# APPENDIX A:

# FINAL JUDGMENTS

UNITED STATES v. CONTINENTAL OIL CO.

Civil No. 4763

Year Judgment Entered: 1968 (Modified in 1972)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

| | | |
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| UNITED STATES OF AMERICA, | § | |
| | § | |
| Plaintiff, | § | |
| | § | Civil Action No. 4763 |
| v. | § | |
| | § | Filed: February 21, 1968 |
| CONTINENTAL OIL COMPANY, | § | |
| | § | |
| Defendant. | § | |

FINAL JUDGMENT

Plaintiff, the United States of America, filed its Complaint herein on May 16, 1961; and after trial by this Court, a Final Judgment was entered dismissing the case on September 20, 1965. The Supreme Court of the United States on May 29, 1967 vacated said Final Judgment of September 20, 1965 and ordered reconsideration of this case. Following the submission of memoranda and oral argument; and the Court having entered findings of fact and conclusions of law,

NOW, THEREFORE, 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 pursuant to Section 15 of the Act of Congress of October 15, 1914 (15 U.S.C. § 25), as amended, commonly known as the Clayton Act. The acquisition of the properties of Malco Refineries, Inc. by defendant Continental Oil Company (Conoco) is in violation of Section 7 of the Clayton Act (15 U.S.C. § 18).

II.

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

III.

(A) Conoco is ordered and directed, within twelve (12) months from the date this Judgment becomes final, to divest itself of all of its right, title and interest in the following properties:

(1) The Artesia refinery plant facilities and related assets (including any transferable crude oil import quota allocable or attributable to the refinery facilities); and

(2) The following pipelines connected with said refinery:

(a) incoming pipelines: The crude oil system, the LPG system; any natural gas lines used or useable to supply fuel gas; and (b) outgoing pipelines: the petroleum products line running from said refinery to El Paso, Texas (excluding Conoco's interest in the products terminals at El Paso, Texas; Albuquerque, New Mexico; and Tucson and Phoenix, Arizona), and the jet fuel pipeline (including delivery facilities) running from said refinery to Walker Air Force Base near Roswell, New Mexico.

(B) Conoco is ordered and directed to publicize the availability of the above properties for sale in appropriate trade and/or financial publications and, in general, to promote the expeditious sale thereof. Sale shall be upon terms and to a person approved by this Court and it is the intent of the Court that the purchaser can be expected to operate the refinery and other properties acquired primarily but not exclusively as a supplier of gasoline to independent marketers.

(C) Conoco is ordered and directed to render bi-monthly written reports to the Court, with copies to the plaintiff, detailing its efforts to comply with subsection (A) above, and the results of such efforts, including every offer to buy which it received. Plaintiff or Conoco may apply to this Court for approval or disapproval of any proposal for the sale of said facilities.

(D) Conoco is ordered and directed to furnish to all bona fide prospective purchasers all relevant information regarding said facilities, and to permit them to inspect such facilities, at reasonable hours.

IV.

For a period of ten (10) years from the date of entry of this Final Judgment, Conoco shall not without first obtaining the approval of this Court, acquire directly or indirectly (excluding construction by Conoco), any interest in any of the following businesses or facilities in the State of New Mexico:

(a) any oil refinery;

(b) any wholesale distributor of gasoline, provided this subsection (b) shall not prohibit in each twelve (12) month period any acquisitions of such businesses having combined annual sales of not more than $250,000 or acquisitions of wholesale distributors who have been selling gasoline exclusively under the trademark "CONOCO" for a period of at least one year prior to their acquisition by Conoco or acquisitions of retail outlets, but this is without prejudice to any claim asserted by the plaintiff in a subsequent antitrust action with respect to the acquisition of retail outlets.

V.

For the purpose of determining and securing compliance with this Final Judgment, and for no other purposes, duly authorized representatives of the Department of Justice shall, on written request of the Assistant Attorney General in charge of the Antitrust Division and on reasonable written notice to Conoco made to its principal offices, be permitted, subject to any legally recognized privilege:

(i) access, during the office hours of Conoco, which may have counsel present, to those books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Conoco regarding the subject matters contained in this Final Judgment, provided, upon such written request, Conoco shall submit reports in writing in respect to any such matters as may from time to time be requested; and

(ii) subject to the reasonable convenience of Conoco and without restraint or any interference from

it, to interview officers or employees of Conoco, who may have counsel present, regarding any such matters.

No information obtained by the means provided in this Section V 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 United States, except in the course of a legal proceeding in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VI.

Jurisdiction of this cause is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to the Court at any time for such further orders or 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 enforcement of compliance therewith and the punishment of violations thereof.

VII.

Defendant Continental Oil Company shall pay such costs as shall be taxed against it by the Court.

ENTERED this 21st day of February, 1968.

H. Vearle Payne
United States District Judge

APPROVED AS TO FORM:

By Lawrence W. Somerville
Attorney for the United States

By David T. Geard
Attorney for defendant
Continental Oil Company

THIS COPY SERVES AS NOTICE
OF ENTRY ON 2-21-68
E. E. GREESON, Clerk

United States v. Continental Oil Co.

U. S. District Court, District of New Mexico. Civil Action No. 4763. Filed July 28, 1972.

Case No. 1612, Antitrust Division, Department of Justice.

Clayton Act

Mergers—Injunctive Relief—Divestiture—Refinancing of Purchasing Company by Divesting Company—Divestiture in Event of Default.—A final judgment in a litigated case requiring an oil company to divest itself of designated facilities and pipelines was modified to order divestiture of the assets if the court-approved buyer, which was to be refinanced by the divesting firm, should default and the divesting company should reacquire any interest in the assets. See ¶ 4365.

For plaintiff: John N. Mitchell, Atty. Gen., Lee Loevinger, Asst. Atty. Gen., Baddia J. Rashid, Bernard O'Reilly, Dept. of Justice, Washington, D. C., George B. Haddock, James Legnard and Lawrence W. Some. ville, Attys., Dept. of Justice, Antitrust Div., Los Angeles, Cal., and John Quinn, U. S. Atty. For defendant: Lloyd F. Thanhouser, and A. T. Biggers, Houston, Tex., A. T. Seymour, and Allen C. Dewey, of Modrall, Seymour, Sperling, Roehl & Harris, Albuquerque, N. M., James T. Jennings, Roswell, N. M., Vinson, Elkins & Searles, Houston, Tex., for Continental Oil Co.

Modification of Final Judgment of February 21, 1968

PAYNE, D. J.: The Final Judgment in this case was entered on February 21, 1968, and provided for the divestiture by Continental Oil Company (Conoco) of the Artesia, New Mexico, refinery and certain related properties, in a manner and to a type of purchaser prescribed in Paragraph III of the Final Judgment. On May 21, 1969, the Court entered an Order approving the sale of the Artesia refinery and other related assets to Navajo Refining Company (Navajo), a partnership consisting of Navajo Corporation and Holly Corporation.

Pursuant to a Stipulation approved by the Court on May 21, 1969, Navajo submitted itself to the jurisdiction of the Court for the purpose of administration of the Final Judgment of February 21, 1968, and hence, is now a party to the Judgment.

On July 28, 1972, the plaintiff, United States of America, Conoco and Navajo, appeared by and through their attorneys at a public hearing on the application of Navajo for approval of a certain proposal for the refinancing of Navajo by Conoco.

The Court, having received testimony in support of the application and having considered the application and the statements and arguments of counsel, and having entered its Order approving such refinancing of Navajo, and

It being the opinion and the finding of the Court that the refinancing of Navajo has become necessary to its continued via-

bility and that as a consequence of Navajo's inability to obtain outside financing Conoco is substituted for Republic National Bank as the dominant creditor with certain security interests which will permit Conoco to reacquire the refinery and other properties in the event of any default by Navajo,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed As Follows:

The Final Judgment of February 21, 1968, is hereby supplemented and amended to order, adjudge and decree that if Conoco shall acquire any interest in any assets of Navajo under the security agreements and transactions which are included in or become a part of the refinancing of Navajo, then and within twelve months after the date of the period of redemption authorized by applicable law, Conoco is ordered and directed to divest itself of all its right, title and interest in the assets acquired by the foreclosure to a person approved by the Court. During such period as Conoco is or may be in possession pursuant to its remedies under the security instruments, Conoco, to the extent that it is reasonably practicable, shall continue to operate the assets acquired in foreclosure as a viable operating business and to supply products to independent marketing customers of Navajo. Paragraph III of the Final Judgment of February 21, 1968, shall be applicable to any such divestiture, except as modified by this amendment.

UNITED STATES v. CONTINENTAL OIL CO., *et al.*

Civil No. 8026

Year Judgment Entered: 1971

UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

| | |
|---|---|
| UNITED STATES OF AMERICA,<br>Plaintiff,<br>v.<br>CONTINENTAL OIL COMPANY, AMERICAN PETROFINA COMPANY OF TEXAS, SPENCER AND COMPANY, INC., and COSDEN OIL AND CHEMICAL COMPANY,<br>Defendants. | Civil No. 8026<br>FINAL JUDGMENT<br>Entered: January 20, 1971 |

The plaintiff, United States of America, having filed its complaint herein on April 30, 1969; the defendants having filed their respective answers denying the substantive allegations of the complaint and no testimony having been taken, and the said plaintiff and defendants, by their respective attorneys, having consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein; and without any admission by any party hereto with respect to any such issue; and the Court having considered the matter and being duly advised, it is

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

II

For the purposes of this Final Judgment:

(a) "Continental" shall mean Defendant Continental Oil Company;

(b) "Petrofina" shall mean Defendant American Petrofina Company of Texas;

(c) "Spencer" shall mean Defendant Spencer and Company, Inc.;

(d) "Cosden" shall mean Defendant Cosden Oil and Chemical Company;

(e) "Affiliated Companies" shall mean Petrofina, Spencer and Cosden; wherever so used the companies shall be treated as a single entity;

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

(g) "Paving asphalt" shall mean an asphaltic byproduct produced in refining crude oil, limited to various types and grades of such byproduct as are used for pavement, the most common of which are asphalt cement, cut-back asphalts, and asphalt emulsions;

(h) "Marketing agent" shall mean an intermediary who sells or arranges the sale of property acquired or to be acquired from a third person, with or without title passing to

the intermediary, where the return to the intermediary for the sale is fixed by agreement between the intermediary and the third person;

(i) "Substantial quantities of paving asphalt" shall mean more than four per cent of the annual paving asphalt sales to the State of New Mexico Highway Department, including sales by highway construction contractors to said Department.

III

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

IV

Defendants Continental, Petrofina and Cosden, are each hereby enjoined and restrained, in connection with the sale of paving asphalt in New Mexico, from entering into any contract, agreement, understanding, plan or program, whereby Continental has a joint marketing agent with Cosden or Petrofina, or whereby any of them has a joint marketing agent with any third party, which third party sells substantial quantities of paving asphalt in New Mexico.

V

Defendant Spencer is enjoined and restrained:

(a) From acting as the marketing agent in the sale of paving asphalt in New Mexico for more than one person selling paving asphalt;

(b) During any period of time that any defendant owns any direct or indirect interest

in Spencer, from acting as the marketing agent in the sale of paving asphalt in New Mexico for any other person not affiliated with the owner of such interest;

(c) During any period of time when Petrofina or Cosden, or any company affiliated therewith, owns any interest in Spencer, from acquiring from any person or persons other than Petrofina or Cosden more than 33 1/3 per cent, and in no event more than 100,000 barrels, of its annual sales of paving asphalt in New Mexico: any amount of paving asphalt which Petrofina or Cosden shall acquire from any other producer of paving asphalt to meet Spencer's commitments in New Mexico shall be deemed to have been acquired by Spencer for purposes of this subsection (c) and Section VII.

VI

Defendants Continental and Affiliated Companies are each enjoined and restrained from:

(a) Entering into or adhering to any contract, agreement, understanding, plan or program with any person, directly or indirectly, in marketing paving asphalt in New Mexico, to

(1) allocate or divide customers, markets or territories for the sale of paving asphalt

(2) fix, maintain or adhere to prices, price differentials, discounts or other terms or conditions for the sale of paving asphalt to any third person;

(3) furnish or exchange information as to prices, price differentials, discounts o

other terms or conditions regarding past, present or future sales of paving asphalt to identified customers in New Mexico;

(b) Communicating to any other person engaged, directly or indirectly, in the marketing of paving asphalt in New Mexico, information as to past, present or future prices, price differentials, discounts or other terms or conditions for the sale of any paving asphalt in New Mexico except for such information which has been released to the public generally, and except in connection with bona fide negotiations for the purchase or sale of paving asphalt between the parties to such communications.

VII

Commencing January 1, 1971 and continuing for a period of five (5) years, defendant Spencer is ordered and directed to provide annual reports on the first day of February of each year to plaintiff setting forth the amount of paving asphalt, by volume:

(a) sold in New Mexico on behalf of Petrofina and Cosden by Spencer in the preceding calendar year and

(b) acquired from each other source of paving asphalt by Spencer and sold by Spencer in New Mexico in the preceding calendar year.

VIII

For the period of five (5) years following the date of entry of this Final Judgment, Spencer shall notify the plaintiff thirty (30) days prior to any sale of any ownership interest in it to any asphalt producer other than Petrofina, which producer sells or has the potential to

sell paving asphalt in New Mexico.

IX

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

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

(b) To interview officers or employees of such defendant, who may have counsel present, and without interference or restraint from it, regarding any such matters; and upon request, defendant shall submit such reports in writing, under oath if so requested, to the Department of Justice with respect to any of the matters contained in this Final Judgment, as from time to time may be requested.

No information obtained by the means permitted in this Section IX 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 in which the United States is a party for the purpose of securing or determining compliance with this Final

Judgment or as otherwise required by law.

X

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

Dated this 20th day of January 1971.

/s/ H. VEARLE PAYNE
United States District Judge

UNITED STATES v. WOLVERINE WORLD WIDE, INC.

Civil No. 9186

Year Judgment Entered: 1972

Cheetah™ Wolters Kluwer

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Wolverine World Wide, Inc., U.S. District Court, D. New Mexico, 1972 Trade Cases ¶74,025, (Jul. 10, 1972)

Federal Antitrust Cases
Trade Regulation Reporter - Trade Cases (1932 - 1992) ¶74,025

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United States v. Wolverine World Wide, Inc.

1972 Trade Cases ¶74,025. U.S. District Court, D. New Mexico. Civil Action No. 9186. Entered July 10, 1972. Case No. 2194, Antitrust Division, Department of Justice.

**Headnote**

**Sherman Act**

**Resale Price Fixing—Shoes—Fair Trade—Consent Decree.**—A consent decree prohibited a manufacturer of shoes from agreeing with retailers to fix the resale price of shoes, refusing to sell shoes to any other retailer because of his prices, or from restricting" the advertising of prices lower than those suggested by the manufacturer. The decree prohibits the manufacturer from coercing any retailer to adhere to prices, encouraging the policing of prices, or conditioning advertising allowances on price adherence. For a period of five years the decree prohibits the manufacturer from refusing to sell to dealers who do not follow suggested prices or from suggesting retail prices unless it is clearly stated that such prices are suggested prices only. No fair trading is allowed for a one-year period. After the one-year period the manufacturer is required to notify each dealer of the extent to which the manufacturer's right to enforce fair trading is abrogated or impaired.

**For plaintiff:** Walker B. Comegys, Acting Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer and Harry Burgess, Antitrust Div., Dept. of Justice, Washington, D. C, Victor R. Ortega, U. S. Atty., Albuquerque, N. M., Lawrence W. Somerville and Richard E. Neuman, Antitrust Div., Dept. of Justice, Los Angeles, Cal.

**For defendant:** R, Malcolm Cumming, of Warner, Norcross & Judd, Grand Rapids, Mich. and Rodney, Dickason, Sloan, Akin & Robb, by Jackson G. Akin, Albuquerque, N. M.

**Final Judgment**

PAYNE, D. J.: The Plaintiff, United States of America, having filed its complaint herein on October 19, 1971, 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

[ *Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states claims for relief upon which relief may be granted against the Defendant under Section 1 of the Act of Congress

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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

[ *Definitions*]

As used in this Final Judgment:

(a) "Defendant" shall mean the Defendant Wolverine World Wide, 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) "Shoes" shall mean any men's, women's or children's footwear.

(d) "Wolverine shoes" shall mean, shoes manufactured by or for Wolverine and sold by it to retailers under Wolverine's labels.

(e) "Retailer" shall mean any person who sells shoes to users.

(f) "Wolverine" shall mean the Defendant Wolverine World Wide, Inc.

III

[ *Applicability*]

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. Except for sales to any agency or instrumentality of the Plaintiff wherever located, the provisions of this Final Judgment are applicable to Wolverine shoe sales only in the United States.

IV

[ *Agreement to Fix Prices*]

Defendant Wolverine is enjoined and restrained from entering into, adhering to, maintaining, enforcing, soliciting, or claiming any rights under any combination, conspiracy, agreement, plan or program with any retailer to:

(a) Fix, establish, maintain, or adhere to prices for the sale of Wolverine shoes at retail;

(b) Refuse to sell Wolverine shoes to any other retailer because of the price or prices at which such other retailer sells such shoes at retail;

(c) Restrict the advertising or display of Wolverine shoes at prices lower than those suggested by Wolverine.

V

[ *Enforcement of Resale Prices*]

Wolverine is enjoined and restrained from directly or indirectly:

(a) Urging, compelling or coercing any retailer to establish, adopt, or adhere to any minimum or suggested retail price, markup, or margin of profit, or to otherwise police or enforce adherence thereto by any of the following means:

(i) attempting to persuade such retailer to discontinue deviations from prices suggested by Wolverine.

(ii) communicating with such retailer concerning variances between such retailer's prices and the retail prices of other customers of Wolverine.

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(iii) communicating with any such retailer who is deviating from prices suggested by Wolverine and calling attention to Wolverine's policy to sell its shoes only to retailers who adhere to its suggested prices.

(b) Encouraging or suggesting to retailers that they report to Wolverine any deviations from suggested price by other retailers;

(c) Informing or implying to any retailer, who has complained or reported price cutting or advertising below suggested retail prices by any Wolverine dealer, that Wolverine will or may take any action to obtain compliance with Wolverine's pricing practices;

(d) Taking any action to mediate or resolve disputes between its retailers with respect to allegations that one or more of its retailers are not following suggested retail prices;

(e) Conditioning advertising allowances by Wolverine to retailers on adherence by retailers to retail prices desired by Wolverine.

**VI**

[ *Refusal to Deal*]

Wolverine is enjoined and restrained, for a period of five (5) years from the date of the entry of this Final Judgment, from directly or indirectly:

(a) Refusing to sell Wolverine shoes to any person who is or becomes a retail customer of Wolverine, because such retail customer has sold Wolverine shoes at prices below Wolverine's suggested retail prices.

(b) Suggesting to any person who is a retail customer of Wolverine that Wolverine may refuse to sell its shoes to such person for reasons based in whole or in part upon the prices at which such person sold, or proposes to sell, Wolverine shoes.

(c) Suggesting retail prices to retailers for the sale of Wolverine shoes unless such suggestion, where written, contains a statement in a clear and bold type, to the effect that the prices are suggested prices only, and that any retailer is free to sell Wolverine shoes at such prices as he may individually determine.

**VII**

[ *Fair Trade*]

Defendant is ordered and directed:

(a) For a period of one (1) year from the date of the entry of this Final Judgment to refrain from exercising such legal rights, if any, which it may have under the Miller-Tydings Act, as amended.

(b) Nothing contained in this Final Judgment shall prevent the Defendant from availing itself of such rights, if any, as it may have pursuant to the Miller-Tydings Act, as amended by the Maguire Act, upon the expiration of one (1) year from the date of the entry of this Final Judgment; Provided, However, that before the Defendant may fair-trade Wolverine's shoes in any State or Territory, it shall first identify each such State or Territory, in writing, to each of its retailers and distributors. In the event that the Defendant's right to fair-trade Wolverine shoes in any State or Territory should be abrogated or impaired, Defendant is ordered and directed to notify forthwith each of its dealers and distributors of that fact, together with all information pertinent thereto, as will adequately advise each retailer and distributor of the extent of such abrogation or impairment.

**VIII**

[ *Notification of Retailers*]

Within sixty (60) days after the date of the entry of this Final Judgment, Defendant shall mail to each retailer of Wolverine branded shoes a true copy of this Final Judgment, together with a copy of the letter attached hereto as Exhibit A, (modified as necessary to reflect differences in divisional and brand names) 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

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Judgment a report of compliance with this paragraph. For purposes of this section, Wolverine branded shoes shall mean Hush Puppies, Bates or Bates Floaters.

**IX**

[ *Complaining Retailers*]

For a period of five (5) years after the date of this Judgment, in the event Wolverine shall receive complaints from any of its retailers that another retailer of Wolverine shoes is cutting prices, in any response made to such complaining retailer, Wolverine shall advise such complaining retailer that Wolverine cannot enforce any retail prices and shall call attention to this Final Judgment.

**X**

[ *Compliance Reports*]

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

**XI**

[ *Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Department of Justice, shall, on 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, subject to any legally recognized privilege:

(a) Reasonable access, during the office hours of Defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or control of Defendant, relating to any matters contained in this Final Judgment; and

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

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

**XII**

[ *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 or termination of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

**Exhibit A**

(To All Hush Puppies® Dealers)

As you may be aware, the United States filed a civil action on October 19, 1971, in the United States District Court for the District of New Mexico naming Wolverine World Wide, Inc., as a defendant and charging a violation

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of Section 1 of the Sherman Antitrust Act arising out of Wolverine's pricing policies. On, 1972, this case was settled by the entry of a Final Judgment to which both the United States and Wolverine World Wide, Inc. consented.

Pursuant to the terms of this Consent Judgment, Wolverine informs you that prices suggested by Wolverine are suggested prices only, and you are free to sell Wolverine shoes at such prices as you may individually determine. Wolverine does not request and will in no way seek assurance or an agreement from you as to the maintenance of retail prices at which you will offer Hush Puppies® or Wolverine Brand shoes and boots for resale.

A copy of the Final Judgment is enclosed and your particular attention is called to Paragraph VI therein.

Wolverine World Wide, Inc.

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UNITED STATES v. WOHL SHOE CO., *et al.*

Civil No. 9187

Year Judgments Entered: 1972, 1973, 1974 (Modified in 1978)

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# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Wohl Shoe Co., Nordstrom's Albuquerque, Inc., Paris Shoe Stores, and Penobscot Shoe Co., U.S. District Court, D. New Mexico, 1972 Trade Cases ¶74,100, (Aug. 21, 1972)

Federal Antitrust Cases
Trade Regulation Reporter - Trade Cases (1932 - 1992) ¶74,100

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United States v. Wohl Shoe Co., Nordstrom's Albuquerque, Inc., Paris Shoe Stores, and Penobscot Shoe Co.

1972 Trade Cases ¶74,100. U.S. District Court, D. New Mexico. Civil Action No. 9187. Entered August 21, 1972. Case No. 2193, Antitrust Division, Department of Justice.

**Headnote**

## Sherman Act

**Price Fixing—Retail Prices—Markups—Shoes—Retailers' Activities—Dealers and Manufacturers—Consent Decree.**—Shoe retailers were barred by a consent decree from agreeing among themselves or with others to 'fix or to induce, compel, or coerce any person to establish, adopt, issue, adhere to or to police or enforce adherence to prices, markups, terms or conditions at which shoes should be sold or offered for sale by any retail dealer to customers. Also covered by the decree were information exchanges between dealers, joining together with retailers to restrict manufacturers from selling any line of shoes to any other retail dealer, advocating to manufacturers that they refuse to sell to any dealer for price reasons, and exchanging with or divulging to manufacturers information concerning or relating to the refusal of any retail dealer to charge or adhere to any particular price. Compliance with fair trading would not be barred by the decree.

**For plaintiff:** Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, James J. Coyle, Lawrence W. Somerville, Richard E. Neuman and Harry N. Burgess, Dept. of Justice, Antitrust Div., and Victor R. Ortega, U. S. Atty., Albuquerque, N. M.

**For defendants:** Bryan, Cave, McPheeters & McRoberts, St Louis, Mo. and Standley, Witt and Quinn, Santa Fe, N. M., for Wohl Shoe Co.; D. Wayne Gittinger, and Matthew R. Kenney, of Lane, Powell, Moss & Miller, Seattle, Wash., and John B. Tittman, of Kelher & McLeod, Albuquerque, N. M., for Nordstrom's Albuquerque, Inc.; Botts, Botts & Mauney, and Modrall, Sperling, Roehl, Harris & Sisk, Albuquerque, N. M., for Paris Shoe Stores; Poole, Tinnin, Dansfelser & Martin, Albuquerque, N. M., John H. Schafer, of Covington & Burling, Washington, D. C, and Gene Carter, of Rudman, Rudman & Carter, Bangor, Me., for Penobscot Shoe Co.

### Final Judgment

PAYNE, D. J.: Plaintiff, United States of America, having filed its Complaint herein on October 19, 1971, all the defendants herein having appeared and severally filed their answers thereto denying the substantive allegations of the Complaint, and the parties hereto by their respective attorneys having each consented to the entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or an admission by any party with respect to any such issue; and this Court having determined pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay in entering a Final Judgment as to ail of the Plaintiff's claims asserted in such Complaint against defendants Nordstrom's Albuquerque, Inc., and Paris Shoe Stores;

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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 hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[ *Jurisdiction*]

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

II

[ *Definitions*]

(a) "Person" shall mean any individual, partnership, corporation, firm, association or other business or legal entity.

(b) "Defendants" shall mean Nordstrom's Albuquerque, Inc. and Paris Shoe Stores.

(c) "Manufacturer" shall mean any person engaged in the manufacture of shoes.

(d) "Retail dealer" shall mean any person engaged in the business of reselling shoes at retail to customers.

(e) "Manufacturer's suggested retail price" shall mean any specific suggested retail price on shoes or any markup or formula for pricing shoes at retail, which a manufacturer communicates to retail dealers either in writing or orally.

(f) "Customer*' shall mean a purchaser of shoes at retail from a retail dealer.

(g) "Shoes" shall mean any men's, women's, or children's footwear, excluding hosiery.

III

[ *Applicability*].

The provisions of this Final Judgment applicable *to* any defendant shall apply to such defendant and to each of its subsidiaries, successors and assigns, and to each of its officers, directors, partners, agents and employees, when acting in such capacities, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise, but shall not apply to activities between any defendant, its officers, directors, partners, employees and agents and its parent or subsidiary companies, or affiliated corporations in which 50% or more of the voting stock is owned by a defendant's parent or subsidiary companies or which is in fact owned or controlled by the defendant or such defendant's parent or subsidiary companies.

IV

[ *Prices*]

The defendants are jointly and severally enjoined and restrained in perpetuity from entering into, adhering to, maintaining, furthering, or enforcing, directly or indirectly any agreement, understanding, plan or program among themselves, or with any person to:

(A) Raise, fix, stabilize, or maintain prices, markups, or other terms or conditions at which shoes are offered for sale by retail dealers to customers;

(B) Induce, compel, or coerce any person to establish, adopt, issue, adhere to, or to police or enforce adherence to prices, markups, terms or conditions at which shoes shall be sold or offered for sale by any retail dealer to customers.

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V

[ *Communications— Dealers and Manufacturers*]

Each of the defendants is perpetually enjoined and restrained from directly or indirectly:

(A) Communicating to or exchanging with any other retail dealer any information concerning any markup which any retail dealer proposes to utilize in formulating a retail selling price, or any proposed price, price change, discount, or other term or condition of sale at, or upon which, shoes are to be sold at retail to any customer;

(B) Suggesting, in any manner, to any retail dealer of shoes that such retail dealer establish any markup or price or adhere to any manufacturer's suggested retail price or markup on any item or line of shoes offered for sale or to be offered for sale by such retail dealer;

(C) Joining together with any other retail dealer to hinder, limit or prevent, or attempt to hinder, limit or prevent any manufacturer of shoes from selling any line of shoes to any other retail dealer;

(D) Advocating, suggesting, urging, compelling, coercing, or attempting to influence any manufacturer (i) to refuse to sell shoes to any retail dealer by reason of such retail dealer's refusal or failure to abide by specified or suggested prices, discounts or other terms or conditions for the sale of shoes, or (ii) to take any action to compel, advise, or encourage any retail dealer to advertise or sell shoes at any particular price;

(E) Exchanging with, or divulging to any manufacturer of shoes information concerning or relating to the refusal of any retail dealer to charge or adhere to any particular price.

VI

[ *Fair Trade Compliance*]

Nothing in this Final Judgment shall be deemed to prevent any retailer defendant from pricing shoes at retail in compliance with, and pursuant to, the lawful exercise by a manufacturer or other vendor of such rights, if any, as may be reserved to such manufacturer or other vendor by the Miller-Tydings Act, 50 Stat. 693 (1937), and the McGuire Act, *66* Stat 632 (1952).

VII

[ *Compliance Reports*]

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

VIII

[ *Inspection and Compliance*]

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

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

(B) Subject to the reasonable convenience of such defendant, and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding any such matters; and upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust

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Division, such defendant shall submit such reports in writing, under oath if so requested, with respect to the matters contained in this Final Judgment, as may from time to time be reasonably requested.

No information obtained by means permitted in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with the Final Judgment, or as otherwise required by law.

**IX**

[ *Jurisdiction Retained*]

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

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# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Wohl Shoe Co., Nordstrom's Albuquerque, Inc., Paris Shoe Stores, and Penobscot Shoe Co., U.S. District Court, D. New Mexico, 1973-2 Trade Cases ¶74,633, (Sept. 5, 1973)

Federal Antitrust Cases
Trade Regulation Reporter - Trade Cases (1932 - 1992) ¶74,633

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United States v. Wohl Shoe Co., Nordstrom's Albuquerque, Inc., Paris Shoe Stores, and Penobscot Shoe Co.

1973-2 Trade Cases ¶74,633. U.S. District Court, D. New Mexico. Civil Action No. 9187. Entered September 5, 1973.Case No. 2193, Antitrust Division, Department of Justice.

**Headnote**

## Sherman Act

**Resale Price Fixing—Shoes—Consent Decree.**—A shoe company was prohibited by a consent decree from selling to retailers on condition that they adhere to suggested resale prices or compelling them to adopt any minimum or suggested retail price or markup; from selling to any retail dealer because it adheres to a particular price or markup or refusing to sell because the dealer does not adhere; and from informing or implying to any retail dealer who has complained or reported price cutting or advertising below prices charged by competitors that the company will take action to obtain compliance. For five years, in the event the company receives complaints from retailers, it must advise the complaining retailers that it cannot enforce any retail prices.

For plaintiff: Thomas E. Kaupcr, Asst. Atty. den., Baddia J. Rashid, Charles F. B. McAleer, Attys., Dept. of Justice, Victor R. Ortega, Albuquerque, N. M.

For defendants: Edwin S. Taylor, of Bryan, Cave, McPheeters & McRoberts, St. Louis, Mo., John Quinn, of Standley, Witt & Quinn, Santa Fe, N. M., for Wohl Shoe Co.; Charles E. Buffon, Tinnin, Danfelser & Martin, Albuquerque. N. M., John H. Schafer, of Covinton & Burling, Washington, D. C, dene Carter, of Rudman, Rudman & Carter, Bangor, Me., for Penobscot Shoe Co.

### Final Judgment as to Penobscot Shoe Co.

PAYNK, D. J.: Plaintiff, United States of America, having filed its Complaint herein on October 19, 1971, all the defendants herein having appeared and severally filed their answers thereto denying the substantive allegations of the Complaint, and the parties hereto by their respective attorneys having each consented to the entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or an admission by any party with respect to any such issue; and this Court having determined pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay in entering a Final Judgment as to all of the plaintiff's claims asserted in such Complaint against defendant Penobscot Shoe Company.

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 hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[ *Jurisdiction*]

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

II

[ *Definitions*]

(a) "Person" shall mean any individual, partnership, corporation, firm, association or other business or legal entity.

(b) "Defendant" shall mean Penobscot Shoe Company.

(c) "Retail dealer" shall mean any person (other than Penobscot) engaged in the business of selling shoes at retail to customers.

(d) "Suggested retail price(s)" shall mean any specific suggested retail price on shoes or any markup or formula for pricing shoes at retail, which a manufacturer communicates to retail dealers either in writing or orally.

(e) "Customer" shall mean a purchaser of shoes at retail from a retail dealer.

(f) "Shoes" shall mean any men's, women's or children's footwear, excluding hosiery.

III

[ *Applicability*]

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

IV

[ *Prices*]

Defendant is enjoined and restrained in connection with its sale, or offering for sale, of shoes throughout the United States from entering into, adhering to, maintaining, furthering, or enforcing, directly or indirectly any agreement, understanding, plan or program with any person to:

(A) Raise, fix, stabilize, or maintain prices, markups, or other terms or conditions at which shoes are offered for sale by any retail dealer to its customers;

(B) Induce, compel, or coerce any person to establish, adopt, issue, adhere to, or to police or enforce adherence to prices, markups, terms or conditions at which shoes shall be sold or offered for sale by any retail dealer to its customers.

V

[ *Prices*]

Defendant is enjoined and restrained in connection with its sale, or offering for sale, of shoes throughout the United States from directly or indirectly:

(A) Selling to any retail dealer of shoes on the condition or pursuant to any agreement, plan or program that the retail dealer will adhere to any suggested resale prices or markups;

(B) Compelling or coercing or attempting to compel or coerce any retail dealer to establish, adopt, or adhere to any minimum or suggested retail price or markup, or to otherwise police or enforce adherence thereto by any means.

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VI

[ *Prices*]

Defendant is enjoined and restrained for a period of five years from the date of the entry of this judgment in connection with its sale, or offering for sale, of shoes throughout the United States from directly or indirectly:

(A) Selling shoes to any retail dealer because the retail dealer adheres to any particular resale price or markup.

(B) Refusing to sell shoes to any retail dealer because the retail dealer fails to adhere to any particular resale price or markup.

(C) Informing or implying to any retail dealer, who has complained or reported price cutting or advertising below retail prices charged or advertised by any competing retail dealer, that defendant will or may take any action to obtain compliance with any suggested price or markup.

VII

[ *Enforcement*]

For a period of five (5) years after the date of this Judgment, in the event Penobscot shall receive complaints from any of its retailers that another retailer of Penobscot shoes is cutting prices, in any response, made to such complaining retailer, Penobscot shall advise such complaining retailer that Penobscot cannot enforce any retail prices.

VIII

[ *Reports*]

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

IX

[ *Inspection and Compliance*]

For the purpose of securing or determining compliance with this Final Judgment and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, on 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:

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

(B) Subject to the reasonable convenience of defendant, and without restraint or interference from it, to interview officers or employees of defendant, who may have counsel present, regarding any such matters; and upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such reports in writing, under oath if so requested, with respect to the matters contained in this Final Judgment, as may from time to time be reasonably requested.

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

X

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Oct 15, 2018 from Cheetah™

[ *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 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 or termination. of any of the provisions hereof, and for the enforcement of compliance therewith and punishment of violations thereof.

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# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Wohl Shoe Co., Nordstrom's Albuquerque, Inc., Paris Shoe Stores and Penobscot Shoe Co., U.S. District Court, D. New Mexico, 1974-1 Trade Cases ¶74,938, (Feb. 11, 1974)

Federal Antitrust Cases
Trade Regulation Reporter - Trade Cases (1932 - 1992) ¶74,938

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United States v. Wohl Shoe Co., Nordstrom's Albuquerque, Inc., Paris Shoe Stores and Penobscot Shoe Co.

1974-1 Trade Cases ¶74,938. U.S. District Court, D. New Mexico. Civil No. 9187. Filed February 11, 1974. Case No. 2193, Antitrust Division, Department of Justice.

## Headnote

### Sherman Act

**Department of Justice Enforcement and Procedure—Injunctive Relief—Geographic Scope—Confinement to Local Area.**—A price fixing injunction was not extended nationwide, in view of the pleadings and prior rulings that restricted the case to a local area. The court ruled that if something takes place anywhere in the United States that affects the local area, it would be enjoined.

**Department of Justice Enforcement and Procedure—Injunctive Relief—Reports—Absence of Need in Price Fixing Case.**—The court refused to include a reports requirement in a price fixing injunction, since the court merely required the defendant to abide by the antitrust law. This was not like a case where a party is required to divest itself of property or where there are other ramifications that would require a report.

**Price Fixing—Shoes in Albuquerque Area—Litigated Decree.**—A shoe retailer was barred, in connection with the sale of shoes in the Albuquerque area, from undertaking specified steps relating to price fixing.

**For plaintiff:** Victor R. Ortega, U. S. Atty., Albuquerque, N. M., Lawrence W. Somerville, Leon Weidman, Richard E. Neuman, Michael J. Dennis, Dept. of Justice, Antitrust Div., Los Angeles, Cal.

**For defendant:** Veryl L. Riddle and Edwin S. Taylor, of Bryan, Cave McPheeters & McRoberts, St. Louis, Mo., John Quinn, of Standley, Witt & Quinn, Santa Fe, N. M.

### Opinion

PAYNE, D. J.: The Court has considered the various memoranda and proposals by the parties hereto and has entered the judgment prepared by the defendant.

It was not the Court who requested the parties to confer for the purpose of reaching an accord as to the form of the judgment but the action was taken at the request of the parties.

To begin with the Court has ruled many, many times that the pleadings in this case referred only to the Albuquerque area and that it was not a nationwide case. The parties never did their discovery with anything else in mind. The Court has refused at this late date to turn this into an antitrust case affecting the entire United States. The transcript of the pretrial hearings will indicate that the Court has ruled on this question repeatedly. It was not tried nor was discovery made with the idea of it being a nationwide case but the entire trial and the discovery was with the idea that it affected only the Albuquerque area.

The Court has ruled that if something takes place anywhere in the United States that affects the Albuquerque area it will be enjoined but the entire case revolved around the Albuquerque area.

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There is no need to have reports because what the Court did merely required the defendant to abide by the antitrust law and the only report that I know of that they could make would be to report to the Court that they were abiding by the law. This is not like a case where a party is required to divest itself of property or where there are other ramifications that would require a report.

Accordingly the plaintiffs' motion is hereby denied and the judgment presented by the defendant, as modified, will be entered and this case is hereby brought to a close.

**Final Judgment**

Plaintiff, United States of America, having filed its Complaint herein on October 19, 1971, alleging a conspiracy to fix the retail price of shoes in the Albuquerque, New Mexico area, defendants Penobscot Shoe Company, NordStrom's Albuquerque, Inc., and Paris Shoe Stores having entered into stipulated judgments, the Court having tried the case against the defendant Wohl and having filed its Memorandum Opinion and Judgment [ 1974-1 TRADE CASES ¶ 74,937], incorporating its findings of fact and conclusions of law on January 16, 1974, and having found that the defendant Wohl has violated the Sherman Act 15 U. S, C. Section One, and that plaintiff is entitled to injunctive relief;

Now Therefore, it is hereby ordered, adjudged and decreed as follows:

**I.**

[ *Jurisdiction*]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The Complaint states claims upon which relief may be granted against defendant Wohl 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," as amended, (15 U. S. C § 1), commonly known as the Sherman Act.

**II.**

[ *Prices*]

Defendant Wohl Shoe Company, its agents, servants or employees, are hereby permanently enjoined and restrained from violating Section One of the Sherman Antitrust Act in connection with the sale of shoes at retail in the Albuquerque area from entering into, adhering to, maintaining, furthering or enforcing, directly or indirectly, any agreement, understanding, plan or program with any person to:

(a) Raise, fix., stabilize or maintain prices, markups, or other terms or conditions at which shoes are sold or offered for sale by retail dealers to customers in the Albuquerque area.

(b) Coerce or compel any person to establish, adopt, issue, adhere to, or to police or enforce adherence to prices, markups, terms or conditions at which shoes shall be sold or offered for sale by any other retail dealer to customers in the Albuquerque area.

(c) Join together with any other retail dealer to hinder, limit or prevent, or attempt to hinder, limit or prevent any manufacturer of shoes from selling any line of shoes to any other retail dealer in the Albuquerque area.

(d) Advocate, suggest, urge, compel, coerce or attempt to influence any manufacturer to refuse to sell shoes to any retail dealer in the Albuquerque area by reason of such retail dealer's refusal or failure to abide by specified or suggested prices, discounts, or other terms or conditions for the sale of shoes.

**III.**

[ *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 such further orders and directions as may be necessary or appropriate for the

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construction or carrying out of this Final Judgment, or for the modification or termination of any of the provisions hereof, and for the enforcement of compliance therewith and punishment of violations thereof.

**IV.**

[ *Costs*]

Defendant Wohl will pay such taxable costs as are appropriate under the Rules of this Court.

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COPY

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

| | |
|---|---|
| UNITED STATES OF AMERICA,<br>Plaintiff,<br>v.<br>NORTH SHOE COMPANY; NORDSTROM'S ALBUQUERQUE, INC.; PARIS SHOE STORES, and PENOBSCOT SHOE COMPANY,<br>Defendants. | Civil Action No. [illegible]<br>ORDER RELIEVING DEFENDANT NORDSTROM'S ALBUQUERQUE, INC. FROM FINAL JUDGMENT |

WHEREAS, the Court having before it the joint motion of Plaintiff and of defendant Nordstrom's Albuquerque, Inc. for relief from Final Judgment and accompanying affidavit, and this Court having reviewed the files and pleadings and being fully advised in the premises, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

Defendant Nordstrom's Albuquerque, Inc. is hereby relieved from the operation of the Final Jugment entered in this case.

DONE IN OPEN COURT this 17th day of October, 1978.

H. VEARLE PAYNE

UNITED STATES DISTRICT JUDGE

APPROVED FOR ENTRY:

Of Attorneys for Plaintiff
United States of America

Of Attorneys for Defendant
Nordstrom's Albuquerque, Inc.

UNITED STATES v. CLOVIS RETAIL LIQUOR DEALERS TRADE ASSOCIATION, *et al.*

Civil No. 74-477

Year Judgment Entered: 1978

UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

| | |
|---|---|
| UNITED STATES OF AMERICA,<br>Plaintiff,<br>v.<br>CLOVIS RETAIL LIQUOR DEALERS TRADE ASSOCIATION;<br>AZTEC BOWLING CORPORATION;<br>CHAPARRAL LIQUORS, INC.;<br>GOLD LANTERN LOUNGE AND PACKAGE, INC.;<br>TOWER HOTEL CORPORATION;<br>JOHNNIE MACK GOODMAN, d.b.a. BOOT HILL LIQUORS;<br>EDDIE P. WATSON, d.b.a. MABRY DRIVE LOUNGE;<br>FRED W. JOHNSTON, d.b.a. SUNSET LOUNGE & PACKAGE STORE;<br>KIT PETTIGREW, d.b.a. PRINCE LOUNGE & PACKAGE STORE; and<br>JAMES E. FOSTER, d.b.a. LAVISTA LOUNGE AND PACKAGE STORE,<br>Defendants. | Civil Action No. 74-477<br>Filed: December 30, 1977<br>Entered: March 31, 1978 |

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on September 26, 1974 and the plaintiff and the defendants, by their respective attorneys, having each consented to the entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or an admission by any party with respect to any such issue of fact or law herein:

NOW, THEREFORE, upon a determination by this Court that entry of this Judgment will be in the public interest, and without any testimony being taken herein and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and of each of the parties hereto. The Complaint states claims upon which relief may be granted against the defendants and any 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," as amended (15 U.S.C. § 1), commonly known as the Sherman Act.

II

As used in this Final Judgment:

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

B. "Retail dealer" shall mean any person engaged in the business of selling alcoholic beverages at retail to consumers.

C. "Wholesaler" shall mean any person engaged in the sale of alcoholic beverages, purchased from the manufacturers, to a retail dealer.

D. "Alcoholic beverages" shall mean beverages containing alcohol, such as beer, wine, whiskey, scotch or other forms of liquor or distilled spirits, whether sold or intended for sale by the drink or in container.

E. "Markup" shall mean that amount added to the cost price by the retail dealer to determine the retail selling price.

III

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

IV

Each defendant shall require, as a condition of a sale or other disposition of any liquor license or other permit to operate as a retail dealer occurring within a period of five (5) years from the date of entry of this Final Judgment, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court, and serve upon the plaintiff, its consent to be bound by this Final Judgment.

V

Each of the defendants is enjoined and restrained from directly or indirectly, entering into, adhering to, maintaining, furthering, enforcing, or claiming any rights under any contract, agreement, understanding, plan, program, combination, or conspiracy to:

A. Raise, fix, stabilize, maintain, determine, or adhere to prices, markups, or any other terms or conditions at which alcoholic beverages are sold or offered for sale by retail dealers; or

B. Induce, persuade, compel, or coerce any person to establish, adopt, issue, adhere to, or to police or enforce adherence to any prices, markups, terms, or conditions at which alcholic beverages shall be sold or offered for sale by any retail dealer.

VI

Each of the defendants is enjoined and restrained from directly or indirectly:

A. Communicating to or exchanging with any retail dealer any information concerning any price or markup which any retail dealer utilizes or proposes to utilize in formulating any existing or proposed price, price change, discount, or other term or condition of sale at, or upon which, alcoholic beverages are to be sold;

B. Suggesting, in any manner, to any retail dealer that such retail dealer establish any markup or price, or utilize any published retail price list in formulating any retail price, on any alcoholic beverage offered for sale or to be offered for sale by such retail dealer;

C. Causing, attempting to cause, or threatening to cause physical or economic harm or property damage to any actual or potential retail dealer, to any of its owners, officers, directors, agents, partners or employees or to any family members of such owners, officers, directors, agents, partners or employees;

D. Threatening to put any retail dealer out of business;

E. Hindering, limiting, preventing, or attempting to hinder, limit, or prevent any wholesaler of alcoholic beverages from selling alcoholic beverages to any retail dealer;

F. Advocating, suggesting, urging, compelling, coercing, or attempting to influence any wholesaler to take any action to compel, advise, or encourage any retail dealer to advertise to sell alcoholic beverages at any particular price;

G. Exchanging with, or divulging to, any wholesaler of alcoholic beverages information concerning or relating to the refusal of any retail dealer to charge or adhere to any particular price; or

H. Causing, attempting to cause, or encouraging any individual to whom, by reason of age or otherwise, the sale of alcoholic beverages is prohibited by the laws of the State of New Mexico, to purchase any alcoholic beverage from any other retail dealer.

VII

A. The defendants are ordered within sixty (60) days after this Final Judgment is entered to dissolve the defendant Clovis Retail Liquor Dealers Trade Association, and, within sixty (60) days after the date of entry of this Final Judgment the defendants shall file with this Court and serve upon plaintiff an affidavit as to the fact and manner of their compliance with this subsection A of Section VII.

B. The defendants are enjoined and restrained from directly or indirectly organizing, joining, participating in the activities of, or contributing anything of value to any trade association, organization, or other group of retail dealers, the purposes or activities of which relate to the distribution or sale of alcoholic beverages contrary to any provision of this Final Judgment; and, for a period of five (5) years from the date of entry of this Final Judgment, the defendants are enjoined and restrained from organizing or maintaining, directly or indirectly, any association of retail dealers pertaining to the retailing of alcoholic beverages in the Clovis, New Mexico, area.

VIII

For a period of five (5) years from the date of entry of this Final Judgment, each defendant shall take the affirmative steps enumerated below to insure compliance with each provision of this Final Judgment and to advise each of its officers, directors, partners, managing agents, and employees who has responsibility for or authority over the establishment of prices of their obligations under this Final Judgment and of the criminal penalties for violations of this Final Judgment:

A. At least once each year, each defendant shall formulate and circulate to its officers, directors, partners, managing agents and pricing employees written directives to effect compliance with this Final Judgment.

B. At least once each year, each defendant shall call and conduct meetings of officers, directors, partners, managing agents and pricing employees to review the terms of this Final Judgment and the methods of compliance therewith.

C. Each defendant shall prepare and maintain for a period of five (5) years a record of each contact between said defendant, any officer, director, partner, managing agent or pricing employee of said defendant and any officer, director, partner, proprietor, managing agent or pricing employee of any other retail dealer doing business in Clovis, or Portales, New Mexico at which the business of the retail sale of alcoholic beverages was discussed. Such record shall identify the date and location of such contact, all parties to said discussion and the subject matter discussed.

IX

For a period of five (5) years from the date of entry of this Final Judgment, each defendant is ordered to file, with this Court and the plaintiff on each anniversary date of this Final Judgment, a sworn statement setting forth the steps it has taken during the prior year to comply with paragraphs VII and VIII of this Final Judgment together with copies of all directives and records made or formulated pursuant to subsections A, B, or C of paragraph VIII. Any defendant who has engaged in no activity relating to the sale of alcoholic beverages during the preceding twelve (12) months may comply with the provisions of paragraphs VIII and IX by so stating in the sworn statement required by this paragraph.

X

A. For the purpose of determining or securing compliance with this Final Judgment, any duly authorized representative 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:

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

2. Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, directors, agents, partners, or employees of such defendant, who may have counsel present, regarding any such matters.

B. A defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing, under oath if requested, with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information or documents obtained by the means provided in this Section shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

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

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

XI

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

XII

Entry of this Final Judgment is in the public interest.

DATED: March 31, 1978

Howard Bratton
UNITED STATES DISTRICT JUDGE