

APPENDIX A:
FINAL JUDGMENTS
(Ordered by Year Judgment Entered)

United States v. National Association of Retail Druggists, et al.

Case No. 10593

Year Judgment Entered: 1907

Equity No. 10593.

May Term, 1907. May 9, A. D. 1907.

Before the Honorable Albert B. Anderson, Judge.

THE UNITED STATES OF AMERICA,

VS.

THE NATIONAL ASSOCIATION OF RETAIL DRUGGISTS ET AL.

DECREE.

Now at this time comes the complainant, by Joseph B. Kealing, the United States attorney for the District of Indiana, and William J. Shroder, special assistant United States attorney, and Addison C. Harris and Charles W. Miller, special counsel, and the defendants, The National Association of Retail Druggists, Searle and Hereth, Hamlin's Wizard Oil Company, E. C. De Witt and Company, H. E. Bucklen and Company, World's Dispensary Medical Association, D. Ransom, Son and Company, S. T. W. Sanford and Sons, Seabury and Johnson, Himrod Manufacturing Company, Allcock Manufacturing Company, The Omega Chemical Company, Dr. Miles Medical Company, The Eli Lilly Company, The Milk's Emulsion Company, John Wyeth and Bro., Smith, Kline and French Company, The Piso Company, Nelson Baker and Company, Parke Davis and Company, F. Stearns and Company, Pyramid Drug Company, F. A. Stuart and Company, Edgar C. Powers Company, J. C. Ayer Company, C. I. Hood Company, Sterling Remedy Company, The Vapo-Cresoline Company, Paris Medicine Company, Chattanooga Medicine Company, Wells and Richardson Company, Dr. B. J. Kendall Company, The W. Hill Company, The Kickapoo Indian Medicine Company, Chamberlain Medicine Company, Lydia E. Pinkham Medicine Company, Dr. Shoop Family Medicine Company, Meade and Baker Carbolic Mouth Wash Company, Battle and Co. Chemists Corporation, California Fig Syrup Company, Charles Gibson, Jonas M. Kilmer, J. A. Lockie, William J. Schiefelin, Jesse F. Hiscox, and Everett S. Hiscox, individually and representing the estate of David Hiscox, deceased, Charles

F. Mann, William A. Hover, George G. Green, Adolph C. Moyer, William E. Gilbert and John G. Gilbert, Charles H. Avery, Charles C. Bombaugh, Charles M. Carr and Thomas V. Wooten, Julius Garst, William D. Wheeler, Fred L. Carter and George Golding Kennedy, Lewis C. Hopp, Lucien B. Hall and Samuel E. Strong, Samuel B. Hartman and Frederick W. Schumacher, Joseph E. Toms, W ——— J. Mooney, John N. Carey, Frank E. Holliday, Frank A. Faxon, Thomas F. Van Natta, Simon N. Jones, M. Cary Peter, Benjamin E. Pritchard, Thomas H. Potts, E ——— C. Bottume, Charles Rehfuss, Mahlon N. Kline, Clayton F. Shoemaker, Joseph H. Schenck, Edward H. Hance, Anthony M. Hance, Emma E. Hance and Edward Hance, Executors of the Estate of Joseph C. Hance, deceased, Thomas Voegelli, Thomas N. Kenyon, M ——— T. Breslin and Arthur D. Parker, by their respective counsel come also, and thereupon it is ordered by the court that the reference of this cause to Noble C. Butler, Special Master, be and the same is hereby set aside, and that this cause shall be now submitted for final hearing and determination.

And now this cause as to the issues between the complainant and the defendants came on to be heard and was argued by counsel and thereupon, upon consideration thereof, it is ordered, adjudged and decreed as follows:

(1) That said defendants, and each and all of them, and each and all of their respective directors, committees, agents, employees, servants, and all persons, acting under or through them or in their behalf, or claiming so to act, or affiliated or associated with them, be and they and each of them are hereby perpetually enjoined, restrained and prohibited from doing any act as charged in the bill of complaint in pursuance of or for the purpose of carrying out the combination, conspiracy and agreement in restraint of trade and commerce and from monopolizing said trade and commerce, as alleged in the bill of complaint.

(2) That the National Association of Retail Druggists, M ——— T. Breslin, Charles H. Avery, Charles M. Carr,

Thomas V. Wooten, Charles F. Mann, Simon N. Jones, Thomas Voegelli, J ——— A. Lockie, Lewis C. Hopp, William D. Wheeler, Thomas H. Potts, E ——— C. Bottume, Charles Rehfuss and Benjamin E. Pritchard, referred to in the bill of complaint and hereinafter as the "National Association of Retail Druggists and its agents," and all members, officers, directors, committees, agents, servants and attorneys of said The National Association of Retail Druggists, and each and every one of them, be and hereby are perpetually enjoined from, by promise, threats, ridicule or discrimination, inducing, forcing or compelling any manufactures of proprietary articles and medicines, drugs, medicines, pharmaceutical preparations, surgical supplies, plasters, or druggists' sundries, to enter into any contract, agreement or understanding in the furtherance of the combination and conspiracy, as alleged in the bill of complaint, regarding or relating to the articles and commodities of his or its manufacture and from inducing, forcing or compelling any such manufacturer to adopt any plan for marketing the article of his or its manufacture, in furtherance of the combination and conspiracy, as alleged in the bill of complaint, and, in furtherance of the combination and conspiracy alleged in the bill of complaint from issuing, causing to be issued, or aiding in any way in the publication of lists or other documents purporting to contain the names of persons, corporations or partnerships adhering or not adhering to their contracts, or maintaining or refusing to maintain prices, and, in furtherance of the combination and conspiracy alleged in the bill of complaint, from securing or aiding in securing the adoption of and from aiding in enforcing the maintenance of any schedule for the sale of the aforesaid articles and commodities by the retail dealers of any market to the consumers of said market, and all such lists, documents, schedules, contracts, agreements and understandings are hereby declared unlawful, and it is ordered that the last named defendants, and all members, officers, employees, committees, agents, servants and attorneys of said The National Association of Retail

Druggists, and each and every one of them, do forthwith release each and every manufacturer of proprietary articles and medicines, pharmaceutical preparations, surgical supplies, plasters, and druggists' sundries from every such contract, agreement or understanding in furtherance of the combination and conspiracy as alleged in the bill of complaint regarding or relating to articles and commodities of his or its manufacture, and do forthwith release every such manufacturer from every such contract, agreement or understanding as to the adoption of any plan for marketing the articles of his or its manufacture, and that said last named defendants, and all members, officers, employees, committees, agents, servants and attorneys of said The National Association of Retail Druggists shall not on their part perform any such contracts, agreements or understandings regarding or relating to said articles and commodities.

It is further ordered that the said last named defendants, and all members, officers, employees, committees, agents, servants and attorneys of said The National Association of Retail Druggists, and each and every one of them, do forthwith recall any and all such lists, documents and publications, and do forthwith annul, cancel and set aside any such schedule of prices in whose adoption, maintenance or enforcement said defendants or any of them in any way participated, pursuant to or in furtherance of the conspiracy as alleged in the bill of complaint.

(3) That the defendants, Lucien B. Hall, William J. Schiefelin, Joseph E. Toms, Fred L. Carter, Arthur D. Parker, William J. Mooney, Charles Gibson, Thomas F. Van Natta, John N. Carey, Frank E. Holliday, Samuel E. Strong, Mahlon N. Kline, Clayton F. Shoemaker, M. Carey Peter, William A. Hover and Frank A. Faxon, referred to, in the bill of complaint and hereinafter as the "National Wholesale Druggists' Association and its members," their officers, committees, members, servants, agents and attorneys, and any other person or persons acting or claiming to act for said defendants, and each and every one of them, be and hereby are perpetually enjoined from, by

promises, threats, ridicule or discrimination, inducing, forcing or compelling any manufacturer of proprietary preparations, surgical supplies, plasters or druggists' sundries, to enter into any contract, agreement or understanding regarding or relating to the articles and commodities of his or its manufacture in furtherance of the combination and conspiracy as alleged in the bill of complaint whereby the sale prices to or by any wholesale dealer are in any way restricted, or whereby any resolution of defendants or any one of them in restraint of trade is in any way incorporated into the contracts of said manufacturer, or whereby any restraint in the commerce of any manufacturer or of any wholesale dealer is imposed, or by any of the means last aforesaid, from inducing, forcing or compelling any such manufacturer to adopt any plan for marketing the articles of his or its manufacture, in furtherance of the combination and conspiracy as alleged in the bill of complaint, and from cooperating in any way in the enforcement of any such contract, agreement, understanding or plan in restraint of the trade and commerce in said articles, and from publishing, issuing, causing to be issued or published, or aiding in any way in the issuance or publication of lists or other documents purporting to contain the names of persons, corporations, or partnerships, adhering or not adhering to their contracts, or maintaining or refusing to maintain prices, and from refusing to sell and from discriminating in sales to persons, corporations or partnerships whose names appear or have appeared on any list or document so issued, or on any list or document issued by or with the assistance of or under the direction of Charles C. Bombaugh or The National Association of Retail Druggists, its members, officers, committees, employees, servants, agents and attorneys, or any of them, for the reason, in whole or in part, that said names appear or have appeared on such lists; all such lists, documents, schedules, contracts, agreements, and understandings as aforesaid, are hereby declared unlawful and it is ordered that the said defendants, The National Wholesale Drug-

gists' Association and its members, their members, officers, employees, committees, agents, servants and attorneys, and each and every one of them, do forthwith release each and every manufacturer of proprietary articles and medicines, drugs, plasters and druggists' sundries from every such contract, agreement or understanding in furtherance of the combination and conspiracy as alleged in the bill of complaint regarding or relating to articles and commodities of his or its manufacture, and do forthwith release every such manufacturer from every such contract, agreement or understanding as to the adoption of any plan for marketing the articles of his or its manufacture, and that said defendants, their members, officers, employees, committees, agents, servants and attorneys, and each and every one of them, shall not on their part perform any such contracts, agreements or understandings regarding or relating to said articles and commodities.

It is further ordered that said The National Wholesale Druggists' Association, its members, their members, officers, employees, committees, agents, servants and attorneys, and each and every one of them, do forthwith recall any and all lists, documents and publications purporting to contain the names of persons, corporations or partnerships adhering or not adhering to their contracts, or maintaining or refusing to maintain prices, in whose compilation, publication or issuance said defendants or any of them in any way participated, and do forthwith annul, cancel and set aside each and every resolution passed by said defendants or any or all of them, in furtherance of the combination and conspiracy as alleged in the bill of complaint regarding or relating to said articles and commodities.

(4) That Charles C. Bombaugh, his agents, servants, employees, and attorneys, and each and every one of them, be and hereby are perpetually enjoined from issuing, publishing, causing to be issued or published, or aiding in the publication or issuance of any lists or other documents purporting to contain the names of persons, cor-

porations, or partnerships, adhering or not adhering to contracts, or maintaining or refusing to maintain prices, as alleged in the bill of complaint; all lists or other documents as aforesaid and all contracts, agreements and understandings in relation to the same are hereby declared unlawful and it is ordered that the said Charles C. Bombaugh, his agents, servants, employees and attorneys, and each and every one of them, do forthwith recall and annul, cancel and set aside every such list or document as aforesaid, in whose issuance or publication he or they aided in any manner, and that said defendant do forthwith release each and every person from any and all contracts, agreements and understandings with said defendant, by which they or said defendant have undertaken in any way to aid in furnishing the names for, or publish or aid in the publication or issuance of any such list or document as aforesaid, and that said Charles C. Bombaugh, his agents, servants, employees and attorneys, shall not on their part perform any contracts, agreements or understandings in any way relating to the issuance or publication of such lists or documents. And said Charles C. Bombaugh, his agents, servants, employees and attorneys, and each and every one of them, are hereby enjoined from making, executing or carrying out any such contract, agreement or understanding in the future.

(5) That the defendants, Julius Garst, doing business as Phenyo Caffeine Co., George Kennedy, doing business as Donald Kennedy, George G. Green, William E. Gilbert and John G. Gilbert, doing business as Gilbert Bros. & Co., Thomas N. Kenyon, doing business as Kenyon Mfg. Co., Joseph H. Schenck, doing business as J. H. Schenck & Son, Jesse F. Hiscox and Everett S. Hiscox, individually and representing the estate of David Hiscox, deceased, doing business as Hiscox Chemical Works, Chattanooga Medicine Company, The W. H. Hill Company, Himrod Manufacturing Company, The Vapo-Cresoline Company, Allcock Manufacturing Company, H. E. Bucklen and Company, The Omega Chemical Company, Hamlin's Wizard Oil Company, F. A. Stuart Company, The Kicka-

poo Indian Medicine Company, Chamberlain Medicine Company, Pyramid Drug Company, J. C. Ayer Company, S. T. W. Sanford and Sons, Smith, Kline and French Company, Lydia E. Pinkham Medicine Company, Dr. B. J. Kendall Company, Battle and Co. Chemists' Corporation, Sterling Remedy Company, Eli Lilly Company, E. C. De Witt and Company, C. I. Hood Company, Meade and Baker Carbolic Mouth Wash Company, Edgar C. Powers Company and D. Ransom Son and Company, referred to in the bill and hereinafter as "Tripartite Proprietors," their members, officers, agents, employees, servants and attorneys, and any and all persons acting or claiming to act for said defendants, and each and every one of them, be and hereby are perpetually enjoined from entering into any contract, agreement or understanding in furtherance of the combination and conspiracy as alleged in the bill of complaint, with each other, or with the defendants. The National Association of Retail Druggists, or The National Wholesale Druggists' Association and its members, their officers, members, agents, employees, servants, and attorneys, or with any of them, regarding or relating to articles of their manufacture, and from performing or aiding in any way in the performance of any such contract, understanding, or agreement with the defendants, or any of them, in restraint of trade and commerce as alleged in the bill of complaint, and, more particularly, from refusing to sell and from discriminating in their sales to persons, corporations and partnerships whose names appear or have appeared on any list or documents published or issued by or with the assistance or under the direction of the defendants, The National Association of Retail Druggists, The National Wholesale Druggists' Association and its members, or Charles C. Bombaugh, their officers, agents, servants, employees, committees, and attorneys, or any of them, purporting to contain the names of persons, corporations or partnerships adhering or not adhering to their contracts, or maintaining or refusing to maintain prices, for the reason, in whole or in part, that said names appear or have appeared on such lists,

and in furtherance of the combination and conspiracy as alleged in the bill of complaint from fixing the price at which the articles and commodities of their respective manufacture shall be sold by the wholesale dealer to the retail dealer, and from including in the terms of such sales any resolution of the defendants, The National Wholesale Druggists' Association and its members in restraint of trade, and in furtherance of the combination and conspiracy as alleged in the bill of complaint, from fixing the price at which articles of their respective manufacture shall be sold by the retail dealer to the consumer and from including in the terms of sale the schedule prices fixed or adopted by 75 per centum or any per centum of the retail dealers in any market; all controls, agreements and understandings as aforesaid are hereby declared unlawful and it is ordered that said defendants, individuals and corporations named herein as "Tripartite Proprietors," their members, officers, agents, servants and attorneys, and each and every one of them, do forthwith release each other, The National Association of Retail Druggists, The National Wholesale Druggists' Association and its members, and Charles C. Bombaugh, their members, officers, employees, agents, servants, committees, and attorneys, and each and every one of them, from each and every contract, agreement and understanding as charged in the bill of complaint as to the sales of articles and commodities of his or its manufacture, or the manufacture of any one of them, restricting or tending to restrict in furtherance of the combination and conspiracy as alleged in the bill of complaint, the free purchase or sale of said commodities, and that said defendants named herein as "Tripartite Proprietors," their members, officers, employees, agents, servants, committees and attorneys shall not on their parts respectively perform any such contracts, agreements or understandings as aforesaid.

(6) That the defendants, Edward H. Hance, Anthony M. Hance, Emma E. Hance, and Edward H. Hance, executors of the estate of Joseph C. Hance, deceased, doing

business as Hance Bros. and White, Baker and Company, Parke, Davis and Company, Seabury and Johnson, F. Stearns and Company, Searle and Hereth, and John Wyeth and Bro., referred to in the bill and hereinafter as "Blacklist Manufacturers," their members, officers, employees, agents, committees, servants, and attorneys, and each and every one of them, be and hereby are perpetually enjoined from entering into any contract, agreement or understanding as charged in the bill of complaint in furtherance of or pursuant to the combination and conspiracy as alleged in the bill of complaint with each other or with the defendants, The National Association of Retail Druggists or The National Wholesale Druggists' Association and its members, their officers, members, agents, employees, committees, servants, and attorneys, or any one of them, regarding or relating to the articles of their manufacture and from performing or aiding in any way in the performance of such contract, agreement or understanding with said defendants, or any one of them, in restraint of trade and commerce as alleged in the bill of complaint and from refusing to sell or from discriminating in their sales to persons, corporations, or partnerships, whose names appear or have appeared on any list or document published or issued by or with the assistance of or under the direction of the defendants, The National Association of Retail Druggists, The National Wholesale Druggists' Association and its members and Charles C. Bombaugh, their agents, members, officers, committees, servants, employees, and attorneys, or any one of them, purporting to contain the names of persons, corporations, or partnerships, adhering or not adhering to their contracts, or maintaining or refusing to maintain prices for the reason, in whole or in part, that said names appear or have appeared on such lists; all contracts, agreements and understandings as aforesaid are hereby declared unlawful and it is ordered that said "Blacklist Manufacturers," their members, officers, agents, employees, servants and attorneys, and each and every one of them, do forthwith release each other, The National Association of Retail

Druggists, The National Wholesale Druggists' Association and its members, and Charles C. Bombaugh, their members, officers, employees, agents, servants, committees and attorneys from each and every contract, agreement or understanding as charged in the bill of complaint in furtherance of the combination and conspiracy alleged in the bill of complaint as to the sales of articles and commodities of his or its manufacture, or the manufacture of any one of them, restricting or tending to restrict the free purchase or sale of said commodities; said "Blacklist Manufacturers," their members, officers, employees, agents, servants, committees and attorneys, shall not on their parts respectively perform any such contracts, agreements, or understandings as aforesaid.

(7) That Jonas M. Kilmer, World's Dispensary Medical Association, Adolph C. Meyer, Dr. Shoop Family Medicine Company, and California Fig Syrup Company, named in the bill of complaint and hereinafter as "Wholesale Contract Proprietors," their members, officers, agents, employees, servants and attorneys, and all persons acting or claiming to act for said defendants, and each and every one of them, be and hereby are perpetually enjoined from entering into any contract, agreement or understanding in furtherance of or pursuant to the combination and conspiracy as alleged in the bill of complaint with the National Association of Retail Druggists, The National Wholesale Druggists' Association, and its members, their officers, members, agents, employees, committees, servants and attorneys, or any one of them, or with each other, and from entering into any plan in furtherance of or pursuant to the combination and conspiracy as alleged in the bill of complaint for marketing the articles of their respective manufacture, and from co-operating in furtherance of or pursuant to the combination and conspiracy as alleged in the bill of complaint with the defendants, The National Association of Retail Druggists, The National Wholesale Druggists' Association, and its members, or Charles C. Bombaugh, their officers, agents, servants, committees, employees and attorneys, or any

one of them, in the enforcement of any such plan, and from in furtherance or pursuant to the combination and conspiracy as alleged in the bill of complaint placing serial numbers upon the retail packages of the articles of their manufacture for the purpose of keeping a record or tracing the sales therefor in the enforcement of such plan, and for said purpose from in furtherance of or pursuant to the combination and conspiracy, as alleged in the bill of complaint, requiring any vendee to keep a record of his sales by means of serial numbers, or to furnish such record to said defendants, or any one of them; and, in furtherance of or pursuant to the combination and conspiracy, as alleged in the bill of complaint, from securing the adoption of, or from aiding in any way in securing the adoption of schedules for the sale of articles of their manufacture and of other articles in any market; and from, in furtherance of or pursuant to the combination and conspiracy as alleged in the bill of complaint, refusing to sell, and from discriminating in their sales, to persons, corporations or partnerships whose names appear or have appeared on any list or document published or issued by, or with the assistance, or under the directions of the defendants, The National Association of Retail Druggists, The National Wholesale Druggists' Association and its members, and Charles C. Bombaugh, their officers, members, agents, servants, employees and attorneys, or any one of them, or upon lists or documents issued by said Wholesale Contract Proprietors, jointly or severally, upon information obtained from such lists or documents purporting to contain the names of persons, corporations and partnerships adhering or not adhering to their contracts, maintaining or refusing to maintain prices, for the reason, in whole or in part, that said names appear or have appeared on such lists.

And it is ordered that said Jonas M. Kilmer, World's Dispensary Medical Association, Adolph C. Meyer, Dr. Shoop Family Medicine Company and California Fig Syrup Company, "Wholesale Contract Proprietors," their members, officers, servants, agents, attorneys, and each

and every one of them, do forthwith release each and every wholesale dealer from any contract, agreement or understanding entered into by him in furtherance of or pursuant to the combination or conspiracy as alleged in the bill of complaint restricting or tending to restrict the free purchase or sale of the articles of their respective manufacture, and that the said defendants shall not, on their part, perform such contracts, agreements or understandings in furtherance of or pursuant to the combination and conspiracy, as alleged in the bill of complaint, and shall abandon the plan or scheme for marketing the articles of their respective manufacture entered into or maintained in furtherance of or pursuant to the combination and conspiracy as alleged in the bill of complaint.

(8) That the defendants, Samuel B. Hartman and Frederick W. Schumacker, doing business as the Peruna Drug Manufacturing Company, Wells and Richardson Company, Dr. Miles' Medical Company, The Milk's Emulsion Company, Paris Medicine Company and the Piso Company, referred to in the bill of complaint and hereinafter as "Direct Contract Proprietors," their members, officers, agents, employees, committees, servants and attorneys, and each and every one of them, be and hereby are perpetually enjoined from agreeing to enter into, and from entering into or adoptnig in furtherance of or pursuant to the combination and conspiracy, as alleged in the bill of complaint, the direct contract serial number plan as charged in the bill of complaint for the marketing of the articles and commodities of their respective manufacture and from co-operating with the defendants, The National Association of Retail Druggists, The National Wholesale Druggists' Association and its members, their officers, members, agents, employees, committees, servants and attorneys, in the carrying out of any such plan in furtherance of or pursuant to the combination and conspiracy, as alleged in the bill of complaint, for the marketing of the articles and commodities of their respective manufacture, and from, in furtherance of or pursuant to the combination and conspiracy, as alleged

in the bill of complaint, requiring any dealer at wholesale or retail to enter into any contract as charged in the bill of complaint restraining in any way the trade and commerce in the articles of their respective manufacture and in furtherance of or pursuant to said combination and conspiracy from placing serial numbers upon the retail packages of said articles and commodities for the purpose of keeping a record or tracing the sales thereof in the maintenance of such plan, and for said purpose in furtherance of or pursuant to the combination and conspiracy as alleged in the bill of complaint from requiring any vendee to keep a record of his sales by means of serial numbers or to furnish such a record to the defendants, or any one of them. And it is ordered that said "Direct Contract Proprietors," their members, officers, agents and attorneys, and each and every one of them, do forthwith release each and every wholesale and retail dealer from any such contract, agreement, or understanding, entered into by him in furtherance of or pursuant to the combination and conspiracy as alleged in the bill of complaint restricting or tending to restrict the free purchase or sale of the articles of their respective manufacture, and that the said defendants shall not on their part perform such contracts, agreements and understandings made and entered into in furtherance of or pursuant to the combination and conspiracy as charged in the bill of complaint for the marketing of the articles of their respective manufacture, and shall forthwith annul, cancel and set aside the same.

(9) Every person, partnership or corporation having knowledge or notice of this decree whether a party hereto or otherwise who shall engage with the defendants herein, or any one or more of them, in the doing of any act or thing by this decree prohibited to be done, or in refusing to do any act or thing by this decree ordered to be done, and by such doing or refusing to do assists the defendants or any one or more of them in the commission of any act or thing hereby enjoined to be done or not to be done, will be guilty of violating this decree.

(10) Nothing herein shall be construed to restrain or interfere with the action of any single corporation, partnership or individual by its, their or his officers or agents from acting or contracting in any lawful manner with respect to its, their or his own corporate, firm or individual property or affairs, and no provision or clause of this decree shall be held to restrain, affect or enjoin the sale of any drugs or merchandise, or the making or securing of any contract, plan or schedule as described in the bill of complaint when such sale or contract, plan or schedule relates only to trade or commerce within a particular state.

(11) It is further ordered, adjudged and decreed by the court that the complainant have and recover of the defendants its costs and charges, taxes at _____ dollars.

United States v. F.S. Bowser & Co., et al.

Case No. 117

Year Judgment Entered: 1915

BERT J. GROSVENOR, SYLVANUS F. BECHTEL, WALTER G. ZAHRT, AND LELAND F. JOHNSON, DEFENDANTS.

FINAL DECREE.

This cause coming on to be heard on the 10th day of June in the year 1915, before Honorable Albert B. Anderson, United States judge for the district of Indiana; and the petitioner, the United States of America, appearing by its United States attorney; and the several defendants appearing by W. J. Vesey and E. G. Hoffman, their solicitors, who now file a duly certified copy of a resolution of the board of directors of the defendants, S. F. Bowser & Co., in the words and figures following, to wit: MEETING OF THE BOARD OF DIRECTORS OF S. F. BOWSER & Co. (INC.).

Meeting held at the office of the company, June 9, 1915. Present, S. F. Bowser, A. A. Bowser, H. M. Bowser, A. Z. Polhamus, S. B. Bechtel, C. A. Dunkelberg, H. J. Grosvenor, W. G. Zahrt, A. S. Bowser.

S. F. Bowser presided as president and A. B. Bowser acted as secretary of the meeting.

Mr. Polhamus offered the following resolution and moved its passage:

"Whereas, there is about to be filed in the District Court of the United States, for the District of Indiana, an action by the United States of America against this company and others appearing for an injunction against this company restraining it from doing or performing the things mentioned in a draft of a decree submitted to this board by W. J. Vesey, attorney, and,

Whereas, it is desired to avoid litigation and the expense thereof incident to the trial of an action in said cause even though the allegations of the bill filed therein shall be untrue. Now, therefore, be it

Resolved, by this Board of Directors, That E. G. Hoffman and W. J. Vesey, attorneys, are hereby authorized to appear for this company in said District Court and to file for this company such answer or pleading as to them may seem best, and to consent to such decree in said action as may be approved by C. A. Dunkelberg, the treasurer of this company."

UNITED STATES v. F. S. BOWSER & CO.

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF INDIANA.

In Equity No. 117.

UNITED STATES OF AMERICA, PETITIONER,

VS.

S. F. BOWSER & Co. (INC.), SYLVANUS F. BOWSER, ALLEN
A. BOWSER, HARRY M. BOWSER, CHARLES A. DUNKEL-
BERG, ALBERT S. BOWSER, ALBERT Z. POLHAMUS, HER-

Which resolution, being duly seconded by S. B. Bechtel, was duly put and voted for and carried unanimously. There being no further business before the board, the meeting adjourned.

I, A. S. Bowser, hereby certify that I am secretary of S. F. Bowser & Co. (Inc.), and that the foregoing is a true and complete copy of the minutes of the meeting of said board of directors held at this company's offices on the 9th day of June, 1915.

A. S. BOWSER. [SEAL.]

and said other defendants by their solicitors as aforesaid also file their written consent to this decree, in words and figures following, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

In Equity No. 117.

UNITED STATES OF AMERICA, PETITIONER,

VS.

S. F. BOWSER & COMPANY (INC.), SYLVANUS F. BOWSER, ALLEN A. BOWSER, HARRY M. BOWSER, CHARLES A. DUNKELBERG, ALBERT S. BOWSER, ALBERT Z. POLHAMUS, HERBERT J. GROSVENOR, SYLVANUS B. BECHTEL, WALTER G. ZAHRT AND LELAND F. JOHNSON.

To E. G. Hoffman and W. J. Vesey, Attorneys.

We, the undersigned, each hereby authorize you, or either of you to appear for us as our attorneys in the above entitled action and consent to the entry of such decree therein as may be consented to by A. C. Dunkelberg.

SYLVANUS F. BOWSER,
ALLEN A. BOWSER,
HARRY M. BOWSER,
CHARLES A. DUNKELBERG,
ALBERT S. BOWSER,
ALBERT Z. POLHAMUS,
HERBERT J. GROSVENOR,

SYLVANUS J. BECHTEL,
WALTER G. ZAHRT,
LELAND F. JOHNSON,
By C. A. DUNKELBERG.

which written consent is now approved by the defendant, Charles A. Dunkelberg, in open court, and all of said defendants by their solicitors as aforesaid, in accordance with the terms and conditions of said resolution and consent, now waive the issuance and service of process herein, and it appearing to the court that it has jurisdiction of the subject matter alleged in the petition, and the petitioner through its counsel having moved the court for an injunction against the defendants in accordance with the prayer of the petition, and the court having heard and duly considered the statements of counsel for the respective parties, and it appearing to the satisfaction of the court that the petitioner is entitled to the relief hereinafter granted and adjudged, and the several defendants, through their solicitors, now and here consenting to the entry of this final decree:

It is, therefore, on motion of the petitioner, ordered, adjudged, and decreed as follows:

FIRST. That the defendants, S. F. Bowser & Co. (Incorporated), Sylvanus F. Bowser, Allen A. Bowser, Harry M. Bowser, Charles A. Dunkelberg, Albert S. Bowser, Herbert J. Grosvenor, Albert Z. Polhamus, Sylvanus F. Bechtel, Walter G. Zahrt, and Leland F. Johnson, have been and are engaged in a combination to restrain and in an attempt to monopolize interstate trade and commerce in pumps, tanks, and outfits for the storage and handling of gasoline and other inflammable liquids, in violation of sections 1 and 2 of the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies" (26 Stat., 209), by means hereinafter enjoined.

SECOND. That the defendants, and each of them, and their officers, agents, and employees, and all persons authorized to act or acting for or in behalf of any of the defendants, be and they are hereby, jointly and severally enjoined as follows:

(a) From making or causing to be made to customers or prospective customers of competitors, false representations concerning the standing, financial or otherwise, or the business methods of such competitors, with the purpose or intent to injure such competitors in their business; and from making any false representations concerning the quality of pumps, tanks, or outfits manufactured by competitors, or the ability of such pumps, tanks, or outfits to meet the requirements of the National Board of Fire Underwriters.

(b) From bringing or threatening to bring suit against competitors, their customers or prospective customers, upon the claim known to be false or not believed in good faith to be well founded, that the products of such competitors are an infringement of the patent rights of defendants.

(c) From hiring, bribing, or employing architects, fire marshals, insurance representatives, or municipal officers or employees, to use their influence in promoting the sale of defendants' products, or in preventing the sale of the products of competitors.

(d) From procuring detectives, agents, or representatives to enter into or take employment in the factories, buildings, shops, or offices of competitors, without their consent, for the purpose of obtaining information concerning their business.

(e) From inducing or hiring draymen, railroad employees, or other persons, to obtain from shipments made by competitors, or from other sources, the names and addresses of their customers; except that the traveling salesmen of defendants, in making reports of prospective customers upon whom they have called, or employees engaged to make canvasses for the purpose of ascertaining the names and addresses of prospective customers, may report the name of the pump, tank, outfit owned by such prospective customer, if the purpose in so doing is not to injure in any manner the business of a competitor.

(f) From securing or attempting to secure, or bring about in any manner, the cancellation of orders taken or

sales made by competitors, or interfering in any way with contracts entered into by competitors with purchasers of their pumps, tanks, or outfits.

(g) From promising or agreeing to indemnify customers or prospective customers of competitors against losses from litigation or otherwise, on condition that they cancel their contracts with such competitors.

(h) From reducing the prices of pumps, tanks, or outfits below the cost of production, or giving them away, in order to prevent sales by competitors; or discriminating in prices between different persons or localities with the purpose or intent thereby to destroy or injure the business of a competitor.

(i) From inducing or hiring salesmen, agents, or other employees of competitors to leave their employment and enter into the employment of defendants; but nothing in this section shall prevent defendants from hiring salesmen, agents, or other employees of competitors who shall have left, without any inducement from defendants, their employment and shall have applied to defendants for situations.

(j) From committing or causing to be committed any other similar acts of unfair competition the purpose or effect of which shall be to injure or destroy the business of any competitor, to substantially lessen competition in or otherwise restrain interstate trade or commerce in pumps, tanks, or outfits, or tend to create a monopoly therein in favor of defendants.

THIRD. That jurisdiction of this cause be and is hereby retained for the purpose of enforcing this decree, or for the purpose of enabling the parties to apply to the court for modification hereof if it be thereafter shown to the satisfaction of the court that by reason of changed conditions or changes in the statute law of the United States, the provisions hereof have become inadequate, inappropriate, or unnecessary to maintain competitive conditions in interstate trade or commerce in pumps, tanks, or outfits, or have become unduly oppressive to the defendants and are no longer necessary to secure or main-

tain competitive conditions in such interstate and foreign trade.

FOURTH. That the United States recover from defendants its costs herein expended, the same to be taxed by the clerk of this court, and have execution therefor.

A. B. ANDERSON, *Judge.*

United States v. Evansville Confectioners' Assn., et al.

Case No. 86

Year Judgment Entered: 1929

UNITED STATES OF AMERICA vs. EVANSVILLE
CONFECTIONERS' ASS'N ET AL., DEFENDANTS.

IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF INDIANA.

In Equity No. 86.

UNITED STATES OF AMERICA, PETITIONER

VS.

EVANSVILLE CONFECTIONERS' ASSOCIATION ET AL.,
DEFENDANTS.

DECREE.

The United States of America having filed its petition herein on the 21st day of February, 1929, and the defendants, Evansville Confectioners' Association, A. Bromm & Co., Edward A. Bromm, Charles N. Bryant, Evansville Candy Manufacturing Co., August J. Goelzhauser, William Lappe, Henry Stadler, Andrew G. Stern, Mary Gowdy, Arthur G. Schnabel, and John L. Walter, having duly appeared by Isador Kahn, their counsel:

Comes now the United States of America by Albert Ward, its attorney for the Southern District of Indiana,

and by Mary G. Connor, Special Assistant to the Attorney General, and come also the defendants named herein by their counsel as aforesaid;

And it appearing to the court by admission of the parties consenting to this decree that the petition herein states a cause of action; that the court has jurisdiction of the subject matters alleged in the petition; and that the petitioner has moved the court for an injunction and for other relief against the defendants as hereinafter decreed; and the court having duly considered the statements of counsel for the respective parties; and all of the defendants through their said counsel now and here consenting to the rendition of the following decree:

Now, therefore, it is ordered, adjudged and decreed:

I. That the combination and conspiracy in restraint of interstate trade and commerce, the acts, agreements and understandings among the defendants in restraint of interstate trade and commerce, as described in the petition herein, and the restraint of such trade and commerce thereby achieved are violative of the Act of Congress of July 2, 1890, entitled, "An Act To protect trade and commerce against unlawful restraints and monopolies," known as the Sherman Antitrust Act.

II. That the defendants, their officers, agents, servants and employees are perpetually enjoined and prohibited—

(a) From combining, conspiring, agreeing or contracting together, or with one another, or with others, orally or in writing, expressly or impliedly, directly or indirectly, to withhold their patronage from any manufacturer or producer of the candy products dealt in by the defendants, for or on account of such manufacturer or producer selling such products in the City of Evansville, in the Southern District of Indiana, wherein defendants are engaged in the candy jobbing business, to persons, firms or corporations who are competitors of defendant jobbers and nonmembers of defendant Association;

(b) From combining, conspiring, agreeing, or contracting together, or with one another, or with others,

orally, or in writing, expressly or impliedly, directly or indirectly, to prevent manufacturers or producers, or their agents, engaged in shipping and selling confectionery products or any other commodity among the several States, from shipping and selling such commodities freely in the open market and particularly in the State of Indiana;

(c) From threatening to boycott manufacturers or producers engaged in selling and shipping confectionery products among the several States who sell and ship or have sold and shipped said products to nonmembers of defendant Association who are competitors of defendant jobbers;

(d) From combining, conspiring or agreeing together, or with one another or with others, to fix, establish and maintain prices to be charged for candy products in Evansville, Indiana, or elsewhere.

III. That jurisdiction of this cause is hereby retained for the purpose of giving full effect to this decree, and for the purpose of making such other and further orders, decrees, amendments, or modifications, 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 any of the parties to this decree to make application to the court at any time, for such further orders and directions as may be necessary or proper in relation to the execution of the provisions of this decree, and for the enforcement of strict compliance therewith and the punishment of evasions thereof.

IV. That the United States shall recover its costs.

ROBERT C. BALTZELL,
United States District Judge.

FEBRUARY 21, 1929.

United States v. Growers Finance Corporation

Case No. 914

Year Judgment Entered: 1945

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Growers Finance Corporation., U.S. District Court, S.D. Indiana, 1944-1945 Trade Cases ¶57,345, (Mar. 2, 1945)

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United States v. Growers Finance Corporation.

1944-1945 Trade Cases ¶57,345. U.S. District Court, S.D. Indiana, Indianapolis Division. Civil Action No. 914. March 2, 1945.

A provision of uniform stand leasing contracts of a vegetable market, providing that produce shipped into the city from distant points may be kept off the market if, in the opinion of the market master, the sale of such products will be in harmful competition to the sale of home grown produce, is void and illegal under the Sherman Anti-Trust Act. The vegetable market is enjoined, by consent, from maintaining any plan to discriminate against produce on the basis of the area of production of such produce.

For the Government: Wendell Berge, Assistant Attorney General; Geo. B. Haddock, Special Assistant to the Attorney General; and Richard B. O'Donnell, Special Assistant to the Attorney General.

For defendant: Edward W. Hohlt.

Consent by Wm. E. Ristow, President, and Edward W. Hohlt, Secretary & Counsel, of the Growers Finance Corporation.

Baltzell, Robert L., United States District Judge.

Final Decree

ROBERT L. BALTZELL, U. S. District Judge: Plaintiff, United States of America, having filed its Complaint herein on the 2nd day of March, 1945; the defendant Growers Finance Corporation, having appeared by its. President, Secretary and Counsel, and each of the aforesaid parties, by their respective attorneys herein, and by the aforesaid President and Secretary having consented to the entry of this final decree herein;

Now, therefore, without taking any testimony, it is hereby

Ordered, adjudged and decreed as follows:

I

[Jurisdiction and Cause of Action]

The Court has jurisdiction of the subject matter hereof and of the defendant, and the complaint states a cause of action against the defendant 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 Anti-trust Act, and acts amendatory thereof and supplemental thereto.

II

[Contract Provision Eliminating Competition of Outside Produce with Home Produce]

The provision of the "Uniform Stand Leasing Contracts" described in paragraph 19 of said Complaint, reading "Produce shipped into the city from distant points may be kept off the market if, in the opinion of the Market Master the sale of such products will be in harmful competition to the sale of home grown produce" is hereby declared to be void and illegal in violation of Section 1 of said Sherman Anti-trust Act, and shall forthwith be deleted from each such contract, and the defendant, its successors, officers, directors, agents, employees and all persons acting or claiming to act in its behalf, is hereby enjoined and restrained from directly or indirectly claim-ing any right under, or enforcing, said provision in any such contract.

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III

[Discrimination on Basis of Area of Production Enjoined]

The defendant, its successors, officers, directors, agents, employees and all persons acting or claiming to act in its behalf, is hereby enjoined and restrained from entering into, adhering to, maintaining or furthering any plan, program, lease, rule, practice or arrangement relating to the operation of the Indianapolis Producers Market, to discriminate through interruption, suspension or restriction on shipments or sales, against produce, or shippers, truckers, handlers or growers of produce on the basis of the area of production of such produce or upon the basis of place from which any such produce originates for shipment.

IV

[Copies of Decree to Contracting Parties]

Within thirty days from the entry hereof, the defendant shall mail a copy of this decree to each person with whom it now has a "uniform stand leasing contract" and within forty days from the entry hereof, the defendant shall file with the Court a verified statement stating that it has complied with this section.

V

[Department of Justice to Be Permitted Access to Record and Interviews]

For the purpose of securing compliance with this decree, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General, or an Assistant Attorney General, be permitted (1) access, during the office hours of the defendant, 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 this decree, and (2) subject to any legally recognized privilege, without restraint or interference from the defendant, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters: 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 under this decree in which the United States is a party or as otherwise required by law.

VI

[Jurisdiction Retained]

Jurisdiction of this cause is retained for the purpose of enabling either of the parties to this decree to apply to the Court at any time for such further orders and decrees as may be necessary or appropriate for the construction or carrying out of this decree, for modification or termination of any of the provisions thereof, for the enforcement or compliance therewith and for the punishment of violations thereof.

United States v. Alliance Amusement Company, et al.

Case No. 493

Year Judgment Entered: 1955

WK_Trade Regulation Reporter - Trade Cases 1932 - 1992 United States v Alliance Amusement Company Fourth Avenue Amusement Company Grand Theatre Corpo.pdf

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Alliance Amusement Company, Fourth Avenue Amusement Company, Grand Theatre Corporation, Terre Haute Amusement, Inc., and Tri-Theatres Corporation., U.S. District Court, S.D. Indiana, 1955 Trade Cases ¶68,142, (Sept. 9, 1955)

United States v. Alliance Amusement Company, Fourth Avenue Amusement Company, Grand Theatre Corporation, Terre Haute Amusement, Inc., and Tri-Theatres Corporation.

1955 Trade Cases ¶68,142. U.S. District Court, S.D. Indiana. Civil Action No. 493. Filed September 9, 1955. Case No. 1124 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies — Consent Decree — Practices Enjoined — Pooling Agreements— Motion Picture Theatres.—Motion picture exhibitors and their subsidiaries were prohibited by a consent decree from making or continuing to perform pooling agreements whereby given theatres of two or more exhibitors, normally in competition, are operated as a unit, whereby the business policies of such exhibitors are collectively determined by a joint committee or by one of the exhibitors, or whereby profits of the "pooled" theatres are divided among the owners according to prearranged percentages.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Motion Picture Licensing Agreements—Clearances.—Motion picture exhibitors and their subsidiaries were prohibited by a consent decree from (1) entering into any licensing agreement for first run exhibition of any feature motion picture which provides for clearance in excess of twenty-five days over the second run exhibition of such picture and (2) entering into any licensing agreement for second run exhibition of any feature motion picture which provides for clearance in excess of seven days over the third run exhibition of such picture. The decree further provided that so long as the exhibitors both maintain any interest in a specified drive-in theatre, they are prohibited from exhibiting pictures in that theatre on a first run basis in excess of fifty-six days in any calendar year.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined— Joint Ownership of Theatres—Acquisition and Merger of Theatres.—Two motion picture exhibitors and their subsidiaries were prohibited by a consent decree from acquiring or maintaining any beneficial interest in any theatre in conjunction with any other exhibitor; however, after thirty months from the date of the entry of the decree, the defendants could acquire such beneficial interests if they show to the satisfaction of the court that such acquisition will not substantially lessen competition. The defendants were prohibited from acquiring any shares of stock in, or assets of, each other or merging or consolidating one with the other, except after an affirmative showing to the court that, the effect of such acquisition, merger, or consolidation will not be substantially to lessen competition or to tend to create a monopoly in the exhibition of motion pictures. So long as the defendants were both shareholders in specified corporations, they were prohibited from permitting the corporations to acquire any financial or operating interest in any theatre.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief —Sale of Theatre Interest.—A consent decree entered against two motion picture exhibitors and their subsidiaries provided that in the event the defendants should be the owners of a certain interest in a specified theatre, the defendants should offer for sale all their interest in that theatre and sell such interest if a reasonable offer is made. If the Government and the defendants disagree as to whether an offer is reasonable, the matter should be arbitrated (at the cost of the defendants) or presented to the court for its determination. In the event the matter is presented to the court, the burden of proof should be on the defendants to establish that the offer is not a reasonable offer. The decree further provided that until such time as the interest of the defendants in the theatre is sold or their lease on the theatre expires, the defendants can continue to operate the theatre.

Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions— Transactions Between Parent and Subsidiary Companies—Operation of Theatre Concessions.—A

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consent decree entered against a motion picture exhibitor and its subsidiaries provided that nothing contained in the decree should be construed to apply to relationships, transactions, or agreements solely between them, so long as the subsidiary companies are directly or indirectly, substantially wholly owned subsidiaries of the parent company. The decree further provided that nothing contained in the decree should prohibit one group of defendants from employing the other group of defendants to manage and operate the business of vending candy, soft drinks, popcorn, confections and like merchandise on the premises of any theatre operated by the first group of defendants.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; and Victor H. Kramer, William D. Kilgore, Jr., Maurice Silverman, Walter D. Murphy, Charles F. B. McAleer, and George D. Reycraft, Attorneys.

For the defendants: Henry J. Stites for Fourth Avenue Amusement Company and Tri-Theatres Corporation, and Seymour Simon for Alliance Amusement Company, Grand Theatre Corporation, and Terre Haute Amusement, Inc.

Consent Judgment

WILLIAM E. STECKLER, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on April 2, 1952; the defendants having appeared and filed their answers to said complaint buying the substantive allegations thereof; and the plaintiff and said defendants, by their respective attorneys, having severally consented to the entry of this Judgment without trial or adjudication of any issue of fact or law herein, and without admission by any party in respect of any such issue.

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent as aforesaid of all the parties hereto,

It is hereby ordered, adjudged and decreed as follows:

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter hereof and of all parties hereto. The complaint states a cause of action against the 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

[*Definitions*]

As used in this Judgment:

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

(B) "Terre Haute area" shall mean the area within the corporate limits of Terre Haute, Indiana and an area within a radius of ten (10) miles from the intersection of 7th Street and Wabash Avenue in Terre Haute;

(C) "Defendants" shall mean Alliance Amusement Company, Fourth Avenue Amusement Company, Grand Theatre Corporation, Terre Haute Amusement, Inc., Tri-Theatres Corporation and each of them;

(D) "Alliance defendants" shall, mean Alliance Amusement Company, Grand Theatre Corporation, Terre Haute Amusement, Inc., and each of them;

(E) "Fourth Avenue defendants" shall mean Fourth Avenue Amusement Company, Tri-Theatres Corporation, and each of them;

(F) "Exhibitor" shall mean any person engaged in the business of Operating one or more motion picture theatres or a person employed by any person engaged in the business of operating one or more motion picture theatres;

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provided, however, that in any event "Exhibitor" shall not include any person who is solely an investor or solely an owner of the real estate in which the Indiana, Wabash, Liberty or Grand Theatres in Terre Haute are located, provided no such investor is otherwise an exhibitor.

III

[*Applicability of Judgment*]

The provisions of this Judgment applicable to a defendant, shall apply only to such defendant, its subsidiaries, officers, agents, servants, employees and attorneys and to those persons in active concert or participation with any defendant who receive actual notice of this Judgment by personal service or otherwise.

IV

[*Pooling Agreements*]

Each of the defendants is enjoined and restrained from:

(A) Entering into, performing, adhering to, maintaining or further directly or indirectly, or claiming any rights under any contract, agreement, understanding, plan or program with any other defendant which has as its purpose or effect the continuing or renewing in the Terre Haute area of any provision of either of the two agreements dated February 13, 1951, true and correct copies of which are annexed to the complaint herein as Appendices A and B thereof, which is inconsistent with any provision of this Judgment.

(B) Making or continuing to perform other pooling agreements in the Terre Haute area whereby given theatres of two or more exhibitors normally in competition are operated as a unit or whereby the business policies of such exhibitors are collectively determined by a joint committee or by one of the exhibitors, or whereby profits of the "pooled" theatres are divided among the owners according to prearranged percentages.

V

[*Joint Ownership of Theatres*]

(A) Subject to the provisions of subsections VI (A) and VI (B) and with the exception of the present interest held by the defendants jointly in the East Side Auto Theatre, the Alliance defendants are enjoined and restrained from acquiring or maintaining any beneficial interest, whether in fee, in shares of stock or otherwise, in any theatre in the Terre Haute area in conjunction with any other exhibitor; provided, however, that after thirty (30) months from the date of entry of this Judgment, said defendants may acquire beneficial interests of the type described in this subsection V (A) (other than pooling agreements and other than joint interests with the Fourth Avenue defendants) if they shall first show to the satisfaction of this Court and the Court shall find that such acquisition will not substantially lessen competition in the Terre Haute area.

(B) Subject to the provisions of subsections VI (A) and VI (B) and with the exception of the present interest held by the defendants jointly in the East Side Auto Theatre, the Fourth Avenue defendants are enjoined and restrained from acquiring or maintaining any beneficial interest, whether in fee, in shares of stock or otherwise, in any theatre in the Terre Haute area in conjunction with any other exhibitor; provided, however, that after thirty (30) months from the date of entry of this judgment said defendants may acquire beneficial interests of the type described in this subsection V (B) (other than pooling agreements and other than joint interests with the Alliance defendants) if they shall first show to the satisfaction of this Court and the Court shall find that such acquisition will not substantially lessen competition in the Terre Haute area.

VI

[*Ownership and Acquisition of Theatres*]

(A) Defendants are jointly and severally enjoined and restrained from owning any interest in the State Theatre other than such interest as Vigo Amusement Corporation owned prior to June 26, 1955, and are enjoined and

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restrained from renewing the lease of and from acquiring any new or further interest in said theatre other than such interest as Vigo Amusement Corporation owned prior to June 26, 1955.

(B) In the event defendants should be the owners of any interest in the State Theatre of the type permitted by subsection VI (A), they shall forthwith offer for sale all their interest in such theatre and sell such interest if a reasonable offer therefor is made. If the plaintiff and defendants disagree as to whether an offer for such interest in the State Theatre is reasonable, the matter shall either be arbitrated or presented to this Court for its determination. If the matter is submitted for arbitration, the cost of such arbitration shall be borne by the defendants. In the event the matter is presented to the Court, the burden of proof shall be on the defendants to establish that the offer is not a reasonable offer. Until such time as the interest of the defendants in the State Theatre is sold or their lease on such theatre expires, the defendants may continue to operate such theatre jointly.

(C) So long as the Alliance and Fourth Avenue defendants both have or maintain any interest in the East Side Auto Theatre, such defendants are enjoined and restrained from exhibiting pictures in such theatre on a first run basis in excess of fifty-six (56) days in any calendar year.

(D) So long as they are both shareholders in the Wabash Outdoor Theatre Corporation or Vigo Amusement Corporation, the Alliance and Fourth Avenue defendants are jointly and severally enjoined and restrained from permitting said corporations, or either of them, to acquire, or hold after such acquisition, any financial or operating interest in any theatre in the Terre Haute area.

VII

[Acquisition and Mergers Between Defendants]

(A) The Alliance defendants and the Fourth Avenue defendants are enjoined and restrained from acquiring, or holding after such acquisition, directly or indirectly, any shares of stock in or assets of or any other interest in each other, or merging or consolidating one with the other, except after an affirmative showing to this Court, upon reasonable notice to the Attorney General, that the effect of such acquisition, merger or consolidation will not be substantially to lessen competition or to tend to create a monopoly in the exhibition of motion pictures in the Terre Haute area.

(B) Nothing contained in this Judgment shall prevent any of the defendants from acquiring any of the shares of stock of Wabash Outdoor Theatre Corporation or Vigo Amusement Corporation owned by any other defendant, subject, however, to the provisions of subsections VI (A) and VI (B) relating to the State Theatre.

VIII

[Licensing Agreements— Clearances]

Defendants are enjoined and restrained from:

(A) Entering into or adhering to any licensing agreement for first run exhibition of any feature motion picture in the Terre Haute area which provides for clearance in excess of twenty-five (25) days over the second run exhibition of such picture in the Terre Haute area;

(B) Entering into or adhering to any licensing agreement for second run exhibition of any feature motion picture in the Terre Haute area which provides for clearance in excess of seven (7) days over the third run exhibition of such picture in the Terre Haute area.

(C) This Section VIII shall not apply to clearances provided for with respect to pictures for which licensing contracts have been entered into and are in force as of the date of the entry of this Judgment.

IX

[Management of Theatre Concessions]

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Nothing contained in this Judgment shall prohibit the Fourth Avenue defendants, if they so elect, from employing the Alliance defendants to manage and operate or otherwise conduct the business of vending candy, soft drinks, confections, popcorn and like merchandise on the premises of any theatre in the Terre Haute area which such Fourth Avenue defendants may operate.

X

[Transactions Between Parent and Subsidiary Companies]

(A) Nothing contained in this Consent Judgment shall be construed to apply to relationships, transactions, or agreements solely between Alliance Amusement Company, Grand Theatre Corporation, and Terre Haute Amusement, Inc., so long as Grand Theatre Corporation and Terre Haute Amusement, Inc. are directly or indirectly substantially wholly owned subsidiaries of Alliance Amusement Company.

(B) Nothing contained in this Consent Judgment shall be construed to apply to relationships, transactions, or agreements solely between Fourth Avenue Amusement Company and Tri-Theatres Corporation, so long as Tri-Theatres Corporation is substantially a wholly owned subsidiary of Fourth Avenue Amusement Company.

XI

[Inspection and Compliance]

For the purpose of securing compliance with this 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: (A) 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 (B) 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.

Upon such request the defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Judgment as may from time to time be necessary to the enforcement of this Judgment. No information obtained by the means provided in this Section XI 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 to which the United States is a party for the purpose of securing compliance with this Judgment, or as otherwise required by law.

XII

[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, for the modification of any of the provisions thereof, and for the purpose of enforcement of compliance therewith and the punishment of violations thereof.

United States v. Herff Jones Company, et al.

Case No. JP65-C-465

Year Judgment Entered: 1967

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Herff Jones Co.; John Roberts Manufacturing Company, Inc.; John T. Waugh; and Robert G. Waugh., U.S. District Court, S.D. Indiana, 1967 Trade Cases ¶72,099, (Jun. 14, 1967)

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United States v. Herff Jones Co.; John Roberts Manufacturing Company, Inc.; John T. Waugh; and Robert G. Waugh.

1967 Trade Cases ¶72,099. U.S. District Court, S.D. Indiana, Indianapolis Division. Civil Action No. JP65-C-465. Entered June 14, 1967. Case No. 1875 in the Antitrust Division of the Department of Justice.

Clayton and Sherman Acts

Acquisitions—Divestiture—Common Officers—Consent Decree.—A manufacturer of class rings, which acquired another class ring manufacturer with the conditional approval of the court and the government, was required by the terms of a consent decree to divest itself of the acquired firm and to refrain from unapproved similar acquisitions for 10 years. Also, the decree prohibited two individuals alleged to have conspired to effect the merger from continuing as officers of any two similar firms simultaneously, and barred the firms from having common officials or employees.

For the plaintiff: Donald F. Turner, Assistant Attorney General; Gordon D. Spivack, William D. Kilgore, Jr., Donald G. Balthis, Walter L. Devany, Leonard E. Dimare, and Joseph A. Licari, Jr., Attorneys, Department of Justice.

For the defendants: Harry T. Ice and Claude M. Warren for Herff Jones Co.; James M. Sneed for John Roberts Mfg. Co., Inc., John T. Waugh and Robert G. Waugh.

Final Judgment

HOLDER, District Judge: Plaintiff, United States of America, having filed its complaint herein on October 4, 1965, and the defendants, by their attorneys, having appeared and filed their answer denying the material allegations of the complaint; the parties, 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 such 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 the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

This Court has jurisdiction of the parties and subject matter of this action. The complaint states claims upon which relief may be granted against all 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 (15 U. S. C. Sec. 1), and under Section 7 of the Act of Congress of October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act, as amended (15 U. S. C. Sec. 18).

II

[Definitions]

As used in this Final Judgment:

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1

- (A) "Herff" means the defendant Herff Jones Co.;
- (B) "Roberts" means the defendant John Roberts Manufacturing Company, Inc.;
- (C) "Waughs" means the defendants John T. Waugh and Robert G. Waugh, and each of them;
- (D) "Person" means any individual, partnership, firm, corporation, or any other business or legal entity; and
- (E) "Class rings" means rings manufactured for ultimate sale to students of institutions of learning which symbolize students' attendance at or graduation from such institutions of learning, and which are made of carat gold, with or without colored center stones, normally bearing the name, crest, symbol, or other emblem of such institution and the year of the student's graduation class.

III

[*Applicability*]

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

IV

[*Future Acquisitions*]

The defendant Herff is enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from acquiring any stock or assets of any person engaged in the manufacture, distribution or sale of class rings in the United States, except upon the defendant's giving sixty (60) days' prior written notice of all relevant facts regarding such proposed transaction to the plaintiff herein and, where the plaintiff advises such defendant in writing within thirty (30) days of actual receipt of such notice that it objects to such proposed transaction, upon application by the defendant to this Court, and after establishing to the satisfaction of this Court that the effect of such proposed transaction will not be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the country.

V

[*Divestiture*]

Within six (6) months from the date of entry of this Final Judgment, Herff shall dispose of all legal and equitable right, title and interest in, and to all the shares of stock of Roberts in a manner acceptable to the plaintiff herein. It is now contemplated that such disposition be accomplished by returning the stock of Roberts to the former owners of Roberts as of December 6, 1965. As part of such disposition, there shall be no common stockholders between Herff and Roberts. After such disposition the Waughs neither directly nor indirectly shall simultaneously hold any of the shares of stock of Herff and Roberts.

VI

[*Restrictions on Officers*]

- (A) The Waughs are enjoined and restrained from continuing as officers, directors, managers, or otherwise in the employ of both Herff and Roberts simultaneously, or in the employ of any two class ring manufacturers simultaneously.
- (B) Herff and Roberts, are each enjoined and restrained from continuing any individual as a director, officer, or employee who is simultaneously a director, officer, or employee of the other corporate defendant.

VII

[*Effect of Conditional Approval*]

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The Entry of this Court of December 9, 1965, as amended January 31, 1967 (copies attached hereto and incorporated by reference herein) in this action shall not prevent the defendants from complying with the terms of this Final Judgment. Upon the filing with the Clerk of this Court by Herff of an affidavit that it has completed the divestiture required by Section V, the Entry of December 9, 1965, as amended January 31, 1967, shall be of no further force or effect.

VIII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment and no other purpose, 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 said defendant's principal office, be permitted (1) access, during the office hours of said defendant who may have counsel present, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant regarding the subject matters contained in this Final Judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference from said defendant, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters.

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 said defendant's 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 requested. 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 the plaintiff 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.

IX

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any of the parties hereto 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 hereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.

Entry for December 9, 1965

HOLDER, D. J.: Plaintiff having filed its complaint herein, a temporary restraining order having been issued, defendants having moved for dissolution of such temporary restraining order and making certain representations in connection therewith, plaintiff having opposed said motion, and the parties having appeared by their counsel; now, therefore, with the consent of defendants and, in view of the representation of the defendants and the particular facts of this case, without objection by plaintiff,

It is ordered, Adjudged and Decreed that:

- (1) The temporary restraining order issued herein on October 5, 1965, as there after modified and continued, be and the same hereby is dissolved under the conditions set forth herein.
- (2) The consolidated hearing herein set for December 13, 1965, be and the same hereby is continued until *further order of the court*, at which time the case will be heard on the application of the plaintiff for a permanent injunction.
- (3) Pending final determination of this action on its merits or unless otherwise ordered by this Court upon good cause shown and after notice to all parties, the defendants may proceed to close and consummate the

transactions and transfers contemplated by the Agreement and Plan of Reorganization, dated September 10, 1965, subject to the following conditions:

(a) Herff Jones Co. (Herff) will receive and hold the shares of the capital stock of John Roberts Manufacturing Company, Inc. (Roberts) to be acquired from its shareholders and shall not enter into any plan of merger, consolidation or other form of reorganization, or alienate, pledge or encumber such shares in any way, pending final determination of this case on its merits, that would result in the loss of the separate identities of said two companies; and Roberts shall be operated as an independent subsidiary of Herff;

(b) Roberts shall have management completely independent of the management of Herff, under the control of a board of directors, none of which officers or directors shall be officers or directors of Herff or of any of Herff's affiliates or subsidiaries; said officers and board of directors of Roberts shall act solely in the best interests of Roberts and shall use in good faith their best efforts to promote and maintain the business operations of Roberts in vigorous competition with all other companies including Herff engaged in the manufacture, sale or distribution of jewelry; and said board of directors and officers shall not, other than in the normal course of business dealings of the nature that existed prior to June 3, 1965, communicate with or inform Herff of its business plans and operations, other than to provide Herff with monthly summary statistical reports, profit and loss statements, and balance sheets, copies of which shall be furnished to the plaintiff at the same time they are furnished to Herff so that the plaintiff may apply to the Court for such relief, if any, as it may deem appropriate; except as otherwise specifically provided in this Order, Herff may exercise all its rights as a shareholder and creditor of Roberts;

(c) Title to all assets, tangible and intangible, including but not limited to plant, dies, molds, machinery, other equipment and facilities, trade secrets, manufacturing processes, patents, good will, etc. of Roberts shall remain in said company and shall not be removed, sold, transferred, encumbered or otherwise disposed of except those products produced for sale by Roberts in the normal and ordinary course of its business; provided, that assets may be encumbered in connection with loans from lending institutions, which loans are incurred in the normal and regular course of business of Roberts;

(d) Dividends or other distributions to Herff as the result or by reason of its ownership of the stock of Roberts shall in no event exceed the net earnings of Roberts subsequent to July 1, 1965, determined in accordance with accounting practices and standards generally followed by manufacturers of jewelry;

(e) No business dealings shall exist between Herff and Roberts other than in the nature of such lawful business dealings as existed prior to June 3, 1965; and either Roberts or Herff when performing services for the other shall receive compensation therefor at the same rate as it was then receiving or as heretofore received from other non-related companies for similar services or at such lower rate as such services may be obtained from other parties;

(f) Subject to the physical limitations of its plant and equipment and facilities, Roberts shall continue to offer its production services at nondiscriminatory rates and terms, but subject to such credit restrictions that it considers necessary in any particular instance, to jewelry manufacturers and distributors insofar as it heretofore has done so; provided that Roberts shall report within thirty (30) days after the end of each month to the plaintiff all services performed hereunder during the preceding month for any company, including Herff; and

(g) No commitments for loans to Roberts shall be made by Herff after the date of this Order unless ten (10) days in advance of any such proposed commitment the plaintiff shall be furnished with a copy of the proposed commitment and any agreements pursuant thereto so that the plaintiff may apply to the Court for such relief, if any, as it may deem appropriate.

Pending final determination of this action upon its merits, or unless otherwise ordered by the Court upon good cause shown and after notice to all the parties:

(a) Defendants Herff and Roberts shall report to plaintiff within sixty (60) days following the calendar quarter ending December 31, 1965, and each calendar quarter thereafter, the volume of sales in units and dollars of each jewelry product;

(b) Defendants Herff and Roberts shall permit authorized representatives of the Department of Justice to have access during the business hours of such companies to all records of such companies relating to any matters contained in this Order and pertaining to this cause, and shall permit said representative to interview, subject to the reasonable convenience of the defendants, the officers or employees of such companies who may have counsel present, regarding any matters contained in this Order and relating to this cause. Said access and interviews shall be granted only upon the written request of the Attorney General or Assistant Attorney General in charge of the Antitrust Division and upon reasonable notice to such company made at its principal office, and is subject to legally recognized privileges.

(c) Defendants Herff and Roberts, upon request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports as may reasonably be requested relating to this Order or this cause.

(d) No information obtained by this 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 the Executive Branch of the plaintiff except in the course of legal proceedings to which plaintiff is a party, for the purpose of securing compliance with this Order or as otherwise required by law.

(5) If any defendant is dismissed as a party to this cause prior to final determination of the cause, such defendant shall continue to be subject to such discovery as is provided for by the Federal Rules of Civil Procedure to the same extent as if it or he were still a defendant.

(6) Information provided in the reports or financial information pursuant to this Order shall not be divulged to persons outside of the Executive Branch of the government or except in the course of legal proceedings to which the United States is a party or as otherwise required by law.

Entry on Stipulation to Amend Entry of December 9, 1965, Dated January 31, 1967

NOLAND, D. J.: The Court having received the Stipulation of the parties to amend the Entry of December 9, 1965 in this cause, and being duly advised in the premises, now orders that such Entry be amended by adding at the end of Paragraph 3(b) of such Entry the following language which shall be a part of such Paragraph:

"Provided, however, nothing contained in this order shall prohibit Roberts from employing John T. Waugh or Robert G. Waugh or Charles Parker, or prohibit all or any of them for six (6) months from the date of this amendment from serving as members of the board of directors of Herff while so employed, but none or all of them shall serve as officers or employees of both Herff and Roberts simultaneously and should any one or more or all of them be hired by Roberts, they shall not again serve as officers or employees of Herff while the Entry of December 9, 1965, as amended, remains in force."

United States v. Wayne Corporation

Case No. IP 72 C 215

Year Judgment Entered: 1972

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 WAYNE CORPORATION,)
)
 Defendant.)

CIVIL ACTION

NO. IP 72 C 215

Entered: June 5, 1972

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on May 4, 1972, and the defendant, Wayne Corporation and its consenting affiliated corporation, Wayne Sales Financial Corporation, having appeared by their counsel, and plaintiff, defendant and Wayne Sales Financial Corporation having consented to the entry of this Final Judgment herein, without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or admission by plaintiff, defendant, or Wayne Sales Financial Corporation with respect to any such issue;

NOW, THEREFORE, without any testimony having been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent of plaintiff, defendant and Wayne Sales Financial Corporation hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and the parties hereto. The complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Act of Congress of July 2, 1890, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," (15 U.S.C. § 1) commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Person" means any individual, partnership, firm, corporation, association, or other business or legal entity, including the Federal, State and local governments, and agencies and instrumentalities thereof;

(B) "Professional vehicles" means all hearses, ambulances, and flower cars assembled by Wayne Corporation or for which Wayne Corporation provides parts or accessories for assembly by other persons, and accessories and parts, including replacement parts and accessories for such professional vehicles;

(C) "Distributor" means any person engaged, in whole or in part, in the purchase from Wayne Corporation of professional vehicles or parts of professional vehicles for resale or lease to other persons; and

(D) "Defendant" means, jointly and severally, Wayne Corporation, each of its subsidiaries, and its consenting affiliate, Wayne Sales Financial Corporation.

III

The provisions of this Final Judgment shall apply to the defendant, its successors and assigns, and to their respective officers, directors, agents, servants and employees, and to all other persons in active concert or participation with the defendant who shall receive actual notice of this Final Judgment by personal service or otherwise. Except for sales to the plaintiff or to any agency or instrumentality thereof, wherever located, this Final Judgment shall not apply to activities of the defendant outside the United States which do not substantially affect the foreign commerce of the United States.

IV

The defendant is enjoined and restrained, directly or indirectly, from:

(A) Entering into, adhering to, enforcing or claiming, or maintaining any right under any contract, agreement, understanding, plan, or program with any

distributor to fix, establish, limit or restrict:

- (1) The prices at which professional vehicles may be resold or leased;
- (2) The prices at which professional vehicles which are purchased for resale or lease may be advertised;
- (3) The prices at which bids may be submitted on the resale or lease of professional vehicles; and
- (4) The persons or classes of persons to whom, or the markets or territories in which, professional vehicles may be resold, distributed or leased.

(B) Requiring any distributor to adhere to any fixed, suggested or specified prices at which professional vehicles may be sold or leased to any other person;

(C) Taking or threatening to take any disciplinary action against any distributor because of the prices at which, the persons or classes of persons to whom, or the markets or territories in which such distributor has sold or leased professional vehicles or intends to sell, distribute, or lease professional vehicles;

(D) Preventing or delaying the filling of any order for the purchase of any professional vehicles by any distributor, or the shipping thereof, because of the market or territory in which, the price at which or the person to whom any distributor has sold or leased or may sell or lease professional vehicles, or from designating to any person a particular distributor from which such person must buy a professional vehicle; and

(E) Refusing to finance any sale of a professional vehicle because of the market or territory in which, the price at which, or the person to whom any distributor sells or leases, intends to sell or lease, or has sold or leased any professional vehicle.

V

(A) The defendant is ordered and directed, within ninety (90) days of the entry of this Final Judgment, to take all necessary action to effect the cancellation of each provision of every contract, agreement or understanding between and among the defendant and each distributor which is contrary to or inconsistent with any provision of this Final Judgment.

(B) The defendant is ordered and directed, within sixty (60) days of the entry of this Final Judgment, to mail a copy of this Final Judgment to each of its present distributors and to notify each such distributor that such distributor may sell such professional vehicles at such prices, and to whomever and wherever such distributor chooses.

(C) The defendant is ordered and directed to file with this Court and serve upon the plaintiff, within one hundred and twenty (120) days from the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with Sections (A) and (B) of this Section V.

(D) For a period of ten (10) years from the date of entry of this Final Judgment, the defendant is ordered to file with the plaintiff, on each anniversary date of this Final Judgment, a report setting forth the steps which it has taken during the prior year to advise the defendant's appropriate officers, directors and employees of its and their obligations under this Final Judgment.

VI

For the purpose of securing or determining compliance with this Final Judgment, and subject to any legally recognized privilege:

(A) Any authorized representative or 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 upon reasonable notice to defendant at its principal office be permitted:

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

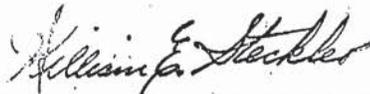
(2) Subject to the reasonable convenience of defendant, and without restraint or interference from it, to interview officers or employees of defendant, who may have counsel present, regarding any matters contained in this Final Judgment;

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office, defendant shall submit such reports in writing, under oath if requested, with respect to any matters contained in this Final Judgment which from time to time may 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 duly authorized representatives 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.

VII

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 of or carrying out of this Final Judgment, for the amendment or modification of any provision contained herein, for the enforcement of compliance therewith, and for the punishment of the violation of any of the provisions contained herein.



United States District Judge

Dated:

June 5, 1972