

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

UHLEMANN OPTICAL CO. OF
ILLINOIS ET AL.,

Defendants.

CIVIL ACTION

NO. 48 C 608

FINAL JUDGMENT

Plaintiff, United States of America, filed its complaint herein on May 4, 1948. Thereafter, the corporate defendants and the defendant individual doctors appeared and filed their answers to the complaint, denying the substantive allegations thereof and any violations of law.

On January 31, 1950, the Court entered an order directing the defendant class doctors, whose names were set forth in exhibits attached to said order, to appear and show cause why such doctors should not be bound by any judgment entered in this case. (A copy of such order, omitting the list of names, is attached hereto as Exhibit 1.) Exhibit 2, attached hereto, also sets forth the names of each defendant class doctor who either received a mailing and service of the aforesaid order and failed to show cause why he should not be bound by any judgment entered in this case, or who submitted himself to the jurisdiction of this Court and agreed to be bound by such judgment, whether after trial or by consent of the parties.

Each of the corporate defendants and the defendant individual doctors hereby consents to the entry of this final judgment. The consent of each defendant individual doctor is made both as an individual and as representative of the defendant class doctors as hereinafter defined.

NOW, THEREFORE, upon such consents, no testimony having been taken, and without any finding or adjudication of fact or as to past specific transactions, or any admission by reason of such consents or this judgment, excepting only the statements hereinabove set forth, which are made solely for the purpose of this proceeding; it is hereby

ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

I. This Court has jurisdiction of the subject matter and of all defendants named in the complaint, including the defendant class doctors named in Exhibit 2; any agreement, understanding and concert of action, whether written or oral, express or implied, of the type charged in the complaint, involving payment by any corporate defendant, directly or indirectly, to any of the defendant individual doctors or to defendant class doctors, or to any agent, representative, employee or designee of any such doctor, of the whole or any part of the purchase price of ophthalmic goods collected by any such corporate defendant (whether or not as agent or purported agent of such doctor) from any one or more patients of any such doctor, and whether in the form of, or described or regarded as a rebate, credit, credit balance, gift, dividend, or participation or share in profits, or otherwise, is hereby adjudged to be in violation of Section 1 of the Sherman Act; and the complaint states a cause of action under Section 1 of the Sherman Act (15 U.S.C. Sec. 1), upon which relief may be granted.

II. Wherever used in this judgment:

(a) "Corporate defendants" means Uhlemann Optical Co. of Illinois and Uhlemann Optical Co. of Michigan, and their successors, assigns, officers, directors, agents, employees and representatives, and each and every other person acting, or claiming to act, under, through, or for such defendant excluding, however, the defendant individual doctors and the defendant class doctors as hereinafter respectively defined.

(b) "Defendant individual doctors" means those oculists named in the complaint as individual defendants and as representatives of the defendant class doctors and each person acting or claiming to act under, through, or for any such defendant individual doctor.

(c) "Defendant class doctors" means those oculists whose names are listed in Exhibit 2 attached hereto, and each person acting, or claiming to act, under, through, or for any such doctor.

(d) "Person" means an individual, proprietorship, partnership, association, joint stock company, business trust, corporation, or any other business organization or enterprise.

(e) "Ophthalmic goods" means ophthalmic lenses, lens blanks, spectacle frames, mountings, eyeglasses, spectacles, and component parts or combinations of any of these articles sold or offered for sale within the United States, its territories and possessions, and as so defined does not include sunglasses or industrial safety equipment not containing lenses ground to prescription.

(f) "Dispensing" means the sale within the United States, its territories and possessions to consumers, of ophthalmic goods, particularly of spectacles and parts thereof, and of repair parts and services in connection therewith, and/or the measurement of facial characteristics for spectacles and the fitting and adjustment of such spectacles to the face.

(g) "Dispenser" means one who engages in dispensing. The term shall not be deemed to apply to a refractionist who engages in dispensing in his own professional offices (either himself or through a bona fide employee) to his own patients only.

(h) "Consumer" means any person who wears spectacles, or any patient for whom spectacles have been prescribed by a refractionist.

III. Each defendant individual doctor and defendant class doctor is hereby perpetually enjoined:

(a) From accepting, directly or indirectly, or designating any other person to thus accept, from any dispenser (whether such dispenser acts or purports to act as an agent of the doctor, or otherwise), any payment arising out of or connected with dispensing to any patient of such defendant doctor, whether such payment is in the form of, or is described or regarded as, a rebate, credit, credit balance, gift, dividend, participation in or share in profits, or otherwise;

(b) Entering into or participating in any plan, arrangement, or scheme whereby said defendant doctor receives from any dispenser (whether such dispenser acts or purports to act as agent of the doctor, or otherwise), directly or indirectly, in any form (including any of the forms and methods referred to above) any payment arising out of or connected with dispensing to any patient of such defendant doctor.

IV. Each of the corporate defendants is hereby perpetually enjoined from making, directly or indirectly, any payment to any refractionist (including any oculist), or any agent, representative, employee or designee of any refractionist, arising out of or connected with dispensing, whether or not such payment is in the form of, or is described or regarded as, a rebate, credit, credit balance, gift, dividend, participation in or share in profits, or otherwise; and whether such payment constitutes an individual transaction, or is part of any plan or program.

V. The corporate defendants, and each of the defendant individual and class doctors are hereby perpetually enjoined from entering into any agreement, understanding or concert of action with any other person or persons, fixing or attempting to fix the consumer price to be charged for ophthalmic goods or services, and from dictating, prescribing, controlling or interfering with, or attempting to dictate, prescribe,

control, or interfere with the consumer prices charged or to be charged by any other person or persons for such ophthalmic goods or services; provided, however, that nothing contained in this judgment shall be deemed to prevent or restrain any of the defendants, after the expiration of ten years from the date of this judgment, from making such suggestions or making and enforcing such agreements as to prices as may then be lawful.

VI. The plaintiff shall mail a copy of this judgment to each member of the defendant class doctors whose name is set forth in Exhibit 2, attached hereto and made a part hereof. Such mailing shall be by franked envelope to the last known address of each of such defendant class doctors, and the plaintiff, after making such mailing, shall file an affidavit of mailing with the Clerk of this Court. The plaintiff may transmit with such mailing a letter, in a form to be approved by the Court, covering the transmission of such judgment and explaining the application of the judgment to the doctor.

VII. For the purpose of securing compliance with this judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall upon written request of the Attorney General or an Assistant Attorney General and on reasonable notice to any defendant made to its principal office be permitted, subject to any legally recognized privilege: (1) 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 said defendant relating to any matters contained in this judgment and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it to interview such defendant, or officers or employees thereof, who may have counsel present, regarding any such matters; provided, however, that no information obtained by the means provided in this paragraph 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 judgment or as otherwise required by law.

VIII. Jurisdiction of this Court 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 thereof, or the enforcement of compliance therewith and for the punishment of violations thereof.

s/ Walter J. La Buy
United States District Judge

Dated: May 16, 1951

We hereby consent to the entry of the foregoing judgment:

For the plaintiff:

s/ H. G. Morison
Assistant Attorney General

s/ Sigmund Timberg
Special Assistant to the
Attorney General

s/ Willis L. Hotchkiss
Special Assistant to
the Attorney General

s/ Harry R. Talan
Special Attorney

Uhlemann Optical Co. of Illinois

by s/ Jack I. Levy
one of its attorneys

For Optical Company
Successor to or formerly known as
Uhlemann Optical Co. of Michigan

by s/ David Paley, its attorney