# Appendix A

# Final Judgments

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Appendix A-1

*United States v. Hiram Norcross, et al.*, No. 21-cv-302 (W.D. Mo. 1924)

UNITED STATES v. HIRAM NORCROSS.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

UNITED STATES OF AMERICA, PLAINTIFF,

*vs.*

HIRAM NORCROSS, SOLE OWNER AND MANAGER OF AND Operating as The Norcross Audit & Statistical Bureau, Ash Grove Lime & Portland Cement Company, The

Bonner Portland Cement Company, Dewey Portland Cement Company, The Monarch Cement Company, Oklahoma Portland Cement Company, and The Western States Portland Cement Company, defendants.

In Equity No. 302.

FINAL DECREE

This cause came on to be heard at this term upon petition and answer and proofs and was argued by counsel, and upon consideration thereof it is *ordered, adjudged,* and *decreed* as follows:

1. That defendant Hiram Norcross, and the Norcross Audit & Statistical Bureau owned and operated by him, and the defendant corporations which subscribed to the service thereof, constituted and is a combination in unlawful restraint of interstate trade and commerce in Portland cement, in violation of Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (26 Stat. 209), known as the Sherman Anti-trust Act.

2. That defendant Hiram Norcross, by organizing and maintaining said Norcross Audit & Statistical Bureau and defendant corporations by subscribing to the service thereof, entered into and engaged in a combination in unlawful restraint of interstate trade and commerce in Portland cement, in violation of said Act of July 2, 1890.

3. That said combination be, and it hereby is, dissolved, and defendant Hiram Norcross and defendant corporations are collectively and individually perpetually enjoined, restrained, and prohibited from entering into, engaging in, or carrying into further effect said combination, or any understanding or agreement constituting a part thereof, or any similar combination or organization having the same purpose and effect.

4. That defendant Hiram Norcross, the Norcross Audit & Statistical Bureau, and defendant corporations are collectively and individually perpetually enjoined, restrained, and prohibited from observing or operating under a so-

called "Subscription Contract" with said Norcross Auditn & Statistical Bureaun the terms and conditions of which are as follows:n

*The Company agrees:*

I.nThat it will furnish THE BUREAU full and accurate information and data in respect to its cement stocks, production, sales, and shipments, its prices, terms, andn conditions of all sales or offers to sell, together with alln changes therein; and all relations, contractual or otherwise, with its customers and the trade.

II. That it will, and does hereby, give THE BUREAU and its authorized representatives andnauditors, free access at all reasonable times to all its records, to the end that THE BUREAU may determine the accuracy and correctness of the information and data furnished as a basis for its reports.

*The Bureau agrees:*

A. That it will, at least once each month, thoroughly check and audit THE COMPANY'S records as herein contemplated.

B.nThat it will furnish THE COMPANY with a monthlyn report showing total cement stocks, production, and shipments to its principal market territory, to wit: The States of Oklahoma, Arkansas, Kansas, Missouri, Nebraska, andn Iowa, of and by the subscribers to THE BUREAU, together with such other information and data from time to timen as shall or may be of interest or value to THE COMPANY in determining its policy, conduct, or prices.

C.nThat it will treat all statistical information as confidential, and shall not, without permission, publish it inn such form as to identify it with the company furnishing same.

D.nThat it will provide and furnish at its own expense suitable and adequate office quarters, help, facilities,n forms, supplies, reports, and activities as hall be required by the majority in interest of its subscribers and necessary to the proper maintenance, conduct, service, andn usefulness of THE BUREAU.n

*Provided,* THE BUREAU'S average expenditures hereunder (not including the Manager's compensation) shall not be more than its receipts in excess of five hundred edollars ($500.00) per month plus one-half (½) mill per barrel from all its subscribers.

E. That it will use its best endeavors to promote faire methods of competition and the open policy among itse subscribers, to the end that each subscriber, large ande small, may have equal opportunity to conduct his business with intelligence, based upon reliable data and information in respect to controlling conditions obtaininge in the industry.e

*It is mutually agreed as follows:*

X.eThat THE COMPANY will pay, and THE BUREAU wille receive, for the services to be rendered, and information and data to be furnished, as herein provided and contemplated, and as full and complete remuneration therefor, the sum of THREE AND ONE-HALF (3½) MILLS PER BARREL for all cement shipped on and after August 25th, 1915, to the territory described in Paragraph "B," settlements to be made monthly on or before the 5th day of the calendar month next succeeding.

Y.eThat the undersigned is only one of several subscribers to THE BUREAU, and that this subscription agreement may, upon thirty (30) days' written notice, be cancelled for misconduct on the part of THE BUREAU or its Manager, provided complaint of such shall have been filed with THE BUREAU, an investigation thereof shall have been made, and five (5) or more subscribers shall express in writing a desire for such cancellation and make provisions for paying unaccrued obligations of THE BUREAU that can not be canceled.

Z.eThat this contract shall, unless sooner canceled ase herein provided, extend from date hereof to and including December 31st, 1916, and its provisions shall be binding upon the successors and assigns of the respective parties hereto, but it shall not be assigned by THE BUREAU without written consent of THE COMPANY.

5. Defendant Hiram Norcross, operating as the Norcross Audit & Statistical Bureau or otherwise, and defendant corporations which subscribed to the service of said Bureau are collectively and individually perpetually enjoined, restrained, and prohibited from agreeing to make or receive, and from making and receiving, pursuant to any agreement, reports of the following character, and from collecting and disseminating through said Bureau, or any agency hereafter organized to succeed or perform services like unto those performed by said Bureau, the information specified in the following reports, or either or any of them:

FORM NO. 1.—*Daily Report of Quotations for specific work, made by subscribers to the Bureau*

(a) Party quoted and destination of shipment.
(b) Number of barrels specified.
(c) Price per barrel f. o. b. destination.
(d) When quotation expires.
(e) Description of work.

FORM NO. 2.—*Daily Sales Report, made by subscribers to the Bureau*

SALES

(a) Order number.
(b) Customer sold and destination of shipment.
(c) Number of barrels sold for prompt delivery to dealers.
(d) If specific work contract, number of barrels sold and date of expiration of contract.
(e) Price f. o. b. destination.

ADDITIONAL DATA PERTAINING TO SPECIFIC CONTRACTS SHOWN ABOVE

(f) Order number.
(g) Name of contractor.
(h) Description of work and remarks.

CANCELLATIONS

(i) Order number.
(j) Name of customer and destination.

(k)o Number of barrels canceled.o

FORM NO. 3.—*Daily Shipping Report made by subscribers to the Bureau.*

(a)o Order number.o
(b)o Name of customer and destination of shipment.o
(c)o Car number.o
(d)Number of barrelsoshipped.o

FORM NO. 4.—*Report of diversions made by subscribers covering diversions in transit after a car has been reported to the Bureau as having been shipped to another customer*

(a)o Car number.o
(b)o Date shipped.o
(c) Number of order on which it was first reported shipped.
(d)o Name of customer diverted to and destination.
(e) Number of order to which shipment was diverted.o
(f)o Date of diversion.o

FORM NO. 5.—*Monthly report made by subscribers to the Bureau*

SHIPMENTS

(a)o Into Kansas, Missouri, Nebraska, Iowa, Oklahoma,o Arkansas.
(b)o Total number of barrels shipped into the six States.o
(c)o Total number of barrels shipped into all territory.o

PRODUCTION

(d)o Cement.o
(e)o Clinker.o

STOCK ON HAND

(f)o Cement.o
(g) Clinker.o

FORM NO. 6.—*Monthly summary of statistics compiled by the Bureau and sent to subscribers*

SHIPMENTS

(a)o Total shipments of cement into each State by allo subscribers for the month as compared with the same month of the previous year.

(b) Total shipments of cement into each State by all subscribers for the year to date as compared with the same period of the previous year.

PRODUCTION

(c) Total production of cement and clinker by all mills for the current month as compared with the same month of the previous year.

(d) Total production of cement and clinker by all mills during current year to date of report.

STOCK ON HAND

(e) Stock of cement and clinker on hand by all mills at the end of the current month as compared with the same month of the previous year. Also the stock on hand at the beginning of the current month for the current year and the previous year.

6. That defendant corporations are collectively and individually perpetually enjoined, restrained, and prohibited from agreeing, among themselves, or with other manufacturers of cement, to cancel and/or from canceling pursuant to such agreement contracts which may exceed, or may be believed to exceed, the actual requirements of specific construction work undertaken or definitely projected, or are duplicate contracts held by other manufac-turers for cement intended for the same construction work; and from agreeing with each other, or with other manufacturers of cement, to collect, and/or from collec-ting, pursuant to such agreement, and distributing among manufacturers of cement, information with reference to such contracts.

7. That defendant corporations are collectively and in-dividually enjoined, restrained, and prohibited from here- after agreeing among themselves, or with other manufac-turers of cement, to do any of the following acts

(a) To establish uniform mill base prices for their product.

(b) To establish arbitrary freight basing points other than the points from which shipments are actually made.

(c) To sell their product f. o. b. point of delivery ex-clusively.

(d)e To establish uniform charges for bags, or uniforme credits for bags returned in good condition.

(e)e To establish a uniform rate of discount or uniform terms for payment of bills within a specified period.

(f) To limit the quantity of cement to be shipped to ae dealer within a specified period of time.

(g)e To prohibit the diversion or so-called misuse ofe cementsold on specific job contracts.

(h)e To establish and maintain a uniform differentiale in the price of cement sold to dealers and contractors.

(i) To fix or suggest the amount of commission ore profit dealers should be required to make in sales of cement.

(j) To regulate or limit the amount of production ofe cement, and/or the amount of stock to be kept on hand.

(k)e To limit the time within which quotations one cement must be accepted and deliveries made, and to refuse to grant extensions in time of deliveries.

(l) To make changes in prices effective as of the date quotations are written, to avoid "price tipping."

(m)e To guarantee prices against decline.e

(n)e To make uniform charges for bin tests, and/or to require the purchaser to pay for such tests.

8.eThat nothing herein shall be construed as prohibiting the defendants from maintaining or subscribing to a traffic bureau to furnish rates or rules of transportation that may be contained in any public schedule or tariff, but all rates furnished shall be the actual rates between points of actual shipment and delivery, and shall not be based on any point or points other than those of actual shipment and delivery.

9.eThat nothing herein shall be construed as prohibiting defendant corporations from maintaining or subscribing to a credit bureau for the sole purpose of furnishing, upon specific requests, information as to the credit of persons and corporations purchasing, or attempting to purchase, cement, but the defendants are collectively and individually perpetually enjoined, restrained, and prohibited from agreeing to refuse to make sales to particular customers

and/or from agreeing upon circumstances or conditions which shall exclude customers from being extended credit.

10. That nothing contained in this decree shall be construed as prohibiting any defendant from doing or performing any of the foregoing acts, or from selecting its own trade, or from disposing of its own product to such persons and on such terms as it may choose if done individually and without combining, conspiring, or agreeing with any other manufacturer of cement.

11. That the injunctions herein contained against defendant bureau and the defendant corporations shall apply to and be binding upon such Bureau and corporations and their respective officers, directors, agents, and employees and all other persons, firms, or corporations acting under, for, or in behalf of them or any of them, or claiming so to act.

12. That jurisdiction of this case is retained for the purpose of enforcing this decree and of enabling the United States to apply to the court for a modification or enlargement of its provisions on the ground that they are inadequate, and the defendants, or either of them, to apply for its modification on the ground that its provisions have become inappropriate or unnecessary.

It was represented by counsel for the defendants and not controverted by the Government, (a) that since the beginning of this suit the defendants, The Bonner Portland Cement Company and The Western Portland Cement Company, have sold and disposed of all of their physical assets and are engaged in liquidating their affairs and distributing their assets among their stockholders and are no longer engaged in the business of manufacturing cement; and (b) that subsequent to the bringing of this suit the defendant Hiram Norcross abandoned and dissolved the Norcross Audit & Statistical Bureau; and that the defendant corporations ceased to become subscribers thereto and ever since said date the practices set forth in this decree in respect to the Norcross Bureau and its activities, and the action of the defendants as subscribers thereto have wholly ceased.

That plaintiff shall have and recover from the defendant its costs.

ALBERT L. REEVES,
*United States District Judge.*

April 2, 1924.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI AT KANSAS CITY.

In Equity No. 302.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

HIRAM NORCROSS, Sole owner and Manager of and Opera-ting as THE NORCROSS AUDITO & STATISTICAL BUREAU, Ash Grove Lime & Portland Cemento Company, the Bonner Portland Cement Company, Dewey Portland Cement Company, the Monarch Cement Company, Oklahoma Portland Cemento Company, and The Western States Portland Cemento Company. DEFENDANTS.

DECREE INTERPRETING AND MODIFYING FINAL DECREE OF APRIL 2, 1924.

On this 14th day of February, 1927, comes on for hearing the petition of the defendants, Ash Grove Lime and Portland Cemento Company, Dewey Portland Cement Company, The Monarch Cemento Company, and Oklahoma Portland Cement Company for an order and Decree Inter-preting and Modifying the Final Decree of the Court entered in this cause on April 2, 1924.

And, thereupon, the defendants above named appear by their counsel Harkless & Histed and the United States of America by R. C. Patterson, United States Attorney; and

THEREUPON, upon the evidence presented and being well advised in the premises it is by the Court ordered, adjudged and decreed, viz.:

1. That nothing in said Final Decree of April 2, 1924, shall be held or construed to enjoin the defendants as manufacturers, from reporting to any Bureau or from

gathering in any other manner statistical information concerning the following matters pertaining to the manufacture and sale of Portland Cement:

(a)o Information concerning actually closed specifico job contracts for the future delivery of Portland Cement sufficiently complete to enable the manufacturer to protect itself against spurious contracts and like transactions induced by misrepresentation and/or fraud;

(b)o Information concerning production, stocks ofo Portland Cement and Clinker on hand, and shipments thereof and bag returns.

That said Final Decree of April 2, 1924 in so far as it may be deemed to be in conflict herewith be and the same is hereby modified accordingly.

ALBERT L. REEVES,
*Judge.*

Filed February 14, 1927.

Appendix A-2

*United States v. Kansas City Ice Company, et al.*, No. 2536 (W.D. Mo. 1934)

**U. S. vs. KANSAS CITY ICE COMPANY, ET AL.**

INe THEe UNITED STATES DISTRICT COURTe FOR THE WESTERN DISTRICT OFeMISSOURI.

In Equity No. 2536.

THEe UNITEDe STATES OF AMERICA, PETITIONER,

vs.

KANSASe CITYe ICE COMPANY, ARMOUR AND COMPANY Artificiale Ice Company, City Icee Company, Consumer Icee Company, Empiree Storage and Ice Company, Mid-west Icee and Cold Storage Company, Mountain Ice

Company, Railways Ice Company, Southwest Ice Company, Superior Ice and Coal Company, United States Cold Storage Company, Western Ice Service Company, A.eHardgrave, Frank G. Crawford, E. M. Dodds, Hurleye Hust, Ralph Wilkerson, H. L. Filkins, Arthur Lesliee Williams, George Olmstead, A. Z. Patterson, P. A.e Weatherred, Louis Margolin, Harold Margolin, Williame J.eSinick, W. N. Shoemaker, George J. Schmitz, A. O.e McLain, Earl V. Musser, M. W. Borders, Jr., and N. F.e Russell, defendants.e

DECREE

This cause coming on to be heard this 5th day of June, 1934, on a regular court day of the April Term, and the several defendants having appeared, the petitioner moved the Court for a decree in conformity with the prayers of the Petition; and the defendants having consented to the making and entering of this decree;

Now, therefore, it is ORDERED, ADJUDGED, and DECREED as follows, as to all defendants except Armour and Company, Mountain Ice Company, William J. Sinick, and W. N. Shoemaker.

I

That the Court has jurisdiction of the subject matter and of all the parties hereto; that the petition states a cause of action against the defendants under the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" and acts amendatory thereof and supplemental or additional thereto, known as the Federal Anti-trust Laws.

That the Kansas City Ice Company will be hereinafter referred to as "the Combine." The remaining corporate defendants will be hereinafter referred to as "corporate defendants", and independent contractors commonly known as "ice dealers", or "ice peddlers", will be hereinafter referred to as "the Dealers."

II

That the defendants and each of them, individually and collectively, their successors, members, officers, directors,

managers, agents, servants, employees, and all persons acting or claiming to act, under or in behalf of them, or any of them, be and they hereby are enpermanently and perpetually enjoined and restrained from in any way maintaining, continuing, or reviving, either directly, or indirectly, by any means whatsoever, the combination, conspiracy, and monopolization of trade and commerce in ice and the ice business described in the petition herein, or any combination, conspiracy, or monopolization similar thereto, and which is in contravention of the Federal Antitrust Laws.

III

That the contracts between the Combine and the corporate defendants and the lease agreements between the Combine and certain of the corporate defendants, be declared in violation of the Federal Antitrust Laws, particularly "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, and that the following specific contracts and lease agreements are hereby declared null and void:

(a) The contract of October 13, 1933, between Artificial Ice Company and the Combine.

(b) The contract of October 13, 1933, between City Ice Company and the Combine.

(c) The contract of October 13, 1933, between Consumers Ice Company and the Combine.

(d) The contract of October 13, 1933, between Empire Storage and Ice Company and the Combine.

(e) The contract of October 13, 1933, between Midwest Ice and Cold Storage Company and the Combine.

(f) The contract of October 13, 1933, between Railways Ice Company and the Combine.

(g) The contract of October 13, 1933, between Southwest Ice Company and the Combine.

(h) The contract of October 13, 1933, between Superior Ice and Coal Company and the Combine.

(i)n The contract of October 13, 1933, betweenn United States Cold Storage Company and the Combine.

(j)n The contract of October 13, 1933, betweenn Western Ice Service Company and the Combine.

(k)n The lease agreement of January 1, 1934, between City Ice Company and the Combine.

(l)n The lease agreement of January 1, 1934, between Consumers Ice Company and the Combine.

(m)n The lease agreement of January 1, 1934, between Artificial Ice Company and the Combine.

(n)n The lease agreement of January 1, 1934, between Western Ice Service Company and the Combine.

IV

That the defendants and each of them, their successors,n members, officers, directors, managers, agents, servants,n employees, and all persons acting or claiming to act undern or in behalf of them, or any of them, be and they are hereby, permanently and perpetually enjoined or restrained from agreeing among or between themselves, or havingn understandings or agreements amongst or between them,n to—

(a)n Make; or induce, persuade or coerce the Dealersn to make or enter into, contracts with them, whereby saidn Dealers surrender their routes of delivery and lists ofn customers and accept in place thereof restricted and exclusive territories; or whereby said Dealers agree to refrain from purchasing ice from manufacturing plants andn wholesalers other than the defendants or any of them; orn whereby said Dealers agree to refrain from invading n zones or territories assigned to other Dealers; or whereby n the Dealers agree to refrain from operating retail cash-and-carry ice stations;

(b)n Close down a large number of their manufacturing plants, so as to seriously curtail a large proportion of then volume of ice needed to supply demands of consumers;

(c)n Eliminate, suppress, or curtail the retail ice sta-

tions or any part of them now available to and used by cash-and-carry consumers;

(d) Discriminate in no prices so between Dealers so in ice, where such Dealers so are of the same class so and where the grade, quality or quantity of ice purchased is approximately the same in such class, or where there are no existing differences in the cost of selling or transportation.

V

That the Kansas City Ice Company shall wind up its affairs so and be dissolved within three months after the date of entry of this decree.

VI

That jurisdiction of this cause is hereby retained for the purpose of enforcing this decree, or enabling the parties so to apply to the court for modification or enlargement of its provisions so on the ground that they are inadequate or have become inappropriate or unnecessary.

VII

That petitioner have and recover of the defendants the costs of this cause.

Dated June 5th, 1934.

MERRILL E. OTIS,
*United States District Judge.*

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI.

In Equity No. 2536.

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

KANSAS CITY ICE COMPANY, ARMOUR AND COMPANY, ArtificialnIcenCompany, CitynIcenCompany, Consumers Ice Company, Empiren Storage and Icen Company, Mid-west Ice and Cold Storage Company, Mountain Ice

Company, Railways Ice Company, Southwest Ice Company, Superior Ice and Coal Company, United States Cold Storage Company, Western Ice Service Company, A. Hardgrave, Frank G. Crawford, E. M. Dodds, Hurleyn Hust, Ralph Wilkerson, H. L. Filkins, Arthur Leslien Williams, George Olmstead, A. Z. Patterson, P. A. Weatherred, Louis Margolin, Harold Margolin, William J. Sinick, W. N. Shoemaker, George J. Schmitz, A. O. McLain, Earl V. Musser, M. W. Borders, Jr., and N. F. Russell, defendants.

SUPPLEMENTAL DECREE

The United States of America filed its petition herein on June 5, 1934, and a decree in accordance with the prayers of the petition was entered as against all defendants except Armour & Company, Mountain Ice Company, W. N. Shoemaker, and William J. Sinick. The said Armour & Company and W. N. Shoemaker now appearing by their counsel, William G. Holt, and the said Mountain Ice Company and William J. Sinick now appearing by their counsel, E. R. Morrison, and agreeing to the entry of this supplemental decree, and the United States of America appearing by Maurice M. Milligan, its United States Attorney for the Western District of Missouri:

It is hereby Ordered, Adjudged, and Decreed as follows:

I. That the Court has jurisdiction of the subject matter hereof and of all persons and parties hereto.

II. That the contract of sale of Armour & Company made with the Kansas City Ice Company for the sale of its ice business to said Kansas City Ice Company, dated October 13, 1933, is hereby cancelled, and said Armour & Company is prohibited from doing any act or thing in performance of or required by said contract.

III. The contract of October 13, 1933, between Mountain Ice Company and the Kansas City Ice Company, for the sale of ice, is hereby cancelled, and said Mountain Ice Company is prohibited from doing any act or thing in performance of or required by said contract.

IV. That this cause be and the same hereby is dis-

missed as to said W. N. Shoemaker and said William J. Sinick.

Dated Kansas City, Missouri, November 26, 1934.

MERRILL E. OTIS,
*United States District Judge.*

# Appendix A-3

*United States v. Bearing Distributors Company, et al.*, No. 6895 (W.D. Mo. 1953)

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Bearing Distributors Company, et al., U.S. District Court, W.D. Missouri, 1952-1953 Trade Cases ¶67,595, (Oct. 27, 1953)



United States v. Bearing Distributors Company, et al.

1952-1953 Trade Cases ¶67,595. U.S. District Court, W.D. Missouri, Western Division. Civil Action No. 6895. Dated October 27, 1953. Case No. 1076 in the Antitrust Division of the Department of Justice.

## Sherman Antitrust Act

**Consent Decree—Specific Relief—Licensing of Patents—Practices Prohibited—Tractor Cabs.**—Manufacturers of tractor cabs were ordered by a consent decree to grant to any applicant a license to manufacture, use, and sell tractor cabs under specified patents and under any other patent relating to tractor cabs issued to or acquired by any such manufacturer within five years from the date of the decree. A uniform, reasonable and nondiscriminatory royalty could be charged upon any license issued. The decree enjoined the manufacturers from making any disposition of any of the patents subject to the above order, unless the manufacturer requires as a condition of such disposition that the purchaser or licensee shall observe the requirements of specified provisions of the decree. Also, the manufacturers were enjoined from instituting any proceeding for infringement of any of the patents alleged to have occurred prior to the date of the decree.
**Consent Decree—Practices Enjoined—Patents.**—Manufacturers of tractor cabs were enjoined from granting to any other person any power or authority to hinder, restrict, limit, or prevent such manufacturer from granting a license under any patent or patents owned or controlled by such manufacturer to any person.
**Consent Decree—Practices Enjoined—Price Fixing.**—Manufacturers of tractor cabs were enjoined from entering into any plan with any person to fix, establish, or determine the prices, or the terms or conditions relating to prices, for the sale of tractor cabs to any third person.
**Consent Decree—Practices Enjoined—Allocation of Markets.**—Manufacturers of tractor cabs were enjoined from entering into any plan with any other defendant or any manufacturer of tractor cabs to allocate or divide territories, markets, dealers, or distributors for the manufacture, distribution, or sale of tractor cabs.
**Consent Decree—Applicability of Decree—Wholly-Owned Subsidiaries.**—A decree, in setting forth the application of the decree to the defendants, provided that "any defendant and a wholly-owned subsidiary thereof shall be considered as one person."

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; Marcus A. Hollabaugh, Earl A. Jinkinson, Raymond D. Hunter, and Bertram M. Long, Special Assistants to the Attorney General; and W. D. Kilgore, Jr., Harry N. Burgess, and Charles F. B. McAleer, Attorneys.

For the defendants: John G. Madden and James E. Burke (Madden and Burke), Kansas City, Mo., for Comfort Equipment Co. (successor to Bearing Distributors Co.); John E. Sebat (Jones, Sebat and Swanson), Danville, Ill., for Cab-Ette Co., Inc. and Lee Flora; Rudolph L. Lowell, Des Moines, Ia., for Fort Dodge Tent and Awning Co. and Michael A. Halligan; and Fred M. Roberts, Kansas City, Mo., for Clyde E. Clapper.

**For an opinion of the U. S. District Court, Western District of Missouri, Western Division, see 1950-1951 Trade Cases ¶ 62,942.**

### Final Judgment

REEVES, District Judge [ *In full text*]: Plaintiff, United States of America, having filed its complaint herein on April 27, 1951, Comfort Equipment Company, a corporation, formerly Bearing Distributors Company, having been made a party defendant herein, and the defendants having appeared and filed their answers to said complaint denying the substantive allegations thereof; and the plaintiff and said defendants, 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 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 Action*]

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 Final Judgment:

(A) "Person" means an individual, partnership, firm, association, corporation or other legal entity.

(B) "Tractor cabs" means an accessory or device for a tractor or similar machinery, made of canvas or similar material, and sometimes designated as a heating unit, which when affixed or fastened to a tractor, or similar machinery, provides an enclosed space in which the driver of the tractor, or similar machinery, is heated and protected from the weather.

(C) "Patents" means United States Letters Patent and applications therefor, all reissues, continuations, divisions or extensions thereof, and patents issued upon said applications, relating to tractor cabs.

**III**

[ *Applicability of Judgment*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its successors, subsidiaries, assigns, officers, directors, agents, employees, and to those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment any defendant and a wholly-owned subsidiary thereof shall be considered as one person.

**IV**

[ *Licensing of Patents Ordered*]

(A) Each defendant is ordered and directed, in so far as it has or may acquire the power or authority to do so, to grant to any applicant making written request therefor a license to manufacture, use and sell tractor cabs under United States Patent No. 2,452,834 and Patent No. 2,461,974 and any other patent relating to tractor cabs issued to or acquired by any such defendant within five years from date hereof, such license to be for the full unexpired term of the patent or patents. Said licenses shall contain no restriction whatsoever except that:

(1) The license may be nontransferable;

(2) A uniform, reasonable and nondiscriminatory royalty may be charged upon any license issued;

(3) Reasonable provisions may be made for periodic inspection of the books and records of the licensee by an independent auditor or by any person acceptable to the licensee who shall report to the licensor only the amount of the royalty due and payable;

(4) Reasonable provision may be made for cancellation of the license upon failure of the licensee to pay the royalties found to be due and payable or to permit the inspection of his books and records as hereinabove provided;

(5) The license must provide that the licensee may cancel the license at any time by giving ninety days' notice in writing to the licensor;

(6) The license or sub-license must provide that the licensee shall immediately have the benefit of any more favorable terms granted any other licensee.

(B) Upon receiving any application for a license in accordance with the provisions of this Section IV, the defendant shall advise the applicant of the royalty it deems reasonable for the patent or patents to which the application pertains. If the parties are unable to agree upon what constitutes a reasonable royalty within sixty (60) days from the date the application for the license was received by the defendant, the applicant therefor or the defendant may forthwith petition this Court for the determination of a reasonable royalty, and the said defendant shall, upon receipt of notice of filing such petition, promptly give notice thereof to the Attorney General. In any such proceeding the burden of proof shall be upon the defendant to establish the reasonableness of the royalty requested by it; and the reasonable royalty rates, if any, determined by the Court shall apply to the applicant and to all other licensees under the same patent or patents. Pending the completion of negotiations or of any such Court proceedings, the applicant shall have the right to make, use and vend under the patent or patents to which its application pertains, without payment of royalty or other compensation, but subject to the following provisions: The defendant may petition the Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty, if any. If the Court fixed such interim royalty rate, the defendant shall then grant, and the applicant shall accept, a license providing for the periodic payment of royalties at such interim rates from the date of the making of such application by the applicant. If the applicant fails to accept such license or fails to pay the interim royalty therein provided, such action shall be ground for the denial or dismissal of his application. Where an interim license has been issued pursuant to these provisions, reasonable royalty rates, if any, as finally determined by the Court shall be retroactive for the applicant and all other licensees under the same patent or patents to the date the applicant filed his application for a license.

(C) Nothing in this Final Judgment shall prevent any applicant for a license from attacking in any proceeding or controversy the validity or scope of any of the patents subject to this Final Judgment nor shall this Final Judgment be construed as importing any validity or value to any such patent.

**V**

[ *Disposition of Patents*]

The defendants are jointly and severally enjoined and restrained from making any disposition of any of the patents or patent applications subject to Section IV of this Final Judgment, or any rights with respect thereto, which deprives such defendant of the power or authority to grant licenses as hereinbefore provided for in Section IV, unless the defendant requires as a condition of such disposition that the purchaser, transferee, assignee or licensee, as the case may be, shall observe the requirements of Sections IV and V hereof, as applicable, and such purchaser, transferee, assignee or licensee shall file with this Court, prior to the consummation of said transaction, an undertaking to be bound by said provisions of this Final Judgment.

**VI**

[ *Infringement Suits*]

Defendants are jointly and severally enjoined and restrained from instituting any proceeding, judicial or administrative, for infringement of any of the patents to which Sections IV and V of this Final Judgment may apply alleged to have occurred prior to the date of the entry of this Final Judgment.

**VII**

[ *Restriction on Licensing*]

The defendants are jointly and severally enjoined and restrained from, in any manner, granting to any other person, any power or authority, whether by contract, agreement or otherwise, to hinder, restrict, limit or prevent such defendant from granting a license under any patent or patents owned or controlled by such defendant to any person.

**VIII**

[ *Agreement Terminated*]

That certain contract dated August 3, 1948 entered into by and between Lee Flora, Clyde E. Clapper, Michael A. Halligan, Cab-Ette Company, a corporation, Fort Dodge Tent and Awning Company, a corporation, and Bearing Distributor Company, a corporation, to the extent, if any, that the same may still be in force and effect, is hereby declared to be cancelled, null and void, and the defendants are jointly and severally enjoined and restrained from renewing, adhering to, maintaining or continuing, or claiming any rights under, any of the provisions thereof.

**IX**

[ *Price Fixing— Allocation of Markets*]

(A) The defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining furthering or enforcing, directly or indirectly, any combination, conspiracy, contract, agreement, understanding, plan or program with any person to fix, establish, or determine the prices, or the terms or conditions relating to prices, for the sale of tractor cabs to any third person;

(B) The defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining, furthering or enforcing, directly or indirectly, any combination, conspiracy, contract, agreement, understanding, plan or program with any other defendant or any manufacturer of tractor cabs to allocate or divide territories, markets, dealers or distributors for the manufacture, distribution or sale of tractor cabs.

**X**

[ *Copies of Decree*]

The defendants Clapper and Flora are ordered and directed within sixty days after the entry of this Final Judgment to send a copy of this Final Judgment to each of their present licensees under any patent or patents to which Section IV of this Final Judgment may apply and to each applicant who has, in writing, heretofore applied for and has not received a license to manufacture, use or sell tractor cabs under any such patent or patents. In the case of applicants who may apply for a license to make, use or sell tractor cabs pursuant to Section IV of this Final Judgment, a copy of this Final Judgment shall be sent promptly to each such applicant immediately after receipt of any such application. Each defendant, not a patentee, shall upon inquiry from an applicant for a license, advise the applicant to whom the application should be addressed, if known.

**XI**

[ *McGuire Act*]

Nothing contained in this Final Judgment shall prevent the defendants from availing themselves of the benefits, if any, of the Act of Congress of July 14, 1952, commonly known as the McGuire Act, or of the Act of Congress of 1937, commonly known as the “Miller-Tydings proviso to Section 1 of the Act of Congress of July 2, 1890 entitled ‘An Act to protect trade and commerce against unlawful restraints and monopolies’ “.

**XII**

[ *Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, made to its principal office, be permitted (1) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it to interview officers or employees of said defendant, who may have counsel present, regarding any such matters, and (3) upon such request the defendant 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 necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section XII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

**XIII**

[ *Jurisdiction Retained*]

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

Appendix A-4

*United States v. Telescope Carts, Inc., et al.*, No. cv-6935 (W.D. Mo. 1953)

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MISSOURI

WESTERN DIVISION

| | |
|---|---|
| UNITED STATES OF AMERICA, Plaintiff, v. TELESCOPE CARTS, INC., ET AL., Defendants. | CIVIL ACTION No. 6935 Filed September 24, 1953 |

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on May 21, 1951, and the defendants having appeared and filed their answers to said complaint denying the substantive allegations thereof; and the plaintiff and said defendants, 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 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

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

As used in this Final Judgment:

(A) "Telescope cart" means a cart and basket, and parts thereof, in combination, consisting of a wheeled carriage which will telescope one within the other, and a basket or baskets which telescope in a horizontal sliding direction when the baskets are in their normal position without the removal of the basket or baskets from the carriage. The basket is provided with a hinged rear gate to permit a like basket to telescope therethrough.

(B) "Person" means an individual, partnership, firm, association, corporation or other legal entity.

(C) "Patents" means United States Letters Patent and applications therefor, all re-issues, continuations, divisions, or extensions thereof, and patents issued upon said applications, relating to telescope carts.

III

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

IV

(A)t Each defendant is ordered and directed, in so far as it hast or may acquire the power or authority to do so to grant to any applicant making written request therefor a license or sublicense to manufacture, use and sell telescope carts under United States Letters Patent No. 2,479,530 and any patent which may issue to or be acquired by any such defendant on telescope carts upon the Goldman patent applications Nos. 25262 and 71703 assigned to Orla E. Watson, or under any continuation, reissue or extension thereof or any other patent covering telescope carts issued to or acquired by any such defendant within five years from date hereof, such license or sublicense to be for the full unexpired term of the patent or patents. Said licenses or sublicenses shall contain no restriction whatsoever except that:

(1)t The license or sublicense may be transferable or nontransferable.t

(2)t A uniform, nondiscriminatory, reasonable royalty may be charged;t

(3) Reasonable provisions may be made for the periodic reporting and payment of any royalties due from the licensee or sublicensee and for periodic inspection of the books and records of the licensee or sublicensee by an independent auditor or any person acceptable to the licensee or sublicensee who shall report to the licensor only the amount of the royalty due and payable;

(4)t Reasonable provision may be made for cancellation of the license or sublicense upon failure of the licensee or sublicensee to pay the royalties found to be duet and payable or to permit the inspection of his books and records as hereinabove provided;t

(5)t The license must provide that the licensee or subt licensee may cancel the license or sublicense at any time by giving thirty days' notice in writing to the licensor;t

(6) The license must provide that the licensee or sublicensee shall immediately have the benefit of anyt more favorable terms contained in any license or sublicense which is in existence at the time of thet license or which is granted thereafter to any othert licensee or sublicensee.t

(7)t The license or sublicense may provide that thet licensee or sublicensee shall affix to any productt manufactured or sold under such license or sublicenset

the number or numbers of the patent or patents under which the product is so manufactured or sold.

(B) Upon receiving any application for a license or sublicense in accordance with the provisions of this Section IV, the defendant shall advise the applicant of the royalty it deems reasonable for the patent or patents to which the application pertains. If the parties are unable to agree upon what constitutes a reasonable royalty within sixty (60) days from the date application for the license was received by the defendant, the applicant therefor may apply forthwith to this Court for the determination of a reasonable royalty, and the said defendant shall, upon receipt of notice of filing such application, promptly give notice thereof to the Attorney General. In any such proceeding the burden of proof shall be upon the defendant or its assignee, vendee, or transferee, to establish the reasonableness of the royalty requested by it; and the reasonable royalty rates, if any, determined by the Court shall apply to the applicant and to the holders of all other licenses or sublicenses issued under the same patent or patents. Pending the completion of negotiations or of any such Court proceeding, the applicant shall have the right to make, use, and vend under the patent or patents to which its application pertains, without payment of royalty or other compensation, but subject to the following provisions: The defendant may apply to the Court to fix an interim royalty rate pending final determination of what constitutes a reasonable royalty, if any. If the Court fixes such interim royalty rate, the defendant shall then grant, and the applicant shall accept, a license or sublicense as the case may be, providing for the periodic payment of royalties at such interim rate from the date of the making of such application by the applicant. If the applicant fails to accept such license or sublicense or fails to pay the interim royalty therein

provided, such action shall be ground for the dismissal of his application. Where an interim license or sublicense has been issued pursuant to these provisions, reasonable royalty rates, if any, as finally determined by the Court shall be retroactive for the applicant and all other licensees or sublicensees under the same patent or patents to the date the applicant filed his application with the Court for the fixing of a reasonable royalty.

V

The defendants are jointly and severally enjoined and restrained from making any disposition of any of the patents or patent applications covered by Section IV of this Final Judgment or any rights with respect thereto, which deprives such defendant of the power or authority to grant licenses or sublicenses as hereinbefore provided for in Section IV, unless it requires as a condition of such disposition, that the purchaser, transferee, assignee, or licensee, as the case may be, shall observe the requirements of Sections IV and V hereof, as applicable, and such purchaser, transferee, assignee, or licensee shall file with this Court, prior to the consummation of said transaction, an undertaking to be bound by said provisions of this Final Judgment.

VI

Defendants Telescope Carts, Inc. and Orla E. Watson are jointly and severally enjoined and restrained from maintaining, adhering to or enforcing any contract, agreement or patent license existing on the date of this Final Judgment between such defendants, or either of them, and John Chatillon & Sons which grants or purports to grant to said John Chatillon & Sons any rights under any of the patents or patent applications to which Section IV of this Final Judgment may apply.

VII

That certain written contract dated June 2, 1949, entered into by and between Orla E. Watson, as inventor, Telescope Carts, Inc., as licensee, and Folding Carrier Corp., as sublicensee, to the extent, if any, that the same may still be in force and effect, is hereby declared to be cancelled, null and void, and the defendants are jointly and severally enjoined and restrained from renewing, adhering to, maintaining or continuing, or claiming any rights under, any of the provisions thereof.

VIII

The defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining, furthering or enforcing, directly or indirectly, any combination, conspiracy, contract, agreement, understanding, plan or program to allocate or divide territories or markets for the manufacture, distribution or sale of telescope carts.

IX

The defendants Orla E. Watson and Telescope Carts, Inc., are ordered and directed within sixty days after the entry of this Final Judgment to send a copy of this Final Judgment to each present licensee or sublicensee under any patent or patents to which Section IV of this Final Judgment may apply and to each applicant who has heretofore applied for and has not received a license to manufacture, use and sell telescope carts under any such patent or patents. In the case of applicants who may apply for a license or sublicense to make, use and sell telescope carts pursuant to Section IV of this Final Judgment, a copy of this Final Judgment shall be sent promptly to each such applicant immediately after receipt of any such application.

X

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, made to its principal office, be permitted (1) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it to interview officers or employees of said defendant, who may have counsel present, regarding any such matters, and (3) upon such request the defendant 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 necessary to the enforcement of this Final Judgment. No information obtained by the means provided in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XI

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment,

for the modification of any of the provisions thereof, and for the purpose of enforcement of compliance therewith and the punish-ment of violations thereof.

XII

The provisions of this Final Judgment shall take effect thirty (30)tdays after the date of its entry.t

September 24, 1953
Date

/s/ Albert L. Reeves
United States District Judge

Appendix A-5

*United States v. Gamble-Skogmo, Inc., et al.*, No. 12776 (W.D. Mo. 1960)

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Gamble-Skogmo, Inc., Western Auto Supply Company, and Bertin C. Gamble., U.S. District Court, W.D. Missouri, 1960 Trade Cases ¶69,770, (Jul. 18, 1960)



United States v. Gamble-Skogmo, Inc., Western Auto Supply Company, and Bertin C. Gamble.

1960 Trade Cases ¶69,770. U.S. District Court, W.D. Missouri, Western Division. Civil Action No. 12776. Dated July 18, 1960. Filed July 18, 1960. Case No. 1513 in the Antitrust Division of the Department of Justice.

## Sherman and Clayton Acts

**Combinations and Conspiracies—Exchange of Information—Consent Decree.**—A corporate defendant and one of its stockholders, engaged in the operation of a chain of retail stores specializing in the sale of "hard" goods, were prohibited by the terms of a consent decree from exchanging confidential information with a competitor, also named as a defendant.

**Acquisition of Stock or Assets—Prior Voluntary Divestiture—Consent Decree.**—A company and one of its stockholders, engaged in the operation of a chain of retail stores specializing in the sale of "hard" goods, were prohibited by a consent decree from acquiring or holding any interests in a competitor, also named as a defendant. The prohibition against the stockholder applied to the acquisition or holding of interests in both companies simultaneously. The consent decree was entered upon the representation by the defendants that they had already divested themselves of all interests in the competitor.

For the plaintiff: Robert A. Bicks, Assistant Attorney General; W. D. Kilgore, Jr., George D. Reycraft, Bill G. Andrews, and J. B. Walsh, Attorneys, Department of Justice; Edward L. Scheufler, United States Attorney.

For the defendants: James C. Wilson, Kansas City, Mo., for Western Auto Supply Co.; Winston, Strawn, Smith & Patterson, by Thomas A. Reynolds, Chicago, I11., and Callahan & Callahan, by Edward J. Callahan, Minneapolis, Minn., for Gamble-Skogmo. Inc. and Bertin C. Gamble.

### Final Judgment

DUNCAN, District Judge [ *In full text*]: Plaintiff, United States of America, having filed its complaint herein on April 1, 1960, and the defendants having appeared and filed answers denying the substantive allegations of the complaint and filed motions to strike the complaint, which motions were denied; and plaintiff and defendants having severally consented to the making and entry of this Final Judgment without trial or final adjudication of any issue of fact or law herein, without admission in respect to any issue, and without any findings of fact, and the Court having considered the matter and being duly advised,

Now, Therefore, before any testimony has been taken and without trial or final adjudication of any issue of fact or law herein and upon consent of the parties hereto and the representation of defendants Gamble-Skogmo and Bertin C. Gamble that they have sold all financial or stock interests, direct or indirect, in Western Auto to Beneficial Finance Co., a Delaware corporation, Beneficial Building, Wilmington, Delaware, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[ *Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states claims upon which relief may be granted against defendants Gamble-Skogmo, Western Auto and Bertin C. Gamble 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,

and under Section 1 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209 (15 U. S. C. § 4), as amended, entitled “An act to protect trade and commerce against unlawful restraints and monopolies” commonly known as the Sherman Act, as amended.

**II**

[ *Definitions*]

As used in this Final Judgment:

(A) “Gamble-Skogmo” shall mean defendant Gamble-Skogmo, Inc., a corporation organized and existing under the laws of the State of Delaware with its principal office in Minneapolis, Minnesota;

(B) “Western Auto” shall mean defendant Western Auto Supply Company, a corporation organized and existing under the laws of the State of Missouri with its principal office in Kansas City, Missouri.

**III**

[ *Applicability*]

The provisions of this Final Judgment applicable to any defendant shall apply to that defendant and to its or his officers, directors, agents, servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with any defendant who receives actual notice of this Final Judgment by personal service or otherwise.

**IV**

[ *Acquisitions Prohibited*]

(A) Defendant Gamble-Skogmo is en joined and restrained from acquiring or holding any interest, directly or indirectly, in the business, capital stock or other share capital or assets of defendant Western Auto.

(B) Defendant Bertin C. Gamble is en joined and restrained from acquiring or holding any interest, directly or indirectly, in the business, capital stock or other share capital or assets of defendant Western Auto if defendant Bertin C. Gamble holds at that time or acquires any interest, directly or indirectly, in the business, capital stock or other share capital or assets of defendant Gamble-Skogmo.

Provided, further, that this section shall not prevent any agent, servant or employee (other than officers and directors) of Gamble-Skogmo or any of its subsidiaries and affiliates from owning 1% or less of the outstanding stock of Western Auto for their own account and not on behalf of or on account of Gamble-Skogmo, Inc. or Bertin C. Gamble.

**V**

[ *Confidential Exchanges*]

Defendant Western Auto is enjoined from exchanging with or furnishing to Gamble-Skogmo or Bertin C. Gamble, and defendants Gamble-Skogmo and Bertin C. Gamble are each enjoined from exchanging with or furnishing to Western Auto any trade secrets or records of a confidential nature, or information contained therein, unless such information or records are available upon written request to other competitors.

**VI**

[ *Compliance*]

For the purpose of securing compliance with this Final Judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to any defendant, at its or his principal office, be permitted with counsel present:

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

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

Any defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its or his principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment applicable to such defendant as from time to time may be necessary for the enforcement of this Final Judgment.

No information obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of plaintiff except in the course of 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 Retained*]

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

Appendix A-6

*United States v. Union Carbide Corp.*, No. cv-12881 (W.D. Mo. 1964)

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Union Carbide Corporation., U.S. District Court, W.D. Missouri, 1964 Trade Cases ¶71,227, (Oct. 9, 1964)



United States v. Union Carbide Corporation.

1964 Trade Cases ¶71,227. U.S. District Court, W.D. Missouri, Western Division. Civil Action No. 12881. Entered October 9, 1964. Case No. 1544 in the Antitrust Division of the Department of Justice.

## Sherman Act

**Price Fixing—Antifreeze—Consent Judgments.**—A manufacturer of antifreeze was prohibited under the terms of a proposed consent judgment from Entering into fair trade contracts for one year, appointing agents to sell the product at the manufacturer's pre-designated price for three years or from, agreeing with distributors to restrict customer selection or to maintain resale prices.

For the plaintiff: William H. Orrick, Jr., Assistant Attorney General, William D. Kilgore, Jr., Harry G. Sklarsky, Earl A. Jinkinson, Robert L. Eisen, Harold E. Baily, and Joseph E. Paige, Attorneys, Department of Justice.

For the defendant: Richard H. Gregory, Jr., for Union Carbide Corp.

### Final Judgment

OLIVER, District Judge: Plaintiff, United States of America, having filed its complaint herein on June 28, 1960; defendant having filed an answer to such complaint on September 27, 1960, denying the substantive allegations thereof; and plaintiff and defendant having by their respective attorneys consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without any admission by plaintiff or defendant in respect to any such issue,

Now, therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein and upon consent of the parties signatory hereto as aforesaid, it is hereby

Ordered, adjudged and decreed as follows:

**I**

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

**II**

As used in this Final Judgment:

(A) “ ‘Prestone’ brand anti-freeze” means an ethylene glycol base anti-freeze produced and marketed by defendant under the trade mark “Prestone”

(B) “Person” means any individual, partnership,, corporation, or any other business or legal entity;

(C) “Agent” means any person selling for or on behalf of defendant “Prestone” brand anti-freeze from stock consigned to it;

(D) “Distributor” means any person purchasing “Prestone” brand anti-freeze from, the defendant for resale;

(E) “Fair trade contract” means any resale price maintenance contract, or supplement thereto, pursuant to which the resale price of “Prestone” brand anti-freeze is lawfully fixed, established or maintained under the fair trade

laws of any state, territory or possession and the Act of Congress of August 17, 1937, commonly called the Miller-Tydings Act, or the Act of Congress of July 14, 1952, commonly called the McGuire Act.

**III**

The provisions of this Final Judgment applicable to the defendant shall apply also to its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with the defendant who shall have received actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment the defendant and its officers, directors, agents, employees and subsidiaries, when acting in such capacity, shall be deemed to be one person.

**IV**

The defendant is enjoined:

(A) For a period of one (1) year from entering into fair trade contracts in the distribution of “Prestone” brand anti-freeze under fair trade laws now in effect;

(B) For a period of three (3) years from appointing agents to sell “Prestone” brand anti-freeze to persons at prices designated by defendant;

(C) From entering into, maintaining, adhering to or enforcing any combination, contract,, agreement or understanding with a distributor of “Prestone” brand anti-freeze limiting or restricting such distributor in the selection of his customers;

(D) From entering into, maintaining, adhering to or enforcing any combination, contract, agreement or understanding with a distributor fixing or maintaining the price for the sale of “Prestone” brand anti-freeze to any third person.

Subject to the terms of subsections (A) and (B) above, this Section IV shall not be deemed to prohibit the defendant from engaging in any practices which any present or future act of Congress makes lawful.

**V**

Within sixty (60) days after the date of the entry of this Final Judgment, defendant shall mail to each person with whom defendant then has existing contractual relations for the marketing of “Prestone” brand anti-freeze a true copy of this Final Judgment; and shall file with this Court and serve upon the plaintiff, within one hundred and twenty (120) days after the date of the entry of this Final Judgment, a report of compliance with this section.

**VI**

For the purpose of securing compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, 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, upon reasonable notice to defendant made to its principal office be permitted subject to any legally recognized privilege:

(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 control of said defendant relating to any of the matters contained in this Final Judgment, and

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

For the purpose of securing compliance with this Final Judgment, the defendant upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports, under oath if so requested, with respect to any of the matters contained in this Final Judgment.

No information obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff 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 for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment and for the enforcement of compliance therewith and the punishment of the violations of any of the provisions contained herein.

Appendix A-7

*United States v. Chas. Pfizer & Company, Inc.*, No. 152980-1 (W.D. Mo. 1966)

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Chas. Pfizer & Co., Inc., U.S. District Court, W.D. Missouri, 1966 Trade Cases ¶71,643, (Jan. 17, 1966)



United States v. Chas. Pfizer & Co., Inc.

1966 Trade Cases ¶71,643. U.S. District Court, W.D. Missouri, Western Division. Civil Action No. 15290-1. Entered January 17, 1966. Case No. 1833 in the Antitrust Division of the Department of Justice.

**Price Fixing—Resale Prices—Cosmetics—Consent Decree.**—A cosmetics manufacturer was prohibited by a consent judgment from prescribing wholesale or retail prices for its cosmetics. Fair trading was permitted in appropriate states, but even then would be suspended for one year if relief against fair trading should be obtained in a similar action pending against another cosmetic manufacturer.

**Price Fixing—Resale Prices—Refusal to Sell—Cosmetics—Consent Decree.**—A cosmetics manufacturer was prohibited by a consent judgment from refusing to sell, or threatening to refuse to sell, to retailers or wholesalers because of the prices at which the wholesaler or retailer has sold the cosmetics.

For the plaintiff: F. Russell Millin and William H. Orrick Jr., Assistant Attorney General, Washington, D. C, and Robert L. Eisen, Department of Justice, Chicago, Ill.

For the defendant: Watson, Ess, Marshall & Enggas, and Simpson, Thacher & Bartlett, New York, N. Y.

**Final Judgment**

OLIVER, District Judge: The plaintiff, United States of America, having filed its complaint herein on December 7, 1964, the defendant having filed its answer denying the substantive allegations of the complaint, and the parties hereto by their respective attorneys having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or an admission by any party hereto with respect to 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 the consent of the parties hereto, it is hereby

Ordered, adjudged, and decreed as follows:

**I**

This court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims for relief 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,” commonly known as the Sherman Act.

**II**

As used in this Final Judgment:

(A) “Defendant” shall mean the defendant Chas. Pfizer & Co., Inc., a corporation organized and existing under the laws of the State of Delaware.

(B) “Person” shall mean an individual, partnership, firm, corporation, association, or other business or legal entity.

(C) “Retailer”’ shall mean any person who purchases cosmetics for resale to consumers.

(D) “Wholesaler” shall mean any person who purchases cosmetics for resale to retailers.

(E) “Cosmetics” shall mean any and all products intended to be applied to the human body or any part thereof for the purpose of cleansing, beautifying, or altering the appearance thereof, whether intended for use by either men or women.

(F) “Coty cosmetics” shall mean cosmetics sold or offered for sale by the Coty Division of defendant or hereafter transferred from said Division to any other Division, department, subsidiary or affiliate of defendant; and any and all cosmetics embodying in whole or in part trade names or trademarks owned or used by Coty Inc., at the time of its acquisition by defendant, or used by the Coty Division of defendant after said acquisition.

**III**

The provisions of this Final Judgment applicable to the defendant shall also apply to each of its officers, directors, agents, employees, successors, and assigns, and to all persons in active concert or participation with the defendant who receive actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment, the defendant and its officers, directors, employees, and subsidiaries, when acting in such capacity, shall be deemed to be one person. The provisions of this Final Judgment are applicable to Coty cosmetic sales only in the United States.

**IV**

Subject to the provisions of paragraph VI, the defendant is enjoined and restrained from entering into, adhering to, maintaining, enforcing, or claiming any rights under, any combination, conspiracy, contract, or agreement with any person engaged in the sale of Coty cosmetics to:

(A) Fix, establish, maintain, or adhere to prices in the sale of Coty cosmetics to any third person.

(B) Refuse to sell Coty cosmetics to any third person because of the price or prices at which such third person has sold such cosmetics.

**V**

For a period of five years after entry of this Final Judgment, except in States where the defendant legitimately fair trades its Coty cosmetics under State fair trade laws, defendant is enjoined and restrained from refusing to sell or threatening to refuse to sell Coty cosmetics to any retailer or wholesaler because of the price or prices at which such retailer or wholesaler has sold such cosmetics. Provided, however, that the defendant may refuse to sell to any retailer or wholesaler for any legitimate reason other than the price at which said retailer or wholesaler has sold Coty cosmetics.

**VI**

Nothing contained in this Final Judgment shall be deemed to prohibit the defendant from availing itself of such rights, or performing such obligations, if any, as it may have arising under any present or future act of Congress, including the Miller-Tydings Act and the McGuire Act. Provided, however, that if, and at such time as, a Final Judgment shall become effective in the case of *United States v. Revlon, Inc.*, Civil Action No. 62 Civ. 2219 (S. D. N. Y.), which contains a similarly onerous provision of at least the same duration, the defendant shall thereupon be enjoined for a period of one year from entering into or enforcing fair trade contracts in the distribution of Coty cosmetics under fair trade laws then in effect.

**VII**

Within sixty (60) days after the date of the entry of this Final Judgment defendant shall mail to each of its Coty cosmetics customers a true copy of this Final Judgment and shall file with this Court and serve upon the plaintiff within one hundred twenty (120) days after the date of the entry of this Final Judgment a report of compliance with this section.

**VIII**

For the purpose of securing compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, 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 upon reasonable notice to defendant made to its principal office be permitted subject to any legally recognized privilege:

(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 control of said defendant relating to any of the matters contained in this Final Judgment; and

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

For the purpose of securing compliance with this Final Judgment, the defendant upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports, under oath if so requested, with respect to any of the matters contained in this Final Judgment. No information obtained by the means provided in this section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff 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.

**IX**

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the enforcement of compliance therewith, and for the punishment of violations of any of the provisions contained herein.

# Appendix A-8

*United States v. Kansas City Music Operators Ass'n, et al.*, No. 18238-4 (W.D. Mo. 1971)

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF MISSOURI

WESTERN DIVISION

| | |
|---|---|
| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>KANSAS CITY MUSIC OPERATORS ASSOCIATION; B & G AMUSEMENT COMPANY; B & G CIGARETTE VENDING COMPANY; PARAMOUNT MUSIC COMPANY, INC.; CHARLES W. BENGIMINA and NICHOLAS EVOLA,<br><br>Defendants. | CIVIL ACTION<br><br>NO. 18238-4<br><br>Filed: August 17, 1971<br><br>Entered: September 18, 1971 |

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on March 30, 1970, and the plaintiff and the defendants, 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 evidence or an admission by any party signatory hereto with respect to 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 of the parties as aforesaid, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties hereto, and the complaint

states claims upon which relief may be granted against the defendants and each of them under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

As used in this Final Judgment:

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

(B) "Vending machine" means a machine or mechanical device which, when coins are inserted therein, dispenses cigarettes, plays phonograph records, or activates a table or other facility for playing amusement games such as pool, bowling, or shuffle-board;

(C) "Vending machine product" means cigarettes sold through cigarette vending machines and records played in juke boxes;

(D) "Customer" means a person who operates a business or other establishment where vending machines are placed and includes, but is not limited to, restaurants, retail stores, offices, hotels, motels, banks, factories, taverns, service stations and bowling alleys;

(E) "Vending machine business" means the business of placing and seeking to place vending machines and vending machine products at customers' locations, the servicing and repairing of such vending machines, and the selling of cigarettes and furnishing of record music and game facilities through said machines;

(F) "Vending machine operator" means a person engaged in the vending machine business;

(G) "B & G Companies" means defendants B & G Cigarette Vending Company and B & G Amusement Company;

(H) "Paramount" means defendant Paramount Music Company, Inc.;

(I) "Association" means defendant Kansas City Music Operators Association.

III

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

IV

Each defendant is enjoined and restrained from entering into, adhering to, enforcing or claiming any rights under, any contract, agreement, understanding, plan or program

(A) With any vending machine operator or any manufacturer or seller of vending machines or vending machine products, not owned or controlled by such defendant, to directly or indirectly:

(1) Fix, determine, maintain, stabilize, or adhere to prices, commissions or other terms or conditions of sale of any vending machine products to any third person;

(2) Fix, determine, maintain, stabilize, or adhere to commissions or other terms or payments to customers for the right to place or maintain vending machines and vending machine products at customer locations; and

(3) Refrain from purchasing vending machines with the purpose or effect of restricting the placement of new or improved vending machines at any location.

(B) With any vending machine operator or any manufacturer or seller of vending machine products, not owned or controlled by such defendant, to, directly or indirectly, fix, determine, maintain, stabilize, or adhere to prices or other terms or conditions for the purchase or repair of any vending machines.

(C) With any person, not owned or controlled by such defendant, to directly or indirectly, divide, allocate, or apportion markets, territories or customers, or refrain from soliciting or accepting vending machines business from customers doing business with other vending machine operators.

V

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

(A) Using threats, coercion or persuasion to prevent or attempt to prevent any vending machine operator from soliciting any customer of another vending machine operator or from expanding its vending machine business;

(B) Using threats or coercion to prevent or attempt to prevent any customer from discontinuing the use of any vending machine or vending machine product of any vending machine operator;

(C) Threatening to put any vending machine operator or customer out of business;

(D) Causing, or threatening to cause, physical harm or property damage to any actual or potential vending machine operator or customer, to any of their owners, officers, directors, agents, servants, or employees, or to any family members of such owners, officers, directors, agents, servants, or employees;

(E) Discussing or exchanging with any vending machine operator the prices to be charged for vending machine products dispensed through vending machines, the commissions to be paid to customers, or the types of vending machines to be purchased or to be placed at a customer's location;

(F) Joining, participating in, or belonging to any trade association, organization, or other group of vending machine operators with knowledge that any of the activities thereof are inconsistent with any terms of this Final Judgment;

(G) Causing any person, not owned or controlled by such defendant, to boycott or refuse to sell vending machines or vending machine products, or repair services to any vending machine operator or customer.

VI

Each defendant is enjoined and restrained from performing the following acts for the purpose or with the effect of eliminating or destroying a competitor or competitors: (i) placing or offering to place vending machines in a location or potential location on terms or conditions which involve below cost prices or commissions, (ii) giving or offering to give lump sum cash payments to the customer, or (iii) giving or offering to give free services, gratuities, or other similar inducements to obtain the right or renewal of a right, to place vending machines at any customer's location.

VII

Within sixty days of the entry of this Final Judgment, defendant Association shall distribute a copy of this Final Judgment to each of its members and former members as shown on the attached list designated as Schedule A, shall file with this Court and serve upon plaintiff an affidavit as to the fact and manner of compliance with this Section VII, and then shall dissolve forthwith. The remaining assets, if any, shall be applied to the outstanding fine levied against the defendant Association as part of the Final Judgment in United States v. Charles W. Bengimina et al., Criminal No. 23078-1 (W.D. Mo.).

VIII

Within sixty days of the entry of this Final Judgment, defendants Paramount and B & G Companies shall each distribute a copy of this Final Judgment to each of its customers and shall file with this Court and serve upon plaintiff an affidavit as to the fact and manner of compliance with this Section VIII.

IX

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted, subject to any legally recognized privilege (a) reasonable access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment, and (b) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, partners or employees of such defendant, who may have counsel present, regarding any such matters. A defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice made to its principal office, shall submit reports in writing with respect to any of the matters contained in this Final Judgment as may from time to time be

requested. No information obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person except a duly authorized representative of the Executive Branch of the United States and 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.

X

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or the carrying out of this Final Judgment, for the modification or termination of any of the provisions hereof for the purpose of enabling the plaintiff to apply to this Court for the enforcement of compliance herewith and for the punishment of violations hereof.

Dated: September 18, 1971

/s/ JOHN W. OLIVER
United States District Judge

SCHEDULE A

The following is a list of names and addresses of persons and firms who are members or former members of the defendant, Kansas City Music Operators Association:

| Company | Individual | Address |
|---|---|---|
| Intercity Music | Jim Morris | 11 North 7th Street<br>Kansas City, Kansas |
| Kansas City Music Co. | Tom Turner | 10905 Hickman Mills Dr.<br>Kansas City, Missouri |
| Howe Amusement Company | Elmer "Red" Howe | 4135 Truman<br>Kansas City, Missouri |
| Missouri-Valley Amusement Company | John Masters | 213 S. E. Main<br>Kansas City, Missouri |
| Boulevard Music Service Company | Louis Renner<br>Charles Eagan | 2429 South Mill<br>Kansas City, Kansas |
| Gilbert Amusement Company | Robert Gilbert, Jr. | 3427 Main<br>Kansas City, Missouri |
| United Music Company | Carl Hoelzel | 3410 Main<br>Kansas City, Missouri |
| American Music Company | Charles Carrola | 401 North Fifth<br>Kansas City, Missouri |
| Filger Enterprises | Frederick F. Filger, Jr. | 2400 W. Vivion Road<br>Kansas City, Missouri |
| Advance Music | Dave Cooper | 1604 Grand<br>Kansas City, Missouri |
| Lee Food and Vending Service | Lee Licausi | 3001 Mercier<br>Kansas City, Missouri |
| Donaldson Amusement Co. | Harry T. Donaldson | 6140 Walnut<br>Kansas City, Missouri |
| Double S. Vending Company | Sam Stallone | 2603 East 18th Street<br>Kansas City, Missouri |
| Waldo Vending Co. | Joseph Fasone | 1300 East Eighth Street<br>Kansas City, Missouri |

# Appendix A-9

*United States v. Associated Milk Producers, Inc.*, No. 74 CV 80-W-1 (W.D. Mo. 1975)

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Associated Milk Producers, Inc., U.S. District Court, W.D. Missouri, 1975-1 Trade Cases ¶60,327, (Apr. 30, 1975)



United States v. Associated Milk Producers, Inc.

1975-1 Trade Cases ¶60,327. U.S. District Court, W.D. Missouri, Western Division. No. 74 CV 80-W-1. Entered April 30, 1975. Case No. 2219, Antitrust Division, Department of Justice.

## Sherman and Agricultural Marketing Agreement Acts

**Monopoly—Restraint of Trade—Dairy Marketing Cooperative—Consent Decree.**—A dairy marketing cooperative, an agricultural marketing association organized under the Capper-Volstead Act, would be barred by a consent decree from practices designed to eliminate the competition of independent milk producers. Generally, the cooperative is barred from: agreeing with or coercing milk haulers not to haul non-members' milk; making anticompetitive requirements or exclusive dealing contracts with milk processors; coercing processors not to deal with non-members; coercing non-members to join the association; and coercing members to remain in the association. The acquisition of milk processing plants, without government approval, is forbidden for 10 years, as are anticompetitive agreements with other cooperatives relating to the purchase of milk from plants not regulated under any Federal Milk Marketing Order or from producers shipping milk to such plants. Reorganization of the cooperative into separate regional or sectional units is also barred, unless each agrees to be bound by the terms of the decree. Procedures for enforcement of the decree, by the United States and other persons, and for modification were established by the court.

**For plaintiff:** C. J. Calnan, Asst. U. S. Atty., John E. Sarbaugh and Rebecca Schneiderman, Antitrust Div., Dept. of Justice, Chicago, Ill. **For defendant:** Edwin C. Heininger, of Mayer, Brown & Piatt, Chicago, Ill., Leroy Jeffers, of Vinson, Elkins, Searls & Smith, Houston, Tex., and Frank Masters, San Antonio, Tex.

### Final Judgment

OLIVER, D. J.: Plaintiff, United States of America, having filed its Complaint herein on February 1, 1972, and the parties hereto, by their respective attorneys, having consented to the making and entry of this Final Judgment, prior to the taking of any testimony, without trial or adjudication of any issue of fact or law herein, and without admission by either party in respect to any issue:

Now, Therefore, prior to the taking of any testimony, before any adjudication of any issue of law or fact herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as Follows:

**I**

[ *Jurisdiction*]

This Court has jurisdiction over the subject matter of this action, and of the parties hereto. The Complaint states claims upon which relief may be granted under Sections 1 and 2 of the Act of Congress of July 2, 1890, as amended (15 U. S. C. §§ 1 and 2), commonly known as the Sherman Act.

**II**

[ *Definitions*]

As used in this Final Judgment:

(a) “Base” means the volume of milk assigned by defendant to certain member-producers for which such member-producer receives a price greater than the price received for milk marketed by such member-producer in excess of his assigned base;

(b) “Committed supply” means a supply of milk which defendant commits itself to deliver to a processor for a period in excess of one month;

(c) “Cooperative” means a person which meets the requirements of 7 U. S. C. § 291;

(d) “Cost” means the fully allocated costs as determined on the basis of generally accepted accounting practices consistently applied;

(e) “Direct shipped milk” means milk which is shipped direct from the farm at which it is produced to the processor;

(f) “Federal Milk Marketing Order” means a marketing agreement or order, and applicable regulations and rules of practice and procedure, relating to the handling of milk and adopted pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. § 601, *et seq*.);

(g) “Fluid milk” means pasteurized milk sold for human consumption in fluid form;

(h) “Former member-producer” means a nonmember-producer who once belonged to defendant but has lawfully terminated any membership or marketing agreement or contract with defendant;

(i) “Member-producer” means a producer belonging to defendant;

(j) “Milk” means raw milk produced by cows prior to pasteurization;

(k) “Milk hauler” means a person, not an employee of defendant, who owns or operates trucks which transport milk;

(l) “Milk products” means products manufactured from milk, such as butter, ice cream, cheese, and powdered milk;

(m) “Nonmember-producer” means a producer not belonging to defendant or any cooperative of producers not belonging to defendant;

(n) “Person” means any corporation, partnership, association, individual, cooperative, or other business or legal entity;

(o) “Plant” means the land, buildings, facilities, and equipment constituting a single operating unit or establishment in which milk or milk products are received, transferred, reloaded, processed, or manufactured;

(p) “Processor” means a person engaged in the business of purchasing milk and processing, bottling, or packaging fluid milk or milk products or manufacturing milk products;

(q) “Producer” means any person engaged in the production of Grade A milk; and

(r) “Southern Region” means the following geographic area:

> Texas, Oklahoma, Arkansas; Campbell County, Tennessee and the area in Tennessee west of and including Henry, Carroll, Henderson and Hardin Counties; the area in Kentucky south or west of and including Ballard, Graves, and Calloway Counties; the area in New Mexico east of and including San Juan, McKinley, Valencia, Socorro, Sierra, and Dona Ana Counties; the area in Kansas west of and including Marshall, Pottawatomie, Geary, Morris, Chase, Coffey, Anderson, and Linh Counties; La Plata and Montezuma Counties in Colorado; De Soto County in Louisiana; Gage, Jefferson, Johnson, Pawnee, and Thayer Counties in Nebraska; the area in Mississippi north of and including DeSoto, Tate, Panola, Lafayette, Pontotoc, Lee and Tawamba Counties; and Bates, Butler, Howell, Jasper, McDonald, Newton, Stoddard, Taney, Vernon, Cass, Cedar, Barry, Christian, Ripley, New Madrid, Dade, Stone, Douglas, Oregon, Dunklin, St. Clair, Lawrence, Ozark, and Shannon Counties in Missouri.

**III**

[ *Applicability*]

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

**IV**

[ *Prohibited Acts*]

The defendant is hereby enjoined and restrained from:

(a) Entering into or enforcing any contract, agreement, or understanding with any milk hauler which requires that such milk hauler transport milk for a member-producer only, but defendant may require that a milk hauler not commingle member-producer milk with nonmember-producer milk unless such requirement would be inconsistent with the provisions of Section VI of this Final Judgment;

(b) Using threats, coercion, or undue influence to induce any milk hauler to refuse or threaten to refuse to haul milk for any nonmember-producer, or to induce any processor to refuse to deal with any milk hauler, but defendant may require that a milk hauler not commingle member-producer milk with nonmember-producer milk unless such requirement would be inconsistent with the provisions of Section VI of this Final Judgment;

(c) Purchasing or acquiring control of any milk hauler or of any hauling equipment of any milk hauler who, at the time of the purchase or acquisition of control, is hauling any milk of any nonmember-producer, unless defendant insures that facilities for shipping milk to the plant to which milk of said nonmember-producer is customarily delivered at the time of said purchase or acquisition of control are available to said nonmember-producer on comparable terms and conditions;

(d) Using threats, coercion, or undue influence to induce any processor to give to defendant preferred access to unloading or testing facilities of said processor;

(e) Entering into or enforcing any contract, agreement, or understanding with any processor which binds such processor to purchase a committed supply of milk from defendant for a period in excess of one (1) year or where the effect of entering into such contract(s), agreement(s) or understanding(s) may be to substantially lessen competition or tend to create a monopoly;

(f) Requiring any processor, as a condition of receiving any milk from defendant, to enter into any contract, agreement, or understanding for a committed supply of milk;

(g) Interfering or attempting to interfere with the exercise of the right of any processor to buy milk from a nonmember-producer at whatever prices, terms, or conditions said processor may choose, except that nothing herein shall limit defendant's rights under the Agricultural Fair Practices Act, 7 U. S. C. § 2301 *et seq*.

(h) Requiring or attempting to require any processor or nonmember-producer to use services supplied by defendant, except that defendant may offer services to any processor or nonmember-producer at the cost of providing such services to member-producers;

(i) Requiring or attempting to require any processor, as a condition to the sale or delivery by defendant of any milk to said processor, to deliver to defendant anything of value based on milk sold to said processor by any nonmember-producer;

(j) Requiring or attempting to require any processor to purchase milk for delivery to one plant as a condition to the sale and delivery of milk to any other plant of such processor;

(k) Entering into or enforcing any contract, agreement, or understanding with any person, or aiding or causing others to enter into or enforce any contract, agreement, or understanding with any person, which has the purpose or effect of limiting said person's right to sell or dispose of milk wherever, to whomever, pursuant to whatever prices, terms, or conditions said person chooses to sell or dispose of such milk, provided that nothing

herein shall prohibit defendant from selling milk on a classified price basis according to use or from entering into a common marketing agreement with other persons as authorized or permitted under 7 U. S. C. §291 unless said common marketing agreement is prohibited by Section X of this Final Judgment.

(1) Discriminating or threatening to discriminate against any processor (i) who purchases or proposes to purchase milk from any person other than defendent for any or all of said processor's plants, or (ii) who resells or delivers or proposes to resell or deliver milk to any other processor, in any way, including but not limited to the following:

(1) refusing, limiting or reducing or threatening to refuse, limit, or reduce the sale or delivery of milk to said processor;

(2) refusing or threatening to refuse to sell a committed supply of milk to said processor;

(3) charging said processor a higher unit price for milk delivered to a plant of any processor than defendent charges for milk delivered to a plant of any competitor of said processor located in the same Federal Milk Marketing Order area or, if no Order exists, in, the same geographic area, for milk sold on the same basis for similar use;

(4) engaging in less reliable or otherwise less favorable delivery practices for milk delivered to said processor than defendant furnishes to any competitor of said processor for milk delivered to a plant of said competitor operated in either the same Federal Milk Marketing Order area or, if no Order exists, in the same geographic area;

(5) delivering a lower or less desirable quality of milk to said processor than defendant delivers to a plant of any competitor of said processor operated in either the same Federal Milk Marketing Order area or, if no Order exists, in the same geographic area;

(6) refusing to provide any service, discount or subsidy for milk delivered to a plant of any processor on the same terms and conditions as defendant offers for milk delivered to a plant of any competitor of said processor operated in either the same Federal Milk Marketing Order area or, if no Order exists, in the same geographic area;

(7) failing to offer to compensate said processor for any service performed, such as field services, on the same terms and conditions on which defendant compensates any competitor of said processor operating plants in either the same Federal Milk Marketing Order area or, if no Order exists, in the same geographic area;

(8) requiring said processor to account for its purchases of milk from defendant at any plant in any calendar month on a classified price basis in any manner which results in a larger percentage of the volume of milk supplied by defendant being purchased at the price defendant charges for the highest value utilization than is the percentage of the volume of milk supplied by all producers which is used by said processor in the highest value utilization at all plants receiving milk regulated under the same Federal Milk Marketing Order and owned or operated by said processor in the calendar month; provided that nothing in this paragraph IV(1) shall prevent defendant from (i) charging said processors different prices for milk based upon differing methods of handling or delivering milk, if (a) said differences in price are reasonably related, to differences in defendant's cost; and (b) said differences in price are not charged for the purpose of inducing any processor to cease, limit, reduce, or not make purchases from nonmember-producers; (ii) charging processors different prices for milk based on its use; or (iii) meeting lower prices of a competitor of defendant;

(m) Directly or indirectly offering to sell fluid milk or milk products to any customer of any person who sells fluid milk or milk products processed from milk produced by any nonmember-producer at prices lower than prices at which defendant offers to sell fluid milk or milk products to a similarly situated competitor of said customer;

(n) Directly or indirectly selectively soliciting any customer of any processor who sells fluid milk or milk products processed from milk produced by a nonmember-producer;

(o) Using threats, coercion, or undue influence to induce any producer to join or refrain from terminating its membership in defendant or to deliver its milk to defendant;

(p) Entering into any membership or marketing agreement with any member-producer which binds such member-producer to deliver milk to defendant for a term in excess of one (1) year, except any such contract may provide for automatic renewal for succeeding periods of one (1) year, if either party does not give notice of termination at least thirty (30) days prior to the termination date of such contract, and provided that defendant will promptly provide any member-producer, who so requests, with written notice of the termination date of his contract and the dates on which he can effectively give notice of termination of said contract;

(q) Compelling or attempting to compel any member-producer to enter into any contract, agreement, or understanding which restricts the right of said member-producer to sell any milk to any processor after said member-producer has lawfully terminated his membership and marketing agreement or contract with defendant; except that defendant may require any member-producer who sells or otherwise transfers base to enter into a contract, agreement, or understanding with the transferee of base which provides that, for a period of two (2) years from the date of said transfer, said transferor will not compete with defendant for fluid milk sales in the Southern Region;

(r) Qualifying milk under any Federal Milk Marketing Order with a purpose of forcing, coercing, or inducing nonmember-producers to join; defendant or to cease selling milk in competition with defendant.

**V**

[ *Notification*]

Defendant is hereby ordered and directed for a period of three (3) years from the entry of the Final Judgment to notify each member-producer of the termination date of his membership or marketing agreement, and of the dates on which he can effectively give notice of termination of such agreement; said notice must be given to each member-producer by defendant annually not more than fifty-five (55) days or less than fifteen (15) days prior to the first day on which said member-producer can effectively terminate said membership or marketing agreement; the provisions of this Section V shall not apply to any member-producer whose membership or marketing agreement is for a term of one (1) month or less.

**VI**

[ *Deliveries*]

The defendant is hereby enjoined and-restrained, for a period of three (3) years from the entry of this Final Judgment from refusing or threatening to refuse to deliver or to market the milk of any former member-producer on the same basis as it delivers or markets the milk of any member-producer whose milk is customarily delivered to the same plant to which the milk of said former member-producer's milk was customarily delivered at the time his membership or marketing agreement with defendant is terminated; the obligation of defendant to continue marketing the milk of any former member-producer shall be from the date defendant receives written notice of the termination of the membership or marketing agreement with defendant to the date at which said plant may terminate its contract with defendant or for four (4) months from the date of the termination of the membership or marketing agreement, whichever is longer.

**VII**

[ *Handling*]

The defendant is hereby enjoined and restrained for a period of five (5) years from the entry of this Final Judgment from refusing or threatening to refuse to receive milk produced by any producer on equivalent and non-discriminatory terms, within the limits permitted by 7 U. S. C. §291, and §§1381 through 1388 of the Internal Revenue Code of 1954, as amended, and regulations issued pursuant thereto (or as the same may be amended from time to time), to the extent of the available capacity of any plant of defendant in excess of capacity needed for the handling of milk of member-producers, provided, however, that nothing in this Section VII shall require defendant to pay any cooperative or processor delivering to defendant's plants (other than unregulated plants described in Section X of this Final Judgment) more than the value of the milk to said plant, said value; to be

determined by the current market price of the products manufactured at said plant, and the yields and the make allowances as used in the federal dairy price support program and announced for the market year.

**VIII**

[ *Voting*]

The defendant is hereby enjoined and restrained for a period of five (5) years front the entry of this; Final Judgment, from exercising its right to vote on behalf of its members pursuant to the terms of 7 U. S. C. §§608c(9)(B), 608c(12) and 608c(16)(b) if the effect of such vote will be to terminate any existing Federal Milk Marketing Order.

**IX**

[ *Acquisitions*]

The defendant is; hereby enjoined and restrained, for a period of ten (10) years from the entry of this Final Judgment from purchasing, consolidating with, acquiring control of, or leasing any plant (except for renewal of an existing lease) without the prior written consent of the Department of Justice or the Court. At least forty-five (45) days in advance of the closing date of any transaction to (purchase, consolidate with, acquire control of or lease any such plant, defendant shall supply plaintiff with complete details concerning the terms and conditions of the proposed transaction. Within thirty (30) days after its receipt of the above information plaintiff shall advise the defendant of any objection it may have to the consummation of the proposed transaction. If such an objection is made by plaintiff, then the proposed transaction shall not be consummated unless approved by the Court on the basis of a showing by defendant that the proposed transaction will not substantially lessen competition in any line of commerce, in any section of the country.

**X**

[ *Non-regulated Plants*]

The defendant is hereby enjoined and restrained, for a period of ten (10) years from the entry of this Final Judgment, from participating in any plan or program with any cooperative or with any organization whose members are cooperatives relating to the purchase or option to purchase milk from plants not regulated under any Federal Milk Marketing Order, or from any producer shipping milk to said plant, unless said plan or program provides:

(a) that any plant not regulated under any Federal Milk Marketing Order may enter into a contract, on a non-discriminatory basis, to grant an option to purchase milk pursuant to a plan or program to establish or maintain a reserve supply of milk if said plant meets similar standards of quantity and quality as are met by any plant under such a contract and said plant is in competition for the procurement of raw milk with any plant which is under contract to supply milk pursuant to such a plan or program;

(b) that there shall be no discrimination against any contracting plant which receives milk from nonmember-producers;

(c) that any contracting plant shall be permitted to dispose of any milk for which a purchase option is not exercised at least 24 hours prior to the time the milk is picked up from the farm to whomever, wherever, and upon whatever terms and conditions it chooses; there shall be no discrimination against any plant which resells milk on which said option is not exercised;

(d) that any cooperative may participate in said plan or program on an equivalent and non-discriminatory basis;

(e) that any participating cooperative shall be permitted to resell milk obtained through such plan or program to whomever, whatever, and on whatever terms and conditions it chooses;

(f) that no contract, agreement, or understanding entered into pursuant to such plan or program shall exceed a term of one (1) year;

(g) that said plan or program shall be used for the purpose of establishing and maintaining a reserve supply of milk to fulfill the requirements of participating cooperatives and for that purpose only;

(h) that in the event said plan or program is carried out through any organization all of whose member are cooperatives, persons receiving orders from participating cooperatives and directing the shipment of milk pursuant to such plan or program shall be independent of and shall not be employed by any participating plant or cooperative; and regardless of the form of said plan or program all reports of shipments of milk will not be made until the completion of the month, and shall be made at the same time to all cooperatives and plants participating in said agreements;

provided, however, the terms of this Section shall not be applicable to any marketing agreement with the Secretary of Agriculture authorized by 7 U. S. C. § 601 *et seq*. relating to a reserve supply of milk in unregulated plants.

**XI**

[ *Associations*]

Within thirty (30) days after the entry of the Final Judgment, defendant is ordered and directed to withdraw from, and is enjoined and restrained from joining, contributing anything of value to, or from participating in, any organization or association which directly or indirectly engages in or enforces any act which the defendant is prohibited by this Final Judgment from engaging in, or enforcing or which is contrary to or inconsistent with any provision of this Final Judgment.

**XII**

[ *By-Laws*]

(A) The defendant is ordered and directed within ninety (90) days from date of this Final Judgment to amend its By-Laws, Rules, and Regulations by eliminating therefrom any provision which is contrary to or inconsistent with any provision of this Final Judgment.

(B) Upon amendment of its By-Laws, Rules, and Regulations as above said, defendant is thereafter enjoined and restrained from adopting, adhering to, enforcing, or claiming any rights under any By-Law, Rule, or Regulation which is contrary to or inconsistent with any of the provisions of this Final Judgment.

(C) The defendant is ordered to file with the plaintiff annually for a period of ten (10) years on the anniversary of the entry of this Final Judgment, a report setting forth the steps taken by the Board to advise its officers, directors, employees, members, and all appropriate committees of its and their obligations under the prohibitions placed upon them by this Final Judgment.

**XIII**

[ *Notice*]

(A) Defendant is ordered to mail or otherwise furnish within ninety (90) days after the date of entry of this Final Judgment a copy thereof to each of its members and employees, to each hauler transporting milk for defendant, to each processor purchasing milk from or selling milk to defendant or any organization for which defendant acts as marketing agent, and to the cooperative members, officers, and employees of Associated Reserve Standby Pool Cooperative, Central Milk Producers Cooperative, Central Milk Sales Agency, and within one hundred fifty (150) days from the aforesaid date of entry to file with the Clerk of this Court an affidavit setting forth the fact and manner of compliance with paragraph XIII.

(B) Defendant is further ordered and directed to mail or otherwise furnish a copy of this Final Judgment to its members once each year for four (4) additional years, and to furnish a copy of this Final Judgment to any person upon request.

**XIV**

[ *Compliance/Inspection*]

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

(a) Duly authorized representatives of the Department of Justice shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to 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 or in the control of defendant relating to any of the matters contained in this Final Judgment, and (2) subject to the reasonable convenience of defendant and without restraint or interference from defendant, to interview officers, or employees of defendant, each of whom may have counsel present, regarding any such matters.

(b) Defendant, upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, 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 paragraph XIV 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 party for the purpose of determining or securing compliance with this Final Judgment or as otherwise required by law.

**XV**

[ *Retention of Jurisdiction*]

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 further orders and direction as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

**XVI**

[ *Reorganization*]

In accordance with the agreement of the parties, the following agreed order is stated in this new paragraph which has been added to this Final Judgment as originally proposed:

Defendant is enjoined and restrained from accomplishing any reorganization or restructuring of defendant into separate regional or sectional cooperatives unless each such cooperative agrees in writing, filed with the plaintiff and the Court, to be bound by the terms of the Final Judgment in *United States v. Associated Milk Producers, Inc*., Civil Action No. 74 CV 80-W-l, entered this day.

**Supplemental Order Establishing Enforcement and Modification Procedures in Regard to Final Judgment Approved April 30, 1975**

Paragraph XV of the Final Judgment entered on the proposed consent decree approved in the above-entitled cause on April 30, 1975, provides:

> 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 further orders and direction as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Pursuant to, and in the exercise of the general jurisdiction of this Court and in the exercise of the particular jurisdiction retained by Paragraph XV of the Final Judgment, this Court, on its own motion, finds and concludes

that the public interest requires that appropriate procedures for enforcement and modification of that decree be established and provided by formal order of court.

Therefore, and in order to implement the provisions of Paragraph XV of the Final Judgment, it is hereby

Ordered, Adjudged, and Decreed That the following procedures shall be followed in connection with future proceedings which may seek the enforcement and modification of said Final Judgment:

I. *Procedure Where Enforcement Is Sought by the United States*

Should the United States determine that defendant is not complying with any provision of the Final Judgment, it shall proceed in accordance with law as provided in Rule 42(b) of the Rules of Criminal Procedure.

II. *Procedures Where Enforcement Is Sought Independent of the United States*

A. Should any person other than the United States believe that defendant is not complying with provisions of the Final Judgment, such person shall, before making or filing any application for this Court to exercise its independent power and jurisdiction to enforce the Final Judgment on its own motion, take the following steps:

1. Such person shall prepare and serve on the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice an appropriate written request which shall formally pray that the United States file an appropriate petition for enforcement pursuant to paragraph I above.

2. Said request shall state with particularity: (a) the interest of the person allegedly aggrieved by the defendant's alleged noncompliance with the Final Judgment; (b) the circumstances concerning defendant's alleged noncompliance; (c) the names of persons who allegedly have personal knowledge of those circumstances; and (d) the relief which such person believes the United States should seek in a petition for enforcement which such person believes the United States should file under the circumstances.

B. Such request shall be supported by an appropriate written memorandum which shall include, as separately numbered exhibits, supporting affidavits of persons with personal knowledge of the alleged circumstances and verified copies of any documentary evidence which the allegedly aggrieved person believes may be relevant and material under the circumstances.

C. Such supporting memorandum shall include as an appendix a copy of a petition for enforcement which the allegedly aggrieved person believes should be filed by the United States.

D. At the time the allegedly aggrieved person serves his request and supporting memorandum on the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, he shall simultaneously transmit information copies of said request and supporting memoranda to the Clerk of this Court and to the judge having jurisdiction over the above-entitled cause.

E. The Assistant Attorney General in charge of the Antitrust Division of the Department of Justice shall, within twenty (20) days (or within such additional time as the Court may grant) after the receipt of a request from an allegedly aggrieved person, reply to such person in writing. Such reply shall state with particularity: (a) what investigation or other action, if any, will be taken by the Antitrust Division in regard to the request; (b) when such action will be taken; and (c) the reasons supporting the decision of the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice.

F. Information copies of the reply of the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice shall be simultaneously transmitted to the Clerk of this Court and to the judge having jurisdiction over the above entitled cause.

G. In the event the United States as a result of the request, or on its own motion, takes action deemed appropriate by the allegedly aggrieved person, no further proceedings will be necessary under the circumstances.

H. In the event, however, that the United States does not take action deemed to be appropriate by the allegedly aggrieved person, then in that event, and only in that event, such person may so advise the Court in writing and

suggest that the Court give appropriate consideration to whether it should, under the circumstances, exercise its independent power and jurisdiction to direct enforcement proceedings on its own motion.

I. The Court will consider the written suggestion of the allegedly aggrieved person, will review the written request and supporting memorandum presented to the Assistant Attorney General, together with the reply of the Assistant Attorney General, and will thereafter determine what, if any, further appropriate proceedings should be directed under the circumstances.

III. *Procedures for Modification of the Final Judgment*

Motions for modification of the Final Judgment may be filed only by a party to the case. Any motion for modification shall be filed in accordance with the Rules of Civil Procedure and the Local Rules of this Court.

In the event such a motion is filed, the Court will direct appropriate proceedings under which persons who claim to be aggrieved will be afforded appropriate notice of the proceeding and will be afforded an appropriate opportunity to seek full or limited participation in the proceedings.

# Appendix A-10

*United States v. Mid-American Dairymen, Inc.*, No. 73 CV 681-W-1 (W.D. Mo. 1977)

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Mid-America Dairymen, Inc., U.S. District Court, W.D. Missouri, 1977-1 Trade Cases ¶61,509, (May 17, 1977)

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United States v. Mid-America Dairymen, Inc.

1977-1 Trade Cases ¶61,509. U.S. District Court, W.D. Missouri, Civil Action No. 73 CV 681-W-1, Entered May 17, 1977.

(Competitive impact statement and other matters filed with settlement: 41 *Federal Register* 21799, 37353). Case No. 2358, Antitrust Division, Department of Justice.

## Sherman Act

**Monopolization: Milk Products: Consent Decree.–** A dairy cooperative was enjoined by a consent decree from unreasonably restraining the ability of milk producers to terminate a membership and marketing agreement and to market milk in competition with the cooperative. The decree enjoined the cooperative from entering into exclusive hauling contracts and from unreasonably restricting the right of independent milk haulers to transport the milk of independent producers. The cooperative was barred from entering any milk sales agreement containing certain requirements as to time, supplies and price, and discriminating against milk purchasers on account of their business relationship with a competitor. It was ordered to divest itself of assets at several plants within two years, and enjoined, for five years, from acquiring any other plant without notifying the government. The decree also enjoined the cooperative, for a period of nine years, from participating in any milk producers association whose activities include acquiring an option to purchase milk received at a milk manufacturing plant not regulated by a federal milk marketing order, unless certain conditions were met.

## Final Judgment

Oliver, D. J.: Plaintiff, United States of America, having filed its Complaint herein on December 27, 1973, and defendant, Mid-America Dairymen, Inc., having appeared by its attorneys and having filed its Answer, by their respective attorneys, having consented to the entry of this Final Judgment, prior to the taking of any testimony, without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or admission by either party as to any issue of fact or law herein:

Now, Therefore, prior to the taking of any testimony, and without trial or adjudication of any issue of law or fact herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as Follows:

**I**

**[ *Jurisdiction*]**

This Court has jurisdiction over the subject matter of this action, and of the parties hereto. The Complaint states claims upon which relief may be granted under Sections 1 and 2 of the Act of Congress of July 2, 1890, as amended (15 U. S. C. §§1 and 2), commonly known as the Sherman Act.

**II**

**[ *Definitions*]**

As used in this Final Judgment:

(A) “Ascertainable quantity” means a percentage of the normal requirements of milk processed in an identified plant or the milk production of an identified producer or group of producers;

(B) “Base” means an allocation by defendant, expressed in pounds of milk per delivery period, possessed by a member under a Class I Base Plan;

(C) “Class I Base Plan” means a procedure or plan for the distribution of marketing proceeds to defendant's members, or a group thereof, whereby each such member is assigned or otherwise acquires a stated Base that entitles the member to receive a higher return for quantities of milk produced and marketed through defendant within the Base than for quantities in excess of the Base;

(D) “Competitor of defendant” means a person selling or offering to sell milk or other dairy products, including, but not limited to, an individual producer, a group of producers, a cooperative or a proprietary firm;

(E) “Federal milk marketing order” means the regulations, rules of practice and procedures issued by the Secretary of Agriculture under the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. §601 *et seq.*), regulating the handling of milk;

(F) “Member” means a producer who has a membership and marketing agreement with defendant and whose milk production is marketed by defendant;

(G) “Milk” means raw Grade A milk produced by cows;

(H) “Milk hauler” means a person, not an employee of defendant, who owns or operates a truck and transports milk;

(I) “Milk Sales Agreement” means a contract between defendant and a person operating a fluid milk processing and packaging plant wherein the buyer agrees to purchase from defendant a specified or ascertainable quantity of milk;

(J) “Person” means any corporation, partnership, association, individual, cooperative, or other business or legal entity;

(K) “Plant” means the land, buildings, facilities and equipment constituting a single operating unit or establishment in which milk is or has been received, transferred, reloaded, processed, or manufactured;

(L) “Producer” means any person engaged in the production of milk.

**III**

**[ *Applicability*]**

The provisions of this Final Judgment shall apply to defendant and to each of its directors, officers, agents, employees, subsidiaries, successors, assigns and their subsidiaries, and to all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

**IV**

**[ *Members, Marketing Pacts, Pools, Prices*]**

Defendant is hereby enjoined and restrained from:

(A) using threats or coercion to induce any producer to execute or refrain from terminating a membership and marketing agreement with defendant or to deliver milk to defendant;

(B) asserting or threatening to assert any claim or cause of action against a member or former member based upon the actual proposed termination by such member or former member, individually or jointly with other producers, of a membership and marketing agreement with defendant after written notice within the time specified in the membership and marketing agreement;

(C) qualifying milk for participation in federal milk marketing order pools with a purpose of suppressing the uniform price paid to producers participating in a federal milk marketing order pool in order to force, coerce

or induce such producers who are not members of defendant to join defendant or to cease selling milk in competition with defendant;

(D) entering into or enforcing any contract or agreement with another cooperative or association of producers to qualify milk for participation in federal milk marketing order pools with a purpose of suppressing the uniform price paid to producers participating in a federal milk marketing order pool in order to force, coerce or induce such producers who are not members of defendant to join defendant or such other cooperative or association or to cease selling milk in competition with defendant or such other cooperative or association;

(E) maintaining or entering into any agreement with another person, except an employee or milk hauler performing services for defendant, that restricts in any way:

(1) the solicitation by such other person of any member of defendant to terminate its membership and marketing agreement with defendant;

(2) the solicitation by defendant of any producer to become a member of defendant;

(3) the territory in which defendant or such other person seeks to obtain supplies of milk;

(F) requiring as part of a Class I Base Plan that a member or former member who transfers Base not compete in the sale of milk unless such requirement is limited to competition with the transferee of Base and to a period not exceeding two (2) years following the transfer of Base.

**V**

**[ *Membership and Marketing Agreements*]**

(A) Defendant is hereby ordered for one (1) year from the entry of this Final Judgment to allow any member to terminate its membership and marketing agreement at any time by giving defendant at least thirty (30) days written notice.

(B) Defendant is hereby enjoined and restrained, after one year from the entry of this Final Judgment, from entering into or enforcing any membership and marketing agreement with any member unless such agreement can be terminated upon written notice by the member at least thirty (30) days prior to such agreement's anniversary date.

(C) If, following the expiration of the time period provided in Paragraph V(A), the anniversary date of a membership and marketing agreement becomes the date prior to which thirty (30) days written notice for the termination of such agreement must be given, defendant is hereby ordered within ninety (90) days of the date the change in procedure becomes effective to notify each member who is a party to such an agreement of the anniversary date thereof; this Paragraph V(C) of this Final Judgment shall expire after five years from the entry thereof.

(D) If, following the expiration of the time period provided in Paragraph V(A), the anniversary date of a membership and marketing agreement becomes the date prior to which thirty (30) days written notice for the termination of such agreement must be given, defendant is hereby ordered for five (5) years from the entry of this Final Judgment to:

(1) allow a producer upon entering into a membership and marketing agreement with defendant or upon executing a new membership and marketing agreement with defendant at the proper time for termination of an existing agreement to select any anniversary date desired by the producer notwithstanding the date upon which the membership and marketing agreement is executed. Defendant shall only be required to allow a producer to select an anniversary date once under this Paragraph V(D)(1);

(2) allow a producer, following a proper notice of termination of a membership and marketing agreement, to extend the membership and marketing agreement to any date, within one (1) year, selected by the withdrawing producer, and market on a non-discriminatory basis the milk production of such producer; provided, however, defendant shall not be required to grant such an extension if defendant has terminated the membership and

marketing agreement for reasons of defendant's inability or difficulty in performing its marketing duties under the membership and marketing agreement.

**VI**

**[ *Hauling*]**

Defendant is hereby enjoined and restrained from:

(A) entering into or enforcing any contract or agreement with any milk hauler that requires the milk hauler to transport milk exclusively for defendant or its members;

(B) requiring as a condition for the approval of an assignment of a hauling contract or other conveyance of the business of a milk hauler that any milk hauler not transport milk in competition with any other milk hauler or with defendant.

**VII**

**[ *Terms of Agreements; Discrimination*]**

Defendant is hereby enjoined and restrained from:

(A) entering into or enforcing any Milk Sales Agreement containing a term in excess of one (1) year;

(B) entering into or enforcing any Milk Sales Agreement unless the buyer had the opportunity to agree to purchase from defendant under such Agreement any lesser specified or ascertainable quantity of milk than was offered for sale by defendant; provided, however, defendant may require the buyer to receive milk in truckload quantities;

(C) entering into or enforcing any Milk Sales Agreement unless such Agreement provides that in the event defendant, during the term of such Agreement, increases the price of milk or changes the formula or procedure for ascertaining the price of milk sold under such Agreement resulting in an increase in the price, the buyer may discharge such Agreement on or after the effective date of the price increase by giving written notice to defendant at any time within twenty (20) days after the announcement of such price increase or five (5) days prior to the effective date of such price increase, whichever is later;

(D) discriminating or threatening to discriminate against any buyer of milk on account of its actual or proposed purchase of milk from a competitor of defendant;

Provided, however, nothing in this Paragraph VII shall be construed to limit or affect the application of the antitrust laws to Milk Sales Agreements.

**VIII**

**[ *Divestiture*]**

(A) Within two (2) years of the entry of this Final Judgment, defendant is hereby ordered to sell to any qualified buyer the assets presently located at its plants in Aurora, Missouri, Ottawa, Kansas, and Bethany, Missouri, described in Exhibit A attached hereto. For purposes of this Paragraph, a “qualified buyer” shall be any person who seeks to purchase as a unit the assets at any of the aforementioned plants and who intends after such purchase to operate a receiving or transfer station for milk or a milk manufacturing plant.

(B) The sale of any of the plants described in this Paragraph VIII shall require the prior approval of plaintiff. In the event plaintiff objects to the proposed sale, the sale shall not be consummated until a showing that the buyer meets the requirements of this Paragraph VIII has been made to this Court.

(C) Until divestiture is completed, defendant will maintain in good condition and repair the assets located at each of the plants in Aurora, Missouri, Ottawa, Kansas, and Bethany, Missouri, and replace any asset removed from

any of the plants following the entry of this Final Judgment with comparable assets prior to the closing of any sale.

(D) Beginning ninety (90) days after the entry of this Final Judgment and continuing every six (6) months until all the assets described in this Paragraph VIII are divested, defendant shall furnish a written report to plaintiff describing the steps taken to accomplish divestiture, the assets sold and remaining to be divested, the assets removed from any of the plants, and the terms and conditions of any offers for the purchase of such assets.

**IX**

**[ *Acquisitions*]**

(A) For five (5) years from the entry of this Final Judgment, defendant shall give notice to plaintiff at least thirty (30) days prior to the closing date of any transaction for the purpose, consolidation, acquisition of control, or lease (except for the renewal of an existing lease) of any plant, and such notice shall fully describe the present and projected operation of the plant to be acquired and the terms and conditions of the proposed transaction.

(B) For five (5) years from the entry of this Final Judgment, defendant is enjoined and restrained from purchasing, consolidating with, acquiring control of, or leasing (except for the renewal of an existing lease) any plant where the effect of such transaction may be substantially to lessen competition, or to tend to create a monopoly.

(C) For one (1) year following the purchase, consolidation, acquisition of control, or lease (except for the renewal of an existing lease) of any plant, defendant is hereby ordered to continue to receive the milk of any competitor of defendant who is delivering milk to such plant on or within sixty (60) days prior to such transaction and who desires to continue such delivery; provided, however, defendant may require such competitor to execute a marketing agreement terminable by the competitor upon at least thirty (30) days written notice at any time.

**X**

**[ *Cooperatives*]**

Defendant is hereby enjoined and restrained, for a period of nine (9) years from the entry of this Final Judgment, from participating in any cooperative, association of producers or organization of cooperatives whose business activities include acquiring an option to purchase milk received at a milk manufacturing plant not regulated by a federal milk marketing order, or to purchase milk from any producer or group of producers shipping milk to such a plant, unless such cooperative, association of producers or organization of cooperatives meets the following conditions:

(A) that any person operating a milk manufacturing plant not regulated by a federal milk marketing order may enter into a contract, on a non-discriminatory basis, to grant an option to purchase milk to establish or maintain a reserve supply of milk if

(1) the milk received at the manufacturing plant meets similar standards of quality and quantity as are prescribed for other quantities of milk subject to such a purchase option; and

(2) said person is in competition for the procurement of raw milk with a person that has a contract to supply milk to said cooperative, association of producers or organization of cooperatives;

(B) that there shall be no discrimination against any person that receives milk from a competitor of defendant;

(C) that any person shall be permitted to dispose of any milk subject to the purchase option if the purchase option is not exercised at least twenty-four (24) hours prior to the time the milk is picked up from the farm to whomever, wherever and upon whatever terms and conditions it chooses, and the cooperative, association of producers or organization of cooperatives shall not discriminate against any person that resells milk subject to a purchase option not exercised;

(D) that any cooperative or association of producers whose business activities are within the provisions of section 1 of the Capper-Volstead Act, 7 U. S. C. §291, or section 6 of the Clayton Act, 7 U. S. C. §17, may participate in said cooperative, association of producers or organization of cooperatives on an equivalent and non-discriminatory basis;

(E) that any participating cooperative shall be permitted to resell milk obtained through said cooperative, association of producers or organization of cooperatives to whomever, wherever and on whatever terms and conditions it chooses;

(F) that no contract or agreement entered into with said cooperative, association of producers or organization of cooperatives may exceed a term of one (1) year;

(G) that said cooperative, association of producers or organization of cooperatives shall obtain the option for the purpose of establishing and maintaining a reserve supply of milk to fulfill the requirements of participating cooperatives and for that purpose exclusively;

(H) that the persons receiving orders from participating cooperatives and directing the shipment of milk upon which a purchase option has been exercised shall be independent of and shall not be employed by any participating person; and all reports of shipments of milk will not be made until the completion of the month, and shall be made at the same time to all participating persons;

Provided, however, the terms of this Paragraph X shall not be applicable to any marketing agreement with the Secretary of Agriculture entered into under the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. §601 *et seq.*).

**XI**

**[ *Other Groups*]**

Defendant is enjoined and restrained from joining, contributing anything of value to, or participating in, any organization or association which directly or indirectly engages in or enforces any act which defendant is prohibited by this Final Judgment from engaging in, or enforcing, or which is contrary to or inconsistent with any provision of this Final Judgment.

**XII**

**[ *Rules; Reports*]**

(A) Defendant is enjoined and restrained from adopting, adhering to, enforcing, or claiming any rights under any by-law, rule or regulation which is contrary to or inconsistent with any of the provisions of this Final Judgment.

(B) Defendant is ordered to file with plaintiff annually for a period of ten (10) years, on or before June 30, a report setting forth the steps taken by its board of directors to advise its officers, directors, employees, members and all appropriate committees of its and their obligations under this Final Judgment.

**XIII**

**[ *Notification*]**

(A) Defendant is ordered to mail or otherwise furnish within ninety (90) days after the entry of this Final Judgment a copy thereof (excluding Exhibit A) to each of its members and employees, to each milk hauler transporting milk for defendant, and to each person purchasing milk from or selling milk to defendant or any organization for which defendant acts as marketing agent, and within one hundred fifty (150) days from the aforesaid date of entry to file with the Clerk of this Court an affidavit setting forth the fact and manner of compliance with Paragraph XIII.

(B) Defendant is further ordered and directed to publish, in a publication circulated to all its members, a copy of this Final Judgment once each year for four (4) years on or about the anniversary date of entry of this Final

Judgment, and to furnish a copy of this Final Judgment (except that Exhibit A need not be furnished unless specifically requested) to any person upon request.

**XIV**

**[ *Inspection and Compliance*]**

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

(A) duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to 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 or in the control of defendant relating to any of the matters contained in this Final Judgment, and (2) subject to the reasonable convenience of defendant without restraint or interference from defendant, to interview officers, or employees of defendant, each of whom may have counsel present, regarding any such matters;

(B) defendant, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, 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 Paragraph XIV shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of plaintiff, except in the course of legal proceedings to which the United States of America is party, or for the purpose of determining or securing compliance with this Final Judgment or as otherwise required by law.

**XV**

**[ *Retention of Jurisdiction*]**

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 further orders and direction as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

**XVI**

**[ *Public Interest*]**

This Court finds that the entry of this Final Judgment is in the public interest.