

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Harper & Row, Publishers, Inc., The Bobbs-Merrill Co., Inc., Childrens Press, Inc., Thomas Y. Crowell Co., Dodd, Mead & Co., Inc., E. P. Dutton & Co., Inc., Golden Press, Inc., Grosset & Dunlap, Inc., Holt, Rinehart and Winston, Inc., Little, Brown & Co., Inc., The Macmillan Co., William Morrow & Co., Inc., G. P. Putnam's Sons, Random House, Inc., Charles Scribner's Sons, The Viking Press, Inc., Henry Z. Walck, Inc., and Franklin Watts, Inc., U.S. District Court, N.D. Illinois, 1967 Trade Cases ¶72,256, (Nov. 27, 1967)

Federal Antitrust Cases

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United States v. Harper & Row, Publishers, Inc., The Bobbs-Merrill Co., Inc., Childrens Press, Inc., Thomas Y. Crowell Co., Dodd, Mead & Co., Inc., E. P. Dutton & Co., Inc., Golden Press, Inc., Grosset & Dunlap, Inc., Holt, Rinehart and Winston, Inc., Little, Brown & Co., Inc., The Macmillan Co., William Morrow & Co., Inc., G. P. Putnam's Sons, Random House, Inc., Charles Scribner's Sons, The Viking Press, Inc., Henry Z. Walck, Inc., and Franklin Watts, Inc.

1967 Trade Cases ¶72,256. U.S. District Court, N.D. Illinois, Eastern Division. Civil Action Nos. 67 C 612—67 C 629. Entered November 27, 1967. Case Nos. 1933—1950 in the Antitrust Division of the Department of Justice.

Headnote

Sherman Act

Resale Price Fixing—Children's Books—Consent Decrees.—Each of defendant book publishers, charged in separate suits with fixing the prices of library editions of children's books with its wholesalers, was prohibited by consent decrees from attempting to maintain the resale price of its books (without regard to rights under fair trade laws for a period of five years) and from entering into agreements with its wholesalers to fix the resale price of books or to submit rigged bids. In its final form, the decree (para. X) also required the Department of Justice, if it discovers violations of the decree affecting local governments, to retain the evidence for a year for use in damage suits.

For the plaintiff: Donald F. Turner, Assistant Attorney General, Baddia J. Rashid, Harry N. Burgess, John E. Sarbaugh, William T. Huyck, John Edward Burke, and David J. Berman, Attorneys, Department of Justice.

For the defendants: Ira M. Millstein and Donald J. Williamson, of Weil, Gotshal & Manges, New York, N. Y., for Harper & Row, Publishers, Inc., Charles Scribner's Sons, E. P. Dutton & Co., Inc., Henry Z. Walck, Inc., and Grosset & Dunlap, Inc.; W. Donald McSweeney and William A. Montgomery, of Schiff Hardin Waite Dorschel & Britton, Chicago, Ill., for G. P. Putnam's Sons, The Viking Press, Inc., and The Bobbs-Merrill Co., Inc.; Don H. Reuben and Fred H. Bartlit, Jr., of Kirkland, Ellis, Hodson, Chaffetz & Masters, Chicago, 111., for Childrens Press, Inc.; Of counsel: H. Templeton Brown, of Mayer, Friedlich, Spiess, Tierney, Brown & Piatt, Chicago, Ill., for Thomas Y. Crowell Co., Holt, Rinehart and Winston, Inc., and William Morrow & Co., Inc.; Of counsel: Leo Rosen, of Greenbaum, Wolff & Ernst, New York, N. Y., for Thomas Y. Crowell Co., and William Morrow & Co., Inc.; Harry Buchman, of Stern & Reubens, for Dodd, Mead & Co., Inc.; Samuel Weisbard, of McDermott, Will & Emery, Chicago, 111., for Golden Press, Inc.; Robert H. Davison, of Hausserman, Davison & Shattuck, Boston, Mass., for Little, Brown & Co., Inc.; Robert C. Keck, of Spray, Price, Hough & Cushman, Chicago, 111.,

for The Macmillan Co.; Albert E. Jenner, Jr. and Philip W. Tone, of Raymond, Mayer, Jenner & Block, Chicago, 111., and Bernard G. Segal, Edward W. Mullinix, and Arthur H. Kahn, of Schnader, Harrison, Segal & Lewis, Philadelphia, Pa., for Random House, Inc.; Of counsel: Earl A. Jinkinson and John W. Stack, of Winston, Strawn, Smith & Patterson, for Franklin Watts, Inc.

Final Judgment as to Harper & Row, Publishers, Inc (Civ. No. 67 C 612; Case No. 1933)

MAROVITZ, Judge: Plaintiff, United States of America, having filed its complaint herein on April 18, 1967, and defendant having filed its answer thereto denying the substantive allegations thereof, and plaintiff and defendant by their respective attorneys having consented to the making and entry of this Final Judgment without admission, by either party in respect to any issue;

Now, Therefore, before any testimony has been taken herein, without trial or adjudication of any issue of fact or law herein, and upon consent of the parties 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 defendant under Section 1 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

As used herein:

(A) "Defendant" means the defendant Harper & Row Publishers, Inc., a corporation organized and existing under the laws of Illinois and each of its domestic subsidiaries and each of its foreign subsidiaries when doing business through or with any reseller in the United States;

(B) "Person" means any individual, corporation, partnership, firm or other legal entity and includes wherever applicable any Federal, State or local or other governmental agency or instrumentality thereof;

(C) "Customer" means any school, library or governmental agency or instrumentality thereof;

(D) "Reseller" means any person who is engaged in the business of buying books for resale and includes any such person when acting as an agent or consignee of defendant; and

(E) Solely for purposes of Section VII(A) and (B), the term "any person engaged in the resale of books purchased from defendant" shall not be deemed to include the national distributor of paperbacks who functions as defendant's sole national distributor.

III

The provisions of this Final Judgment applicable to the defendant shall also apply to each of its officers, directors, agents and employees and to each of its successors and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. This Final Judgment shall not apply to sales for use outside the United States, except for sales to or for the use of the plaintiff or any instrumentality or agency thereof.

IV

Defendant is ordered and directed:

(A) Within ninety (90) days after entry of this Final Judgment, to mail a copy thereof to each of its currently active wholesale accounts which sells to customers; for a period of five (5) years after such entry to mail a copy to

each such additional wholesale account to whom it sells books; and to maintain for such five (5) year period a complete list of all such wholesale accounts to whom defendant has so mailed copies;

(B) To issue a written statement to the effect that this Final Judgment prohibits the defendant from fixing, determining, dictating, approving or disapproving the customers to whom or the prices at which any reseller may sell or advertise defendant's books to any school, library or governmental agency or instrumentality, the statement to be circulated by either one of the following means:

(1) By mailing, within six (6) months after entry of this Final Judgment, to the currently active list of schools, libraries and governmental agencies and instrumentalities to whom it mails catalogues; or

(2) By publication in an issue of *School Library Journal* published not later than two (2) months after entry of this Final Judgment.

(C) Within six (6) months after entry of this Final Judgment, to furnish plaintiff with a written statement of the form and manner of compliance with the provisions of subsection (B) of this Section IV;

(D) For a period of one (1) year after entry of this Final Judgment, to furnish a copy thereof to any school, library or governmental agency or instrumentality requesting it.

V

For a period of five (5) years after the date set forth in this Section V, defendant is enjoined and restrained, in connection with the pricing of its books, except textbooks, from directly or indirectly, in any manner, using the words "net" or "net price" in or on such books or in any catalogue, price list, circular or other bulletin when referring to such books; provided, however, that this Section V shall not apply to any now-existing copies of such catalogues, price lists, circulars or other bulletins until July 1, 1968 or to now-existing copies of such books.

VI

Defendant is enjoined and restrained from, directly or indirectly, in any manner:

(A) Fixing, determining, dictating, approving, disapproving, or policing the customers to whom, or the prices or related terms and conditions of sale at or upon which any reseller may have sold, sells, advertises or offers to sell any books to any customer;

(B) Suggesting (otherwise than by imprinting any price, without more, on a book or book jacket) to any reseller the prices or related terms and conditions of sale at which said reseller should sell, advertise or offer to sell any books to any customer;

(C) Hindering, restricting, limiting or preventing, or attempting to hinder, restrict, limit or prevent any reseller from advertising for sale, selling or offering to sell any books (1) to any customer or (2) to any customer at any price or related terms and conditions of sale individually determined by such reseller;

(D) So long as defendant sells books to resellers, refusing to sell or offer to sell or threatening to refuse to sell or offer to sell such books to, or coercing, or discriminating in the sale or shipment of any books to, any reseller because of the prices at which said reseller intends to sell or has sold any books to any customer;

(E) Inducing or suggesting to any reseller that such reseller refuse to deal with or discriminate against any third person with respect to the sale, distribution, purchase or shipment of any books to any customer; and

(F) Issuing or disseminating defendant's customer prices in any promotional material directed to resellers or in any price catalogues, lists, circulars or bulletins with respect to books sold by resellers unless such material contains a statement, in easily legible type, that any reseller is free to charge whatever price he wishes for defendant's books; provided, however, that this Section (F) shall not apply to any now-existing copies of such promotional material, catalogues, lists, circulars or bulletins until July 1, 1968.

Provided that, upon the expiration of a period of five (5) years following the date of entry of this Final Judgment, nothing contained in Section VI of this Final Judgment shall prohibit the defendant from lawfully exercising such rights, if any, or performing such obligations, if any, as it may have arising under the Miller-Tydings Act and the McGuire Act.

VII

In addition to the prohibitions of Section VI, above, defendant is enjoined and restrained from entering into, adhering to, maintaining, enforcing or claiming any rights under any contract, agreement, understanding, plan or program with any person engaged in the resale of books purchased from defendant to:

- (A) Fix, establish, maintain or adhere to prices in the sale of its books to any third person;
- (B) Refuse to sell its books to any third person because of the price or prices at which, or persons to whom such third person intends to sell, advertise, or display or may have sold, advertised or displayed such books;
- (C) Submit collusive or rigged bids or quotes for supplying any of its books to any third person; or
- (D) Bid or quote a specific price, or refrain from bidding or quoting, on any of its books to be sold to any third person;

Provided that, subject to Section VI of this Final Judgment, nothing contained in this Section VII shall prohibit the defendant from lawfully exercising such rights, if any, or performing such obligations, if any, as it may have arising under the Miller-Tydings Act and the McGuire Act.

VIII

Nothing contained in this Final Judgment shall be deemed to prohibit the defendant from complying with requirements imposed upon it by State or local law or by any governmental agency or instrumentality acting pursuant to State or local law.

IX

For a period of five (5) years following the date of the entry of this Final Judgment, defendant is ordered and directed to furnish simultaneously with each sealed bid and sealed quotation (other than a bid or quotation for a sale which will involve less than \$100) submitted by it to any customer for the sale of books, other than textbooks, a written certification by the official of defendant having authority to determine the price or prices bid or quoted that said bid or quotation was not the result, directly or indirectly, of any agreement, understanding, plan, or program between defendant and any other person.

X

For the purpose of securing compliance with this Final Judgment, and for no other purpose, 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 defendant (which may have counsel present), made through its principal office, be permitted, subject to any legally recognized privilege, (1) access during reasonable office hours to 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 subject matters contained in this Final Judgment, and (2) subject to the reasonable convenience of 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; and upon such request, defendant shall submit such reports in writing, under oath if so requested, to the Department of Justice with respect to any of the matters contained in this Final Judgment as may from time to time be requested for the enforcement of this Final Judgment. No information obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person, other than a duly authorized representative of the Executive Branch of plaintiff, 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.

Any such information evidencing a violation of this Final Judgment which adversely affects the interest of any State or local governmental agency or instrumentality shall be retained by plaintiff for a period of one (1) year from the time when it is obtained and shall be treated as impounded subject to further order of this Court which, on motion and notice to the parties and a showing of good cause by the principal law officer of any State or local

governmental agency or instrumentality, may order disclosure to such officer of any part or all of such information as the Court deems proper for use by such agency or instrumentality preliminarily to or in connection with an action under the federal antitrust laws.

XI

Jurisdiction is retained for the purpose of enabling either 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 or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

Final Judgments as to The Bobbs-Merrill Co., Inc., Childrens Press, Inc., Thomas Y. Crowell Co., Dodd, Mead & Co., Inc., E. P. Dutton & Co., Inc., Golden Press, Inc., Grosset & Dunlap, Inc., Holt, Rinehart and Winston, Inc., Little, Brown & Co., Inc., The Macmillan Co., William Morrow & Co., Inc., G. P. Putnam's Sons, Random House, Inc., Charles Scribner's Sons, The Viking Press, Inc., Henry Z. Walck, Inc., and Franklin Watts, Inc.

The judgments are the same as in Harper & Row, Publishers, Inc., above (Case No. 1933, Civil Action No. 67C 612), except for (1) the use of the phrase "defendant having appeared herein" in lieu of "defendant having filed its answer thereto denying the substantive allegations thereof" in the introductory paragraph of the Little, Brown & Co., Inc. and Franklin Watts, Inc. judgments, (2) the substitution of the name of the defendant and its state of incorporation (see below in paragraph 11(A), and (3) the substitution of the dates in paragraphs V and VI(F) as follows:

Case No.	Civil Action No.	Defendant	Par. IIA	Par. V	Par. VI(F)
1934	67 C 613	The Bobbs-Merrill Co., Inc.	Indiana	Jan. 1, 1968	June 30, 1968
1935	67 C 614	Childrens Press, Inc.	Illinois	Nov. 30, 1967	Aug. 15, 1968
1936	67 C 615	Thomas Y. Crowell Co.	New York	June 30, 1968	Jan. 1, 1968
1937	67 C 616	Dodd, Mead & Co., Inc.	New York	Sept. 22, 1968	Sept. 22, 1968
1938	67 C 617	E. P. Dutton & Co., Inc.	New York	Sept. 1, 1968	Sept. 1, 1968
1939	67 C 618	Golden Press, Inc.	New York	Dec. 31, 1967	June 30, 1968
1940	67 C 619	Grosset & Dunlap, Inc.	New York	Jan. 1, 1968	Jan. 1, 1968
1941	67 C 620	Holt, Rinehart and Winston, Inc.	New York	Sept. 30, 1968	Sept. 30, 1968
1942	67 C 621	Little, Brown & Co., Inc.	Massachusetts	July 1, 1968	July 1, 1968
1943	67 C 622	The Macmillan Co.	Delaware	Oct. 31, 1968	Oct. 31, 1968
1944	67 C 623	William Morrow & Co., Inc.	New York	Apr. 30, 1968	Apr. 30, 1968
1945	67 C 624	G. P. Putnam's Sons	New York	Feb. 29, 1968	Feb. 29, 1968
1946	67 C 625	Random House, Inc.	New York	June 30, 1968	June 30, 1968
1947	67 C 626	Charles Scribner's Sons	New York	Aug. 1, 1968	Aug. 1, 1968
1948	67 C 627	The Viking Press, Inc.	New York	Aug. 31, 1968	Aug. 31, 1968
1949	67 C 628	Henry Z. Walck, Inc.	New York	Sept. 30, 1968	Sept. 30, 1968
1950	67 C 629	Franklin Watts, Inc.	New York	Dec. 31, 1967	Dec. 31, 1967