

## **Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. General Outdoor Advertising Co., Inc., U.S. District Court, N.D. Illinois, 1955 Trade Cases ¶68,169, (Oct. 21, 1955)**

United States v. General Outdoor Advertising Co., Inc.

1955 Trade Cases ¶68,169. U.S. District Court, N.D. Illinois, Eastern Division. Civil Action Docket No. 50 C 936, Dated October 21, 1955. Case No. 1058 in the Antitrust Division of the Department of Justice.

### **Sherman Antitrust Act**

**Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief —Divestiture—Outdoor Advertising Facilities.**—An outdoor advertising company was ordered by a consent decree to sell or divest itself of its stock or other financial interest in specified outdoor advertising companies. The company was not required to sell such stock or other financial interest at less than a fair market price. In the event of the failure or inability of the company to accomplish the sale or divestiture within a period of two years, the company, would be ordered to transfer to a trustee such stock or other financial interest which it may then own or control. The trustee would be appointed and his duties prescribed by the court, and the company would be ordered to vest in the trustee full power and authority to sell at a fair market price such stock or other financial interest. The company was ordered to submit to the Attorney General a written report each ninety days of its efforts and progress in selling such stock or other financial interest and prohibited from requiring as a condition of sale that the purchaser agree to purchase any of the stock of a specified sales representative for outdoor advertising companies. The stock or other financial interest in the companies could not be sold to any person in which the company shall, after such sale, have any financial interest or to any person who shall then be an officer, director, agent, or employee of the company or shall then hold a financial interest in the company.

**Monopolies—Consent Decree—Practices Enjoined—Interlocking Personnel.**—An outdoor advertising company was prohibited by a consent decree from permitting more than one person to serve simultaneously as an officer, director, or employee of both the company and a specified sales representative for outdoor advertising companies, and from permitting any officer or employee of the specified sales representative to serve, at the same time, as officer, director, servant, or employee of the company.

**Monopolies—Consent Decree—Practices Enjoined—Acquiring or Voting Stock— Acquisitions of Stock and Assets.**—An outdoor advertising company was prohibited by a consent decree from acquiring, holding, or voting more than thirty per cent of the common stock of a specified sales representative for outdoor advertising companies. The company was prohibited from acquiring any of the physical assets, business, or good will of, or any stock or other financial interest in, any poster plant in any city, town, or market in which the company then owns or operates a poster plant, except upon application to the, court and a showing that the effect of such acquisition may not be substantially to lessen competition or to tend to create a monopoly in the display of posters in such city, town, Or market.

**Monopolies—Consent Decree—Practices Enjoined—Control of Supply.**—An outdoor advertising company was prohibited by a consent decree from having under lease at any time in any city, town, or market, wherein the company has twenty-four or more poster panels, unbuilt poster sites,in excess of twelve and one-half per cent of the company's poster panels in such city, town, or market.

**Monopolies—Consent Decree—Practices Enjoined—Tying Agreements.**—An outdoor advertising company was prohibited by a consent decree from conditioning the sale or use of space on any of its poster panels in any market upon any agreement that the purchaser or user thereof will purchase or use any space on poster panels of the company in any other market. A provision of a consent decree previously entered against the company was made a part of the instant decree. This provision prohibited the company from requiring as a condition to the acceptance of any contract for an outdoor advertising display to be executed in part on the display plants owned and/or operated by the company and in part on display plants owned and/or operated by persons other than the company, that the company shall sublet the part or parts of such contracts to be executed on the display plants owned and/or operated by persons other than the company.

**Monopolies—Consent Decree—Practices Enjoined—Interfering with Competitors.**—An outdoor advertising company was prohibited by a consent decree from owning, operating, or building any poster panel or panels in such close proximity to a pre-existing poster panel of another plant operator as materially to reduce, impair, or limit the visibility of such pre-existing poster panel; or from knowingly and falsely representing to any person that the services rendered by any other person engaged in the poster advertising business are unsatisfactory or inferior to the services rendered by the company.

**Monopolies—Consent Decree—Practices Enjoined—Granting Concessions from Published Rates.**—An outdoor advertising company was prohibited by a consent decree from granting or offering to grant, to any person in connection with any poster advertising contract any discount rebate, bonus, or other concession from the published rates of the company. The decree provided that the company was not prohibited from lowering its price or prices in good faith to meet an equally low price or prices of a competing poster plant operator.

**Monopolies—Consent Decree—Practices Enjoined—Agreements Not To Compete.**—An outdoor advertising company was prohibited by a consent decree from enforcing any agreement with any other person made in connection with an acquisition by the company of poster display plants or a financial interest therein that such other person will refrain from competing against the company in the business of poster advertising in any city, town, or market unless such agreement is limited to three years or less and to the same geographical area in which the poster display plants so sold, to the company were located.

**Monopolies—Consent Decree—Practices Enjoined—Refusal To Sell—Inducing Breach of Contract.**—An outdoor advertising company was prohibited by a consent decree from urging, coercing, or inducing any national advertiser, advertising agency, or other similar person to refuse to enter into, breach, or change any contract for poster advertising with any other person. A provision of a consent decree previously entered against the company was made a part of the instant decree. This provision prohibited the company from refusing or failing to furnish or to sell advertising space on the display plants of the company or refusing or failing to permit the employment of such plants, when space thereon is available for sale or employment, with the intent or the effect of preventing competing solicitors from engaging in the solicitation and/or execution of contracts for outdoor advertising displays.

**Mohopolies—Consent Decree—Practices Enjoined—Trade Association Membership.**—An outdoor advertising company was prohibited by a consent decree from knowingly maintaining membership in any trade association relating to poster advertising which follows any plan either (1) of limiting membership therein to only one poster plant operator in any city, town, or marketer (2) of discouraging its members from competing against each other in the business of poster advertising.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General, W. D. Kilgore, Jr., Joseph Prindaville, Earl A. Jinkinson, Harry N. Burgess, and Willis L. Hotchkiss.

For the defendant: Lord, Bissell & Brook by David M. Gooder.

#### Final Judgment

WIN G. KNOCH, District Judge [ *In full text* ] : Plaintiff, United States of America, having filed its complaint herein on June 30, 1950; defendant having appeared and filed its answer to the complaint denying the substantive allegations thereof and any violation of law and asserting affirmative defenses; and plaintiff and defendant, 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 any of the parties hereto with respect to any such issue;

Now, therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein and upon the consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

[ *Sherman Act* ]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a claim against defendant under Section 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 in this Final Judgment:

- (A) "Poster" shall mean advertising copy, whether lithographed, printed, processed or hand-painted, made upon multiple sheets of paper for ultimate posting on the surface of a poster panel, customarily measuring approximately 106" x 236" and commonly referred to, in the outdoor advertising industry, as a 24-sheet poster;
- (B) "Poster panel" shall mean any physical structure commonly used for the outdoor display of posters of national advertisers;
- (C) "Display plant" or "Poster plant" shall mean all the poster panels of a person which are located in any one city, town or market for the outdoor display of posters;
- (D) "Poster site" shall mean the real estate or building used for the erection of a poster panel;
- (E) "Unbuilt poster site" shall mean a site to be used as a poster site on which no poster panel has been erected for a period of ninety (90) days or more after defendant was entitled to the possession thereof;
- (F) "Market" shall mean any two or more cities or towns which for the purpose of selling showings of poster advertising are grouped into a single unit;
- (G) "Person" shall mean any individual, partnership, firm, corporation, association whether incorporated or unincorporated or any other business or legal entity.

## III

### [ Applicability of Judgment]

The provisions of this Final Judgment shall apply to defendant and its subsidiaries, successors and assigns, and to each of its officers, agents, servants and employees, and to all other persons in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise.

## IV

### [ Divestiture Ordered]

- (A) Within two (2) years after the date of the entry of this Final Judgment, defendant is ordered and directed to sell or divest itself of all right, title or interest which it may own or control in or to any of the stock of or other financial interest in any of the following corporations or successors thereto: Alabama Outdoor Advertising Co., Inc.; Central Outdoor Advertising Co., Inc.; Pittsburgh Outdoor Advertising Company; Walker and Company; provided, however, that this Section IV shall not be construed to require defendant to sell or divest such stock or other financial interest at less than a fair market price;
- (B) In the event of the failure or inability of defendant fully to accomplish the sale or divestiture required by the foregoing subsection (A) within the time therein prescribed, then and in that event, two (2) years after the date of the entry of this Final Judgment defendant is ordered and directed to transfer to a trustee, as hereinafter provided for, any and all right, title and interest which it may then own or control in or to any of such stock or other financial interest;
- (C) The trustee hereinabove provided for shall be appointed and his duties and compensation shall be prescribed by this Court after notice to defendant and the Attorney General and an opportunity by them to be heard with respect thereto; and defendant is further ordered and directed to vest in such trustee full power and authority to offer to sell, and, upon request, to sell at a fair market price and upon terms and conditions to be

determined and approved by this Court, all of such right, title or interest in or to any stock or other financial interest to which this Section IV may apply;

(D) Defendant is ordered and directed, commencing ninety (90) days after the entry of this Final Judgment, and each ninety (90) days thereafter, to submit to the Attorney General a report, in writing, of its efforts and progress in selling or otherwise divesting itself of the stock or other financial interest required by this Section IV to be sold or divested by defendant;

(E) (1) The trusteeship hereinabove provided for shall continue until all of the stock or other financial interest to which this Section IV may apply shall have been sold or otherwise disposed of or the trusteeship shall have been terminated by this Court;

(2) During the existence of said trust defendant shall be entitled to receive all dividends upon said stock (except stock dividends which shall be retained in the trust) and, upon the request of defendant, it shall be the duty of the trustee to bring, maintain or join in, or authorize defendant to bring, maintain or join in, stockholders' actions of any kind;

(F) The stock or financial interest required by this Section IV to be sold or divested shall not be sold or divested by defendant or said trustee to any person in which defendant shall, after such sale or divestiture, have any financial interest, nor shall it be sold or divested, to any person who shall then be an officer, director, agent or employee of defendant, or shall then hold a financial interest in defendant except that defendant or the said trustee may sell or dispose of such stock or other financial interest to the company or its stockholders to which such stock or other financial interest may relate;

(G) Upon the sale or divestiture by defendant or the trustee of any stock or financial interest to which Section IV applies, defendant is enjoined and restrained from reacquiring any such right, title or interest and is enjoined and restrained from exercising or maintaining, and from attempting to exercise or maintain, any control or authority over any of said corporations. Nothing contained in this sub-section (G) shall prevent defendant or the trustee from entering into or exercising any rights under a security instrument, provided that in the event of a reacquisition of any of such stock or financial interest pursuant to a security instrument such reacquired stock or financial interest shall be subject to all of the provisions of this Section IV;

(H) Defendant is enjoined and restrained from requiring as a condition of the sale or divestiture of any stock or financial interest pursuant to this Final Judgment, that the purchaser thereof shall purchase or agree to purchase any of the stock of Outdoor Advertising Incorporated.

## V

### [ *Acquiring or Voting Stock—Interlocking Personnel* ]

Defendant is enjoined and restrained from, directly or indirectly:

(A) Acquiring, holding or voting, at any time, more than thirty (30) per cent of the common stock from time to time outstanding of Outdoor Advertising Incorporated;

(B) Permitting more than one person to serve simultaneously as an officer, director, or employee of both defendant and Outdoor Advertising Incorporated;

(C) Permitting any officer or employee of Outdoor Advertising Incorporated to serve, at the same time, as officer, director, servant or employee of defendant.

## VI

### [ *Practices Enjoined* ]

Defendant is enjoined and restrained from directly or indirectly:

- (A) Conditioning the sale or use of space on any of its poster panels in any market upon any agreement or understanding that the purchaser or user thereof will purchase or use any space on poster panels of defendant in any other market;
- (B) Owning, operating, maintaining or building any poster panel or panels in such close proximity to a pre-existing poster panel of another plant operator as materially to reduce, impair or limit the visibility of such pre-existing poster panel;
- (C) Knowingly and falsely representing to any person that the services rendered, or to be rendered, by any other person engaged in the poster advertising business, are or will be unsatisfactory or inferior to the services rendered, or to be rendered, by defendant;
- (D) Urging, coercing or inducing, or attempting to urge, coerce or induce, any national advertiser, advertising agency or other similar person to refuse to enter into, breach or change any contract or agreement for poster advertising with any other person; provided, however, that this subsection (D) shall not prohibit defendant from (i) making bona fide representations concerning the merits of the services rendered or to be rendered by defendant, or by any other poster plant operator, or (ii) soliciting poster advertising contracts or executing or carrying out such contracts;
- (E) Granting or offering or attempting to grant or offer, to any person, in connection with any poster advertising contract, any discount, rebate, bonus or other concession from the published rates of defendant; provided; however, that this subparagraph (E) shall not prevent defendant from lowering its price or prices in good faith to meet an equally low price or prices of a competing poster plant operator; and provided further that in any suit or proceeding instituted by the plaintiff against defendant charging a violation by defendant of this subsection (E) the burden of proof shall be upon defendant to establish that any such discount, rebate, bonus or other concession from its published rates was made or offered by defendant in good faith to meet an equally low price made or offered by a competing poster plant operator;
- (F) (1) Enforcing or continuing to enforce any contract, agreement or understanding with any other person made in connection with an acquisition by defendant of poster display plants or a financial interest therein that such other person will refrain from competing against defendant in the business of poster advertising, in any city, town or market unless such contract, agreement or understanding is limited to three (3) years or less and to the same geographical area in which the poster display plants so sold to the defendant were located;
- (2) Entering into, adhering to, maintaining or enforcing, or claiming any rights under, any contract, agreement or understanding with any other person that such other person will not engage in the poster advertising business except to the extent permitted in subparagraph (F)(1) above;
- (G) Knowingly maintaining membership in any trade association relating to poster advertising which follows any plan or program either (a) of limiting membership therein to only one (1) poster plant operator in any city, town or market or (b) of discouraging its members from competing against each other in the business of poster advertising;
- (H) Acquiring in any manner any of the physical assets, business or good will of, or any stock or other financial interest in, any poster plant in any city, town or market in which defendant then owns or operates a poster plant except upon application to this Court, after notice to the Attorney General, and a showing to the satisfaction of this Court that the effect of such acquisition may not be substantially to lessen competition or to tend to create a monopoly in the display of posters in such city, town or market;
- (I) Having under lease at any time in any city, town or market, wherein defendant has 24 or more poster panels, unbuilt poster sites in excess of twelve and one-half (12 ½) per cent of defendant's poster panels in such city, town or market

## VII

[ *Prohibitions of Prior Consent Decree* ]



The following provisions of paragraph 5 of the Final Decree entered on May 7, 1929 in *United States v. General Outdoor Advertising Co., Inc.*, et al., Equity No. 46-50, in the United States District Court for the Southern District of New York are hereby made a part hereof;

Defendant is enjoined and restrained from directly or indirectly:

(A) Refusing or failing to furnish or to sell advertising space on the display plants owned or operated by defendant or refusing or failing to permit the employment of such plants, when space thereon is available for sale or employment, with the intent or the effect of preventing competing solicitors from engaging in the solicitation and/or execution of contracts for outdoor advertising displays; provided however, that nothing herein shall prevent defendant from refusing to sell advertising space based on bona fide compliance with reasonable requirements as to financial responsibility or business ethics;

(B) Requiring or attempting to require as a condition to the acceptance of any contract for an outdoor advertising display to be executed in part on the display, plants owned and/or operated by defendant and in part on display plants owned and/or operated by persons other than defendant, that defendant shall sublet the part or parts of such contracts, or any of them, to be executed on the display plants owned and/or operated by persons other than defendant; provided, however, that nothing contained in this subparagraph (B) shall prevent defendant from retaining any or all of its property or property rights employed by it in negotiating for a contract for an outdoor advertising, display,

#### VIII

##### [ *Inspection and Compliance* ]

For the purpose of securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to its principal office be permitted (a) access, during the office hours of defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of defendant relating to any of the matters contained in this Final Judgment; and (b) subject to the reasonable convenience of defendant, and without restraint or interference from it, to interview officers or employees of defendant, who may have counsel present, regarding any such matters. For the purpose of securing compliance with this Final Judgment and for no other purpose, defendant upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means provided 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 such Department, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

#### IX

##### [ *Jurisdiction Retained* ]

Jurisdiction of this cause is retained 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 hereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.