

**APPENDIX A**

**FINAL JUDGMENTS**

(Ordered by Case Listing in the Case Caption)

UNITED STATES v.  
RHODE ISLAND FOOD COUNCIL, INC., *et al.*

Civil No.: 157

Year Judgment Entered: 1941



**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Rhode Island Food Council, Inc., Great Atlantic & Pacific Tea Co., First National Stores, Inc., Brownell and Field Company, Weybosset Pure Food Market, G. D. Del Rossi Company, Inc., General Fruit Stores, Inc., d. b. a. United Public Markets, Thomas F. Lloyd, Wolcott Chapin, Russell W. Field, Albert H. Daly, Jr., Gaetano D. Del Rossi, Joseph W. Ress, Howard B. Whitney, Frank W. Lynch. Joseph Maciel., U.S. District Court, D. Rhode Island, 1940-1943 Trade Cases ¶56,175, (Dec. 19, 1941)**

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United States v. Rhode Island Food Council, Inc., Great Atlantic & Pacific Tea Co., First National Stores, Inc., Brownell and Field Company, Weybosset Pure Food Market, G. D. Del Rossi Company, Inc., General Fruit Stores, Inc., d. b. a. United Public Markets, Thomas F. Lloyd, Wolcott Chapin, Russell W. Field, Albert H. Daly, Jr., Gaetano D. Del Rossi, Joseph W. Ress, Howard B. Whitney, Frank W. Lynch. Joseph Maciel.

1940-1943 Trade Cases ¶56,175. U.S. District Court, D. Rhode Island. Civil Action 157. December 19, 1941.

**Upon consent of all parties, a decree is entered in proceedings under the Sherman Anti-Trust Act, restraining the defendants from combining and conspiring to fix the prices of grocery products which are defined to include fresh fruits and vegetables, dairy, meat and bakery products. Among the activities enjoined are price fixing; issuing price lists; collecting and disseminating information regarding price policies and proposed prices; discouraging price competition; making and publishing false representation with respect to the Rhode Island Unfair Sales Act; enforcing its provisions through threats of litigation or other coercive activity; supporting and lending financial aid to private organizations for the purpose of enforcing or administering the state laws which restrict sales below cost.**

Thurman Arnold, Assistant Attorney General, John N. Cole and H. Donald Leatherwood, Special Attorneys, for the plaintiff.

Brickley, Sears & Cole, Boston, Mass., Lyne Woodworth & Evarts, Boston, Mass., and Judah C. Semonoff, Providence, R. I., for defendants.

Before Hartigan, District Judge.

**Final Judgment**

The complainant, United States of America, having filed its complaint herein on Dec. 19, 1941; all the defendants having appeared and severally filed their answers to such complaint denying the substantive allegations thereof; all parties hereto by their respective attorneys herein having severally consented to the entry of this final decree herein 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 the defendants having moved the Court for this decree;

NOW, THEREFORE, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law 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 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.

[ *Terms Defined*]

The following terms, as used herein, shall have the respective meanings hereinafter set forth viz:

[ *“Grocery Products”*]

The term “grocery products” shall mean all grocery products, including fresh fruits and vegetables, dairy products, meats and bakery products, which are usually and customarily sold in retail grocery stores.

[ *“Unfair Sales Act”*]

The term “Unfair Sales Act” shall mean 1939 Public Laws of Rhode Island, Chapter 671, as amended.

[ *“Wholesaler”*]

The term “wholesaler” shall mean any person, partnership, corporation or association engaged in the purchase of products from producers or manufacturers for resale to retail grocers.

[ *“Retailer”*]

The term “retailer” or “retail grocer” shall mean any person, partnership, corporation or association operating one or more stores for the sale and distribution of grocery products to the consuming public.

[ *“Retailer Owned Wholesale Group”*]

The term “retailer owned wholesale group” shall mean any partnership, corporation or association of independently owned retail grocers owning a warehouse and engaging in cooperative buying and advertising activities.

[ *“Wholesale Sponsored Voluntary Chain”*]

The term “wholesale sponsored voluntary chain” shall mean any association of independently owned retailers and a wholesaler by virtue of which the wholesaler and the independently owned retailers engage in cooperative advertising activities.

III.

[ *Activities Enjoined*]

Each of the defendants, their successors, subsidiaries, officers and employees, or any of them, be, and they hereby are enjoined and restrained from agreeing, combining or conspiring among themselves, or with others to do, or attempt to do, the following things, or any of them:

[ *Price Fixing*]

1. Raise, fix, maintain or adhere to wholesale or retail prices or minimum wholesale or retail prices of grocery products; except as provided in Section 1 of Chapter 1. Title 15. United States Code Annotated As Amended August 17, 1937, c. 690, Title VIII, 50 Stat; 693.

[ *Coercion*]

2. Force, coerce, whether through threat of litigation or otherwise, or persuade any wholesaler or retailer to sell or to refrain from selling grocery products at any specified prices:

[ *Specifying Minimum Prices*]

3. Suggest or specify to wholesalers or retailers the minimum prices allowed by the Unfair Sales Act:

[ *Issuing Price Lists*]

4. Issue any suggested price list:

[ *Disseminating Information*]

5. Collect and disseminate any information concerning proposed price policies or proposed prices:

[ *Computing Uniform Costs*]

6. Compute an average, normal or uniform cost of merchandise, cost of doing business, or mark-up to cover cost of doing business or establish standards or methods for such computation:

[ *Discouraging Price Competition*]

7 Publish material or literature discouraging price competition;

[ *Publish False Representations of Law*]

8. Publish any material or literature concealing the Unfair Sales Act which falsely represents the purposes or provisions of said Act;

[ *Enforcing State Law Through Threats of Litigation*]

9. Enforce the Unfair Sales Act through threat of litigation or other coercive activity, or through hearings or trials other than those instituted in the Courts of the State by the injured party, or through attempts to encourage litigation or by determining when an advertisement offer to sell or sale by a competitor is made with intent to injure competitors, or to destroy competition, or is a sale below cost, or by any other means or method.

**IV.**

[ *Other Activities Prohibited*]

Each of the defendants, their successors, subsidiaries, officers and employees, or any of them, be, and they hereby are enjoined and restrained from doing or attempting to do the; following things, or any of them

[ *Issuing Price Lists*]

1. Issue to any competitor, including wholesalers and retailers, any suggested price list;
2. Issue to any wholesaler or retailer any suggested price list for any goods which were not supplied by the defendant;

[ *Coercing Agreements by Threat of Litigation*]

3. Force or coerce any wholesaler or retailer, whether through threat of litigation or otherwise, or attempt to gain an agreement from any wholesaler or retailer, to sell or refrain from selling grocery products at specified prices;

[ *Reporting Violations of State Law*]

4. Report to any person the name of any Wholesaler or retailer who is believed to have violated the Unfair Sales Act, other than for the sole purpose of having such person institute in behalf of the reporter and in his name such legal proceedings as are authorized under the Unfair Sales Act.

[ *Supporting Private Enforcement of State Law*]

5 Support, maintain or encourage any private Organization, or any person, Other than the appropriate government official, if such organization or person attempts to enforce the Unfair Sales Act through threat of litigation or other coercive activity, or through hearings or trials other than those instituted in the Courts of the State, or through encouragement of litigation, or by determining when an advertisement, offer to sell or sale by a competitor is made with Intent to injure competitors or to destroy competition, or is a sale below, cost, or by any other means or method.

[ *Collecting Information*]

6. Collect, disseminate, or report to any private agency, any information designed to assist any activity prohibited in Section III, Paragraph. 9.

[ *Misrepresenting Provisions of State Law*]

7. Publish any material or literature concerning the Unfair Sales Act Which falsely represents the purposes or provision of said Act for the purpose of inducing the fixation or maintenance of retail or wholesale prices, or of minimum retail or wholesale “prices, including among others, representations—

(a) that the Act prohibits sales below cost even where there is no intent to injure competitors or destroy competition; and that the provision which makes a sale below cost prima facie evidence of intent does more than shift the burden of proof as to Intent;

(b) that the Act establishes a uniform minimum price for all competitors;

(c) that a seller must add to the cost of merchandise the mark-ups specified in the Act, even though his own costs of doing business are less than the amount of such mark-ups;

(d) that the seller may not base his prices upon invoice cost if his purchase was made outside the state, or that he must use only the Invoice cost of merchandise bought within the state in establishing his minimum prices:

(e) that a seller is permitted to sell below cost to meet competition if the lower price quoted by a competitor is itself in accord with the Act, but not if such lower price is in violation of the Act;

(f) that advertising allowances received by sellers or other concessions which reduce the net cost of merchandise may not be taken into account in computing minimum prices.

[ *Supplying Price Proposals*]

8. Supply to any private association or group of wholesalers or retailers of grocery products, any information concerning proposed price policies or proposed prices;

[ *Lending Financial Aid for Private Enforcement of State Law*]

9. Make any payment or contribution of money to any private organization if such payment or contribution is to be used to conduct private inquiries as to the violation of, police, enforce, or administer state laws which restrict sales below cost.

V.

[ *Dissolution of Council*]

Each of the defendants, their successors, subsidiaries, officers and employees, or any of them, are hereby ordered to take such steps as are necessary to dissolve and liquidate defendant Rhode Island Food Council, Inc.

VI.

[ *Activities Excepted*]

Nothing contained herein shall be deemed to affect activities which otherwise are lawful within a wholesale-sponsored voluntary chain or within a retailer-owned wholesale group; and nothing in this decree shall be deemed to prohibit a defendant wholesale sponsored voluntary chain or a defendant retailer-owned wholesale group from engaging in such cooperative advertising activities as may be otherwise lawful. This provision shall not be deemed to pass upon the legality of the activities of wholesale-sponsored voluntary chains or retailer-owned wholesale groups, nor upon the legality of cooperative advertising.

VII.

[ *Examination of Records Permitted to Secure Compliance*]

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 matters contained in the 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) the defendants, on such request, shall submit such reports in respect of any such matters as may from time to time be reasonable 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.

#### VIII.

[ *Retention of Jurisdiction*]

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 hereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.

UNITED STATES v.  
PROVIDENCE FRUIT & PRODUCE  
BUILDING, INC., *et al.*

Civil No.: 1533

Year Judgment Entered: 1954



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA,

Plaintiff

v.

PROVIDENCE FRUIT & PRODUCE  
BUILDING, INC., ET AL.,

Defendants

Civil Action  
No. 1533

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on February 6, 1953, all the defendants having appeared and filed their answers to such Complaint denying the substantive allegations thereof, and said Complaint having been dismissed as to all defendants except those signatory hereto, and the undersigned defendants and plaintiff by their attorneys having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of law or fact herein and without admission by any of said defendants in respect of any such issue:

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

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the parties signatory to this Final Judgment and over the subject matter hereof. The Complaint states a cause of action against the undersigned defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890,

entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," as amended, commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Person" shall mean an individual, partnership, corporation, association or any other legal entity;

(B) "Company" shall mean the defendant, PROVIDENCE FRUIT & PRODUCE BUILDING, INC.;

(C) "Produce Building" shall mean the physical structure and facilities including parking areas and approaches, used, owned or leased by the Company;

(D) "Receiver" shall mean any person to whom fruits and vegetables are forwarded for resale at wholesale, whether such person is a consignee, commission merchant, a merchant buying and selling on his own account, or an agent of a grower or a shipper engaged in receiving and selling fruit and vegetable produce for the account of the grower or shipper;

(E) "Wholesaler" shall mean any person, including a receiver, who usually sells fruit and vegetable produce in wholesale lots of five or more boxes or packages;

(F) "Jobber" shall mean a person who sells fruit and vegetable produce to restaurants, grocery stores, and other retail outlets in less than wholesale lots;

(G) "Tenant" shall mean a person authorized to use the facilities of the Produce Building either as a tenant or sub-tenant;

(H) "Applicant" shall mean any person who files a written request with the Company to rent or lease space in the Produce Building;

(I) "Tenant defendants" shall mean the defendants T.A. BOYLE CO., A. M. TOURTELLOTT CO., NATHAN WARREN & SONS, and FELIX ROCCO CO., and each of them;

(J) "Space" shall mean space in the Produce Building;

(K) "Unit", as used herein, shall mean space on both floors of said Produce Building, fifteen feet in width and the full depth of the building, and shall include the cellar under the same and the space under the front platform in front of said cellar.

### III

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

### IV

The Company is enjoined and restrained from:

(A) Refusing to lease or rent any space to any applicant desiring to act as a receiver, wholesaler or jobber at the Produce Building, except upon the grounds (1) that the applicant is not financially responsible, or (2) that all the space desired by the applicant in the Produce Building is already leased or rented to tenants, or is the subject matter of active negotiations pursuant to Section V (C) of this Final Judgment; or (3) that the applicant or a partner or the person in active control or management thereof has within three years prior to the application been convicted of a crime involving moral turpitude.

(B) Interfering with or restricting any tenant in the conduct of its business; provided, however, that the Company shall have the right to promulgate reasonable, uniform and non-discriminatory rules and regulations relating to the physical operation of the Produce Building;

(C) Excluding any person as a tenant or subtenant of the Produce Building because such person is a non-resident of the State of Rhode Island;

(D) Refusing to permit a tenant to assign its lease or sublet the whole or a part of its premises, except on the grounds that (1) the proposed assignee or sublessee proposes to conduct a business in the Produce Building other than that of a receiver, wholesaler, jobber, restaurant, telegraph office, or other business naturally incident, accessory to, and grouping itself with, a produce terminal, or (2) the proposed assignee or subtenant or a partner, or the person in active control or management thereof has, within three years prior to the application for such permission, been convicted of a crime involving moral turpitude;

(E) Consenting to the transfer or assignment of any lease or to the subletting of the whole or any part of its premises to any person who proposes to conduct a business in the Produce Building other than that of a receiver, wholesaler or jobber, if at the time the application for such transfer, assignment or subletting is made, there are any pending applications of any receiver, wholesaler or jobber for space;

(F) Granting to any tenant any preferential discount or rent because of the number of units leased or rented to a particular tenant, or because the tenant is a stockholder of the Company;

(G) Refusing to renew the lease of any receiver, wholesaler or jobber except on one of the grounds on which it may refuse a lease.

V

(A) Within ten (10) days from the date of the entry of this Final Judgment, the Company shall mail (registered mail) a copy of this Final Judgment to each person who had filed applications for space (and whose applications had not been previously withdrawn) to the last known address of such applicant. Such applicant shall be requested (a) to file a new application, or (b) to notify the Company it no longer desires space. If such applicant does not make a new application for space within sixty (60) days from the mailing of such notice, then its pending application shall be deemed to have been withdrawn. If such application is made, however, it shall be retroactive to the date of the original application in regards to preference to be given as hereinafter provided. Within one hundred twenty (120) days from the entry of this Final Judgment, the Company shall file a report with this Court, with a copy to the Attorney General, as to the disposition of all such applications for space pending as of the date of the entry of this Final Judgment;

(B) Within ten (10) days from the date of the entry of this Final Judgment, the Company shall mail (registered mail) a copy of this Final Judgment to each tenant and shall publish once in the legal advertisements in the Providence Journal and the Evening Bulletin a copy of Section V of this Final Judgment;

(C) (1) When space occupied by a receiver, wholesaler or jobber becomes available and is applied for in writing by a receiver, wholesaler or jobber, the Company is enjoined and restrained from denying such application except pursuant to Section IV (A) of this Final Judgment. If space occupied by a person who is not a receiver, wholesaler or jobber becomes available and a written application for such space is received from a receiver,

wholesaler or jobber and another person, preference in the renting of such space shall be given to the receiver, wholesaler or jobber; provided, however, that such space may be rented to such other applicant for the purpose of conducting a restaurant or a telegraph office (provided that there shall not be more than three restaurants and one telegraph office on the premises).

If more than one written application for space is received from receivers, wholesalers or jobbers, preference shall be given to such applicants in the order in which their applications have been received by the Company. As applications for space are received by the Company, they shall be numbered consecutively in the order of their receipt and shall be kept on file by the Company. If an application for space which has become available is refused, the Company shall notify the applicant in writing of its refusal and state the grounds for such refusal. Any application refused for lack of available space, however, shall remain on file as set forth above and shall be considered at the time of any subsequent vacancy and shall be accorded the preference as herein provided;

(2) When space is vacated by a tenant and thus becomes available, such space shall be offered by the Company pursuant to the provisions of Section V (C) (1) to each applicant, who is a receiver, wholesaler or jobber, in the order in which written applications have been received by the Company from receivers, wholesalers or jobbers;

(D) Notwithstanding the foregoing, the Company may renew the lease or tenancy of (1) any tenant as of the date of the entry of this Final Judgment, or (2) any person who may thereafter become the tenant in accordance with the terms of Section V (C) above;

(E) No tenant shall be permitted to lease or rent, directly or indirectly, more than seven (7) units without prior approval of the Attorney General;

(F) The Company is ordered and directed, within ten (10) days from the date of entry of this Final Judgment to terminate and cancel any contract or agreement inconsistent with any of the provisions of this Final Judgment.

VI

(A) The Company may require evidence of financial responsibility of any applicant or tenant, and, in connection therewith, may require an applicant or tenant to furnish a financial statement, statement of ownership of the applicant or tenant, which shall include a list of partners, stockholders and/or other principals. The Company may at its option require, as a condition of renting or leasing space, that a bond be furnished in an amount not to exceed one year's rent;

(B) The Company may provide in its lease that, without the written consent of the Company, a tenant may not assign or transfer its lease or sublet the whole or any part of its premises; provided, however, that the Company's consent shall not be withheld except on the grounds that (1) the proposed assignee or sublessee proposes to conduct a business in the Produce Building other than that of a receiver, wholesaler, jobber, restaurant, telegraph office or other business naturally incident, accessory to, and grouping itself with, a produce terminal, or (2) the proposed assignee or subtenant or a partner or the person in active control or management thereof has, within three years prior to the filing of the application for such permission, been convicted of a crime involving moral turpitude;

(C) To prevent circumvention on the part of any tenant of any such restrictions against assignment or subletting, the Company

may provide in its lease that without the written consent of the Company a tenant may not transfer any interest in its business, or, if it is a corporation, transfer any of its stock; provided, however, that the Company's consent shall not be withheld except on one of the grounds on which it may refuse to consent to an assignment or subletting, as hereinbefore provided;

(D) If, contrary to the above-mentioned provisions prohibiting assignment, subletting or transfer of stock without the written consent of the Company, a tenant makes such assignment, sublease or transfer of stock without applying to the Company for consent, the Company may terminate the lease, and such termination shall not be a violation of this Final Judgment; provided, however, that if the failure of the tenant to apply for such consent is due to an oversight, the Company may not terminate the lease unless the Company would have had the right to refuse permission to the tenant to assign, sublet or transfer its stock had such permission been requested by the tenant.

#### VII

Each of the tenant defendants is enjoined and restrained from filing any application for additional space within seventy (70) days after the publication provided for herein in Section V.

#### VIII

Each of the tenant defendants is enjoined and restrained from entering into any agreement or understanding with each other or with any other person to limit or restrict any tenant in the operation or conduct of its business or to limit or restrict the person to which any such tenant may sublet its premises; provided, however, that this Section VIII shall not prohibit any of the tenant defendants, their officers, directors

or agents who might be officers or directors of the Company from performing their duties as officers or directors of the Company.

IX

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

X

Jurisdiction 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 modification of any of the provisions thereof,

and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

Dated:

EDWARD W. DAY

October 18, 1954

United States District Judge

We hereby consent to the entry of the foregoing Final Judgment:

For the Plaintiff:

STANLEY N. BARNES

Assistant Attorney General

W. D. KILGORE, JR.

BERTRAM C. DEDMAN

HARRY N. BURGESS

WILLIAM J. ELKINS

CHARLES F. B. McALEER

JOHN J. GALGAY

Attorneys for Plaintiff

For the Defendants:

PROVIDENCE FRUIT & PRODUCE  
BUILDING, INC.  
T. A. BOYLE CO.  
A. M. TOURTELLOT CO.  
NATHAN WARREN & SONS  
FELIX ROCCO CO.

By their Attorneys

/s/ ANDREW P. QUINN

Andrew P. Quinn

/s/ CHRISTOPHER DEL SESTO

Christopher Del Sesto

/s/ FRANK LICHT

Frank Licht

/s/ A. PETER QUINN, JR.

A. Peter Quinn, Jr.

UNITED STATES v.  
PROVIDENCE FRUIT & PRODUCE  
BUILDING, INC., *et al.*

Civil No.: 1533

Year Judgment Modified: 1977  
(Allowing an exception for condemnation)



Cheetah™



**[Trade Regulation Reporter - Trade Cases \(1932 - 1992\), United States v. Providence Fruit & Produce Building, Inc., et al., U.S. District Court, D. Rhode Island, 1977-2 Trade Cases ¶61,602, \(Mar. 23, 1977\)](#)**

Federal Antitrust Cases

1533

Trade Regulation Reporter - Trade Cases (1932 - 1992) ¶61,602

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United States v. Providence Fruit &amp; Produce Building, Inc., et al.

1977-2 Trade Cases ¶61,602. U.S. District Court, D. Rhode Island, Civil Action No. 1533, Dated March 23, 1977.

Case No. 1154, Antitrust Division, Department of Justice.

### Sherman Act

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#### Headnote

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**Terminal Facilities: Fruit and Produce: Discriminatory Leasing: Chronological Treatment of Applicants: Exception for Condemnation: Modification of Consent Decree.—**

As a result of a modification of a 20-year-old consent decree, a tenant in a produce market building whose space had been taken by condemnation could lease another available space equal in area, insofar as it was possible, to the space taken, without according first consideration to any pending applicant as had been required by the decree.

**Modifying consent decree,** [1954 Trade Cases ¶67,872](#).

**For plaintiff:** W. Clyde Robinson, Robert J. Ludwig, and Robert J. Rose, Dept. of Justice, Washington, D. C. **For defendants:** Frank Licht, Harry J. Hoopis, and John P. Hawkins, Providence, R. I., John F. Cuzzone, of Quinn, Cuzzone & Geremia, Providence, R. I., for W. J. Canaan; Rudolph E. Boffi, Providence, R. I., for Manhattan Tomato Co.; and Andrew P. Quinn, Providence, R. I.

### Order

Pettine, D. J.: Whereas, a Final Judgment was entered herein by this Court on October 18, 1954, requiring the defendant, Providence Fruit & Produce Building, Inc., (“Company”), to lease available space in the Produce Building to applicants therefor in the chronological order in which such applications are received by the Company, and

Whereas, space has now become available in the Produce Building because of the termination of its lease by a tenant, and by the bankruptcy of another tenant, and

Whereas, certain space in the Produce Building now occupied by tenants under lease to the Company has been condemned by the State of Rhode Island Department of Transportation, which has resulted in the displacement of such tenants from their respective leased space, and

Whereas, the Final Judgment makes no provision for such condemnation, and the Court believing it to be in the public interest to amend said Final Judgment, it is therefore,

Ordered, Adjudged and Decreed, that

I. Section V of the 1954 Final Judgment is amended by adding thereto a new subsection (H) as follows:

(V)

\*\*\*\*

(H) Notwithstanding any of the provisions of this Final Judgment, the Company shall allocate and offer to lease to any tenant whose space in the Produce Building has been taken by condemnation or other eminent domain proceedings, any available space in such Produce Building equal in area, insofar as it is possible, to the space taken.

UNITED STATES v.  
PROVIDENCE FRUIT & PRODUCE  
BUILDING, INC., *et al.*

Civil No.: 1533

Year Judgment Modified: 1977  
(Allowing assignment and transfer of a lease)

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND



UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 1533
	)	
PROVIDENCE FRUIT & PRODUCE	)	
BUILDING, INC., ET AL.,	)	
	)	
Defendants.	)	

ORDER

WHEREAS, a Final Judgment was entered herein by this Court on October 18, 1954 requiring the defendant Providence Fruit & Produce Building, Inc. to lease available space in the Produce Building to applicants therefor in the chronological order in which such applications were received; and

WHEREAS, plaintiff on December 3, 1974 filed its Motion for Interpretation and Enforcement of said Final Judgment requesting the Court to require the defendant to lease such available space in accordance with the provisions of that Judgment, and further requesting that the Judgment be modified so that all applicants be considered in their chronological order when a tenant desires to assign or sublease a whole or part of his leased premises; and

WHEREAS, a hearing having been held on plaintiff's said motion on February 20, 1975 and the Court being fully apprised of the facts therein; it is hereby

ORDERED, ADJUDGED and DECREED:

I. Sections IV(D) and VI(B) of the 1954 Final Judgment

are hereby modified by adding thereto the following language:

. . . or (3) applicants having a written application on file with the Company for space in the Produce Building have not been given an opportunity, in the chronological order in which such applications were received, to sublease the premises or to receive an assignment from such tenant.

Section IV(D), as modified, will then read:

IV

The Company is enjoined and restrained from;

\* \* \* \*

(D) Refusing to permit a tenant to assign its lease or sublet the whole or a part of its premises, except on the grounds that (1) the proposed assignee or sublessee proposes to conduct a business in the Produce Building other than that of a receiver, wholesaler, jobber, restaurant, telegraph office, or other business naturally incident, accessory to, and grouping itself with, a produce terminal, or (2) the proposed assignee or subtenant or a partner, or the person in active control or management thereof has, within three years prior to the application for such permission, been convicted of a crime involving moral turpitude, or (3) applicants having a written application on file with the Company for space in the Produce Building have not been given an opportunity, in the chronological order in which such applications were received, to sublease the premises or to receive an assignment from such tenant.

Section VI(B), as modified, will then read:

VI

\* \* \* \*

(B) The Company shall provide in its lease that, without the written consent of the Company, a tenant may not assign or transfer its lease or sublet the whole or any part of its premises; provided, however, that the Company's consent shall not be withheld except on the grounds that (1) the proposed assignee or sublessee proposes to conduct a business in the Produce Building other than that of a receiver,

accessory to, and grouping itself with, a produce terminal, or (2) the proposed assignee or subtenant or a partner or the person in active control of management thereof has, within three years prior to the filing of the application for such permission, been convicted of a crime involving moral turpitude, or (3) applicants having a written application on file with the Company for space in the Produce Building have not been given an opportunity, in the chronological order in which such applications were received, to sublease the premises or to receive an assignment from such tenant.

II. Section V of the 1954 Final Judgment is hereby modified by adding thereto a subsection (G) as follows:

V

\* \* \* \*

(G) For purposes of this Final Judgment, space shall be deemed available for leasing by the Company when it is vacated by a tenant, when it is offered by a tenant for transfer, assignment or sublease, or when it is otherwise available for occupancy by an applicant.

III. Section V(C) of the 1954 Final Judgment is hereby modified by adding a new subsection (3) as follows:

(C) (3) Notwithstanding the provisions of Section V(C) (1) and V(C) (2), the Company may offer to lease or may refuse to lease available space to any applicant, and such offer or refusal shall not be a violation of this Final Judgment if irreparable harm or extreme hardship, either to such applicant or to the Company, would otherwise result. For purposes of this subsection, the burden of proof to show irreparable harm or extreme hardship shall be on the Company.

IV. All other provisions of the Final Judgment shall remain in full force and effect.

SO ORDERED:

  
UNITED STATES DISTRICT JUDGE  
3/23/19

Dated:

UNITED STATES v.  
MACHINE CHAIN MANUFACTURERS  
ASSOCIATION, *et al.*

Civil No.: 1816

Year Judgment Entered: 1955



## **Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Machine Chain Manufacturers Association, et al., U.S. District Court, D. Rhode Island, 1955 Trade Cases ¶68,009, (Mar. 18, 1955)**

[Click to open document in a browser](#)

United States v. Machine Chain Manufacturers Association, et al.

1955 Trade Cases ¶68,009. U.S. District Court, D. Rhode Island. Civil Action No. 1816. Dated March 18, 1955. Case No. 1219 in the Antitrust Division of the Department of Justice.

### **Sherman Antitrust Act**

**Combinations and Conspiracies—Price Fixing—Consent Decree—Practices Enjoined —Pricing Practices —Machine-Made Chain.**—Manufacturers of machine-made chain were enjoined by a consent decree from entering into any understanding with any other such manufacturer or with any association or central agency for such manufacturers to (1) fix or maintain prices, pricing methods, discounts, or other conditions used by any person, (2) circulate or exchange any price lists in advance of publication to customers, or (3) circulate or exchange any statistics representing costs of operation for the purpose of fixing prices.

Each manufacturer was ordered to cease utilizing any cost or pricing formula, which has not been independently determined, as a means of determining the price at which the manufacturer will sell any style, size, or design of machine-made chain; and ordered to withdraw its presently effective price lists, to individually review the prices withdrawn on the basis of its individual cost figures and individual judgment as to profits, and to issue a new price list on the basis of such review.

**Combinations and Conspiracies — Trade Association — Consent Decree — Practices Enjoined—Circulating Cost or Price Information.**—An association of manufacturers of machine-made chain was prohibited by a consent decree from circulating, reporting, or recommending to any manufacturer any costs or averaged costs of manufacture or sale of machine-made chain, any prices or terms used or to be used in the sale of such chain, or any formulae for computing such costs or prices. Manufacturers of machine-made chain were prohibited from being a member of, knowingly contributing anything of value to, or participating in any of the activities of, any trade association or central agency for machine-made chain manufacturers, the activities of which are inconsistent with any of the provisions of the decree.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; George L. Derr, W. D. Kilgore, Jr., and Richard B. O'Donnell, Special Assistants to the Attorney General; Jacob S. Temkin, United States Attorney; and John S. James, Elliott H. Feldman, E. Winslow Turner, and Stanley Blecher, Trial Attorneys.

For the defendants: Francis J. Kiernan for Machine Chain Manufacturers Assn.; American Jewelry Chain Company; Automatic Chain Co.; Chain Craft Co.; Concord Manufacturing Corporation; Federal Chain Company; Kunzmann Chain Company; Sweet Manufacturing Company, Inc.; Universal Chain Company, Inc.; Annie L. Jaegle; William H. Jaegle; Wiesner Manufacturing Company; and Armbrust Chain Company. Hale and Dow, Samuel S. Dennis, III, and George H. Foley for M. S. Co., Inc. Christopher Del Sesto for Prochain, Inc.

### **Final Judgment**

EDWARD W. DAY, District Judge [ *In full text*]: The plaintiff, United States of America, having filed its complaint herein on March, 18, 1955, and each of the defendants signatory hereto having appeared herein and the plaintiff and the said defendants, by their respective attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or admission of any criminal or civil culpability by any such defendant in respect of any such issue;

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

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Ordered, adjudged, and decreed as follows:

I

[ *Sherman Act* ]

The Court has jurisdiction of the subject matter herein and all the parties signatory hereto. The complaint states a cause of action against the defendants and each of them 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

[ *Definitions* ]

As used in this Final Judgment:

- (A) "Defendant Association" means the defendant Machine Chain Manufacturers Association;
- (B) "Consenting defendants" means each and all of the defendants signatory hereto;
- (C) "Person" means an individual, partnership, firm, corporation, association or other business or legal entity.

III

[ *Applicability of Judgment* ]

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

IV

[ *Costs of Manufacture and Prices* ]

The defendant Association is enjoined and restrained from collecting from or circulating, reporting, or recommending to any manufacturer of machine-made chain any costs or averaged costs of manufacture or sale of machine-made chain, any prices or terms used or to be used in connection with the sale of machine-made chain, or any formulae for computing such costs or prices.

V

[ *Concerted Pricing Practices* ]

The consenting defendants are jointly and severally enjoined and Restrained from entering into, adhering to, or maintaining, or claiming any rights under any contract, combination, agreement, understanding, plan, or program with any other defendant, with any other manufacturer of machine-made chain, or with any association or central agency of or for manufacturers of machine-made chain:

- (A) To fix, determine, establish or maintain prices, pricing methods, discounts or other terms and conditions used or to be used by such defendant or by any other person in connection with the manufacture or sale of machine-made chain;
- (B) To circulate or exchange, directly or indirectly, any price lists or price quotations applicable to machine-made chain with any other machine-made chain manufacturers in advance of the publication, circulation or communication of such price lists or price quotations to the customers of such defendant;
- (C) To circulate or exchange, directly or indirectly, any statistics representing costs of operation with any other machine-made chain manufacturer, for the purpose or with the effect of fixing prices, or otherwise restraining trade.

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VI

[ *Individual Pricing Practices* ]

The consenting defendants are jointly and severally enjoined and restrained from:

- (A) Urging, influencing or suggesting, or attempting to urge, influence or suggest, to any other manufacturer of machine-made chain the price or prices, or other terms or conditions charged or to be charged by such other manufacturer for machine-made chain;
- (B) Circulating, exchanging or using, in any manner, any price list or purported price list containing or purporting to contain any prices, terms or conditions for the sale of machine-made chain, which have been agreed upon or established pursuant to agreement between two or more manufacturers of machine-made chain; and
- (C) Being a member of, knowingly contributing anything of value to, or participating in any of the activities of, any trade association or central agency for machine-made chain manufacturers, the activities of which, are inconsistent in any manner with any of the provisions of this Final Judgment.

VII

[ *Cost or Pricing Formula* ]

Within sixty (60) days following the date of the entry of this Final Judgment, each of the consenting defendants, other than the defendant Association, is ordered and directed to cease utilizing any cost or pricing formulae or part thereof which has not been independently arrived at by such consenting defendant, and which has been theretofore furnished to such defendant by the defendant Association, or by any other manufacturer of machine-made chain, as a means of determining in whole or in part the price or prices at which such consenting defendant will sell any style, size or design of machine-made chain.

VIII

[ *Withdrawal of Price Lists—Review* ]

Within sixty (60) days following the date of the entry of this Final Judgment, each of the defendants, other than the defendant Association, and the consenting defendant M. S. Co., Inc., is ordered and directed:

- (A) To withdraw his or its presently effective price lists for machine-made chain (or, where no price list has been issued, withdraw his or its presently prevailing prices); and
- (B) To individually review the machine-made chain prices withdrawn in conformity with Section VIII (A) herein, on the basis of his or its individual cost figures and individual judgment as to profits, and issue a new price list (or, where no price list has been issued, issue new prices) on the basis of such independent review.

IX

[ *Notice of Judgment* ]

The defendant Association is ordered and directed, within ten (10) days after the date of its entry, to furnish to each of its present members a conformed copy of this Final Judgment and to file with this Court, and with the plaintiff herein, a report setting forth the fact and manner of its compliance with this Section IX, together with the names and addresses of each person to whom a copy of this Final Judgment shall have been furnished in compliance herewith.

X

[ *Inspection and Compliance* ]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any consenting defendant made to its principal

office, be permitted, subject to any legally-recognized privilege, (a) reasonable access, during the office hours of such defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this Final Judgment, and (b) subject to the reasonable convenience of such defendant, and without restraint or interference, to interview officers and employees of such defendant who may have counsel present regarding any such matters. For the purpose of securing compliance with this Final Judgment, the defendants, 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 permitted 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 Department except in the course of legal proceedings for the purpose of securing compliance with this Final Judgment in which the United States is a party, or as otherwise required by law.

**XI**

*[ Jurisdiction Retained]*

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

UNITED STATES v.  
BOSTITCH, INC.

Civil No.: 2362

Year Judgment Entered: 1958



*WK\_Trade Regulation Reporter - Trade Cases 1932 - 1992 United States v Bostitch Inc US District Court D Rhode Island 1958 Trade Cases 69207 Dec 2 195.pdf*

## **Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Bostitch, Inc., U.S. District Court, D. Rhode Island, 1958 Trade Cases ¶69,207, (Dec. 2, 1958)**

United States v. Bostitch, Inc.

1958 Trade Cases ¶69,207. U.S. District Court, D. Rhode Island. Civil Action No. 2362. Dated December 2, 1958. Case No. 1395 in the Antitrust Division of the Department of Justice.

### **Sherman Antitrust Act**

**Resale Price Fixing—Restraint of Trade Under Sherman Act, Section 1—Consent Decree—Practices Enjoined—Agreement to Maintain Resale Prices.**—A manufacturer of stitchers and staplers was enjoined by a consent decree from (1) entering into any agreement with its distributors to fix the prices, terms, or conditions for the sale of such products to third persons, and (2) entering into any agreement with any dealer, for a period of two years from the effective date of the decree, relating to resale price maintenance. The manufacturer was also enjoined from circulating to distributors information respecting prices, prior to the time when such information was generally announced to the trade.

**Resale Price Fixing—Restraint of Trade Under Sherman Act, Section 1—Consent Decree—Practices Enjoined—Resale Price Control Through Refusal to Sell.**—A manufacturer of stitchers and staplers was enjoined by a consent decree from refusing to enter into, or cancelling, any agreement or contract with any distributor for the sale or resale of any products because of such distributor's refusal to adhere to price fixing agreements or any other agreements prohibited by the decree. However, the manufacturer and its subsidiaries were permitted to choose and select distributors, dealers, and other customers.

**Combinations and Conspiracies—Consent Decree—Practices Enjoined—Allocation of Markets and Customers.**—A manufacturer of stitchers and staplers was enjoined by a consent decree from (1) limiting or restricting the territories in which any distributor, or the manufacturer, might sell such products, (2) limiting or restricting the customers to whom any distributor, or the manufacturer, might sell such products, and (3) refraining from competing in or for customers, markets, or territories for the sale of such products. However, the manufacturer was permitted to designate geographical areas in which its distributors should be primarily responsible for selling its products.

**Combinations and Conspiracies—Consent Decree—Practices Enjoined—Restricting Use of Competitors' Products.**—A manufacturer of stitchers and staplers was prohibited by a consent decree from limiting or restricting the right of any distributor to purchase, distribute, or sell products manufactured or sold by any source other than the manufacturer.

**Department of Justice Enforcement and Procedure—Consent Decree—Specific Relief —Modification of Contracts.**—A manufacturer of stitchers and staplers was ordered by a consent decree to modify any agreements with certain companies which related to products sold by the manufacturer, by terminating and cancelling provisions which were contrary to the terms of the decree. Also, the manufacturer was directed to mail to each of those companies, within thirty days, a true and complete copy of the decree.

**Department of Justice Enforcement and Procedure—Consent Decree—Permissive Provision—Choosing Customers—Designating Sales Territories.**—A manufacturer of stitchers and staplers was permitted by a consent decree to choose and select distributors, dealers and other customers and to designate geographical areas in which they should be primarily responsible for selling the manufacturer's products. Also, the manufacturer was permitted to terminate the franchises of distributors or stop selling to dealers who did not adequately represent it and promote the sale of its products in their respective areas.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; and W. D. Kilgore, Jr., Baddia J. Rashid, Philip L. Roache, Jr., Charles F. B. McAleer, Stanley R. Mills, Jr., and Joseph J. O'Malley, Attorneys, Department of Justice.

For the defendant: George C. Davis and Westcote H. Chesebrough.

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### Final Judgment

EDWARD W. DAY, District Judge [ *In full text*]: The plaintiff, United States of America, having filed its complaint herein on June 19, 1958; the defendant, Bostitch, Inc., having appeared and filed its answer to the complaint denying the substantive allegations thereof; and the plaintiff and the defendant, by their attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without admission by either of them in respect to any such issue;

Now Therefore, before any testimony or evidence has been taken herein, and 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.

##### [ *Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states a claim against the defendant, under which relief may be granted 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.

##### [ *Definitions*]

As used in this Final Judgment:

(A) "Person" means any individual, partnership, firm, association, corporation or other business or legal entity.

(B) "Products" means any and all stitchers and staplers (including stapling hammers, stapling tackers, stapling pliers, stapling bottomers and auto-clench stapling machines), folder gluers or any fastening device similar to any of the foregoing, staples, staple removers, and any and all parts and accessories therefor, now or hereafter manufactured and/or sold by Bostitch, Inc. or by any of its subsidiaries, as subsidiaries are hereinafter defined.

(C) "Defendant" means Bostitch, Inc., a corporation organized and existing under the laws of the State of Rhode Island.

(D) "Subsidiary" means any existing or future corporation whose stock is directly or indirectly wholly owned by defendant.

(E) "Distributor" means any person (other than defendant and its wholly-owned subsidiaries) engaged in the purchase of products from Bostitch, Inc., for resale to third persons in the United States.

(F) "Dealer" means any person engaged in the purchase of products from a distributor or subsidiary or through an agent for resale to third persons in the United States.

(G) "United States" means the United States, its territories and possessions.

#### III.

##### [ *Applicability*]

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

#### IV.

##### [ *Price-Fixing—Exclusive Dealing*]

Defendant is enjoined and restrained from directly or indirectly:

(A) Entering into, adhering to, maintaining, enforcing or claiming any rights under any agreement, contract or understanding with any distributor to:

- (1) Fix, establish, maintain, stabilize or adhere to prices, terms or conditions for the sale of products to third persons;
- (2) Fix, establish, maintain, stabilize or adhere to freight rates to be used in the sale of products to the United States Government, State, municipal or educational institutions;
- (3) Limit or restrict the territories in which or the customers to whom any distributor or the defendant may sell products;
- (4) Refrain from competing in or for customers, markets or territories for the sale of products;
- (5) Limit or restrict the right of any distributor to purchase, distribute or sell products manufactured or sold by any source other than defendant.

(B) Refusing to enter into or cancelling any agreement or contract with any distributor for the sale or resale of any products because of such distributor's refusal to agree or adhere to any agreement, contract or understanding contrary to or inconsistent with any of the provisions of subsection (A) of this Section IV.

(C) Circulating, exchanging or communicating to or with any distributor information respecting prices, freight rates or terms or conditions for the sale of products to third persons prior to the time when such information is generally announced to the trade.

(D) Entering into, adhering to, maintaining, enforcing or claiming any rights for a period of two years from the effective date of this Final Judgment under any contracts, agreements or understandings with any dealer relating to resale price maintenance.

[ *Permissive Provision* ]

Subject to subsections (A), (B), (C) and (D) above, Bostitch, Inc. and its subsidiaries may respectively exercise the right to choose and select distributors, dealers, and other customers and to designate geographical areas in which such distributors and dealers shall respectively be primarily responsible for selling products and may terminate the franchises of distributors or cease to sell to dealers, who do not adequately represent Bostitch, Inc. or its particular subsidiary and promote the sale of products in areas so designated as their primary responsibility.

V.

[ *Specific Relief* ]

(A) Defendant is ordered and directed to modify, within 30 days from the entry of this Final Judgment, any agreements with American Type Founders Co., Inc., Bostitch-McClain, Inc., and Henry W. Saari, Inc., relating to products, by terminating and cancelling any provisions thereof contrary to or inconsistent with any terms of this Final Judgment.

(B) Upon the modification, termination or cancellation of the agreements provided for in subsection (A) hereof, defendant is enjoined and restrained from entering into, adhering to or claiming any rights under any agreement, contract or understanding which is contrary to or inconsistent with any provision of this Final Judgment.

(C) Defendant is ordered and directed, within 30 days from the entry of this Final Judgment, to mail to each of the corporations listed in subsection (A) hereof, a true and complete copy of this Final Judgment.

VI.

[ *Enforcement 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 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, subject to any legally recognized privilege:

(A) Access, during the office hours of the defendant, to those parts of the books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant which relate to any matters contained in this Final Judgment;

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

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Anti-trust, Division, the defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section VI shall 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 in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

#### VII.

[ *Jurisdiction Retained* ]

Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time and from time to 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 thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

#### VIII

[ *Effective Date* ]

This Final Judgment shall become effective thirty (30) days from the date of entry hereof.

UNITED STATES v.  
KAISER ALUMINUM & CHEMICAL CORPORATION

Civil No.: 2795

Year Judgment Entered: 1965



## **Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Kaiser Aluminum & Chemical Corporation., U.S. District Court, D. Rhode Island, 1965 Trade Cases ¶71,354, (Feb. 23, 1965)**

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United States v. Kaiser Aluminum & Chemical Corporation.

1965 Trade Cases ¶71,354. U.S. District Court, D. Rhode Island. Civil Action No. 2795. Entered February 23, 1965. Case No. 1609 in the Antitrust Division of the Department of Justice.

### **Clayton Act**

**Acquiring Competitors—Divestiture—Consent Judgment.**—An integrated aluminum company was required by a consent judgment to sell a wire and cable plant to an eligible purchaser which would keep it in operation. The price at which the plant was to be sold was set at not less than book value, and if no sale was effected within nine months, despite a bona fide effort, the aluminum producer would be relieved of its obligation to sell. The judgment also enjoined the aluminum producer from acquiring any other wire and cable producer for five months.

For the plaintiff: William H. Orrick, Jr., Donald F. Melchior, William D. Kilgore, Jr., Charles D. Mehaffie, Jr., and Lawrence F. Noble, Attorneys, Department of Justice.

For the defendant: William H. Edwards, Gordon Johnson and Paul R. Haerle.

### **Final Judgment**

DAY, Judge: Plaintiff, United States of America, having filed its complaint herein on April 28, 1961, and defendant, Kaiser Aluminum & Chemical Corporation, having appeared and filed its answer to such complaint, denying the substantive allegations thereof; and plaintiff and defendant, by their respective attorneys, having each consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence or an admission by either party hereto with respect to any such issue, and the Court having considered the matter and being duly advised,

Now, therefore, before the taking of any testimony and 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

[ *Clayton Act* ]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim upon which relief may be granted against the defendant under Section 7 of the Act of Congress of October 15, 1914 (15 U. S. C. Section 18), commonly known as the Clayton Act, as amended.

II

[ *Definitions* ]

As used in this Final Judgment:

(A) "Eligible Purchaser" means any person, other than a producer of primary aluminum metal, approved by plaintiff;

(B) "Kaiser" means defendant, Kaiser Aluminum & Chemical Corporation, a corporation organized and existing under the laws of the State of Delaware with its principal office at Oakland, California;

(C) "Person" means any individual, partnership, firm, corporation, association, trustee or other business or legal entity;

(D) "Plan" means Kaiser's Bristol, Rhode Island, wire and cable plant (including lands and buildings) previously owned by United States Rubber Company, together with the machinery and equipment, raw materials, operating supplies, work-in-progress, finished electrical wire and cable goods and other inventory items located at the Plant, and field finished goods inventories produced at the Bristol wire and cable plant; and

(E) "United States" shall mean the United States of America, its territories and possessions.

### III

#### [ *Applicability* ]

The provisions of this Final Judgment applicable to Kaiser shall also apply to its directors, officers, agents, and employees and to its subsidiaries, successors and assigns, and to all other persons in active concert or participation with Kaiser who have received actual notice of this Final Judgment by personal service or otherwise. This Final Judgment shall not apply or relate to the activities or operations of Kaiser outside of the United States. None of the provisions of this Final Judgment shall apply to any person or persons who acquire any of the assets disposed of pursuant to this Final Judgment.

### IV

#### [ *Terms of Divestiture* ]

(A) Kaiser is ordered and directed, within nine months from the date of entry of this Final Judgment, to sell the Plant to an Eligible Purchaser which will operate the Plant as an operating business in competition with other firms engaged in the manufacture, production and sale of insulated and covered electrical conductor wire and cable products. The net price to be paid to Kaiser for the Plant shall be no less than the total of:

(a) The book value of the land, plant and equipment as of the date of sale (said book value being \$4,362,000 as of October 31, 1964);

(b) The book value of all raw materials, operating supplies, work in progress, finished goods, plant inventories and finished goods inventories except, however, that the book value shall be adjusted to include aluminum and copper content at market value as of date of sale;

(c) The amount of additional expense incurred by Kaiser for pension and termination pay payments, or provisions there-for, relative to Plant employees resulting from the fact that the pension and termination pay plans for said employees were not funded at the time of acquisition by Kaiser; and

(d) All incidental expenses relative to the sale of the Plant and the transfer of said assets.

Without limiting the generalities of the foregoing, Kaiser may at any time make capital additions to the Plant and the cost thereof shall be included in said book value. In addition, the purchaser of said Plant shall agree to continue pension and termination payment plans for the employees of the Plant, other employee benefits, and conditions of employment, upon terms no less favorable than those provided by Kaiser and shall assume all of the obligations of Kaiser relative to said pension and termination payment plans and to conditions of employment applicable to both past and existing employees of the Plant. In the event the full net price is not payable to Kaiser in cash, the terms and conditions of payment shall be such as are acceptable to Kaiser.

(B) If Kaiser is unable to sell the Plant as hereinbefore provided within nine months from the date of entry of this Final Judgment, it shall have the right to apply to the Court, on notice to plaintiff, for a determination that it has made a *bona fide* effort to sell the Plant and has been unable so to do, in which event and on such determination by the Court, Kaiser shall be relieved from further obligation to sell the Plant.

(C) Kaiser shall make known the availability of the Plant for sale by customary and usual means. Kaiser shall furnish to bona fide prospective purchasers all necessary information regarding the Plant and the operations

carried on by Kaiser therein, and shall permit them to make such inspection of the Plant as may be reasonably necessary for the above purpose.

(D) The divestiture ordered and directed by this Final Judgment shall be made in good faith and shall be absolute and unqualified; *provided, however*, that Kaiser may accept and enforce any bona fide lien, mortgage, deed of trust or other form of security on all or any portion of the Plant given for the purpose of securing to Kaiser payment of any unpaid portion of the purchase price there for or performance of the sale transaction, and may also enforce any other of the terms and conditions of the sale transaction as therein provided or as provided by law; *provided, further*, that should the Plant be returned to the control of Kaiser, it shall then dispose of the Plant in accordance with the provisions of this Section IV, with the time period to be computed from the date of return of control.

## V

### [ *Future Acquisitions* ]

Kaiser is enjoined and restrained for a period of five years from the effective date of this Final Judgment from acquiring

- (1) Any capital stock of any corporation which is engaged in the manufacture of electrical conductor wire and cable products in the United States; or
- (2) All or any part of the assets (except for the purchase of products, commodities, machinery or equipment in the normal course of business) of a person engaged in the manufacture of electrical conductor wire and cable products within the United States.

This Final Judgment shall not prohibit Kaiser from acquiring in good faith the stock or assets of any person in the exercise of any security or debt or liability enforcement process, whether provided by law or bona fide agreement, so long as Kaiser shall dispose of such stock or assets within a reasonable period of time.

## VI

### [ *Inspection and Compliance* ]

For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Kaiser at its principal office, be permitted:

- (1) Reasonable access, during office hours of Kaiser, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Kaiser relating to any matters contained in this Final Judgment; and
- (2) Subject to the reasonable convenience of Kaiser and without restraint or interference from it, to interview officers or employees of Kaiser, who may have counsel present, regarding any such matters.

For the purpose of securing compliance with this Final Judgment, Kaiser, upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice made to its principal office, shall submit such reasonable reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may, from time to time, be necessary for the enforcement of this Final Judgment. No information obtained by the means provided in this Section VI 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 court 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.

## VII

[ *Jurisdiction Retained*]

Jurisdiction is retained by this Court 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, the modification or termination of any of the provisions thereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.

UNITED STATES v.  
KAISER ALUMINUM & CHEMICAL CORPORATION

Civil No.: 2795

Year Judgment Modified: 1965



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UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA, )  
Plaintiff, )  
v. )  
KAISER ALUMINUM & CHEMICAL )  
CORPORATION, )  
Defendant. )

Civil Action No. 2795

*12/20/65*

ORDER PURSUANT TO SECTION IV(B)  
OF FINAL JUDGMENT

Defendant having moved for an order and determination pursuant to Section IV(B) of the Final Judgment herein and the parties, by their respective counsel, having stipulated in writing that the Court may make and enter this Order, and  
**GOOD CAUSE APPEARING THEREFOR,**

The Court hereby grants said motion and finds, determines and orders as follows:

1. It is found that:

(A) Defendant has made known the availability for sale of the Plant (as "Plant" is defined in Section II(D)

1 of the Final Judgment herein) by customary and usual means.

2 (B) Defendant has furnished to all bona fide  
3 prospective purchasers all necessary information regarding  
4 the Plant and the operations carried on by defendant therein,  
5 and has permitted them to make such inspection of the Plant  
6 as was reasonably necessary for the above purpose.

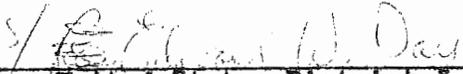
7 (C) Defendant has been unable to sell the Plant  
8 as provided in the Final Judgment herein.

9  
10 2. It is, therefore, determined and ordered that:

11 (A) Defendant has made a bona fide effort to sell  
12 the Plant and has been unable so to do.

13 (B) Pursuant to the provisions of the Final Judgment  
14 herein, and particularly Section IV(B) thereof, defendant shall  
15 be, and it hereby is, relieved from further obligation to sell  
16 the Plant.

17  
18 DONE IN OPEN COURT this 20 day of December, 1965.

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23 United States District Judge  
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UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA, )  
Plaintiff, )  
v. ) Civil Action No. 2795  
KAISER ALUMINUM & CHEMICAL )  
CORPORATION, )  
Defendant. )

STIPULATION FOR ORDER PURSUANT  
TO SECTION IV(B) OF FINAL JUDGMENT

It is stipulated between the parties hereto, acting  
by their undersigned counsel, as follows:

1. The affidavits (including the exhibits  
attached thereto) served and filed with said motion, being  
the affidavits of Messrs. Robert L. Price and William H.  
Jordan, may be deemed received in evidence with like force  
and effect as if the affiants had appeared before the  
Court, been sworn, and testified as set forth in said  
affidavits.
2. The depositions (as corrected) of Messrs.

1 Robert L. Price, William H. Jordan, Jr. and Ronald E. Rhody,  
2 taken in this action by plaintiff on December 8, 1965, may  
3 likewise be deemed received in evidence with like force and  
4 effect as if the deponents had appeared before the Court,  
5 been sworn and testified as set forth in said depositions.

6 3. The form of order attached hereto may be made  
7 and entered by the Court forthwith.

8 Dated: December 15, 1965.

9  
10 DONALD F. TURNER  
11 DONALD F. MELCHIOR  
12 WILLIAM D. KILGORE, JR.  
13 CHARLES D. MAHAFFIE, JR.  
14 LAWRENCE F. NOBLE  
15 Department of Justice  
16 Washington, D. C.

WILLIAM H. EDWARDS  
EDWARDS & ANGELL

By William H. Edwards

17 By Richard J. Pettine

GORDON JOHNSON  
PAUL R. HAERLE  
THELEN, MARRIN, JOHNSON & BRIDGES

18 RICHARD J. PETTINE  
19 Federal Building  
20 Providence, Rhode Island

By Gordon Johnson  
Gordon Johnson  
Attorneys for Defendant

21 By Richard J. Pettine  
22 Attorneys for Plaintiff

23  
24  
25  
26  
27 SO ORDERED:

28 Edward B. Day  
29 United States District Judge  
30  
31  
32

UNITED STATES v.  
BRANCH RIVER WOOL COMBING COMPANY, INC., *et al.*

Civil No.: 3123

Year Judgment Entered: 1964



## **Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Branch River Wool Combing Company, Inc.; The French Worsted Company., U.S. District Court, D. Rhode Island, 1964 Trade Cases ¶71,045, (Apr. 13, 1964)**

[Click to open document in a browser](#)

United States v. Branch River Wool Combing Company, Inc.; The French Worsted Company.

1964 Trade Cases ¶71,045. U.S. District Court, D. Rhode Island. Civil Action No. 3123. Entered April 13, 1964. Case No. 1745 in the Antitrust Division of the Department of Justice.

### **Clayton Act**

**Acquiring Competitors—Acquisition of Assets—Divestiture—Consent Judgment.**—A producer of wool top was required under the terms of a consent judgment to sell the assets of a comber of wool top which it had acquired and prohibited for five years from acquiring from any person engaged in the production of wool top any machinery or other asset used in the production of wool top.

For the plaintiff: William H. Orrick, Jr., William D. Kilgore, Jr., Harry G. Sklarsky, John J. Galgay, John D. Swartz, Raymond W. Philipps, Bertram M. Kantor, and William J. Elkins, Attorneys, Department of Justice.

For the defendant: Jacob Imberman for Branch River Wool Combing Company, Inc.

### **Final Judgment**

DAY, District Judge [ *In full text*]: Plaintiff, United States of America, having filed its complaint herein on May 13, 1963, and the plaintiff and the defendants, by their respective attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final judgment constituting evidence or any admission by any party signatory hereto with respect to any such issue;

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

Ordered, adjudged and decreed as follows:

#### **I**

[ *Clayton Act*]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims upon which relief may be granted against the defendants under Section 7 of the Act of Congress of October 15, 1914, (15 U. S. C. § 18), commonly known as the Clayton Act, as amended.

#### **II**

[ *Definitions*]

As used in this Final Judgment:

(A) "Person" means any individual, partnership, firm, corporation, association, trustee or other business or legal entity;

(B) "Eligible purchaser" means any United States dealer in machinery used for the production of wool top and any person engaged or proposing to engage in the United States in the production of wool top except that none of the following concerns or their parents, subsidiaries, successors, agents, officers or directors shall be eligible purchasers: Prouvost Lefebvre of Rhode Island, Inc., Prouvost Lefebvre & Co., Inc., Amedee Prouvost, Inc., The Top Company, Marriner & Company, Inc., Nichols & Company, Inc., Wellman Combing Company, Southwell

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Combing Company, Nichols Fibre Company, High Street Wool Corporation, Boutin Wool Company, Davis Wool Company, Fred Whitaker Company;

(C) "Machinery used in the production of wool top" means machinery necessary for the production of wool top, including, but not limited to, combs, cards, gill boxes, scouring machines, back washers, dryers, coilers and feeders;

(D) "Wool top" means raw wool which has been scoured, carded and combed and is ready for spinning into worsted yarn.

### III

#### [ *Applicability* ]

The provisions of this Final Judgment applicable to either defendant shall apply to such defendant and its subsidiaries, successors and assigns and to each of their respective directors, officers, agents, servants and employees, and to all other persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise. None of the provisions of this Final Judgment applicable to Branch River shall apply to any eligible purchaser who acquires the machinery disposed of pursuant to Section IV of this Final Judgment.

### IV

#### [ *Divestiture Required* ]

Defendant Branch River is ordered and directed within twelve (12) months from the date of entry of this Final Judgment to sell to an eligible person on reasonable terms and conditions all the machinery and other assets acquired by Branch River from French Worsted by the agreement dated March 24, 1959. Should such machinery and other assets not be disposed of within the said twelve-month period, defendant Branch River is ordered and directed within three (3) months thereafter to sell to an eligible person all such machinery and assets at the highest cash price offered. Sale of such machinery and other assets shall be on a basis as will permit said machinery to be operated as a going enterprise engaged in the manufacture of wool top. Until such machinery and other assets are disposed of, French Worsted shall have the right to use and operate said machinery and assets upon terms and conditions as set forth in the Sale, Lease and Sub-lease Agreement between Branch River and French Worsted. French Worsted shall have the right to purchase said machinery and assets from Branch River if the offer of French Worsted is the highest offer received by Branch River.

### V

#### [ *Acquisitions Prohibited* ]

(A) Defendant Branch River is enjoined and restrained from directly or indirectly acquiring jointly with any other person engaged in the manufacture of wool top any machinery used in the production of wool top or any other assets, business, good will, stock of, or other financial interest in any person engaged in the manufacture or sale in the United States of wool top.

(B) Defendant Branch River is enjoined and restrained for a period of five (5) years from the date of entry of this Final Judgment from acquiring directly or indirectly from any person engaged in the production of wool top in the United States any machinery used in the production of wool top or any other assets, business, good will, stock of, or other financial interest in any person engaged in the production or sale in the United States of wool top.

(C) Subsequent to the five (5) years specified in subsection (B) above, for an additional period of five (5) years, defendant Branch River is enjoined and restrained from acquiring directly or indirectly from any person engaged in the production of wool top in the United States any machinery used in the production of wool top, other assets, business, good will, stock of, or other financial interest in any person engaged in the production or sale in the United States of wool top except upon approval of this Court after notice to the plaintiff and upon establishing

to the satisfaction of this Court that such acquisition will not substantially lessen competition or tend to create a monopoly in the production or sale of wool top.

Provided, however, that this Section V shall not be deemed to prohibit defendant Branch River from acquiring from any source any machinery or parts thereof used in the production of wool top needed by it as a replacement for machinery or parts in any of its plants.

## VI

### [ *Other Prohibitions* ]

Defendant Branch River is enjoined and restrained from:

- (A) Taking any action to prevent French Worsted from carrying on the business of wool combing, wool scouring or wool re-combing for any person;
- (B) Prohibiting French Worsted from purchasing machinery used in the production of wool top; provided, however, that Branch River shall be under no obligation to purchase from French Worsted and French Worsted shall be under no obligation to sell to Branch River any such machinery acquired by French Worsted;
- (C) Entering into any agreement which would prohibit or restrain in any manner any person (1) from engaging in the business of producing wool top, scouring wool and recombining wool, and (2) from purchasing machinery used in the production of wool top.

## VII

### [ *Inspection and Compliance* ]

For the purpose of securing compliance with this Final Judgment and for no other purpose, subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted (1) reasonable access, during the office hours of said defendant, 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 matters contained in this Final Judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference from the defendant, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters.

For the purpose of securing compliance with this Final Judgment, each defendant, upon the written request of the Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and upon notice made to its principal office, shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section VII 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 the plaintiff except in the course of court 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.

## VIII

### [ *Jurisdiction Retained* ]

Jurisdiction is retained by this Court 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 modification or termination of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

UNITED STATES v.  
BRANCH RIVER WOOL COMBING COMPANY, INC., *et al.*

Civil No.: 3123

Year Judgment Modified: 1971



UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

----- x

UNITED STATES OF AMERICA, ;  
 Plaintiff, :  
 v. : Civil Action No. 3123

BRANCH RIVER WOOL COMBING COMPANY, : NOTICE OF ENTRY  
 INC.; THE FRENCH WORSTED COMPANY, : AND  
 Defendants. : ORDER

----- -x

PLEASE TAKE NOTICE that the within is a true copy of an order duly entered and filed herein on January 22, 1971, in the office of the Clerk of the United States District Court for the District of Rhode Island.

Dated: New York, New York  
January 25, 1971

Proskauer Rose Goetz & Mendelsohn

By Jacob Imberman  
 Jacob Imberman  
 A Member of the Firm  
 300 Park Avenue  
 New York, N. Y. 10022  
 212-MU 8-7300

Owen P. Reid  
 Owen P. Reid, Esq.  
 Hospital Trust Building  
 15 Westminister Street  
 Providence, Rhode Island 02903  
 Attorneys for Defendant  
 Framatex Corporation  
 (formerly Branch River Wool)  
 Combing Company, Inc.)

TO: Raymond W. Philipps, Esq.  
 United States Department of Justice  
 Washington, D.C. 20530

Allan M. Shine, Esq.  
 Winograd, Winograd & Marcus  
 915 Hospital Trust Building

Michael A. Silverstein, Esq.  
 Tobin, Decof, LeRoy & Silverstein  
 1122 Industrial Bank Building  
 Providence, Rhode Island

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

-----X

UNITED STATES OF AMERICA,

Civil Action No. 3123

Plaintiff,

v.

ORDER

BRANCH RIVER WOOL COMBING COMPANY,  
INC.; THE FRENCH WORSTED COMPANY,

Defendants.

-----X

This cause came on for hearing on the application by Framatex Corporation (formerly Branch River Wool Combing Company, Inc.), pursuant to Section V(C) of the final judgment herein dated April 13, 1964, for leave to acquire the machinery listed on Exhibit A annexed hereto from Marriner & Co., Inc., and the Court, after carefully considering all of the evidence presented in support of and in opposition to said application, and after hearing the testimony of witnesses and the arguments of counsel for all parties herein at hearings held on December 28 and 29, 1970, and after issuing its opinion of January 11, 1971, being satisfied that said acquisition will not substantially lessen competition or tend to create a monopoly in the production or sale of wool top, it is hereby

ORDERED:

1. The application of Framatex Corporation is granted.
2. Framatex Corporation may acquire from Marriner & Co., Inc. the machinery listed on Exhibit A annexed hereto.

3. During each combing year (July 1st to June 30th), Framatex Corporation shall make wool combing space available at its Branch River plant for each of its customers in an amount equal to that which the customer combed at Branch River in the prior combing year, provided that the customer gives Framatex Corporation its commitment to comb wool during the month of June immediately preceding the commencement of the combing year and agrees to space its combing requirements in substantially equal quarterly amounts.

4. In any combing year, Framatex Corporation shall comb wool at its Branch River plant for new customers on a space-available basis.

5. Attached hereto and marked Exhibit B is the combing tariff with discount schedules as applicable currently in effect at Framatex Corporation's Branch River plant. Framatex Corporation shall charge all customers the amounts shown on this tariff (and succeeding ones as they are promulgated) for wool combed at the Branch River plant, and shall not discriminate between customers with respect to the tariffs charged.

6. If any combing machinery in Framatex Corporation's Branch River plant becomes surplus to Framatex Corporation as a result of its acquisition of combing machinery from Marriner & Co., Inc., Framatex Corporation shall offer said surplus machinery for sale to others in the wool combing industry in the United States. If the machinery so offered is not sold within a reasonable time, Framatex Corporation shall be free to make such other disposition thereof as it deems appropriate.

7. Nothing contained in this Order shall require Framatex Corporation to keep its Branch River plant in operation, and it is free to close the plant if, in its discretion, it decides to do so.

8. The terms of this Order shall apply to Framatex Corporation's Branch River plant only, and are not intended to affect Framatex Corporation's operations at its Santee River plant.

9. The obligations imposed upon Framatex Corporation by this Order shall terminate on April 12, 1974.

*/s/ Edward W. Day*  
United States District Judge

Dated: January 22, 1971

EXHIBIT A

<u>No. Units</u>	<u>Description</u>
2	DeLaval grease separators
1	Duesberg Bosson cards
1	Set covers for cards
8	1/2 H.P. motors for cards
6	Sant' Andrea gill boxes
9	Warner & Swasey 3680 Pin drafters
6	Warner & Swasey 3730 " "
5	Warner & Swasey 3700 " "
92	Sant' Andrea combs and creels
1	DCCA unit and dryer

SPARE PARTS

For Sant' Andrea combs and creels  
 For grease separator, Duesberg cards,  
 W&S pin drafters, Sant' Andrea gills

BRANCH RIVER WOOL COMBING CO., INC.

P.O. Box 950  
Woonsocket, R.I. 02895

Cables: Branchcomb

Commission Combers

Area Code 401  
Phone 769-1600

TARIFF #48

COMMISSION COMBING CHARGES

Effective August 1, 1970

at BRANCH RIVER WOOL COMBING COMPANY, INC. WOONSOCKET, R.I.

<u>GRADE</u>	<u>MICRON</u>	<u>PRICE PER LB.</u>	
		<u>CAPE &amp; AUST.</u>	<u>ANY ORIGIN</u>
80s	18.10 - 19.59	34¢	35¢
70s	19.60 - 21.09	32 1/2¢	33 1/2¢
64s	21.10 - 22.59	31 1/2¢	32 1/2¢
62s	22.60 - 24.09	30¢	31¢
60s	24.10 - 25.59	28 1/2¢	29 1/2¢
58s	25.60 - 27.09		26 3/4¢
56s	27.10 - 28.59		25 1/4¢
54s	28.60 & lower		24 1/4¢
	Top blending		6¢

Exhibit B

VOLUME REBATE

Every customer of Branch River is entitled to an annual rebate based on the customer's total volume production of top combed at Branch River. The rebates vary as follows:

over 3,000,000 lbs.	4%
2,500,000 to 3,000,000	" 3 1/2%
2,000,000 to 2,500,000	" 3%
1,500,000 to 2,000,000	" 2 1/2%
1,000,000 to 1,500,000	" 2%
500,000 to 1,000,000	" 1%

The amount of rebate is figured on total combing produced during the year.

-----

FIDELITY REBATE

To the volume rebate, an additional 2% fidelity rebate may be achieved by fulfilling an annual quota divided into four quarterly portions which have to be respected within plus or minus 20%.

If a Customer wishes to avail himself of the possibility of entering into such an agreement, Branch River will commit itself to produce these quarterly quotas.

In such a case, Branch River will reserve four quarterly portions varying in quantities according to holidays and vacation affecting each quarter.

-----

ADDENDUM TO TARIFF NUMBER 48

Customers requiring more than three million pounds of wool combed per annum and who will enter into a five year written contract to that effect, will be charged the following net prices for the period ending August 1, 1971 not subject to any volume or fidelity rebates:

<u>Type of Wool</u>	<u>Prices per point</u>
Quarterbloods:	
54s	21¢
56s	22¢
58s	23¢
Fine wools:	
60s (Australian and Cape*)	23¢
60s (Any Origin)	24 1/2¢
62s (Australian and Cape*)	23 3/4¢
62s (Any Origin)	25 3/4¢
64s (Australian and Cape*)	24 1/2¢
64s (Any Origin)	26 1/2¢
70s (Australian and Cape*)	26¢
70s (Any Origin)	28¢
80s (Australian and Cape*)	28¢
80s (Any Origin)	30¢

\*Including Montevideo and Australian type Buenos Aires wool.

The foregoing prices are applicable only if 7 million pounds of wooltop equivalent or more are combed by Branch River for the customer in any one year. If the annual volume of combing is between 3 and 7 million pounds of wooltop equivalent, then the above prices shall be increased by the percentage resulting from the following formula:

A fraction, the numerator of which shall be the difference between 7 million pounds and the number of pounds of wooltop equivalent being combed during the year and the denominator of which shall be 4,000,000, shall be multiplied by 20% for fine wools and 15% for quarterbloods. (For example, if the annual volume of combing is 5,000,000 pounds of wooltop equivalent, then the price for 70s (Any Origin) would be

$$28¢ \left( \frac{7,000,000 - 5,000,000}{4,000,000} \right) \times 20\% + 28¢ = 30.8¢/lb.$$

The foregoing prices in this addendum will be subject to reasonable adjustments as of August 1 of each year of the contract commencing August 1, 1971.

UNITED STATES v.  
JOSEPH P. CUDDIGAN, INC., *et al.*

Civil No.: 3843

Year Judgment Entered: 1970



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

-----X  
UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH P. CUDDIGAN, INC.; COUPE &  
ASSOCIATES, INC.; L. PROCACCINI  
PLUMBING & HEATING CO., INC.; ZARRELLA  
PLUMBING & HEATING CO., INC.; D. DIXON  
DONOVAN, INC.; BOOKBINDER PLUMBING &  
HEATING CO., INC.; BASSETT & COMPANY, INC.,  
GEORGE E. REINSANT & SONS, INC.; WARREN H.  
ALLSOP PLBG. & HTG. CO., INC.; MAX FISH  
PLUMBING CO. INC.; ELHATTON PLUMBING AND  
HEATING COMPANY, INC.; JOHN MARANDOLA  
PLUMBING & HEATING COMPANY; ANTHONY OLEAN  
PLUMBING & HEATING CO., INC.; INDUSTRIAL  
HEATING & PLUMBING CORPORATION; PAUL J.  
CONNOR; AMADEO D'AMARIO; and JOHN F.  
O'BRIEN,

Defendants.  
-----X

Civil Action

No. 3843

Entered: June 15, 1970

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on September 12, 1967, and the defendants having filed their several answers to said complaint, denying the substantive allegations thereof, and the plaintiff and the said defendants, by their respective attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or admission by any party in respect to any issue of fact or law herein;

NOW THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of all the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED, as follows:

I.

This Court has jurisdiction of the subject matters hereof and of each party hereto. The complaint states claims for relief against defendants 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 in this Final Judgment:

(A) "Awarding authority" shall mean any governmental agency, corporation, firm or individual that undertakes the erection of a commercial, industrial, institutional, or high rise residential building located in the State of Rhode Island;

(B) "Plumbing contractor" shall mean any corporation, firm or individual engaged in the business of performing plumbing jobs in the State of Rhode Island;

(C) "Plumbing job" shall mean the sale and installation of plumbing supplies by a plumbing contractor in a commercial, industrial, institutional, or high rise residential building located in the State of Rhode Island for which competitive bids are solicited;

(D) "Plumbing supplies" shall mean those materials and fixtures customarily used in the plumbing industry in the installation or repairing of water, gas, or waste disposal systems in commercial, industrial, institutional, or high rise residential buildings, and includes, among other items, steel, soil galvanized, black and cast iron pipe, fittings, valves and trim, vitreous china lavatories, sinks, bathtubs, water closets, copper tubing and water heaters.

### III.

The provisions of this Final Judgment applicable to any consenting defendant shall also apply to each of its respective subsidiaries, successors, assigns, officers, directors, agents and employees, and to all other persons in active concert or participation with any consenting defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

### IV.

Each of the consenting defendants is enjoined and restrained from directly or indirectly combining or conspiring, or entering into, enforcing or claiming any rights under any agreement, arrangement, plan or understanding with any other plumbing contractor, to:

- (A) Divide or allocate plumbing jobs;
- (B) Submit to any awarding authority, general contractor or any other person collusive or rigged bids or quotations for plumbing jobs;

(C) Fix, establish, stabilize or maintain prices, pricing methods, discounts or any terms or conditions relating to plumbing jobs;

(D) Exchange information relating to an intention to bid or refrain from bidding or the price or other terms or conditions to be bid on any plumbing job;

(E) Suggest, recommend, threaten, intimidate, coerce or compel any plumbing contractor to refrain from competitively soliciting, seeking or negotiating for any plumbing job.

V.

Each of the consenting defendants is enjoined and restrained from directly or indirectly:

(A) Communicating to or receiving from any other plumbing contractor information concerning bids, prices or terms or conditions of sale on any plumbing job prior to the final award of the bid on the plumbing job, and thereafter from directly or indirectly communicating any such information if such communication would in any way constitute, lead to, or tend to enable a violation of any of the provisions of this Final Judgment;

(B) Advising any other plumbing contractor of, or making any inquiry of any other plumbing contractor as to an intention to bid or refrain from bidding on any plumbing job;

(C) Requesting, recommending, threatening or coercing any other plumbing contractor to bid or refrain from bidding on any plumbing job.

VI.

Each of the consenting defendants is enjoined and restrained from directly or indirectly participating in the activities of any trade association or other organization with knowledge that any of the activities of such association or such other organization are being carried on in a manner which if such association or such other organization were a consenting defendant herein would be inconsistent with any of the provisions of this Final Judgment.

VII.

For a period of five (5) years following the effective date of this Final Judgment, each consenting defendant shall, in connection with any written bid submitted by it to any awarding authority or general contractor on a plumbing job, supply to such awarding authority or general contractor an affidavit containing a statement that the bid submitted by the defendant is not collusive or rigged and that such affidavit is in compliance with the provisions of this Final Judgment.

VIII.

For the purpose of determining or 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 any defendant made to its principal office, be permitted, subject to any legally recognized privilege and with the right of any such defendant to have counsel present:

(A) Reasonable access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matter contained in this Final Judgment; and

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

Each defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice made to its principal office, shall submit such written reports, under oath if that is requested, with respect to any of the matters contained in this Final Judgment as from time to time may be requested. No information obtained by the means provided in this section shall be divulged by any representative of the Department of Justice to any person except a duly authorized representative of the Executive Branch of the United States 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.

IX.

Jurisdiction 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 of 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 for the punishment of violations thereof.

/s/ EDWARD WILLIAM DAY  
United States District Judge

Dated: June 15, 1970