

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Outdoor Advertising Association of America, Inc., et al., U.S. District Court, N.D. Illinois, 1952-1953 Trade Cases ¶67,341, (Sept. 9, 1952)

United States v. Outdoor Advertising Association of America, Inc., et al.

1952-1953 Trade Cases ¶67,341. U.S. District Court, N.D. Illinois, Eastern Division. Civil Action No. 50 C 935. Dated September 9, 1952. Case No. 1057 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decrees—Practices Enjoined—Fixing Rates, Restrictive Practices, Allocating Markets, Refraining from Competition—Outdoor Advertising Associations.—A national outdoor advertising association and local member associations are enjoined by a consent decree from fixing or suggesting the rate or amount of any commission paid by any plant operator to any advertising agency, or from fixing or suggesting the price to be charged by any plant operator for the display of any poster; from limiting or restricting any person from owning or operating any poster panel or display plant in any territory, limiting or restricting any national advertiser from entering into any advertising contract directly with any plant operator, limiting or restricting any plant operator from entering into any advertising contract directly with any national advertiser, or limiting or restricting any plant operator from competing in the same market with any other plant operator; from limiting or designating the persons with whom national advertisers may do business; from allocating markets for the operation of poster panels or display plants by any person; from limiting association membership to one or any particular number of plant operators in any market; from requiring as a condition of membership the payment by the applicant of any dues not legally due from and payable by such applicant; from adopting any plan the purpose of which is to encourage any person to refrain from competition; from granting more than one association voting membership to any plant operator; from authorizing any officer or employee of the national association to serve at the same time as an officer or employee of two named corporations; from arbitrating or holding hearings in connection with any dispute between two or more members where the effect thereof would be inconsistent with this judgment; and from making or adopting any plan or regulation the purpose or effect of which is to recognize or disapprove any national advertiser as a source of business for any plant operator, to condition the availability, of statistical service upon any contract that the recipient shall perform or refrain from performing any act, to hinder or prevent any advertising agency from representing any national advertiser, or to hinder or prevent any member from casting any vote by proxy at any association meeting.

Consent Decrees—Specific Relief—Association Membership, Statistical Service, and Securing Compliance with Decree—Outdoor Advertising Associations.—A national outdoor advertising association and local member associations are required by a consent decree to make and furnish to each of its members and to each applicant for membership a clear and readily understandable statement of its membership requirements, to grant to any plant operator town membership for all markets in which such plant operator maintains a display plant, and to provide for the assessment and collection of all membership dues upon a reasonable, uniform and non-discriminatory basis. The national association is required to include in its statistical service the plant data of any non-member plant operator (upon the request of any non-member plant operator) upon payment of a reasonable and non-discriminatory charge, to furnish its statistical service to any person requesting the same upon the payment of a reasonable, non-discriminatory charge, and to furnish to any person specifications and detailed illustrations of posterpanel structures recommended by such national association. The national association is further required to take all reasonable steps consistent with the provisions of the decree to insure compliance of each of the local member associations with each of the provisions of the decree. If the national association shall have reasonable grounds to believe that any such member association may be violating the provisions of the decree, it shall notify such association of its belief. If the national association is unable to cause such association to cease such violations, it shall cancel its charter and report such action to the Attorney General.

For the plaintiff: Newell A. Clapp, Acting Assistant Attorney General; Willis L. Hotchkiss and Edwin H. Pewett, Special Assistants to the Attorney General; and Raymond D. Hunter, Joseph Prindaville, and Harry N. Burgess, Trial Attorneys.

For the defendants: E. Allen Frost for Outdoor Advertising Ass'n of America, Inc.; Morrison, Hohfeld, Foerster, Shuman and Clark by Roland C. Foerster, for Outdoor Advertising Ass'n of California and Outdoor Advertising Ass'n of Arizona; Richard T. Jones for Outdoor Advertising Ass'n of The Northern States; Phillip J. Fox for Outdoor Advertising Ass'n of Wisconsin; and Otis E. Nelson for Outdoor Advertising Ass'n of Texas, Inc.

Final Judgment

BARNES, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on June 30, 1950; each of the named defendants having appeared; each of the class defendants having filed its consent to be represented in this action by the defendants named in the complaint in their several and representative capacities, and its consent to be bound by the terms of any final judgment entered herein, and the plaintiff and each of the named defendants, in their several and representative capacities, having consented to the entry of this Final Judgment,

Now, therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein, and upon the consent of all of the parties hereto, and and without any admission by any such party with respect to any such issue;

It is hereby ordered, adjudged, and decreed as follows:

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter herein and of all the parties hereto, including each of the class defendants, and the complaint states a cause of action against each of the defendants, including each of the class 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

[*Definitions*]

As used in this Final Judgment:

- (A) "Defendant National Association" means the defendant Outdoor Advertising Association of America, Inc.;
- (B) "Defendant associations" means the defendant National Association, each of the named defendants, and each of the state outdoor advertising associations which is a member of the defendant class as defined in the complaint;
- (C) "State association" means any association chartered by the defendant National Association;
- (D) "National advertiser" means any person whose product or service is advertised generally over a wide geographical area;
- (E) "Poster" means the advertising copy of a national advertiser;
- (F) "Poster panel" means the physical structure of the type used in connection with outdoor advertising to exhibit a poster;
- (G) "Display plant" means the aggregate of poster panels owned, operated, or maintained by any person in any city, town or market;
- (H) "Plant operator" means any person, as herein defined, who owns, maintains, or operates poster panels;

(I) "Outdoor advertising" means the display on poster panels of posters, and includes the solicitation of contracts for national outdoor advertising;

(J) "Plant data" means that information with respect to display plants and plant operators which is customarily issued by the defendant National Association in its Statistical Service, and used by advertising agencies and national advertisers in connection with a national outdoor advertising program;

(K) "Advertising agency" means any person engaged in the business of formulating and conducting advertising programs for national advertisers;

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

(M) "50 showing" means the total number of regular and illuminated poster panels recommended by the defendant National Association as adequate to provide approximately one-half (1/2) complete advertising coverage in any city, town or market;

(N) "Town membership" means a membership which is held by an association member in any defendant association for any city, town or market.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any defendant, including any class defendant, shall apply to each such defendant, and to its officers, directors, agents, employees, successors and assigns, and to all other persons when acting under, through or for such defendant.

IV

[*Furnishing of Specifications Required*]

The defendant National Association is ordered and directed to furnish, upon request, to any person specifications and detailed illustrations of poster-panel structures recommended by defendant National Association. Such information shall be furnished by defendant National Association at cost.

V

[*Statement of Membership Requirements Ordered*]

Each defendant association is ordered and directed forthwith to:

(A) Make, publish and furnish to each of its present members, and to each applicant for membership, a clear, concise and readily understandable statement of its membership requirements;

(B) Grant, upon request, to any plant operator, town membership for all cities, towns or markets in which such plant operator owns, operates or maintains a display plant.

(1) In the event any defendant association refuses to grant any application for membership received by it, such refusal shall be by an instrument, in writing, mailed to the applicant, setting forth in detail the reasons for such refusal;

(2) In the event any such application is (a) improperly refused, or (b) is not acted upon within sixty (60) days of its receipt by the recipient defendant association, the applicant may apply to this Court to compel the granting of such membership. In the event of any such application to this Court, the burden of proof shall be upon the defendant association failing to grant such application for membership to show that its failure so to do does not constitute a violation of this subsection (B);

(C) Provide for the assessment and collection of all membership dues upon a reasonable, uniform and non-discriminatory basis, provided that in cities, towns, districts and markets of 75,000 population or over, where a new membership is granted, the dues of the new member shall be in the same proportion of the total dues paid

by the present member or members as the number of showings operated by the new member in such cities, towns, districts or markets bears to the number of showings operated by the present member or members. Such computation shall be made on the number of 50 showings operated by each member on December 1, of each year preceding the year for which dues are levied.

VI

[Order Inclusion of Plant Data of Non-Members in Statistical Service]

Defendant National Association is ordered and directed:

- (A) Upon the request of any non-member plant operator, to include in its Statistical Service, without discrimination in any manner, the plant data of such plant operator upon payment of a reasonable and non-discriminatory charge. The plant data of any non-member plant operator shall be set forth in such Statistical Service in the same manner as the plant data of member plant operators of the defendant National Association;
- (B) To furnish its Statistical Service to any person requesting the same upon the payment of a reasonable, non-discriminatory charge;
- (C) Within sixty (60) days after the date of the entry of this Final Judgment, to send a copy of this Final Judgment to:
 - (1) All plant operators known to the defendant National Association located in the United States, including both members and nonmembers of said Association;
 - (2) All advertising agencies known to the defendant National Association who, on the date of entry of this Final Judgment, or who within five (5) years prior to said date of entry of this Final Judgment, have placed contracts for outdoor advertising in the United States;
 - (3) All members of National Outdoor Advertising Bureau, and to the principal officers of American Association of Advertising Agencies and Association of National Advertisers.
- (D) To file with this Court, and serve upon the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, within ninety (90) days following the date of the entry of this Final Judgment, an affidavit listing all persons to whom copies of this Final Judgment have been sent pursuant to subsection (C) of this Section VI.

VII

[Practices Enjoined]

The defendant associations are jointly and severally enjoined and restrained from directly or indirectly:

- (A) Fixing influencing, recommending or suggesting, or attempting to fix, influence, recommend or suggest:
 - (1) The rate or amount of any commission or other compensation paid, or to be paid, by any plant operator to any advertising agency;
 - (2) The price or prices to be charged by any plant operator for the display of any poster or posters, or the price or prices to be paid by any national advertiser, or advertising agency, to any plant operator for the display of any poster or posters.
- (B) Limiting, restricting or preventing, or attempting to limit, restrict or prevent:
 - (1) Any person from owning, operating or maintaining any poster panel or display plant in any territory, city, town, market or other location;
 - (2) Any national advertiser from entering into any advertising contract directly with any plant operator;
 - (3) Any plant operator from entering into any advertising contract directly with any national advertiser or advertising agency;

- (4) Any plant operator from competing in the same city, town or market with any other plant operator.
- (C) Limiting, restricting or designating, or attempting to limit, restrict or designate, the persons with whom national advertisers or advertising agencies may do business in connection with outdoor advertising;
- (D) Allocating, limiting or dividing, or attempting to allocate, limit or divide, in any manner, territories, cities, towns or markets for the operation of poster panels or display plants, or the display of posters, by any person;
- (E) Limiting or restricting, or attempting to limit or restrict, association membership to one or any particular number of plant operators in any territory, city, town or market;
- (F) Requiring as a condition of member ship the payment by the applicant of any dues, fees or other sums of money not legally clue from any payable by such applicant. Without in any manner limiting the generality of the foregoing language of this subsection (F), each defendant association is enjoined and restrained from requiring, as a condition to the granting of member ship, the payment, by any applicant therefor which is a successor to a former member, of any dues or fees assessed, or other sums of money claimed, by any defendant association against such former member;
- (G) Adopting or adhering to any under standing, plan, program, bylaw, rule, regulation or recommendation, the purpose or effect of which is to influence, urge or encourage any person to refrain from com petition with any other person in connection with outdoor advertising;
- (H) Granting more than one association voting membership to any plant operator;
- (I) Authorizing or knowingly permitting any officer, representative, director or employee of the defendant National Association to serve at the same time as an officer, representative, director or employee of both General Outdoor Advertising Company, Inc., and Outdoor Advertising, Incorporated;
- (J) Arbitrating, settling or adjusting, or holding hearings in connection with, or establishing any procedures for arbitrating, settling or adjusting, any dispute between two or more members, where the purpose or effect thereof would be violative of or inconsistent with any of the provisions 'of this Final Judgment;
- (K) Making, promulgating, adopting, proposing or continuing in effect any plan, program, by-law, rule, regulation or recommendation, the purpose or effect of which is, or may be:
- (1) To recognize, approve or disapprove any national advertiser or advertising agency as a source of business for any plant operator;
 - (2) To condition the availability of its Statistical Service upon any contract, agreement, or understanding that the recipient of such Statistical Service, or any association member, shall perform, or refrain from performing, any act, other than the payment of a reasonable, non-discriminatory charge therefor;
 - (3) To hinder, limit, restrict or pre vent any advertising agency from representing, or entering into any contract or agreement with, any national advertiser with respect to outdoor advertising;
 - (4) To hinder, limit, restrict or prevent any member from casting any vote, by proxy or absentee ballot, at any association meeting.

VIII

[Taking of Reasonable Steps To Insure Compliance Ordered]

Defendant National Association is ordered and directed to take all reasonable steps consistent with the provisions of this Final Judgment, to insure compliance by each of the defendant State associations, and the members thereof, with each of the provisions of this Final Judgment. In the event defendant National Association shall have reasonable grounds to believe that any of such State associations, or any of the members thereof, may be violating any of the provisions of this Final Judgment, the defendant National Association shall immediately notify such State association of its belief and the grounds therefor, and give to such State association an opportunity to express its views with respect thereto. If, after a reasonable time, the defendant National Association is unable to cause such State association, or the members thereof, to cease any such

violation, of this Final Judgment, defendant National Association shall thereupon cancel any charter issued by it to such State association and cause the immediate dismissal of such State association from participation in any of the activities of the defendant National Association and immediately report such action to the Attorney General.

IX

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant Association, be permitted (a) 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 from it, to interview officers or employees of such defendant, who may have counsel present, regarding any such matters. For the purpose of securing compliance with this Final judgment, any defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. No information obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

X

[*Jurisdiction Retained*]

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 amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.