailer for this reason. Defendant retailers of refrigerators entered into a consent decree enjoining them: from combining with other retailers to fix or maintain wholesale or retail prices, terms or conditions of sale, to induce any retailer to maintain suggested prices, to refuse to purchase or to discriminate against refrigerators manufactured by any manufacturer, to investigate prices charged by any manufacturer, wholesaler or retailer, or to induce any manufacturer to issue any resale price contract, to induce any manufacturer to raise, lower, or fix retail prices or discriminate against any retailer; from combining with any manufacturer to establish terms and conditions of sale other than minimum prices to be charged for new refrigerators; and from refusing to purchase refrigerators sold by any manufacturer for the purpose of coercing him to issue resale price contracts.

Entered by Leon R. Yankwich, D. J.

Thurman Arnold, Assistant Attorney General; Tom C. Clark and Alfred. C. Ackerson, Special Assistants to the Attorney General; William Fleet Palmer, United States Attorney; for the United States.

Lawlor, Felix & Hall, by Brenton J. Metzler, for The May Co., Coast Music Co., Ben Piatt.

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O. C. Sattinger and LeRoy M. Edwards, by O. C. Sattinger, for Southern Counties Gas Company, Norman.R. McKee.

LeRoy M. Edwards, T. J. Reynolds, and L. T. Rice, by L. T. Rice, for Southern California Gas Company, F. M. Banks, William J. Miller.

Cosgrove & O'Neil and Roscoe C. Andrews, by Roscoe C. Andrews, for Los Angeles Furniture Co., Fred G. Abbey.

Loeb & Loeb, by Herman E. Selvin, for Leo J. Meyberg Company, M. G. Sues.

Mather & Sheppard, by Paul M. Gregg and J Stanley Mullen, for Dohrmann Commercial Co., G. W. Guth.

Meserve, Mumper & Hughes, for George Belsey Co., Ltd., George Belsey.

Clark M. Milliron, for Fifth Street Building (Inc.), L. Earn.

Benjamin, Lieberman & Elmore, by B. B. Benjamin, for Eastern Columbia, Inc.

J. Wesley Cupp, for Retail Furniture Dealers Association of Southern California, W. E. Fairchild, Phil Battelle, William Stanley Keir.

Harry W. Biddle and D. K. Gault, by Harry W. Biddle, for K. S. Long.

Harold H. Streight, for Barker Bros. Corporation, E. L. Glancy, E. P. Barker.

Elliott H. Pentz, for J. W. Robinson Co.

MacFarlane, Schaefer, Haun & Mulford, by Henry Schaefer, Jr., for Broadway Department Store, Inc., Bullock's, Inc., F. F. Brown, R. C. Ferber.

John J. Irwin, for O'Keefe & Merritt Company, Daniel P. O'Keefe, W. C. Gaffers.

Final Judgment

The complainant, United States of America, having filed its Complaint herein on May 7, 1942; all of the defendants having appeared and severally filed their answers to such Complaint denying the substantive allegations thereof; and all parties hereto, by their respective attorneys herein, having severally consented to the entry of this final Decree herein without trial and without admission by any party in respect of any issue;

Now, therefore, before any testimony has been taken herein, and upon consent of all parties hereto, it is hereby Ordered, adjudged, and decreed as follows:

I

[Jurisdiction]

That the Court has jurisdiction of the subject matter hereof and of all the parties hereto; 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 the acts amendatory thereof and supplemental thereto.

II

[Definitions]

For the purpose of this Decree:

(a) The term "refrigerators" shall be deemed to include both gas and electric refrigerators of the type ordinarily used for the preservation or storage of food and other perishable commodities in the private home and public restaurant.

(b) The term "defendant manufacturers" means the following defendants: Southern California Gas Company, Southern Counties Gas Company, O'Keefe & Merritt Company, W. C. Gaffers.

(c) The term “defendant retailers” means the following defendants: Barker Bros. Corporation, Broadway Department Store, Inc., J. W. Robinson Co., Bullock'S, Inc., The May Co., Fifth Street Building (Inc.), Dohrmann Commercial Co., Los Angeles Furniture Co., Coast Music Co., Eastern—Columbia, Inc.

(d) The term “retailer” means any person, firm, partnership, or corporation engaged in selling refrigerators at retail.

(e) The term “manufacturer” means any person, firm, partnership, or corporation engaged in manufacturing refrigerators and in selling or distributing such refrigerators to wholesalers, jobbers, distributors, or retailers.

III

[*Activities Enjoined*]

The defendant manufacturers, their directors, officers, agents and employees, and their successors, and all persons acting under, through, or for said defendant manufacturers, or their successors, or any of them, be, and they hereby are, enjoined and restrained from:

(a) agreeing, combining, or conspiring with any other defendant manufacturer or manufacturers, or with any other manufacturer, its or their officers, directors, agents, or employees(1) to fix, establish, adhere to, maintain, stabilize or suggest wholesale or retail prices, terms, or conditions for the sale of refrigerators; (2) to induce or require any retailer of refrigerators to maintain or adhere to established, published, suggested, or subscribed prices, terms, or conditions for the sale or purchase of new or used refrigerators by said retailer; (3) to refuse to sell or supply refrigerators to any retailer, or to sell or supply refrigerators to any agreed upon retailer, or to otherwise discriminate against or coerce or threaten any retailer or discriminate in favor of any agreed upon retailer; (4) to police and investigate the prices charged or the terms or conditions set by any retailer for the sale or purchase of new or used refrigerators;

(b) agreeing, combining or conspiring with any retailer (1) to establish, adhere to, maintain or stabilize the terms and conditions of sale or trade, other than minimum prices to be charged for new refrigerators, which directly affect the amount paid or received or agreed to be paid or received by the purchaser at retail for new or used refrigerators; (2) to threaten or coerce any retailer in connection with his or its sales of refrigerators at retail, by threatening to refuse or refusing to sell and supply refrigerators to such retailer, or by discriminating against such retailer in the terms or conditions upon which he may purchase refrigerators, or by otherwise Injuring or threatening to injure such retailer;

(c) agreeing, combining or conspiring with any other defendant manufacturer or manufacturers or with any other manufacturer, its or their officers, directors, agents or employees, and with any retailer to fix, establish, adhere to, maintain, or stabilize retail prices for refrigerators.

IV

The defendant manufacturers, their directors, officers, agents and employees, and their successors, and all persons acting under, through, or for said defendant manufacturers, or their successors, or any of them, be, and they hereby are, individually enjoined and restrained from refusing to sell or supply refrigerators to any retailer because such retailer fails to abide by or has offered to deviate from the prices, terms, or conditions of sale set by other manufacturers of refrigerators, or otherwise discriminating against, coercing, or threatening any retailer for this reason.

V

The defendant retailers, their directors, officers, agents and employees, and their successors, and all persons acting under, through, or for said defendant retailers, or their successors, or any of them, be, and they hereby are, enjoined and restrained from:

(a) agreeing, combining, or conspiring with any other defendant retailer or retailers, or with any other retailer, its or their officers, directors, agents, or employees, (1) to fix, establish, adhere to, maintain, or stabilize wholesale or retail prices, terms, or conditions for the sale of refrigerators; (2) to induce or require any retailer of refrigerators to maintain or adhere to established, published, suggested, or subscribed prices, terms, or conditions for the sale or purchase of new or used refrigerators by said retailer; (3) to refuse to purchase, sell, display, advertise, handle, or otherwise to discriminate against or threaten to discriminate against, refrigerators manufactured or distributed by any manufacturer, or sold or distributed by defendant Gas Companies, or to purchase, sell, display, advertise, or handle refrigerators manufactured or distributed by any manufacturer, or to otherwise discriminate in favor of any manufacturer; (4) to police and investigate the prices charged or the terms or conditions set by any manufacturer, wholesaler or retailer for the sale or purchase of new or used refrigerators; (5) to induce any manufacturer to issue or place in effect any resale price contract, or to submit any such contract or any minimum prices established pursuant thereto to any agency or group for approval or disapproval, or to include in any such contract any provision establishing resale prices or the observance of stipulated terms of sale; (6) to induce any manufacturer to raise, lower, fix, establish, maintain or stabilize the retail prices, terms, or conditions for the sale or purchase of new or used refrigerators, or to refuse to sell or supply refrigerators to any retailer, or to sell and supply refrigerators to any retailer for the purpose of threatening or coercing any other retailer in connection with his or its sales of refrigerators at retail, or to otherwise threaten or discriminate against any retailer or in favor of any agreed upon retailer;

(b) agreeing, combining or conspiring with any manufacturer to establish, adhere to, maintain, or stabilize the terms and conditions of sale or trade, other than minimum prices to be charged for new refrigerators, which directly affect the amount paid or received or agreed to be paid or received by the purchaser at retail for refrigerators;

(c) agreeing, combining or conspiring with any other defendant retailer or retailers or with any other retailer, its or their officers, directors, agents, or employees, and with any manufacturer to fix, establish, adhere to, maintain or stabilize retail prices for refrigerators.

VI

The defendant retailers, their directors, officers, agents and employees, and their successors, and all persons acting under, through, or for said defendant retailers, or their successors, or any of them, be, and they hereby are, individually enjoined and restrained from refusing to purchase, sell, display, advertise or handle refrigerators sold by any manufacturer for the purpose of coercing such manufacturer to issue resale price contracts or to include in such contracts any stipulated provision or to enforce such contracts, or to abide by the prices, terms, or conditions of retail sales set by other manufacturers of refrigerators, or otherwise discriminating against any manufacturer for any such purpose.

Defendants, their directors, officers, agents and employees, and their successors, and all persons acting under, through, or for said defendants, or their successors, or any of them, be, and they hereby are, enjoined and restrained from agreeing, combining or conspiring between or among themselves, or with any other manufacturer, retailer, or distributor to fix, maintain, or adhere to prices charged or to be charged for refrigerators in any manner involving any collaboration between manufacturers, not including distributors, or between wholesalers, or between retailers, or between distributors of the same class or in any manner not permitted by the Act of July 2, 1890, c. 647, 26 Stat 209, as amended by the Act of August 17, 1937, c. 690, 50 Stat. 693, known as the Sherman Act as amended by the Miller-Tydings Amendment.

VIII

Defendants, their respective directors, officers, agents and employees, and their successors, and all persons acting under, through, or for said defendants, or their successors, or any of them, be, and they hereby are, individually and perpetually enjoined and restrained from:

(a) sponsoring, calling, holding, or participating in any meeting or conference held for the purpose of devising, formulating, or attempting means and methods for carrying out or effectuating any of the acts or practices enjoined by this decree;

(b) organizing, maintaining, fostering, or joining any group, association, or organization of manufacturers, retailers, or distributors, or any of them, created or operating to police, investigate, enforce, or maintain surveillance over the observance or non-observance of resale prices or resale contracts, relating to the sale of refrigerators, of or by manufacturers, wholesalers, or retailers, whether through investigation, the holding of hearings, the assessment of fines, or liquidated damages, threats of litigation, conduct of litigation, or otherwise;

(c) circulating or disseminating in any manner data or information identifying any manufacturer or retailer who has or has not established or maintained resale prices or other terms or conditions of sale for refrigerators, or informing any manufacturer of the identity of any retailer who has failed or refused to conform to or abide by, or who has conformed to or abided by, or who has offered to deviate from, or abide by, prices, terms, or conditions established, published, or suggested by any manufacturer for the sale or purchase of new or used refrigerators:

(d) policing or investigating, or inducing or seeking to induce a manufacturer to investigate and police, the prices charged or paid, or the terms or conditions of sale offered, or given, by any retailer in connection with the sale or purchase, or in connection with negotiations for the sale or purchase of new or used refrigerators for the purpose of influencing, coercing, or restraining any manufacturer in the adoption or enforcement of a resale price policy with respect to such retailer;

(e) entering into or carrying out any contract fixing resale prices or other conditions or terms of sale for refrigerators with the knowledge that such contract has been submitted, in advance of adoption by any manufacturer or distributor, to any competing manufacturer or distributor, or to any agency or organization acting for or supported by any group of competitors engaged in the manufacture, distribution, or sale of refrigerators, for review, approval, or disapproval, or has been issued pursuant to an agreement or understanding among persons, firms, or corporations in competition with each other.

XI

[*Department of Justice to Have Access to Records*]

For the purpose of securing compliance with this Decree, and for no other purpose, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or an Assistant Attorney General and on reasonable notice to the defendants made to the principal office of the defendants, be permitted subject to any legally recognized privilege (1) access, during the office hours of the defendants, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendants, relating to any; matter contained in this Decree, (2) subject to the reasonable convenience of the defendants and without restraint or interference from them, to interview officers or employees of the defendants, who may have counsel present, regarding any such matters, and (3) to require the defendants, on such written request, to submit such reports in respect of any such matters as may from time to time be reasonably necessary for the proper enforcement of this Decree; provided, however, that information obtained by the means permitted in this paragraph shall not be divulged by any representative 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 for the purpose of securing compliance with this Decree in which the United States is a party or as otherwise required by law.

X

[*Southern Counties Gas Co. of California and Southern California Gas Co.*]

For the purpose of construing and enforcing this Decree, the defendants Southern Counties Gas Company of California and Southern California Gas Company shall be considered as one defendant. XI

[*Jurisdiction Retained*]

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this Decree to apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Decree, for the modification or termination of any of the Provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.