

**APPENDIX A:
FINAL JUDGMENTS**

UNITED STATES v. INTER-ISLAND STEAM NAVIGATION CO., LTD., ET AL.

Civil No. 887

Year Judgment Entered: 1951

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Inter-Island Steam Navigation Co., Ltd., et al., U.S. District Court, D. Hawaii, 1950-1951 Trade Cases ¶62,766, (Jan. 11, 1951)

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United States v. Inter-Island Steam Navigation Co., Ltd., et al.

1950-1951 Trade Cases ¶62,766. U.S. District Court, D. Hawaii. Civil No. 887. Filed January 11, 1951.

Sherman Antitrust Act

Consent Decree—Steamship and Airline Competition—Allocation of Territories and Services.—After reorganization of a steamship company is planned which would place various combined operations individually into the hands of new and separate corporations and remove stock ownership in competitors, a decree is consented to which prohibits agreements not to compete in similar tourist transportation or otherwise to suppress competition by the allocation of territories and services among competitors, and prohibits arrangements for exclusive dealing with any shipper. It is provided that if two certain competitors in the future become connected by any common stock ownership, then either one operating an airline shall be prohibited from engaging in water carriage until authority is granted by the proper governmental agency.

For the plaintiff: Wm. Amory Underhill, Acting Assistant Attorney General; Sigmund Timberg, James E. Kilday, and Robert W. Strange, Special Assistants to the Attorney General; Howard K. Hoddick, United States Attorney; Edwin H. Pewett and Stanley D. Rose, Attorneys.

For the defendants: J. Gamer Anthony (Robertson, Castle & Anthony, of counsel), Honolulu, Hawaii, for Inter-Island Steam Navigation Co., Ltd., Hawaiian Airlines, Ltd., Inter-Island Resorts, Ltd., and Overseas Terminal, Ltd.

For earlier opinion in same case, see ¶ 62,593.

Final Judgment

[*In full text*]

Plaintiff, United States of America, having filed its complaint herein on December 17, 1948, and defendant Inter-Island Steam Navigation Company, Limited, and defendant Hawaiian Airlines, Limited, having appeared and filed their answers to such complaint denying the substantive allegations thereof; and plaintiff's motions for preliminary injunction and summary judgment having been denied by the Court; and the Court having ruled in its decision thereon that it had jurisdiction over this cause; and defendant, Inter-Island Steam Navigation Company, Limited, having ceased its business and operations as a common carrier by water on March 31, 1950, and having adopted a plan of reorganization on July 17, 1950 whereby two new corporations Overseas Terminal, Ltd., and Inter-Island Resorts, Ltd., succeed to certain of its assets and, further pursuant to this plan, defendant Inter-Island Steam Navigation Company, Limited, will dispose of all of the shares in defendant Hawaiian Airlines, Limited, held by it and will then be dissolved and disincorporated; and a supplemental complaint having been filed on January 11, 1951, naming as defendants in this case Overseas Terminal, Ltd., and Inter-Island Resorts, Ltd., and the undersigned defendants having appeared and filed their answers to such supplemental complaint;

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 the signatory parties hereto, and without admission that defendants or any of them have violated or are now violating any statute,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

|

[*Jurisdiction*]

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This Court has jurisdiction of the subject matter herein and of all parties hereto, and the complaint and supplemental complaint herein state a cause of action against the defendants under Sections 1, 2 and 3 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", as amended:

II

[*Definitions*]

As used in this judgment:

(a) "Inter-Island" means defendant Inter-Island Steam Navigation Company, Limited, a Hawaiian Corporation existing under the laws of the Territory of Hawaii and having its principal office and place of business in Honolulu, T. H. and shall be understood to include defendant Overseas Terminal, Ltd., and defendant Inter-Island Resorts, Ltd.

(b) "Hawaiian" means defendant Hawaiian Airlines, Limited, a Hawaiian corporation and a common carrier by air existing under the laws of the Territory of Hawaii and having its principal office and place of business in Honolulu, T. H.

III

[*Application to Successors*]

The provisions of this Judgment shall apply to the defendants, their respective officers, directors, agents, employees, successors and assigns and all other persons acting under, through or for such defendant.

IV

[*Limitation on Types of Business*]

If at any time defendant Inter-Island should own any of the stock of defendant Hawaiian or defendant Hawaiian should own any of the stock of defendant Inter-Island, or if both defendant Inter-Island and defendant Hawaiian should be owned or controlled by the same individual or corporation, and either of such defendants should then be operating an airline, neither of such defendants shall engage in the business of a common carrier by water between ports of the Territory of Hawaii except pursuant to an order of the Civil Aeronautics Board or other appropriate agency of the Federal Government having jurisdiction and authority to issue such order permitting the same. In the event that the Civil Aeronautics Board or such other agency, upon application pursuant to this Judgment, should disclaim jurisdiction, neither of such defendants shall engage in the business of a common carrier by water until after the Attorney General shall have received in Washington, D. C. sixty days' written notice thereof.

V

[*Agreements Prohibited*]

Defendants Inter-Island and Hawaiian are hereby enjoined and restrained from entering into, performing, adopting, adhering to, maintaining or furthering, directly or indirectly, any combination, contract, agreement, or arrangement between themselves or with any tourist or travel agency to arrange for and conduct tours by common carriers, solely or in part on land, sea, and in the air on condition that the other or such tourist or travel agency be prohibited from arranging similar tours with, or furnishing tickets or other transportation services for, common carriers other than one or both of the defendants.

VI

[*Rate Agreements Prohibited*]

If defendant Inter-Island should hereafter enter into the business of a common carrier, defendant Inter-Island and defendant Hawaiian are hereby enjoined and restrained from entering into any agreement, understanding, or arrangement, establishing any rate for the purpose of eliminating or suppressing competition.

VII

[*Discrimination Prohibited*]

Defendant Hawaiian is hereby enjoined and restrained from:

(a) entering into or carrying out any agreement or understanding with any tourist or travel agency not owned by it on condition that such agency will not sell or handle the tickets of, or not furnish services comparable to those furnished by it to defendant Hawaiian, to any other air carrier lawfully operating to, from or between points in the Territory of Hawaii and

(b) refusing to deal with, or discriminating against, any tourist or travel agency because such agency sells the tickets of, or renders other services to, any other air carrier lawfully operating to, from or between points in the Territory of Hawaii.

If defendant Inter-Island should hereafter enter into the business of a common carrier, defendant Inter-Island and defendant Hawaiian are hereby enjoined and restrained from entering into any agreement, understanding, or arrangement with any shipper whereby such shipper agrees to refrain from using the shipping facilities of any common carrier.

[*No Paragraph VIII in Decree*]

IX

[*Rights Under Other Laws*]

Nothing in this Judgment shall be construed to prevent defendants from doing anything authorized to be done by Sections 408, 409 and 412 of the Civil Aeronautics Act of 1938, or by Section 15 of the Shipping Act of 1916, as amended, or shall deprive defendants of the immunities conferred by said acts as now in force or as hereafter amended.

X

[*Inspection and Compliance*]

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 officers or employees of said defendant, who may have counsel present, regarding any such matters and upon request said defendant shall submit such written reports to the Department of Justice with respect to matters contained in this Judgment, as may from time to time be reasonably necessary to the enforcement of this 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 is a party for the purpose of securing compliance with this Judgment or as otherwise required by law.

XI

[*Jurisdiction Retained*]

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

UNITED STATES v. HAWAII RETAIL DRUGGISTS ASSOCIATION

Civil No. 2064

Year Judgment Entered: 1963

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Hawaii Retail Druggists Association., U.S. District Court, D. Hawaii, 1963 Trade Cases ¶70,914, (Nov. 19, 1963)

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United States v. Hawaii Retail Druggists Association.

1963 Trade Cases ¶70,914. U.S. District Court, D. Hawaii. Civil No. 2064. Entered November 19, 1963. Case No. 1688 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Selling Prices—Retail Druggists Association—Consent Judgment.— An association of retail druggists and its members was prohibited under the terms of a consent judgment from entering into, adhering to maintaining any understanding, combination or conspiracy to fix resale prices for drugs or related products, to urge, induce or compel any drug manufacturer or supplier to enter into fair trade contracts, increase or enforce fair trade prices, or refuse to sell to any pharmacy or pharmacists, or to boycott any manufacturer or supplier of any drug or related product.

For the plaintiff: William H. Orrick, Jr., Harry G. Sklarsky, W. D. Kilgore, Jr., Lyle L. Jones, Herman T. F. Lum, Raymond S. Carlson, Carl L. Steinhouse, and Don H. Banks.

For the defendant: Wallace S. Fujiyama.

Final Judgment

TAVARES, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on June 29, 1962, and the defendant, by its attorneys, having appeared and having 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 an admission by any party 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 such consent, it is hereby

Ordered, adjudged and decreed as follows:

I

[Sherman Act]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states a claim upon which relief may be granted against defendant Hawaii Retail Druggists Association 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 herein:

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

(B) "Drug products" shall mean medications for the treatment of human ailments sold at retail to consumers either with or without a physician's prescription.

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(C) "Related goods" shall mean toiletries, cosmetics and all sundry drugstore items;

(D) "Manufacturer or supplier" shall mean any person who produces or sells drug products or related goods to retail druggists and drugstores, including manufacturers, distributors and jobbers of such products and goods;

(E) "Fair trade contract" shall mean an agreement between a. manufacturer or supplier and a retail druggist fixing the price of drug products or related goods pursuant to the Fair Trade Laws of the State of Hawaii;

(F) "Fair trade price" shall mean the price or prices set by a manufacturer or supplier by means of a fair trade contract or contracts for resale to the consuming public.

III

[*Applicability*]

The provisions of this Final Judgment applicable to defendant Hawaii Retail Druggists Association shall apply to defendant, its officers, directors, committees, agents, employees and successors, and to those persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Fair Trade*]

Defendant is restrained from entering into, adhering to or maintaining any understanding, combination or conspiracy with any of its members or any other person to:

(A) Fix, establish, maintain or stabilize prices for the sale of any drug product or related goods to any third person;

(B) Urge, induce, compel or coerce any manufacturer or supplier of any drug product or related goods to enter into fair trade contracts, to increase or to enforce fair trade prices, or to refuse to sell to any pharmacy or pharmacist;

(C) Boycott or threaten to boycott any manufacturer or supplier of any drug product or related goods.

V

[*Enforcing Adherence*]

Defendant is restrained from:

(A) Formulating, adopting distributing, recommending, advocating or suggesting the use by any pharmacist, druggist or any other person of any pricing schedule or other price list, formula, guide, schedule or method for pricing any drug product or related goods;

(B) Advocating, suggesting, urging, inducing, compelling or in any other manner influencing or attempting to influence any manufacturer or supplier to enter into fair trade contracts or to increase or to enforce fair trade prices;

(C) Policing or making individual contact with any pharmacist or other person or devising or putting into effect any procedure to ascertain whether or not any person is charging fair trade prices or any other prices or level of prices in Hawaii;

(D) Combining or conspiring to restrain the sale or distribution of any drug product or related goods;

(E) Expelling from membership or refusing to admit to membership, any druggist for or on account of any practice or policy concerning prices of any drug product or related goods.

VI

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[Price Policy Committee]

Defendant is ordered to dissolve its Price Policy Committee and is restrained from forming, appointing or maintaining such committee or any similar committee.

VII

[Service on Members]

(A) Defendant is ordered and directed, within 30 days after the entry of this Final Judgment, to serve by mail upon each of its members a conformed copy of this Final Judgment. Said defendant is further ordered and directed to thereupon file an affidavit with the clerk of this Court that it has done so, which affidavit shall set forth the name and address of each person so served.

(B) Defendant is ordered and directed to furnish a copy of this Final Judgment to each new member thereof at the time of acceptance of such new membership and to obtain from each such member, and keep a receipt therefor signed by each such new member in the files of defendant for the duration of his membership.

VIII

[Inspection and Compliance]

For the purpose of securing compliance with this Final Judgment duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant, and subject to any legally recognized privilege, be permitted:

(A) 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 said defendants relating to any matters contained in this Final Judgment; and

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

Upon written request, defendant shall submit such written reports to the Department of Justice with respect to matters contained in this Final Judgment as from time to time may be necessary to the enforcement of said Final Judgment. No information obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of plaintiff, except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

IX

[Jurisdiction Retained]

Jurisdiction 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 the Final Judgment, for the modification or vacating of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violation thereof.

UNITED STATES v. FIRST HAWAIIAN BANK, ET AL.

Civil No. 2540

Year Judgment Entered: 1969

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. First Hawaiian Bank (formerly First National Bank of Hawaii) and Cooke Trust Co., Ltd.; Federal Deposit Insurance Corp., Intervenor., U.S. District Court, D. Hawaii, 1969 Trade Cases ¶72,944, (Nov. 17, 1969)

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United States v. First Hawaiian Bank (formerly First National Bank of Hawaii) and Cooke Trust Co., Ltd.; Federal Deposit Insurance Corp., Intervenor.

1969 Trade Cases ¶72,944. U.S. District Court, D. Hawaii. Civil No. 2540. Entered November 17, 1969. Case No. 1899 in the Antitrust Division of the Department of Justice.

Clayton Act

Merger—Acquisition of Competitor—Banks—Consent Decree.—An Hawaiian bank was barred by a consent decree from merging, acquiring or holding any of the stock, assets or accounts of any trust company or commercial bank with a trust department for a period of ten years, in settlement of a suit challenging a consummated merger.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen., W. D. Kilgore, Jr., Baddia J. Rashid, Charles L. Whittinghill, Herbert G. Schoepke, and Charles F. B. McAleer, Attys., Dept. of Justice.

For the defendants: C. Frederick Schutte, Gilbert E. Cox, and William M. Swope, of Smith, Wild, Beebe & Cades.

For the intervenor: Leslie H. Fisher, Gen. Counsel.

Final Judgment

PENCE, D. J.: Plaintiff, United States of America, having filed its complaint herein on June 10, 1966, seeking to enjoin alleged violations of Section 7 of the Clayton Act (15 U. S. C. Sec. 18); and defendants Cooke Trust Company, Limited and First Hawaiian Bank (formerly First National Bank of Hawaii), having on June 29, 1966 filed motions to vacate or dissolve the stay of the federal banking agencies' approvals of the merger of defendant Cooke Trust Company, Limited into defendant First Hawaiian Bank, resulting by the terms of the Bank Merger Act of 1966; and this Court (Judge Lindberg, sitting by assignment), after hearing and argument, having, on July 14, 1966, entered and filed its Findings of Fact and Conclusions of Law Upon Defendants' Motion to Dissolve Stay and its Order Vacating Stay of Effectiveness of Agency Approval; defendant Cooke Trust Company, Limited having on July 25, 1966 merged into defendant First Hawaiian Bank; defendant First Hawaiian Bank having filed its answer herein denying any violation of law; plaintiff and defendant First Hawaiian Bank, 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 (other than the issues determined by the Findings of Fact and Conclusions of Law hereinabove referred to), and without this Final Judgment constituting any evidence or an admission by either party hereto with respect to any issue of fact or law herein; and this Court having considered the matter and being duly advised;

Now Therefore, upon the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

[Jurisdiction]

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 First Hawaiian Bank under Section 7 of the Act of Congress of October 15, 1914 (15 U. S. C. § 18), as amended, commonly known as the Clayton Act.

II

[Definitions]

As used in this Final Judgment:

(A) "First Hawaiian" means defendant First Hawaiian Bank, which is the surviving corporation in the merger of defendant Cooke Trust Company, Limited with and into defendant First National Bank of Hawaii.

(B) "Trust company" means and includes (i) First Hawaiian, (ii) any trust company organized under the laws of and doing a trust business in the State of Hawaii, and (iii) any bank which is duly authorized under the laws of the United States and/or the State of Hawaii to engage, and which is engaged, in a trust business in the State of Hawaii.

III

[Applicability]

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

IV

[Merger Restrictions]

Defendant First Hawaiian is enjoined and restrained for a period of ten (10) years from the effective date of this Final Judgment from merging with, acquiring or holding after such acquisition for its own account, any of the stock, assets, trust or fiduciary accounts, any part of the business of or any financial interest in any other trust company, provided however, that nothing herein contained shall prohibit transactions conducted in the normal course of business.

V

[Modification]

Defendant First Hawaiian may petition this Court at any time and from time to time to modify Section IV of this Final Judgment to permit defendant First Hawaiian to merge with, acquire and hold after such acquisition for its own account any of the stock, assets, trust or fiduciary accounts, any part of the business of or any financial interest in any other trust company (other than, pursuant to transactions conducted in the normal course of business), and such petition shall be granted if defendant First Hawaiian shall show to the satisfaction of the Court that such merger or acquisition has for good cause been requested by the bank regulatory authority having jurisdiction in the premises because of, or in order to avert, the insolvency of such other trust company.

VI

[Inspection and Compliance]

(A) For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon writ ten request of the Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and on reason able notice to defendant First Hawaiian at its principal office, be permitted:

(1) Access, during office hours of First Hawaiian, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of First Hawaiian relating to any matters contained in this Final Judgment; and

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

(B) Defendant First Hawaiian, upon such written request, shall submit such reports in writing to the Department of Justice with respect to any matters contained in this Final Judgment as may, from time to time, be requested. 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 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 party 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 of any provision thereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.

UNITED STATES v. INTER-ISLAND TRAVEL SERVICE, LTD., D/B/A TRADE WIND TOURS OF
HAWAII AND INTERNATIONAL TRAVEL SERVICE, LTD., ET AL.

Civil No. 75-0334

Year Judgment Entered: 1978

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Inter-Island Travel Service, Limited, d/b/a Trade Wind Tours of Hawaii and International Travel Service, Ltd., Island Holidays, Ltd., MacKenzie Travel Organization, Hawaii, Inc., Vacations-Hawaii, Inc., d/b/a Lea Lea Tours., U.S. District Court, D. Hawaii, 1978-2 Trade Cases ¶62,276, (Sept. 12, 1978)

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United States v. Inter-Island Travel Service, Limited, d/b/a Trade Wind Tours of Hawaii and International Travel Service, Ltd., Island Holidays, Ltd., MacKenzie Travel Organization, Hawaii, Inc., Vacations-Hawaii, Inc., d/b/a Lea Lea Tours.

1978-2 Trade Cases ¶62,276. U.S. District Court, D. Hawaii, Civil No. 75-0334, Entered September 12, 1978, (Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 26801).

Case No. 2478, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Tourist Packages and Commission Rates: Hawaiian Tour Operators: Consent Decree.— Four Hawaiian tour operators were prohibited by a consent decree from fixing prices and travel agent commissions on free-independent-travel tour packages to Hawaii. The firms also were barred from exchanging price information with each other or with other tour operators, except for bona fide business transactions.

For plaintiff: Hugh P. Morrison, Jr., Actg. Asst. Atty. Gen., Richard J. Favretto, Anthony E. Desmond, Don B. Overall, and Robert H. Heidt, Attys., Dept. of Justice. **For defendants:** A. Bernard Bays, of Carlsmith, Carlsmith, Wichman and Case, for Robert E. MacGregor and Inter-Island Travel Service, Ltd., dba Trade Wind Tours of Hawaii; James S. Campbell, of Cades, Schutte, Fleming & Wright, for Island Holidays, Ltd.; William Quinn, Goodsill, Anderson & Quinn, for HIC Travel, Inc., formerly MacKenzie Travel Organization, Hawaii, Inc.; Peter A. Donahoe, of Donahoe & Duca, for Vacations-Hawaii, Inc., dba Lea Lea Tours.

Final Judgment

King, D. J.: Plaintiff, United States of America, having filed its complaint herein on October 2, 1975, and the Plaintiff and the Defendants, by their respective attorneys, having 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 against or admission by any party with respect to any issue of fact or law herein:

Now Therefore, without any testimony being taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of all parties hereto, it is hereby Ordered, Adjudged and Decreed:

I.

[Jurisdiction]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The Complaint states a claim upon which relief may be granted against the Defendants under Section 1 of the Sherman Act (15 U. S. C. §1).

II.

[Definitions]

As used in this Final Judgment:

(a) "Hawaii" means the State of Hawaii;

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- (b) "Mainland" means all of the States of the United States except the State of Hawaii;
- (c) "Components" means goods and services, such as lei greetings, transfers, hotel accommodations, ground transportation, and sightseeing features, commonly offered together in the form of FIT tour packages by tour operators;
- (d) "FIT tour package" means a bundle of components, generally described in a brochure and offered by a tour operator for sale to a "free independent traveler" (one who need not arrive or depart with a group at a specified time) for touring Hawaii;
- (e) "Tour operator", sometimes also known in the industry as a "wholesaler", means any company engaged in the assembling, sale and operation of FIT tour packages; and
- (f) "Retail travel agent" means any company engaged in selling FIT tour packages at retail on a commission basis.

III.

[Applicability]

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

IV.

[Prices; Commissions]

Each Defendant is enjoined and restrained from:

- (a) Directly or indirectly entering into, adhering to, enforcing, maintaining, furthering or claiming any right under any contract, agreement, understanding, plan, program, concert of action, combination or conspiracy with any other tour operator or other person to:
1. Fix, raise, maintain or stabilize the markups, prices, fees, or terms or conditions of sale of FIT tour packages or of any components thereof;
 2. Eliminate, reduce, or prevent discounts offered for components of FIT tour packages; or
 3. Fix, maintain, or stabilize the commissions to retail travel agents for the sale of FIT tour packages or components thereof;
- (b) Suggesting to, discussing with or expressly or implicitly furnishing to or requesting from any tour operator any price, markup, term or condition with respect to FIT tours or components thereof; and
- (c) Belonging to, or participating in, or contributing anything of value to any trade association or other group with knowledge that the activities thereof are contrary to or inconsistent with the provisions of this Final Judgment.

V.

[Bona Fide Sales]

Nothing contained in Subsection (b) of Section IV above of this Final Judgment shall apply to any negotiation or communication between a Defendant and another tour operator or seller of tour components, retail travel agent or representative thereof, whose sole purpose is a bona fide proposed or actual purchase or sale of tour components for FIT tours.

VI.

[Acquiring Parties]

Each Defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of the assets used by it that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court, and serve upon the Plaintiff, its consent to be bound by this Final Judgment.

VII.

[Notice]

Each Defendant is ordered and directed:

(a) To furnish within sixty (60) days after entry to this Final Judgment a copy thereof to each of its officers and directors, and to each of its managing agents and employees having any responsibility for or authority over the establishment of the markup on or price of any tour or component thereof which said Defendant sells or proposes to sell or for the establishment of commissions to be paid travel agents therefor;

(b) To furnish a copy of this Final Judgment to each person who becomes an officer or director, or managing agent or employee described in Subsection (a) of this Section VII, within sixty (60) days after such person is employed by or becomes associated with such Defendant;

(c) To take additional affirmative steps to advise each of its officers and directors, and each managing agent and employee described in Subsection (a) of this Section VII of its and their obligations under this Final Judgment and of the criminal penalties for violation of Section IV of this Final Judgment, including written directives setting forth corporate compliance policies, distribution of Final Judgments, and meetings to review its terms and the obligations it imposes.

(d) To file with the Court and serve upon the Plaintiff, within ninety (90) days from the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with Subsection (a) of this Section VII; and

(e) To obtain, from each person described in Subsection (a) or (b) of this Section VII, a written statement evidencing such person's receipt of a copy of this Final Judgment, and to retain such statements in its files.

VIII.

[Inspections]

For the purpose of determining or securing compliance with this Final Judgment, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division or his agent, subject to any legally recognized privilege:

(a) On reasonable notice to a Defendant made to its principal office duly authorized representatives of the Department of Justice shall be permitted:

1. Access, during office hours of such Defendant, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such Defendant relating to any matters contained in this Final Judgment; and
2. Subject to the reasonable convenience of such Defendant and without restraint or interference from it, to interview officers, directors, employees or agents of such Defendants, any of whom may have counsel present, regarding any matters contained in this Final Judgment.

(b) Each Defendant shall submit such reports in writing, under oath if requested, with respect to matters contained in this Final Judgment as may from time to time be so requested.

No information or documents obtained by the means permitted in this Section VIII 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 legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by a Defendant to Plaintiff, such Defendant represents and identifies in writing the material in any such information or documents of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by Plaintiff to such Defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the Defendant is not a party.

IX.

[Retention of Jurisdiction]

Jurisdiction is retained by the 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 modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

X.

[Public Interest]

Entry of this Final Judgment is in the public interest.

UNITED STATES v. HAWAIIAN HOLIDAYS TOURS, INC., ET AL.

Civil No. 76-0371

Year Judgment Entered: 1978

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Hawaiian Holidays Tours, Inc., Hawaiian Holidays, Inc., Inter-Island Travel Service, Ltd., d. b. a. Trade Wind Tours of Hawaii, International Travel Brokers, Inc., and Hawaii Unlimited., U.S. District Court, D. Hawaii, 1978-2 Trade Cases ¶62,386, (Nov. 16, 1978)

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

United States v. Hawaiian Holidays Tours, Inc., Hawaiian Holidays, Inc., Inter-Island Travel Service, Ltd., d. b. a. Trade Wind Tours of Hawaii, International Travel Brokers, Inc., and Hawaii Unlimited.

1978-2 Trade Cases ¶62,386. U.S. District Court, D. Hawaii, Civil No. 76-0371 Entered November 16, 1978.

(Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 42822). Case No. 2540, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing: Exchange of Information: Bona Fide Sales: Pooling Agreements: Group Package Tour Industry: Consent Decree.— Five Hawaiian tour operators were barred by a consent decree from agreeing to fix prices or exchanging information in connection with the sale of group package tours. The prohibitions contained in the decree would not apply to proposed or actual bona fide sales of tour components nor to pooling agreements in connection with the number of passengers to be provided an airplane flight. Any acquiring party should show consent to the prohibitions of the decree.

For plaintiff: John H. Shenefield, Asst. Atty. Gen., and William E. Swope, Charles F. B. McAleer, Anthony E. Desmond, Don B. Overall, and Steven L. Weinstein, Attys., Dept. of Justice. **For defendants:** Alexander Anolik, San Francisco, Cal., for Inter-Island Travel Service, Ltd., and Hawaii Unlimited; Lawrence B. Kahn, Great Neck, N. Y., for International Travel Brokers, Inc.; and Thomas H. Baer, of Baer & McGoldrick, New York, N. Y., for Hawaiian Holidays Tours, Inc., and Hawaiian Holidays, Inc.

Final Judgment

King, J.: Plaintiff, United States of America, having filed its complaint herein on October 5, 1976, and the Plaintiff and the Defendants, by their respective attorneys, having 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 against or admission by any party with respect to any issue of fact or law herein:

Now Therefore, without any testimony being taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of all parties hereto, it is hereby Ordered, Adjudged and Decreed:

I.

[Jurisdiction]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The Complaint states a claim upon which relief may be granted against the Defendants under Section 1 of the Sherman Act (15 U. S. C. §1).

ii.

[Definitions]

As used in this Final Judgment:

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

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- (b) "Hawaii" means the State of Hawaii;
- (c) "Mainland" means all of the States of the United States except the State of Hawaii;
- (d) "GIT tour package" means a bundle of components generally consisting of air transportation, hotel accommodations and sightseeing features offered for group travel to Hawaii based on a discounted airfare known as a "group inclusive tour" fare;
- (e) "Tour operator," sometimes also known in the industry as a "wholesaler," means any company engaged in the assembling, sale and operation of GIT tour packages; and
- (f) "Pooling" means the method by which two or more tour operators jointly provide passengers for the same airplane flight in order to utilize a GIT airfare.

III.

[Applicability]

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

IV.

[Price Fixing; Exchange of Information]

Each Defendant is enjoined and restrained from:

- (a) Directly or indirectly entering into, adhering to, enforcing, maintaining, furthering, or claiming any right under any contract, agreement, understanding, plan, or program, concert of action, combination or conspiracy with any person, directly or indirectly to fix, maintain or stabilize the prices, terms or conditions of sale, or markups of GIT tour packages, or
- (b) Suggesting to, discussing with or expressly or implicitly furnishing to or requesting from any tour operator or person associated with or employed by any tour operator any price, markup, term or condition with respect to GIT tours.

V.

[Permitted Activities]

Nothing contained in Section IV above or this Final Judgment shall apply to any negotiation or communication between the Defendants or a Defendant and another tour operator or person associated with or employed by a tour operator, the sole purpose of which is a bona fide proposed or actual purchase or sale of tour components for GIT tours.

Nothing contained in Section IV above or this Final Judgment shall prohibit pooling agreements between the Defendants or a Defendant and another person to the extent that such agreements may provide for a specific number of passengers each member of a pool must produce for each airplane flight and any penalties to be assessed to a member of a pool for failure to provide the required number of passengers.

VI.

[Acquiring Party's Consent]

Each Defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of the assets used by it that the acquiring party agree to be bound by the provisions of this Final Judgment. The

acquiring party shall file with the Court, and serve upon the Plaintiff, its consent to be bound by this Final Judgment.

VII.

[Notice]

Each Defendant is ordered and directed:

(a) To furnish within sixty (60) days after entry of this Final Judgment a copy thereof to each of its officers and directors, and to each of its managing agents and employees having any responsibility for or authority over the establishment of the pricing or markup on or price of any tour or component thereof which said Defendant sells or proposes to sell or for the establishment of commissions to be paid travel agents therefor;

(b) To furnish a copy of this Final Judgment to each person who becomes an officer or director, or managing agent or employee described in Subsection (a) of this Section VII, within sixty (60) days after such person is employed by or becomes associated with such Defendant;

(c) To take additional affirmative steps to advise each of its officers and directors, and each managing agent and employee described in Subsection (a) of this Section VII of its and their obligations under this Final Judgment and of the criminal penalties for violation of Section IV of this Final Judgment, including written directives setting forth corporate compliance policies, distribution of Final Judgments, and meetings to review its terms and the obligations it imposes.

(d) To file with the Court and serve upon the Plaintiff, within ninety (90) days from the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with Subsection (a) of this Section VII; and

(e) To obtain, from each person described in Subsection (a) or (b) of this Section VII, a written statement evidencing such person's receipt of a copy of this Final Judgment, and to retain such statements in its files.

VIII.

[Inspection]

For the purpose of determining or securing compliance with this Final Judgment, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division or his agent, subject to any legally recognized privilege:

(a) On reasonable notice to a Defendant made to its principal office duly authorized representatives of the Department of Justice shall be permitted:

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

2. Subject to the reasonable convenience of such Defendant and without restraint or interference from it, to interview officers, directors, employees or agents of such Defendants, any of whom may have counsel present, regarding any matters contained in this Final Judgment.

(b) Each Defendant shall submit such reports in writing, under oath if requested, with respect to matters contained in this Final Judgment as may from time to time be so requested.

No information or documents obtained by the means permitted in this Section VIII 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 legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by a Defendant to Plaintiff, such Defendant represents and identifies in writing the material in any such information or documents of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said Defendant marks each pertinent page of such material, "Subject to

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claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by Plaintiff to such Defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the Defendant is not a party.

IX.

[Retention of Jurisdiction]

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[Public Interest]

Entry of this Final Judgment is in the public interest.