

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Borden Co. et al., U.S. District Court, N.D. Illinois, 1966 Trade Cases ¶71,681, (Jan. 11, 1966)

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United States v. The Borden Co. et al.

1966 Trade Cases ¶71,681. U.S. District Court, N.D. Illinois, Eastern Division. Civil Action No. 51 C 947. Dated January 11, 1966. Case No. 1090 in the Antitrust Division of the Department of Justice.

Robinson-Patman Act

Price Discrimination—Classification of Customers—Consent Judgment.—Dairies were prohibited by a consent decree from selling or offering to sell milk, of like grade and quality and in comparable containers, to competing store customers in the Chicago area pursuant to discount or net price schedules based on classifications of store customers on any basis other than those arising from differing methods of manufacture, sale, delivery, or differing quantities purchased. In the event that any one or more methods of delivery are optional to the customers in any given volume class, all such customers must be given the opportunity, in writing, of exercising their choice of such methods of delivery. Generally, sales at different prices were prohibited, except where the price difference reflected cost savings or was made in good faith to meet competition. Also, the dairies were required to keep sales and price records.

For the plaintiff: Donald F. Turner, Assistant Attorney General, William D. Kilgore, Jr., Charles F. B. McAleer, John E. Sarbaugh, and Bertram M. Long, Attorneys, Department of Justice, Chicago, Ill.

For the defendants: John Paul Stevens for Hawthorn-Mellody, Inc., Thomas B. Gilmore for Hunding Dairy Co., Michael G. Stein for Western United Dairy Co., Harold Kruley for Capitol Dairy Co., and Charles W. Schaub for Meadowmoor Dairies, Inc., Division of Scot Lad Foods, Inc.

Final Judgment

Plaintiff, United States of America, filed its complaint herein on June 18, 1951, and the defendants, American Processing and Sales Company, Capitol Dairy Company, Hunding Dairy Company, Meadowmoor Dairies, Inc., and Western United Dairy Co. (which defendants are hereinafter referred to collectively as the "consenting defendants"), and each of them, appeared and filed their answers to said complaint denying the substantive allegations thereof. The plaintiff and the consenting defendants, by their respective attorneys, consented to the entry of a Final Judgment without trial or adjudication of any issue of fact or law herein, and without admission by any party in respect of any such issue and this Court entered the same on February 19, 1953. On October 9, 1953 this Court stayed the operation of the judgment.

On or about April 11, 1960, the dairy operations theretofore conducted by American Processing and Sales Company in the Chicago area were transferred to Hawthorn-Mellody, Inc., a Delaware corporation, which Company thereupon became a successor to the defendant American Processing and Sales Company within the meaning of the judgment entered on February 19, 1953.

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law therein, and upon consent as aforesaid of the plaintiff and the consenting defendants,

It is hereby ordered, adjudged and decreed as follows:

I

[*Prior Judgment*]

The following judgment supersedes the judgment of February 19, 1953.

I

[*Clayton Act*]

This Court has jurisdiction of the subject matter hereof and of the plaintiff and consenting defendants. The complaint states a cause of action against the consenting defendants under Section 2(a) of the Act of Congress of October 15, 1914, entitled "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and for Other Purposes," commonly known as the Clayton Act, and acts amendatory thereof and supplemental thereto.

III

Definitions

As used in this Final Judgment:

- A. "Fluid milk" means cow's milk sold in fresh fluid form, whether as milk or as cream or intermixtures thereof.
- B. "Chicago area" means the territory lying within the corporate limits of the cities of Chicago and Evanston, and the territory lying within the corporate limits of the villages of Wilmette, Kenilworth, Glencoe, Winnetka, and Oak Park, all in the State of Illinois.
- C. "Store customer" means any person, firm, or corporation operating one or more grocery stores in the Chicago area which purchases fluid milk for resale purposes and not for consumption on the premises.
- D. "Optional method of delivery" is one which by nature is not inherent in defendant's system of distribution of fluid milk, and which a store customer may (in order to obtain a lower price or a larger discount) elect to perform for himself instead of having it performed for him by any defendant.

IV

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its successors, subsidiaries, assigns, officers, directors, agents, 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.

V

[*Discrimination*]

Each defendant is enjoined and restrained from:

- A. Selling or offering to sell fluid milk of like grade and quality and in comparable containers to competing store customers in the Chicago area at different prices unless:
 - (1) Such price differences make due allowance for cost savings resulting from differing methods of manufacture, sale, or delivery, or differing quantities purchased; or
 - (2) Made in good faith in order to meet equally low prices offered or given by a competitor.
- B. Selling or offering to sell fluid milk of like grade and quality and in comparable containers to competing store customers in the Chicago area pursuant to discount or net price schedules based on classifications of store customers on any basis other than those arising from differing methods of manufacture, sale, or delivery or differing quantities purchased; provided that in the event any one or more methods of delivery are optional to the store customers in any given volume class then all such store customers shall be given the opportunity, in writing, of exercising their choice of such methods of delivery.

VI

[*Records*]

Each defendant is ordered and directed to keep and maintain route books, price and discount schedules, or other records until April 24, 1968 which will reflect the conditions and terms of purchase of fluid milk, the volume purchased, and the prices charged and discounts granted.

VII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon 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, be permitted:

A. Access during the office hours of the defendant to, and the right to copy or reproduce, all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant relating to any of the matters contained in this Final Judgment; and

B. Subject to the reasonable convenience of the defendant, and without restraint or interference from it, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters.

Upon request each defendant shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as from time to time may 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 except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII

[*Jurisdiction Retained*]

Jurisdiction of this action is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the Court within a reasonable 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 modification of any of the provisions thereof, or for the enforcement of compliance therewith and the punishment of violations thereof.