

**UNITED STATES OF AMERICA v. FLOWER
PRODUCERS CO-OPERATIVE ASSOCIATION
OF NEW YORK, INC., ET AL., DEFENDANTS.**

DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF NEW YORK.

Equity No. 35-7

UNITED STATES OF AMERICA, PETITIONER,

v.

FLOWER PRODUCERS CO-OPERATIVE ASSOCIATION OF NEW YORK, INC., WALLACE R. PIERSON, ANTHONY RUZICKA, ISIDORE FIGHT, MARIUS MATHERON, FRANK B. ABRAMS, ARMIN B. KRETSCHMAR, SIGMUND KAHN, EBEN HISCOX, CURT THIMM, JOHN LANGE, HERMAN MAMITSCH, PETER HOEBEL, HERMAN WEISS, M. C. FORD, MITCHELL W. FL. COMPANY, HENSHAW FLORAL COMPANY, GEO. GOLSNER'S SONS, CHAS. FUTTERMAN, WILLIAM T. ILER, SAMUEL C. GILBERT, EDWARD BRENNER, ARTHUR ROBINS, PAUL MECONI, S. S. PENNOCK COMPANY, A. SAUTER, UNITED CUT FLOWER COMPANY, INC., ALFRED H. LANGJAHR, ROBERT LABAN, TRAENDLY & SCHENCK, HENTZ & NASH, J. J. COAN, INC., JOSEPH S. FENRICH, I. GOLDSTEIN, EDWIN D. MORGAN, JAMES RUTIG, JOSEPH J. LEVY, NICHOLAS PAPPAS COMPANY, GEO. W. CRAWBUCK COMPANY, INC., HY. M. ROBINSON COMPANY, GEORGE SULLIVAN, DOLAN CUT FLOWER COMPANY, WILLIAM G. BADGLEY, CHARLES MILLANG, ABRAHAM ROSEN, WILLIAM MACKE, CARVELL & DENIS, WILLIAM KESSLER, SAMUEL SALZBERG, BARNEY JACOBS, HANIG & GEIGER and H. E. FROMENT.

FINAL DECREE.

This cause came on to be heard at this term, and upon consideration thereof, and upon motion of the petitioner by Emory R. Buckner, United States Attorney for the Southern District of New York, and Alexander B. Royce, Special Assistant to the United States Attorney, and Israel B. Oseas, Special Assistant to the United States Attorney, of counsel, for relief in accordance with the prayer of the petition, and no testimony or evidence having been taken, and the defendants Flower Producers Co-operative Association of New York, Inc., Wallace R. Pierson, Anthony Ruzicka, Isidore Fight, Marius Matheron, Frank B. Abrams, Armin B. Kretschmar, Sigmund Kahn, Eben Hiscox, Curt Thimm, John Lange, Herman Mamitsch, Peter Hoebel, Henshaw Floral Company, George Golsner's Sons, Charles Futterman, A. Sauter, William Kessler, Arthur Robbins, Barney B. Jacobs, Hanig & Geiger, Herman Weiss, Dolan Cut Flower Company, Mitchell Wholesale Florist Company, Inc., Traendly & Schenck, Alfred H. Langjahr, Geo. W. Crawbuck Company, Inc., Henry M. Robinson Company, Samuel Salzberg, Carvel & Denis and *Samuel C. Gilbert, having appeared by their attorney, Henry Booth Moore, and the defendants I. Goldstein and *Edward Brenner having appeared by their attorney, William Weisman and the defendants *Hentz & Nash by their attorneys, Carr, Hill & Koenig and the defendants, J. J. Coan, Inc. by J. J. Coan and George Sullivan, *William J. Badgley, *M. C. Ford, *William T. Iler, *Edwin D. Morgan, *Nicholas G. Pappas & Company, *James Rutig, *Abraham Rosen, *Laban Bros. by Robert Laban, *Joseph S. Fenrich, *William Mackie, *H. E. Froment, and *S. S. Pennock Company by P. B. Rigby having appeared in their own proper person, and *Joseph J. Levy, *United Cut Flower Company by D. J. Pappas, *Paul Meconi by F. Meconi having appeared both in person and by Otterbourg, Steindler & Houston, attorneys, and having con-

*These defendants were not included in decree filed Jan. 15, 1926, but consented subsequently.

sented thereto in open court; NOW THEREFORE it is ORDERED, ADJUDGED AND DECREED as follows:

(1) That the combination and conspiracy in restraint of interstate trade and commerce and to monopolize the same, and the restraint and tendency toward monopoly attained thereby, described in the petition herein, be and they hereby are declared illegal and in violation of the Act of Congress approved July 2, 1890, and Acts amendatory thereof and supplemental or additional thereto.

(2) That the defendants and their officers, agents, servants, employees and members, and all persons acting under, through, by, or in behalf of, or in aid of, or in conjunction with them or any of them or claiming so to act, be and they hereby are perpetually enjoined, restrained and prohibited from directly or indirectly further engaging in or further carrying into effect the said combination and conspiracy, and from engaging in or entering into any like combination or conspiracy the effect of which would be to restrain or monopolize the trade or commerce in cut flowers among the several states of the United States, and from directly or indirectly carrying out or continuing in effect the by-laws, agreements, acts and practices described in the petition herein and from making any express or implied agreements or arrangements with one another or with others like the agreements or arrangements alleged in the petition herein and hereby declared to be illegal, and from using any other similar means or methods, the effect, of which would be to prevent the free and unrestrained flow of trade or commerce in flowers among the several states of the United States or to tend to monopolize the same.

(3) That the defendants and all others acting in aid of, or in conjunction with them or any of them be and they hereby are ordered and directed to dissolve and forever discontinue the defendant, Flower Producers Co-Operative Association of New York, Inc., and be and they hereby are enjoined and prohibited from promoting, organizing and operating any similar association for like purposes and objects; PROVIDED HOWEVER that the

defendants are not restrained or enjoined from continuing in existence the defendant, Flower Producers Co-Operative Association of New York, Inc., if and so long as they shall:

(a) Forthwith send a notice, the form of which shall be approved by this Court, to all wholesalers to whom notices of any kind were previously sent by, or who have at any time been solicited on behalf of the defendant, Flower Producers Co-Operative Association of New York, Inc., notifying them that all the by-laws, agreements and policies described in the petition herein have been annulled.

(b) Send a similar notice under similar conditions to all members past and present of the defendant Flower Producers Co-Operative Association of New York, Inc.

(c) Publish or cause to be published under similar conditions in the "Florists Exchange", a trade newspaper, an announcement to the same effect.

(d) Forthwith amend and/or cause to be amended the by-laws of the defendant Flower Producers Co-Operative Association of New York, Inc., in the following manner; by striking out Articles XII, XVI, and Sections 2, 3 and 13 of Article III, and in place thereof substituting the following:

ARTICLE III, SECTION 1:

"Membership in this association shall be open to such individuals, firms or corporations as are engaged in the producing or growing of cut flowers (grown under glass and/or outdoor grown) primarily for the flower and not for the bulb, seed or plant, and in the consignment thereof to the New York market; provided that membership shall not be open to persons, firms or corporations averaging throughout the year less than ten shipments per month of roses, carnations or other long season crops in season, and/or five shipments per month of short season crops."

ARTICLE III, SECTION 2:

"It is understood, however, that upon request the association shall handle, and/or arrange for the handling of, the sale of flowers (grown under glass and/or outdoor grown) of any individuals, firms or corporations desirous of marketing their products in the New York City market, all on the same terms and conditions as apply to members of the association, and are more fully set forth in Article XIV of these by-laws."

ARTICLE XII, SECTION 1:

"The Board of Directors of the corporation shall cause to be employed a proper and suitable person to act as an inspector and as agent of the association for the purpose only of ascertaining

(a) The conditions under which the products of members of the association are sold in the New York City market, and to report to the directors recommendations for the best interests of the cut flower business in the New York City market.

(b) The method of grading cut flowers offered for sale in the New York City market."

But nothing in this decree or this article shall be construed to authorize any act forbidden by section 4 of this decree; nor shall any person be required to give any information in pursuance of this article which he deems desirable or necessary to withhold, and all information obtained shall on request be made available to non-members.

(e) Cause this decree to become and remain a part of the By-Laws or other working regulations of defendant Flower Producers Co-Operative Association of New York, Inc., and binding upon all who may become members thereof.

(4) That the defendants and their officers, agents, servants and employees, and all persons acting under them, through, or in behalf of, or in aid of, or in conjunction with them or any of them or claiming so to

act, be and they hereby are perpetually enjoined, restrained and prohibited, collectively and individually, directly or indirectly, from

(a) Agreeing among themselves or with each other or with others, to fix, establish or publish, or fixing, establishing or publishing any resolution, by-law, agreement or policy whereby members or non-members of the defendant Flower Producers Co-Operative Association of New York, Inc., are forbidden to ship or receive for sale, any flowers at any time or times or for any period.

(b) Enforcing any such agreement, by-law, policy or practice by means of fines or penalties of any sort to be levied upon members or non-members.

(c) Maintaining any system of inspection for the purpose of enforcing or securing information as to the enforcement of such arrangements, by-laws, policies or practices, and from using any other method, means or device to coerce or procure in any manner obedience of any producers or wholesalers to such agreement, by-law, practice or policy as aforesaid.

(d) Agreeing among themselves, or with each other, or with others, directly or indirectly to threaten to boycott, or directly or indirectly threatening to boycott, or boycotting wholesalers with the intent of preventing such wholesalers from receiving for sale and/or selling any products whatever, or to induce them to conform to any other rules or practices.

(e) Discriminating or causing discrimination against growers or wholesalers because of, or pursuant to, or as the result of any rule, regulation, by-law, agreement or policy adopted by the defendant, Flower Products Co-Operative Association of New York, Inc., or its members to govern or control or interfere with the production, shipment, and/or sale of flowers.

(6) Jurisdiction of the cause is maintained for the purpose of giving full effect to this decree and of making such other and further orders and decrees or taking such other action, if any, as may be necessary or appropriate

to the carrying out and enforcement of said decree, and for the purpose of enabling the United States to apply to the Court for a modification or enlargement of the provisions of said decree on the ground that they are inadequate and the defendants or any of them to apply for a modification of said provisions on the ground that they or any of them have become inappropriate or unnecessary.

(7) It is further ordered that defendants pay all the costs of this cause to be taxed.

FRANCIS A. WINSLOW,
United States District Judge.

Entered Jan. 15, 1926.