

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

U.S. v. A. SCHRADER'S SON, INC.  
Civil No.: 1116  
Year Judgment Entered: 1923



U. S. v. A. SCHRADER'S SON, INCORPORATED.

AT A STATED TERM OF THE UNITED STATES DISTRICT  
COURT HELD IN AND FOR THE EASTERN DISTRICT OF  
NEW YORK AT THE FEDERAL BUILDING, BROOKLYN,  
NEW YORK, ON THE 14th DAY OF JULY, 1923.

In Equity No. 1116.

Present: HON. EDWIN L. GARVIN, *District Judge*.

THE UNITED STATES OF AMERICA, PETITIONER,

VS.

A. SCHRADER'S SON, INCORPORATED, Henry P. Kraft,  
Philip G. Cole, William T. Hunter, jr., Frederick Tris-  
man, and Julius Volckhausen, DEFENDANTS.

FINAL DECREE.

This cause came on to be heard on the 29 day of June,  
1923, and was argued by counsel; and thereupon, upon  
consideration thereof, it was ordered, adjudged, and de-  
creed as follows, viz:

1. That the plan of selling and distributing valves, valve parts and accessories, pressure gauges, and other patented and unpatented articles described in the original petition in this cause and observed and enforced by the defendant, A. Schrader's Son, Incorporated, its officers and agents, prior to and at the time of the filing of said petition, was in violation of sections 1, 2, and 3 of the Act of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and also in violation of sections 2 and 3 of the Act of October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

2. That the defendants, A. Schrader's Son, Incorporated, Henry P. Kraft, Philip G. Cole, William T. Hunter, Jr., Frederick Trisman, and Julius Volckhausen, and all persons acting for or in behalf of them, be, and they are hereby, perpetually enjoined and restrained from selling or distributing such valves, valve parts, and accessories, pressure gauges, and other articles under the so-called "Tire Manufacturers Patent License," "Vehicle Manufacturers Patent License," "Jobbers' Patent License," and "Twitchell License Agreement" referred to in the petition in this case, or any other licenses or agreements or understandings imposing like restrictions on the use or resale thereof; and from in any manner selling or distributing such articles, or any of them, upon the condition, agreement, or understanding (a) that the purchaser shall resell only to manufacturers and dealers designated by the defendant, A. Schrader's Son, Incorporated, (b) that the purchaser shall resell only at prices fixed by agreement, understanding, or otherwise indicated by said defendants, (c) that the purchaser shall use defendants' products exclusively, (d) that the purchaser shall not use any of such articles except in connection with other like articles and accessories manufactured by the defendants, or (e) that the purchaser shall resell such articles at prices which discriminate unlawfully between different customers or classes of customers; and from controlling or attempting

to control in any manner or by any device the price at which purchasers of articles manufactured by the defendant, A. Schrader's Son, Incorporated, shall sell the same, or the persons to whom they sell, or the use to which the articles may be put by such purchasers; and from in any manner or by any device limiting or attempting to limit purchasers of any of the Schrader products from buying, selling, using, or dealing in like articles manufactured by competitors of the Schrader Company; provided, that this decree is not intended to prevent the imposition of restrictions regarding the exportation of defendants' products into other countries where defendants' patents in such countries would be adversely affected by such exportation.

3. The object of this decree is to secure bona fide compliance with the "antitrust laws" as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, but not to restrain the defendants from transacting their business with the largest measure of liberty permitted by law, and any party to this cause may make application to the court at any time for such further orders or directions as may be necessary or proper to give effect to the declared object of this decree, and jurisdiction of this cause is hereby retained for that purpose.

4. That the United States shall have its costs.

EDWIN L. GARVIN,  
*United States District Judge.*

U.S. v. SEAFARERS SEA CHEST CORPORATION, ET. AL.

Civil No.: 14674

Year Judgment Entered: 1956



**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Seafarers Sea Chest Corporation and Seafarers International Union of North America, Atlantic and Gulf District., U.S. District Court, E.D. New York, 1956 Trade Cases ¶68,298, (Mar. 20, 1956)**

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United States v. Seafarers Sea Chest Corporation and Seafarers International Union of North America, Atlantic and Gulf District.

1956 Trade Cases ¶68,298. U.S. District Court, E.D. New York. Civil Action No. 14674. Dated March 20, 1956. Case No. 1205 in the Antitrust Division of the Department of Justice.

**Sherman Antitrust Act**

**Combinations and Conspiracies—Monopolies—Labor Unions—Consent Decree—Practices Enjoined—Use of Bargaining Power to Compel Purchases from Union-Owned Business—Slop Chest Supplies.**—A seamen's union and its company, which was engaged in the sale of slop chest supplies, were each prohibited by a consent decree from entering into any agreement with any employer of seamen which may have the effect of inducing any such employer (1) to invite bids for contracts covering the purchase of such supplies only from either defendant, (2) to refuse to permit any dealer in such supplies from boarding any vessel, (3) to cancel orders for the purchase of such supplies from any person other than either defendant, (4) to return supplies held by such employer on consignment from any persons other than either defendant, or (5) to take any other steps that restrain or exclude any such supplier from freely engaging in the business of selling such supplies to any person. The union was prohibited from exercising any of its collective bargaining powers or rights, as a labor union, to coerce employers of seamen to purchase such supplies from either defendant or from any supplier designated by either defendant. Also, the union was ordered to cancel provisions of collective bargaining contracts requiring the purchase of such supplies from its company.

**Combinations and Conspiracies—Monopolies—Labor Unions—Consent Decree—Practices Enjoined—Sale of Slop Chest Supplies.**—A seamen's union and its company, which was engaged in the sale of slop chest supplies, were each prohibited from engaging in the sale of such supplies after five years from the date of the entry of the decree, unless, after three years from the date of the entry of the decree, the defendants can establish that such relief is not then necessary or that effective competitive conditions exist in the sale of such supplies to vessel owners employing members of the union.

**Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions—Union Activities.**—A consent decree entered against a seamen's union and its company; which sold slop chest supplies, provided that nothing contained in the decree should be deemed to prohibit the union from negotiating, as collective bargaining representative, with employers of seamen, captains, or masters of vessels concerning slop chests aboard vessels operated by such employers or by the captains or masters of such vessels. The decree further provided that such negotiations and contracts should not require the purchase of slop chest supplies from the union or its company.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General, and Marcus A. Hollabaugh, Richard B. O'Donnell, William D. Kilgore, Jr., John D. Swartz, Morton Steinberg, and Louis Perlmutter, Attorneys.

For the defendants: Seymour W. Miller, Brooklyn, N. Y.

**Final Judgment**

WALTER BRUCHHAUSEN, District Judge [ *full text* ] : Plaintiff, the United States of America, having filed its complaint in this Court on August 20, 1954; and all the parties hereto by their attorneys herein 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 hereto in respect of any such issue;

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

Ordered, adjudged, and decreed as follows :

I

[ *Sherman Act*]

The Court: has jurisdiction of the subject matter hereof and of all the parties hereto. The complaint states a claim upon which relief against the defendants may be granted 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," commonly known as the Sherman Act, as amended.

II

[ *Applicability of Judgment*]

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

III

[ *Definitions*]

For the purpose of this Final Judgment :

- (A) "Slop chest supplies" means those articles of clothing, merchandise, sailors' gear, tobacco and tobacco products 'purchased for resale aboard vessels to vessel personnel;
- (B) "Purchaser" means any vessel owner, operator, captain, master, steward or other person who purchases slop chest supplies for resale aboard vessels to vessel personnel;
- (C) "Person" means any individual, corporation, partnership or other legal entity;
- (D) "Defendant Union" means defendant Seafarers International Union of North America, Atlantic: and Gulf District;
- (E) "Defendant Corporation" means Seafarers Sea Chest Corporation.

IV

[ *Use of Bargaining Powers Restricted*]

Defendant Union is enjoined and restrained from exercising any of its collective bargaining powers, rights or duties, as a labor union, directly or indirectly, to coerce employers of seamen, or any purchaser to purchase slop chest supplies, in whole or in part, from either defendant, or from any slop chest supplier designated by either defendant.

V

[ *Termination of Restrictive Agreements*]

(A) Defendant Union is ordered and directed forthwith to terminate and cancel:

- (1) Those provisions of its collective bargaining agreements of December 31, 1952 with certain steamship owners and/or operators, identified as the "Second Memorandum of Agreement" captioned "1—SLOP CHEST" which provides that:



In order to afford members of the crew the opportunity to obtain the highest quality of merchandise at the most reasonable price, the Companies agree to permit the SEA CHEST CORPORATION to furnish Slop Chests on a competitive basis as to price, quality and brands:

The SEA CHEST CORPORATION further agrees to supply the necessary articles to vessels as required by law. In Ports where the SEA CHEST CORPORATION has no office and where they can not furnish the Slop Chests, the present practice of obtaining supplies for the Slop Chest shall be continued.

- (2) Amendments or revisions, if any, of the aforesaid provisions of the said Second Memorandum of Agreement;
- (3) Related or kindred understandings or agreements, if any, with employers of seamen, or with any purchaser, having to do with the sale and/or purchase of slop chest supplies from either defendant;
- (B) Defendant Union is ordered and directed to file with this Court within 10 days after the entry of this Final Judgment a report setting forth the facts and manner of its compliance with subsections (1), (2) and (3) of subsection (A) of this section V, and to serve a copy of such report upon the plaintiff herein;
- (C) Each defendant is enjoined and restrained from entering into, adopting, performing, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under any contract, agreement, understanding, plan or program which has as its purpose or effect the continuation of renewal of the aforesaid provisions of the Second Memorandum of Agreement; or revisions or amendments thereof, if any; or of the aforesaid related or kindred understandings, if any.

VI

*[ Prohibited Agreements]*

Each defendant is enjoined and restrained from entering into, adopting, performing, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under any contract, agreement, understanding, plan or program with any employer of seamen, or with any purchaser, which may have the purpose or may have the effect of inducing or influencing any such employer or purchaser:

- (A) To invite bids for contracts covering the purchase of slop chest supplies only from either defendant or any supplier of slop chest supplies designated by either defendant;
  - (B) To refuse to permit any dealer in slop chest supplies from boarding any vessel;
  - (C) To cancel orders for the purchase of slop chest supplies from any person other than either defendant;
  - (D) To return slop chest supplies held by such employer or purchaser on consignment from any persons other than either defendant;
  - (E) To take any other steps or do any other things that restrain or exclude or tend to restrain or exclude any supplier of slop chest supplies from freely engaging in the business of selling slop chest supplies to any person.
- Provided, however, that the foregoing terms of this section VI shall not be deemed to be violated simply because the defendant Corporation has a contract with any purchaser for the sale of slop chest supplies, or is making sales of such supplies to any purchaser, if made in the ordinary course of business.

VII

*[ Sale of Supplies Prohibited]*

Five (5) years after the date of the entry of this Final Judgment, defendants are enjoined and restrained from, directly or indirectly, engaging in the sale of slop chest supplies; provided, however, that defendants may, upon terms and conditions, if any, to be approved by this Court, be relieved of this section VII upon application to this Court, with notice thereof to the plaintiff, at any time after three (3) years after the date of the entry of this Final Judgment and showing to the satisfaction of this Court that such relief is not then necessary or appropriate, or that effective competitive conditions exist in the sale of slop chest supplies to vessel owners, operators, or their agents, employing members of the defendant Union.

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VIII

*[ Activities Not Prohibited ]*

Nothing contained in this Final Judgment shall, or be deemed to, enjoin, restrain, prohibit, or prevent defendant Union from negotiating and contracting as collective bargaining representative, with employers of seamen, captains, masters or stewards of vessels, or their respective representatives, concerning slop chests aboard vessels operated by such employers, or by the captains, masters or stewards of such vessels; provided that such negotiations and contracts shall not require or have the effect of requiring the purchase of slop chest supplies from either defendant or from any slop chest supplier designated by either defendant.

IX

Subject to the provisions of section VII, nothing contained in this Final Judgment shall, or be deemed to, enjoin, restrain, prohibit or prevent defendant Union, or defendant Corporation, from engaging or continuing to engage, in the sale and furnishing of slop chest supplies to purchasers.

X

*[ 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 either 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. For the purpose of securing compliance with this Final Judgment, either 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 with respect to any of the matters contained in this Final Judgment as from time to time may be reasonably necessary for the purpose of 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 Retained ]*

Jurisdiction is retained by this 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 and directions 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 the punishment of violations thereof.

U.S. v. NASSAU & SUFFOLK COUNTY RETAIL HARDWARE ASSOCIATION, INC., ET AL.

Civil No.: 17768

Year Judgment Entered: 1959



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**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Nassau & Suffolk County Retail Hardware Association, Inc., et al., U.S. District Court, E.D. New York, 1959 Trade Cases ¶69,345, (Apr. 24, 1959)**

United States v. Nassau & Suffolk County Retail Hardware Association, Inc., et al.

1959 Trade Cases ¶69,345. U.S. District Court, E.D. New York. Civil Action No. 17768. Filed April 24, 1959. Case No. 1346 in the Antitrust Division of the Department of Justice.

**Sherman Antitrust Act**

**Combinations and Conspiracies—Consent Decree—Trade Associations—Association Membership as Means of Trade Restraint—Price-Fixing—Boycotts—Exclusion from Trade—Refusal to Deal.**—A retail hardware dealers' trade association and its former president were enjoined by a consent decree from entering into or enforcing any agreement to fix prices or other terms or conditions for the sale of hardware and housewares to consumers, restrict price competition between discount houses and retailers, and hinder or prevent any discount house or other person from selling to consumers. The decree also enjoined the association and its former president from advising or inducing suppliers to discontinue business relations with any discount house, hinder or prevent distributors or wholesalers from reselling to any discount house, and boycotting or refusing to deal with any manufacturer of products resold in discount houses or any supplier of such discount houses. In addition, the decree prohibited membership or participation in the activities of any trade association or other organization whose activities were inconsistent with the provisions of the judgment.

**Department of Justice Enforcement: and Procedure—Consent Decree—Specific Relief—Dissolution of Hardware Retailers' Trade Association.**—The dissolution of a hardware retailers' trade association was ordered by a consent decree.

For the plaintiff: Robert A. Bicks, Acting Assistant Attorney General; and Baddia J. Rashid, Harry N. Burgess, Richard B. O'Donnell, Augustus A. Marchetti, Joseph T. Maioriello, Paul D. Sapienza, and Donald A. Kinkaid.

For the defendants: William E. Woods for Nassau and Suffolk Retail Hardware Assn., Inc. The decree was also signed by Murray M. Pearlstein, the individual defendant.

**Final Judgment**

**[ Consent Decree]**

MATTHEW T. ABRUZZO, District Judge [ *In full text*]: The plaintiff, United States of America, having filed its complaint herein on June 27, 1957, and each of the said defendants having appeared herein 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 admission by any party in respect of any such issue;

Now, Therefore, before any testimony or evidence has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of all the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

**[ Jurisdiction]**

The Court has jurisdiction of the: subject matter hereof and all the parties hereto. The complaint states a claim 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

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[ *Definitions*]

As used in this Final Judgment:

- (A) "Person" shall mean any individual, partnership, firm association, corporation or other legal entity;
- (B) "Defendant, association" shall mean the defendant Nassau & Suffolk County Retail Hardware Association, Inc.;
- (C) "Retailer" shall mean any person who sells for profit goods and merchandise to consumers;
- (D) "Discount house" shall mean a retailer who solicits the favor of consumers chiefly on the basis of price.

III

[ *Applicability*]

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

IV

[ *Specific Relief—Dissolution of Association*]

The defendants are ordered and directed:

- (A) To institute such action as may be necessary to dissolve the defendant association under the laws of the State of New York within 90 days from the signing of this Judgment, and to complete such dissolution with 120 days from the date of the signing of this Judgment.
- (B) Upon completion of such dissolution of the defendant association, to file an affidavit with this Court and with the plaintiff setting forth the fact of compliance with this Section IV.

V

[ *Price-Fixing—Exclusion from Trade*]

The defendants are jointly and severally enjoined and restrained from, directly or indirectly, entering into, adhering to, enforcing, maintaining or claiming any rights under any contract, agreement, understanding, plan or program with any retailer or with any association or central agency of or for retailers:

- (A) To fix, determine, establish, maintain or stabilize prices, pricing methods, discounts, mark-ups or other terms or conditions for the sale of hardware and housewares to consumers;
- (B) To limit, restrict, eliminate or reduce price competition between discount houses and retailers;
- (C) To hinder, restrict, limit or prevent any discount house or other person from selling hardware and housewares to consumers.

VI

[ *Boycotting—Refusal to Deal*]

The defendants are jointly and severally enjoined and restrained from, directly or indirectly:

- (A) Advising, suggesting or inducing or attempting to advise, suggest or induce, any or all suppliers of hardware and housewares to discontinue business relations with any discount house;
- (B) Hindering, restricting, limiting or preventing or attempting to hinder, restrict or prevent distributors, jobbers or wholesalers of hardware and housewares from reselling such products to any discount house;

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(C) Boycotting or refusing to deal, or attempting to boycott or refuse to deal, with any manufacturer of products resold in discount houses or with any supplier of merchandise to discount houses:

(D) Being a member of, contributing anything of value to, or participating in any of the activities of, any trade association or other organization, the activities of which are inconsistent in any manner with any of the provisions of this Final Judgment.

VII

[ *Inspection and Compliance* ]

For the purpose of securing compliance with this Final Judgment, 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, 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 of the matters contained in this Final Judgment, and (B) subject to the reasonable convenience of such defendant, and without restraint or interference, to interview officers and employees of such defendant who may have counsel present, regarding any such matters. Upon such written request said defendant shall submit such written reports 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 permitted in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII

[ *Jurisdiction Retained* ]

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

U.S. v. NASSAU-SUFFOLK PHARMACEUTICAL SOCIETY, INC.  
Civil No.: 63-C-1206  
Year Judgment Ordered: 1963



[§ 70,936] United States v. Nassau-Suffolk Pharmaceutical Society, Inc.  
In the United States District Court for the Eastern District of New York. Civil No.  
63-C-1206. Filed, but not entered, November 7, 1963.  
Case No. 1766 in the Antitrust Division of the Department of Justice.  
Sherman Act  
Price Fixing—Retail Druggist Association—Prescription Drugs—Consent Judgment.  
—A retail druggist association and its members would be enjoined by a consent judgment.  
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from maintaining or adhering to uniform prices for prescription drugs or professional services.

See Price Fixing, Vol. 1, ¶ 4770, Department of Justice Enforcement, Vol. 2, ¶ 6834.10.

For the plaintiff: William D. Kilgore, Jr., John J. Galgay, John D. Swartz, Morris F. Klein and Paul D. Sapientza, Attorneys, Department of Justice.

For the defendant: Arent, Fox, Kintner, Plotkin and Kahn, Washington, D. C.

#### Proposed Final Judgment

Plaintiff, United States of America, having filed its complaint, and the defendant, Nassau-Suffolk Pharmaceutical Society, Inc., having appeared by its attorneys, and the said plaintiff and defendant having each consented to the entry of this Final Judgment herein, without admission by any party in respect to any issue herein.

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

Ordered, adjudged and decreed as follows:

#### I

##### [Sherman Act]

The complaint states a claim against the defendant under Section 1 of the Act of Congress of July 2, 1890 entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended. This Court has jurisdiction of the subject matter hereof and the parties hereto.

#### II

##### [Definitions]

As used in this Final Judgment:

(A) "Prescription" is an order for drugs or medicines or combinations or mixtures thereof, written, signed or authorized by a duly licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions intended for the treatment or prevention of disease in man or animals;

(B) "Prescription drug" is a drug or medicine or a combination or mixture thereof sold to fill a prescription;

(C) "Pharmacist" is an individual duly licensed to prepare, compound and dispense prescriptions and to sell drugs, medicines and notions at retail;

(D) "Prescription pricing schedule" is a document, formula or list designed for use as a guide in computing prices to be charged by pharmacists for prescription drugs;

(E) "Person" is any individual, firm, partnership, corporation, association, trustee or any other business or legal entity.

#### III

##### [Applicability]

The provisions of this Final Judgment applicable to defendant, Nassau-Suffolk Pharmaceutical Society, Inc., shall apply to the defendant, its officers, directors, governors, agents, members and employees, committees of defendant, and other persons in active concert or participation with the defendant who receive actual notice of this Final Judgment by personal service or otherwise.

#### IV

##### [Practices Prohibited]

Defendant Nassau-Suffolk Pharmaceutical Society, Inc. and each of its members are enjoined and restrained from, directly or indirectly:

(A) Combining or conspiring to establish or maintain uniform consumer prices for prescription drugs or professional services in the State of New York;

(B) Entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan, or program or conspiracy (1) to fix, determine, maintain or suggest prices, terms or conditions for the sale of prescription drugs or professional services, or (2) to formulate, adopt, issue, distribute, recommend or suggest the use by any pharmacist or any other person of any professional fee schedule, or prescription pricing schedule or other list, formula, guide, schedule, or method for pricing prescription drugs;

(C) Advocating, suggesting, urging, inducing, compelling, or in any other manner influencing or attempting to influence any person to use or adhere to any professional

fee schedule or prescription pricing schedule or schedules, or any other list, formula, guide, schedule or method for pricing prescription drugs;

(D) Policing or making individual contact with any pharmacist or other person or devising or putting into effect any procedure to ascertain, determine, fix, influence, or suggest the price at which any prescription drug or professional service is or may be sold or offered by any pharmacist.

Nothing in subsections (B), (C), or (D) of this Section IV shall be construed to restrain any pharmacy owner or pharmacist member of the defendant Society or any other associations from requiring his employees to sell prescription drugs at prices, and upon terms and conditions of sale, established by such pharmacy owner or pharmacist in pharmacies owned or operated by said pharmacist or pharmacy owner.

At any time, any agency of the United States or of the State of New York may, upon grounds of undue hardship to it, and without having standing as a party herein, petition this Court for an order enabling the defendant Society to negotiate and enter into a contract for the sale of prescription drugs where the price of such prescription drugs will be paid for by the petitioning agency. Such petition may be in the form of a letter to the Court with copies to be served on both the plaintiff and defendant herein. The matter will then be set for hearing at which time the petitioning agency may produce witnesses and other evidence in support of its petition. Plaintiff and defendant will be permitted to be heard and make objections to any such proposed negotiation or contract. Permission by this Court to enter into any such contract shall not be considered an adjudication as to the legality or illegality of such contract under the antitrust laws, nor shall it be deemed to bar or estop the plaintiff from attacking the legality of any such contract under the antitrust laws generally.

## V

### [Compliance]

Defendant Nassau-Suffolk Pharmaceutical Society, Inc. is ordered and directed:

(A) Within 60 days after the entry of this Final Judgment, to serve by mail upon each of its members a confirmed copy of

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this Final Judgment. Said defendant is further ordered and directed to thereupon file an affidavit with the clerk of this Court that it has done so, which affidavit shall set forth the name and address of each person so served;

(B) To furnish a copy of this Final Judgment to, or to serve same by registered or certified mail return receipt requested upon, each new member thereof at the time of acceptance of such membership and to obtain and keep in its files so long as he or she remains a member, a receipt therefor signed by each new member or a registered or certified mail receipt for each such Final Judgment served by mail;

(C) Within 60 days after entry of this Final Judgment, to promulgate and enforce a requirement that as a condition of membership or retention of membership each present and future member deliver to the defendant Society for destruction all copies in his or her possession or control of prescription pricing schedules obtained from or through the defendant Society or a statement that he or she has no such schedules in his or her possession or control;

(D) To promptly destroy all copies of such schedules in its possession or delivered to it as hereinabove provided.

## VI

### [Inspection]

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 the defendant, and subject to any legally recognized privilege, be permitted:

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

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

Upon such written request, defendant shall submit such written reports to the Department of Justice with respect to matters contained in this Final Judgment as from time to time may be necessary to the enforcement of said Final Judgment. No information obtained by the means provided in this Section 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, 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 the 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 vacating of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violation thereof.

U.S. v. NASSAU-SUFFOLK PHARMACEUTICAL SOCIETY, INC.  
Civil No.: 63-C-1207  
Year Judgment Entered: 1963



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL NO. 63 C 1207
	)	
MASSAU-SUFFOLK PHARMACEUTICAL	)	
SOCIETY, INC.,	)	ENTERED: December 9, 1963
	)	
Defendant.	)	

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint, and the defendant, Nassau-Suffolk Pharmaceutical Society, Inc., having appeared by its attorneys, and the said plaintiff and defendant having each consented to the entry of this Final Judgment herein, without admission by any party in respect to any issue herein;

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

ORDERED, ADJUDGED AND DECREED as follows:

I

The complaint states a claim against the defendant under Section 1 of the Act of Congress of July 2, 1890 entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended. This Court has jurisdiction of the subject matter hereof and the parties hereto.

II

As used in this Final Judgment:

- (A) "Prescription" is an order for drugs or medicines or combinations or mixtures thereof, written, signed or authorized by a duly licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions intended for the treatment or prevention of disease in man or animals;
- (B) "Prescription drug" is a drug or medicine or a combination or mixture thereof sold to fill a prescription;
- (C) "Nonprescription drug" is a drug or medicine or a combination or mixture thereof which can legally be sold without a prescription;
- (D) "Drug products" include both prescription drugs and nonprescription drugs;
- (E) "Related goods" are toiletries, cosmetics and all sundry drugstore items;
- (F) "Druggist" or "drugstore" is any person engaged in the business of selling at retail, prescription drugs, nonprescription drugs and related goods;
- (G) "Pharmacist" is an individual duly licensed to prepare, compound and dispense prescriptions;
- (H) "Manufacturer" is any person engaged in the business of manufacturing or producing drug products, chemicals or related goods;
- (I) "Fair trade price" is the price set by the manufacturer for resale to the consuming public in accordance with the Fair Trade Laws of the State of New York;
- (J) "Person" is any individual, firm, partnership, corporation, association, trustee or any other business or legal entity.

III

The provisions of this Final Judgment applicable to defendant, Nassau-Suffolk Pharmaceutical Society, Inc., shall apply to the defendant, its officers, directors, governors, agents and employees, committees of defendant, and other persons in active concert or participation with the defendant who receive actual notice of this judgment by personal service or otherwise. This Final Judgment shall not be deemed to apply to any practice of the defendant with respect to prescription drugs if that practice by the defendant is prohibited in the Final Judgment entered in United States v. Nassau-Suffolk Pharmaceutical Society, Inc., Civil \_\_\_\_\_, \_\_\_\_\_, 1963.

IV

Defendant Nassau-Suffolk Pharmaceutical Society, Inc., is hereby enjoined and restrained from directly or indirectly:

- (A) Combining or conspiring to stabilize and maintain resale prices of drug products or related goods;
- (B) Entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program to fix, determine, maintain or suggest prices or other terms or conditions for the sale of drug products or related goods;
- (C) Inducing, compelling, coercing or in any other manner influencing or attempting to influence any person to sell drug products or related goods at any fixed, minimum or maximum price;
- (D) Shopping, investigating, policing, threatening, warning or making individual contact with any druggist, pharmacist or other person or devising or putting into effect any procedure to ascertain, determine, fix, influence or suggest the price at which any drug products or related goods are or may be sold by any druggist or pharmacist;

(E) Advocating, suggesting, urging, inducing, compelling, coercing or in any other manner influencing or attempting to influence any manufacturer to enforce fair trade prices for the products of such manufacturer;

(F) Notifying or otherwise advising any manufacturer of sales of its products at less than fair trade prices or threatening, warning or advising any druggist that it will do so;

(G) Instigating or instituting lawsuits to maintain fair trade prices, recommending or suggesting attorneys or paying legal fees or expenses or collecting evidence therefor, or threatening or warning any druggist that it will do so.

Nothing in this Section IV shall be construed to restrain any pharmacist or druggist member of defendant Society from requiring his employees to sell drug products or related goods in drugstores owned or operated by such pharmacist or druggist at prices, and upon terms and conditions of sale, established by such pharmacist or druggist or at fair trade prices.

V

Defendant Nassau-Suffolk Pharmaceutical Society, Inc., is ordered and directed:

(A) Within sixty (60) days after the entry of this Final Judgment, to serve by mail upon each of its members a conformed copy of this Final Judgment. Said defendant is further ordered and directed to thereupon file an affidavit with the clerk of this Court that it has done so, which affidavit shall set forth the name and address of each person so served;

(B) To furnish a copy of this Final Judgment to, or to serve same by registered or certified mail return receipt requested upon, each new member thereof at the time of acceptance of such membership



and to obtain and keep in its files so long as he or she remains a member, a receipt therefor signed by each such new member or a registered or certified mail receipt for each such Final Judgment served by mail.

VI

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 the defendant, and subject to any legally recognized privilege, be permitted:

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

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

Upon such written request, defendant shall submit such written reports to the Department of Justice with respect to matters contained in this Final Judgment as from time to time may be necessary to the enforcement of said Final Judgment. No information obtained by the means provided in this Section 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, 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 the 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 vacating of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violation thereof.

Dated this 9th day of December, 1963.

/s/ WALTER BRUCHHAUSEN  
United States District Judge

U.S. v. PERMATEX COMPANY, INC.  
Civil No.: 66-C-395  
Year Judgment Entered: 1966



**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Permatex Company, Inc., U.S. District Court, E.D. New York, 1966 Trade Cases ¶71,754, (Jun. 1, 1966)**

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

United States v. Permatex Company, Inc.

1966 Trade Cases ¶71,754. U.S. District Court, E.D. New York. Civil No. 66 C 395. Entered June 1, 1966. Case No. 1898 in the Antitrust Division of the Department of Justice.

**Sherman Act**

**Refusal to Sell—Class of Business—Maintenance Chemical Products—Consent Judgment—**A manufacturer of maintenance chemical products was prohibited by a consent judgment from entering into any agreement with any of its distributors or jobbers to restrict or limit the persons to whom they may sell the manufacturer's products and from refusing to sell to any person because of the price at which the person has sold the manufacturer's products.

For the plaintiff: Donald F. Turner, Assistant Attorney General; Gordon B. Spivack; Harry G. Sklarsky; and John D. Swartz.

For the defendant: Herbert J. Miller, Jr.; Murray S. Monroe; Norman H. Seidler; John H. Clark; Harry N. Burgess; Charles F. B. McAleer; Joseph J. Calvert.

**Final Judgment**

ROSLING, District Judge: Plaintiff, United States of America, having filed its complaint herein on April 28, 1966, and defendant having filed its answer denying the substantive allegations of such complaint, and the parties 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 either party with respect to any such issue;

Now, Therefore, without the taking of any testimony and without trial or adjudication of any fact or law herein, and upon the consent of the parties hereto, separately filed May 27, 1966 it is hereby

Ordered, Adjudged and Decreed as follows:

I

**[ Sherman Act]**

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, 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) "Permatex" means the defendant Permatex Company, Inc., a New York corporation;
- (B) "Person" means any individual, partnership, firm, corporation, association or other business or legal entity;
- (C) "Permatex product" means any product now, or hereafter, manufactured or sold by Permatex;

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(D) "Distributor" means any person, having a place of business in the United States, who purchases any Permatex product from Permatex for resale;

(E) "Jobber" means any person (other than a distributor), having a place of business in the United States, who purchases any Permatex product for resale to retailers, auto repair shops, manufacturers, or industrial or governmental users of Permatex products.

III

[ *Applicability* ]

The provisions of this Final Judgment, shall apply to Permatex and to each of its subsidiaries, successors, assigns, officers, directors, servants, employees and agents, and to all other persons in active concert or participation with Permatex who receive actual notice of this Final Judgment by personal service or otherwise. Provided, however, that for the purposes of this Final Judgment, defendant Permatex, its officers, directors, servants, employees and *bona fide* agents, when acting as such, shall be deemed to be one person.

IV

[ *Practices Prohibited* ]

Defendant Permatex is enjoined and restrained from, directly or indirectly:

(A) Entering into, adhering to, maintaining, enforcing or claiming any rights under any contract, agreement, understanding, plan or program with any distributor or jobber of any Permatex product, or with any other person to:

- (1) Fix, establish, limit or restrict the price or prices, terms or conditions for the sale of any Permatex product to any third person;
- (2) Restrict or limit the person, or persons, to whom any distributor, or jobber or any other person may or shall sell any Permatex product;
- (3) Boycott, or otherwise refuse to sell any Permatex product to, any person or class or group of persons;

(B) Selling, or offering or attempting to sell, any Permatex product to any person on or accompanied by any condition, agreement or understanding which fixes, limits or restricts the price or prices, terms or conditions at which such Permatex product or products may be sold to any third person, or which restricts or limits the persons or class of persons to whom such product or products may be sold;

(C) Restricting or limiting or attempting to restrict or limit any person from purchasing any Permatex product or products from any other source;

(D) Refusing, in the ordinary course of business, to sell any Permatex product to any person based in whole or in part upon the price or prices at which, or the persons to whom, such other person sells, or has sold, Permatex products;

(E) In any manner restricting, limiting or preventing, or attempting to restrict, limit or prevent any other person from:

- (1) Selling or offering to sell any Permatex product or products at any price, or upon any terms or conditions such other person may individually determine; or
- (2) Selling or offering to sell any Permatex product or products to any person or person, or to any group or class of persons;
- (3) Purchasing any Permatex product or products from any distributor or jobber thereof;

(F) Nothing contained in subsections (A) (2), (B), or (E) (2) of this Section IV shall be construed to prohibit defendant Permatex from allowing or disallowing any distributor or jobber any functional discount or allowance when so required under the Robinson-Patman Act.

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V

*[ Modification of Contracts]*

(A) Defendant is ordered and directed, within 90 days from the date of entry of this Final Judgment, to

- (1) Cancel each provision of every contract to which it may be a party which is contrary to, or inconsistent with, any provision of this Final Judgment;
- (2) Remove from all its sales literature, salesmen's manuals, and similar documents, any language which is contrary to or inconsistent with any provision of this Final Judgment;
- (3) Mail to each of its distributors and to each of its jobbers known to it a conformed copy of this Final Judgment together with a letter which includes a statement substantially identical to Exhibit A attached hereto and made a part hereof; and

(B) Defendant is ordered and directed, for a period of two years from the date of entry of this Final Judgment, to mail to each new distributor appointed by it, not later than 30 days after the date of such distributor's appointment, a conformed copy of this Final Judgment together with a letter which includes a statement substantially identical to Exhibit A attached hereto and made a part hereof.

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

VI

*[ Inspection and Compliance]*

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

(A) Access during the office hours of defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the 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 officers or employees of defendant, who may have counsel present, regarding any such matter.

Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division defendant shall submit such written reports with respect to the matters covered in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment.

No information obtained by the means provided for 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 of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

*[ Jurisdiction Retained]*

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the Court at any time for such further orders 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.

Exhibit "A"

In accordance with the terms of a decree entered by the United States District Court for the Eastern District of New York in Brooklyn, New York, with the consent of the parties, terminating the Government's civil antitrust lawsuit against Permatex Company, Inc., we are sending this notice to you and to other distributors and jobbers in the United States who handle Permatex products.

The decree provides, among other things, that:

- (1) We cannot enter into any agreement with you which prevents you from selling Permatex products to any customer you choose, at any price you determine; and
- (2) We cannot enter into any agreement with you or anyone else which prevents us from selling Permatex products to any other person.

A copy of the Court's decree is enclosed.

The Permatex Company, in entering into this decree, did so in order to avoid expensive litigation so that it would be able to concentrate on its primary purpose—selling Permatex products. The decree does not, of course, constitute an admission that Permatex Company is guilty of any wrongdoing, and the decree so states.

We trust that we can look forward to a continuation of the wonderful business relationship that has existed between us in the past.

U.S. v. EHRENREICH PHOTO-OPTICAL INDUSTRIES, INC.

Civil No.: 66-C-929

Year Judgment Entered: 1966





**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Ehrenreich Photo-Optical Industries, Inc., U.S. District Court, E.D. New York, 1966 Trade Cases ¶71,892, (Oct. 31, 1966)**

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

United States v. Ehrenreich Photo-Optical Industries, Inc.

1966 Trade Cases ¶71,892. U.S. District Court, E.D. New York. No. 66-C-929, Entered October 31, 1966. Case No. 1915 in the Antitrust Division of the Department of Justice.

**Sherman Act**

**Price Fixing—Photographic Products—Consent Judgment.**—A distributor of photographic products was prohibited under the terms of a consent decree from agreeing with anyone to fix prices, impose restrictions on resale, or refuse to sell its products to others; from placing limits as to persons to whom its products may be resold or refusing to deal with anyone because of persons to whom resale is made.

For the plaintiff: Donald F. Turner, Assistant Attorney General, Gordon B. Spivack, William D. Kilgore, Jr., John D. Swartz, and Eugene Margolis, Attorneys, Department of Justice.

For the defendant: Alvin A. Licht of LeBoeuf, Lamb & Leiby.

**Final Judgment**

MISHLER, D. J.: Plaintiff, United States of America, having filed its complaint herein on September 29, 1966, and the parties 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 either party with respect to any such issue;

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

Ordered, adjudged and decreed as follows:

I

**[ Sherman Act]**

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 (15 U. S. C. §1), as amended, commonly known as the Sherman Act.

II

**[ Definition]**

As used in this Final Judgment:

(A) "Defendant" shall mean Ehrenreich Photo-Optical Industries, Inc. and any corporation or other legal entity owned or controlled by Ehrenreich Photo-Optical Industries, Inc.;

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

(C) "Photographic products" shall mean cameras, lenses, projectors and accessories thereof, and film processing equipment, except lenses, projectors and film processing equipment intended for commercial or industrial use.

III

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**[ Applicability]**

The provisions of this Final Judgment shall apply to the defendant and to each of its subsidiaries, successors, and assignees, and to their respective officers, directors, agents and employees, 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.

**IV**

**[ Price Fixing]**

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

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

- (1) Fix, establish, limit or restrict the price or prices, terms or conditions for the sale of any photographic products to any other person;
- (2) Restrict or limit any person, or persons from reselling any photographic products to any other person;
- (3) Boycott, or otherwise refuse to sell any photographic products to any person or class or group of persons.

(B) Imposing or attempting to impose any limitation, condition or restriction as to the persons to whom, photographic products with which, prices at which, or terms and conditions on which, any person may resell defendant's photographic products;

(C) Refusing to sell or threatening to refuse to sell to any person who was or is appointed a dealer of the defendant because of the persons to whom, photographic products with which, prices, terms or conditions of sale on which, said person resold or resells defendant's photographic products;

(D) In any manner restricting, limiting or preventing, or attempting to restrict, limit or prevent any person from:

- (1) Selling or offering to sell any photographic products at any price, or upon any terms or conditions such person may individually determine; or
- (2) Selling or offering to sell any photographic products to any other person or persons, or to any group or class of persons;

(E) Refusing to honor the warranty on defendant's photographic products sold by it when such products are purchased from any retailer.

Nothing contained in this Section IV of this Final Judgment shall prevent defendant from availing itself of the benefits, if any, accruing to it by virtue of the Act of Congress of August 17, 1937, commonly known as the Miller-Tydings Act, or the Act of Congress of July 14, 1952, commonly known as the McGuire Act, upon the expiration of one (1) year after the date of entry of this Final Judgment.

**V**

**[ Contract Cancellation and Notice]**

(A) Defendant is ordered and directed, within ninety (90) days from the date of entry of this Final Judgment, to

- (1) Cancel each provision of every contract to which it may be a party which is contrary to, or inconsistent with, any provision of this Final Judgment;
- (2) Remove from all its sales literature, salesmen's manuals, and similar documents, any language which is contrary to or inconsistent with any provision of this Final Judgment;
- (3) Mail to each of its retailers known to it a conformed copy of this Final Judgment together with a letter which includes a statement substantially identical to Exhibit A attached hereto and made a part hereof;

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(4) Publish a conformed copy of this Final Judgment in Photo Dealer, Photographic Trade News, Photo Marketing, and Photo Weekly commencing with issues published within 60 days subsequent to the date of entry of this Final Judgment.

(B) Defendant is ordered and directed, for a period of one (1) year from the date of entry of this Final Judgment to mail to each new retailer appointed by it, not later than thirty (30) days after the date of such retailer's appointment, a conformed copy of this Final Judgment together with a letter which includes a statement substantially identical to Exhibit A attached hereto and made a part hereof.

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

VI

*[ Inspection and Compliance]*

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

(A) Access during the office hours of defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the 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 officers or employees of defendant, who may have counsel present, regarding any such matter.

Upon such written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, defendant shall submit such written reports with respect to the matters contained in this Final Judgment.

No information obtained by the means provided for 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 of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VII

*[ Jurisdiction Retained]*

Jurisdiction is retained 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.

Exhibit "A"

In accordance with the terms of a decree entered by the United States District Court for the Eastern District of New York in Brooklyn, New York, with the consent of the parties, terminating the Government's civil antitrust lawsuit against Ehrenreich Photo-Optical Industries, Inc., we are sending this notice to you and to other retailers in the United States who handle Ehrenreich photographic products.

The decree provides, among other things, that:

(1) We cannot enter into any agreement with you which prevents you from selling Ehrenreich photographic products to any customer you choose, at any price you determine; and

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(2) We cannot enter into any agreement with you or anyone else which prevents us from selling Ehrenreich photographic products to any other person.

A copy of the Court's decree is enclosed.

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U.S. v. F. & M. SCHAEFER BREWING COMPANY  
Civil No.: 62-C-1421  
Year Judgment Entered: 1969



**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. F. & M. Schaefer Brewing Co., U.S. District Court, E.D. New York, 1969 Trade Cases ¶72,902, (Aug. 19, 1969)**

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

United States v. F. & M. Schaefer Brewing Co.

1969 Trade Cases ¶72,902. U.S. District Court, E.D. New York. Civil Action No. 62 C 1421 Calendar No. NJ-1210. Entered August 19, 1969. Case No. 1727 in the Antitrust Division of the Department of Justice.

**Sherman Act**

**Common Buying or Selling Agent—Beer—Consent Decree.**—A brewing company was barred by a consent decree from entering into a marketing agreement with a designated brewery respecting either firm's beer anywhere in the United States and, for ten years, from entering into unapproved marketing agreements with any other brewery, respecting either firm's beer, anywhere that the consenting defendant marketed at the time of the decree.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen., Baddia J. Rashid, William D. Kilgore, Jr., Norman H. Seidler, John Sirignano, Jr., Ralph T. Giordano, and Joan Sidor, Attys., Dept. of Justice.

For the defendant: Royall, Koegel & Wells, by William R. Glendon.

**Final Judgment**

ROSLING, D. J.: Plaintiff, United States of America, having filed its Complaint herein on December 20, 1962, and the defendant having appeared by its attorneys and filed its answer to such Complaint, denying the substantive allegations thereof, and

Plaintiff and defendant The F. & M. Schaefer Brewing Co. ("Schaefer") having severally 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 Schaefer, in respect to any such issue, and this Court having directed the entry of such a Final Judgment,

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 hereof and of the parties consenting hereto and the Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended (15 U. S. C. Sect. 1).

II

**[ Definitions ]**

For purposes of this Final Judgment:

(A) "Schaefer" means defendant The F. & M. Schaefer Brewing Co., a corporation organized and existing under the laws of the State of New York, and shall include any subsidiary or affiliate thereof.

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(B) "Anheuser" means Anheuser-Busch, Incorporated, a corporation organized and existing under the laws of the State of Missouri, and shall include any subsidiary or affiliate thereof.

(C) "Brewer" means any person engaged in the United States in the manufacture of beer as that term is hereinafter defined.

(D) "Distributor" means any person engaged in the business of selling, marketing or otherwise wholesaling beer to retailers.

(E) "Beer" means beer, ale, porter, stout and other similar fermented beverages (including sake or similar products) of any name or description, as denned in 68A Stat. 612; 26 U. S. C. [I. R. C] 5052.

(F) "Person" means any individual, partnership, firm, corporation or any other business or legal entity.

(G) "Schaefer beer" means any brand of beer produced and sold by Schaefer under any trademark or trade name owned or controlled by Schaefer.

(H) "Anheuser beer" means any brand of beer produced and sold by Anheuser under any trademark or trade name owned or controlled by Anheuser.

(I) The phrase "sell, merchandise or otherwise market" shall relate only to the functions of advertising, promotion and sale of beer and without limitation of the foregoing shall exclude the warehousing and delivery of beer.

III

**[ Applicability ]**

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

IV

**[ Marketing—Anheuser Beer ]**

Schaefer is permanently enjoined and restrained from entering into any contract, conspiracy, agreement, arrangement or understanding under the terms of which:

(a) it would sell, merchandise or otherwise market any beer brewed by Anheuser, or Anheuser would sell, merchandise or otherwise market any beer brewed by Schaefer;

(b) Schaefer and Anheuser would agree that any third person would serve as a distributor in the United States for both Schaefer beer and Anheuser beer provided, however, subject to the other subsections of this paragraph IV, this subsection (b) shall not prevent (i) Schaefer from continuing or appointing any distributor for Schaefer beer who is also a distributor for Anheuser beer, or (ii) a distributor for Schaefer beer from continuing the distribution of or entering into any agreement to distribute Anheuser beer;

(c) Schaefer would sell, merchandise or otherwise market its beer through any distributor located in the United States in which Anheuser (i) has a stock interest, or (ii) has a common director, officer, or managing agent with such distributor;

(d) Anheuser would sell, merchandise or otherwise market its beer through any distributor located in the United States in which Schaefer (i) has a stock interest, or (ii) has a common director, officer, or managing agent with such distributor.

V

**[ Marketing—Other Beer ]**

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Schaefer is enjoined and restrained for a period of ten (10) years from the date hereof, except with the prior written approval of the plaintiff, from entering into any contract, agreement, arrangement or understanding under the terms of which:

- (a) any brewer other than Anheuser would sell, merchandise or otherwise market Schaefer beer;
- (b) Schaefer would sell, merchandise or otherwise market the beer of any brewer other than Anheuser;
- (c) Schaefer and any brewer other than Anheuser would agree that any third person would serve as a distributor for both Schaefer beer and the beer of such other brewer, provided, however, subject to the other subsections of this Section V, this subsection (c) shall not prevent (i) Schaefer from continuing or appointing any distributor for Schaefer beer who is also a distributor for another brewer, or (ii) a distributor for Schaefer beer from continuing the distribution of, or entering into any agreement to distribute, the beer of another brewer in addition to Schaefer beer;
- (d) Schaefer would sell, merchandise or otherwise market its beer through any distributor, in which any brewer other than Anheuser (i) has a stock interest or (ii) has a common director, officer or managing agent with such distributor; or
- (e) Any other brewer other than Anheuser would sell, merchandise or otherwise market its beer through any distributor in which Schaefer (i) has a stock interest or (ii) has a common director, officer or managing agent with such distributor.

In the event the aforesaid approval of the plaintiff is not received by Schaefer within twenty-one (21) days after receipt by plaintiff of Schaefer's written request therefor, Schaefer may seek an order from this Court approving such contract, agreement, arrangement or understanding upon the Court's finding that such contract, agreement, arrangement or understanding would not unreasonably restrain trade or commerce in the sale, merchandising or marketing of beer.

The provisions of this paragraph V shall apply only in the territory where Schaefer beer is now sold, as defined in the attached Exhibit 1.

#### VI

##### *[ Inspection and 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 Schaefer, at its principal office, be permitted:

- (A) access, during the office hours of the defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of Schaefer relating to any of the matters contained in this Final Judgment applicable to Schaefer; and
- (B) subject to the reasonable convenience of Schaefer and without restraint or interference from it, to interview the officers and employees of Schaefer, who may have counsel present, regarding any such matters.

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

No information obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than 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

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**[ Jurisdiction Retained]**

In addition to the jurisdiction vested in the Court pursuant to the provisions of paragraph V, 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.

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U.S. v. BIRD CORPORATION, ET AL.  
Civil No.: 72-C-860  
Year Judgment Entered: 1972



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- x  
UNITED STATES OF AMERICA, :  
Plaintiff, : Civil No. 72-C-860  
v. : Entered: July 27, 1972  
: Filed: June 27, 1972  
BIRD CORPORATION and :  
INSTRUMENTATION ASSOCIATES, INC., :  
Defendants. :  
----- x

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on June 27, 1972, defendants having appeared by their respective counsel, 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 with respect to any such issue; by Stipulation filed June 28, 1972;

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 a claim upon which relief may be granted against 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. Sec. 1), commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Respirators" shall mean mechanical devices of the type known as Intermittent Positive Pressure Breathing devices, manufactured by the Bird Corporation;

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

(C) "Distributor" shall mean any person who purchases Respirators for resale.

III

The provisions of this Final Judgment applicable to any defendant shall apply to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with either defendant who receives actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment each of the defendants and its officers, directors, partners, employees, and subsidiaries, when acting in such capacity, shall be deemed to be one person. The provisions of this Final Judgment shall not be applicable to activities of Bird outside the United States (except for sales to agencies of the Plaintiff) which do not affect the domestic or foreign commerce of the United States.

IV

Each of the defendants is enjoined and restrained from:

(A) Directly or indirectly entering into, adhering to, maintaining, enforcing, or claiming any rights under any contract, agreement, combination, understanding, plan or program with any Distributor to:

(1) fix, establish, maintain or adhere to, prices, or discounts, for the resale of Respirators; or

(2) limit, allocate, or restrict the persons to whom, or the territories within which, Respirators may be sold.

(B) Directly or indirectly:

(1) compelling or coercing any Distributor to establish, adopt, adhere to, or enforce adherence to, any minimum or suggested retail prices, mark-ups, or margin of profit;

(2) compelling or coercing any Distributor to establish, adopt, adhere to, or enforce adherence to any limitation on the classes of customers to whom, or territory in which, the Distributor may sell Respirators;

(3) selling or offering to sell a Respirator to any Distributor on the condition or understanding that the Distributor will (a) adhere to or be expected to adhere to any price suggested by either defendant, or (b) limit the persons to whom or the territories within which the Distributor may sell Respirators.

(C) Directly or indirectly entering into, adhering to, maintaining, enforcing, or claiming any rights under any contract, agreement, combination, understanding, plan or program which prevents or restricts defendant Instrumentation Associates, Inc. from selling or dealing in any product other than respirators.

V

Nothing in this Final Judgment shall prohibit either defendant from:

(A) After five years from the date of entry of this Final Judgment, exercising any lawful rights it may have under the Miller-Tydings Act, 50 Stat. 693 (1937) and the McGuire Act, 66 Stat. 632 (1952) with respect to respirators.

(B) Requiring that any person who purchases Respirators for resale to a user must have taken such training course or courses in the use and servicing of Respirators as Bird customarily provides for Distributors; provided that Bird shall make such training course or courses available, on nondiscriminatory terms and conditions to any such person in the trade who shall apply to take such training course or courses.

VI

A) Within 90 days from the date of entry of this Final Judgment, each defendant shall send to each Distributor to which such defendant has within the preceding twelve months sold any Respirator, a true copy of this Final Judgment.

(B) Within 120 days from the date of entry of this Final Judgment, each defendant shall file with this Court and serve upon the plaintiff a report setting forth the fact and manner of compliance with paragraph VI(A) above.

VII

For a period of ten years from the date of entry of this Final Judgment, each defendant is ordered and directed each year

on the anniversary date of the entry of this Final Judgment to file a report with the plaintiff setting forth the steps which it has taken during the prior year to advise its appropriate officers, employees and agents of its and their obligations under the provisions of this Final Judgment. Such report filed by each defendant shall further contain the name and address of any Distributor in the United States to whom each such defendant has refused to sell any Respirator during said period and state the reasons for such refusal.

#### VIII

For the purpose of securing or determining compliance with this Final Judgment, 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 either of the defendants made to its principal office, be permitted, subject to any legally recognized privilege:

(A) Access, during 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 such defendant relating to any matters contained in this Final Judgment.

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

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, each defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means permitted in this section VIII shall be divulged by any representatives 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 by this Court for the purpose of enabling any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions contained therein, for the enforcement of compliance therewith and for the punishment of violations thereof.

Dated: July 27, 1972  
Brooklyn, N.Y.

/s/ JACOB MISHLER  
UNITED STATES DISTRICT JUDGE



U.S. v. ROSS TRUCKING, INC., ET AL.

Civil No.: 70-C-1228

Year Judgment Entered: 1973



**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Ross Trucking, Inc., Standard Fruit and Steamship Co., and Castle & Cooke, Inc., U.S. District Court, E.D. New York, 1973-1 Trade Cases ¶74,386, (Apr. 17, 1973)**

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United States v. Ross Trucking, Inc., Standard Fruit and Steamship Co., and Castle & Cooke, Inc.  
1973-1 Trade Cases ¶74,386. U.S. District Court, E.D. New York. 70 Civ. 1228. Entered April 17, 1973. Case No. 2131, Antitrust Division, Department of Justice.

**Sherman Act**

**Tying Arrangements—Transportation and Bananas—Consent Decree.**—An importer of bananas was prohibited by a consent decree from requiring wholesalers or retailers to use a designated agent. However, for purchases of quantities of 300 boxes or less, truckers could be designated. Where designated trucks are not used, the firm could require prior notification of arrival at the point of discharge, and could designate starting times for loading.

**For plaintiff:** Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, Norman H. Seidler, Ralph T. Giordano, Charles J. Walsh, Erwin L. Atkins, and Melvin Lublinski, Dept. of Justice. **For defendants:** Milbank, Tweed, Hadley & McCloy, by Briscoe R. Smith, New York, N. Y.

**Final Judgment as to Standard Fruit and Steamship Co. and Castle & Cooke**

ZAVATT, D. J.: The Original Complaint having been filed on September 28, 1970 and the Supplemental Complaint having been filed on October 2, 1972, the plaintiff and the defendants Standard Fruit and Steamship Company and Castle & Cooke, Inc., 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 admission by any party with respect to any issue of fact or law herein;

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 of the action and of the parties hereto. The Original Complaint and the Supplemental Complaint state claims upon which relief may be granted against the defendant Standard Fruit and Steamship Company, and the Supplemental Complaint states a claim upon which relief may be granted against the defendant Castle & Cooke, Inc., under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

**[ Definitions]**

As used in this Final Judgment:

- (A) "Standard" means Standard Fruit and Steamship Company and each of its subsidiaries and affiliates.
- (B) "Castle & Cooke" means Castle & Cooke, Inc. and each of its subsidiaries and affiliates.

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(C) "Jobber" means any person engaged in whole or in part in the business of buying bananas, ripening the bananas, and selling them to wholesalers or retailers for resale.

(D) "Port of New York" means the various piers, docks, and related port facilities in the States of New York and New Jersey lying on or adjacent to the Hudson River south of Spuyten Duyvil Junction, the East River, The Narrows, Newark Bay, Kill Van Kill and Arthur Kill.

(E) "Metropolitan New York area" means the area generally included in the five boroughs of New York City, Nassau, Suffolk and Westchester Counties in the State of New York, and Essex, Bergen, Hudson, Union, Middlesex, Monmouth, Morris and Passaic Counties in the State of New Jersey.

(F) "Boxes" means any containers holding approximately 95 to 115 bananas and weighing approximately 40 to 45 pounds.

(G) "Person" means any individual, partnership, corporation or other legal or business entity.

III

[ *Applicability* ]

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

IV

[ *Designated Transport Agents* ]

Except upon the written consent of the Department of Justice or, after days notice, upon a showing to this Court that it will not unreasonably lessen competition or tend to create a monopoly in the trucking of bananas, Standard and Castle & Cooke are enjoined and restrained from, directly or indirectly:

(A) Selling or offering to sell bananas to any jobber, supermarket or other customer, located anywhere in the United States, upon any condition, requirement or understanding that such jobber, supermarket or other customer hire or use a designated person or persons to transport the bananas;

(B) Selling or offering to sell bananas to any jobber, supermarket or other customer, located anywhere in the United States, upon any condition, requirement or understanding which deprives such jobber, supermarket or other customer of the option of taking delivery of the bananas by its own truck or the truck of any person of its choosing; and

(C) Preventing, hindering or impeding or attempting to prevent, hinder or impede any jobber, supermarket or other customer, located anywhere in the United States, from using its own truck or the truck of any person of its choosing to transport bananas purchased from Standard or Castle & Cooke.

Provided, however, that this Final Judgment shall not prohibit Standard or Castle & Cooke from requiring that jobbers, supermarkets and other customers give at least one day's prior notification of the arrival at the point of discharge at the Port of New York of their own trucks or those of any persons of their choosing; and *provided further* that this Final Judgment shall not prohibit Standard or Castle & Cooke from requiring that jobbers, supermarkets and other customers which seek to transport bananas in quantities of 300 boxes or less, or their equivalent weight, from the Port of New York, hire or use a person or persons selected by Standard or Castle & Cooke for such purpose.

V

[ *Starting Times* ]

Standard and Castle & Cooke shall designate a starting time when, during the discharge at the Port of New York of each of their shipments of bananas, the loading of the trucks of jobbers, supermarkets and other customers

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located within the Metropolitan New York area, or those of persons of their choosing, shall begin. Standard and Castle & Cooke shall use their best efforts to provide that such trucks are loaded expeditiously and without unnecessary delay upon their arrival at the point of discharge at or subsequent to such designated starting time, it being understood that such trucks will await their turn for loading and shall receive no preference in that regard.

VI

[ Notification]

(A) Standard and Castle & Cooke are ordered and directed, within 60 days from the date of entry of this Final Judgment, to mail to each person within the Metropolitan New York area which purchases bananas from them, a conformed copy of this Final Judgment.

(B) Standard and Castle & Cooke are ordered and directed, within 90 days from the date of entry of this Final Judgment, to file with the Clerk of this Court and to mail to the plaintiff, an affidavit setting forth the fact and manner of compliance with subsection (A) of this Section VI.

VII

[ Reports]

For a period of 10 years from the date of entry of this Final Judgment, Standard and Castle & Cooke are ordered to file with the plaintiff, on each anniversary date of this Final Judgment, a report setting forth the steps they have taken during the prior year to advise their appropriate officers, directors and employees of their obligations under this Final Judgment.

VIII

[ Inspection and Compliance]

For the purpose of securing or determining 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, and on reasonable notice to Standard and Castle & Cooke made to their principal offices, be permitted (a) access during the office hours of Standard or Castle & Cooke to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Standard or Castle & Cooke, relating to any of the matters contained in this Final Judgment and (b) subject to the reasonable convenience of Standard or Castle & Cooke and without restraint or interference from them, to interview officers or employees of Standard or Castle & Cooke, who may have counsel present, regarding any such matters.

Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, Standard and Castle & Cooke shall submit such reports in writing to the Department of Justice with respect to any matters contained in this Final Judgment as from time to time may be requested.

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

IX

[ 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.



**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Ross Trucking, Inc., Standard Fruit and Steamship Co., and Castle & Cooke, Inc., U.S. District Court, E.D. New York, 1973-1 Trade Cases ¶74,409, (Apr. 17, 1973)**

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United States v. Ross Trucking, Inc., Standard Fruit and Steamship Co., and Castle & Cooke, Inc.  
1973-1 Trade Cases ¶74,409. U.S. District Court, E.D. New York. 70 Civ. 1228. Entered April 17, 1973. Case No. 2131, Antitrust Division, Department of Justice.

**Sherman Act**

**Tying Arrangements—Transportation and Bananas—Consent Decree.**—A trucking firm was barred by at consent decree from participating with any banana importer in any plan that would require banana buyers to use the firm as its transport agent. However, for purchases of quantities of 300 boxes or less, the firm could be designated as trucker. Coercion of any banana buyer to use the firm to transport bananas or the attempt to prevent free choice of transport agent is also prohibited.

**Final Judgment as to Ross Trucking, Inc.**

ZAVATT, D. J.: The Original Complaint having been filed on September 28, 1970 and the Supplemental Complaint having been filed on October 2, 1972, the plaintiff and the defendant Ross Trucking, Inc. 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 admission by any party with respect to any issue of fact or law herein:

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 of the action and of the parties hereto. The Original Complaint and the Supplemental Complaint state claims upon which relief may be granted against the defendant Ross Trucking, Inc. under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", commonly known as the Sherman Act, as amended.

II.

**[ Definitions]**

As used in this Final Judgment:

(A) "Ross" means Ross Trucking, Inc. and each of its subsidiaries and affiliates.

(B) "Banana Importer" means any person engaged in whole or in part in the business of importing bananas into the United States, or of selling unripened bananas, imported into the United States, to jobbers or supermarkets.

(C) "Jobber" means any person engaged in whole or in part in the business of buying bananas, ripening the bananas, and selling them to wholesalers or retailers for resale.

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(D) "Port of New York" means the various piers, docks, and related port facilities in the States of New York and New Jersey lying on or adjacent to the Hudson River south of Spuyten Duyvil Junction, the East River, The Narrows, Newark Bay, Kill Van Kull and Arthur Kill.

(E) "Boxes" means any containers holding approximately 95 to 115 bananas and weighing approximately 40 to 45 pounds.

(F) "Person" means any individual, partnership, corporation or other legal or business entity.

III.

[ *Applicability* ]

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

IV.

[ *Trucking Services* ]

Except upon the written consent of the Department of Justice or, after 60 days notice, upon a showing to this Court that it will not unreasonably lessen competition or tend to create a monopoly in the trucking of bananas, Ross is enjoined and restrained from, directly or indirectly:

(A) Entering into or participating in any contract, agreement, understanding, plan or arrangement with any banana importer under which any jobber, supermarket or other person, located anywhere in the United States, is required to hire or use Ross to transport bananas, or is deprived of the option of taking delivery of bananas from such banana importer by its own truck or the truck of any person of its choosing;

(B) Coercing, compelling or requiring or attempting to coerce, compel or require any jobber, supermarket or other person, located anywhere in the United States, to hire or use Ross to transport bananas; and

(C) Preventing, hindering or impeding, or attempting to prevent, hinder or impede any jobber, supermarket or other person, located anywhere in the United States, from using its own truck or the truck of any person of its choosing to transport bananas.

Provided, however, that this Final Judgment shall not prohibit Ross from entering into or participating in any contract, agreement, understanding, plan or arrangement with any banana importer under which jobbers, supermarkets and other persons which seek to transport bananas in quantities of 300 boxes or less, or their equivalent weight, from the Port of New York, are required to hire or use Ross.

V.

[ *Notification* ]

(A) Ross is ordered and directed, within 60 days from the date of entry of this Final Judgment, to mail to each jobber and supermarket for which it transports bananas, a conformed copy of this Final Judgment.

(B) Ross is ordered and directed, within 90 days from the date of entry of this Final Judgment to file with the Clerk of this Court and to mail to the plaintiff, an affidavit setting forth the fact and manner of compliance with subsection (A) of this Section V.

VI.

[ *Reports* ]

For a period of 10 years from the date of entry of this Final Judgment, Ross 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 its appropriate officers, directors and employees of its and their obligations under this Final Judgment.

VII.

*[ Inspection and Compliance]*

For the purpose of securing or determining 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, and on reasonable notice to Ross made to its principal office, be permitted (a) access during the office hours of Ross to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Ross, relating to any of the matters contained in this Final Judgment and (b) subject to the reasonable convenience of Ross and without restraint or interference from it, to interview officers or employees of Ross, who may have counsel present, regarding any such matters.

Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, Ross shall submit such reports in writing to the Department of Justice with respect to any matters contained in this Final Judgment as from time to time may be requested.

No information obtained by the means provided in this Section VII 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, for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

VIII.

*[ 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.

U.S. v. NATIONAL ASSOCIATION FOR AIR FREIGHT, INC., ET AL.  
Civil No.: 71-C-563  
Year Judgment Entered: 1974





UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA,

Plaintiff,

v.

NATIONAL ASSOCIATION FOR AIR  
FREIGHT, INC.;

A.T.D. TRUCKING CORP.;

AIR-FREIGHT TRUCKING SERVICE, INC.;

B & P DELIVERY SERVICE, INC.;

BREEN AIR FREIGHT LTD.;

CALTRO TRUCKING, INC.;

GESELL TRUCKING CORP.;

J & J TRUCKING CO., INC.;

JUNIOR TRUCKING, INC.

L & J TRUCKING CORP.;

TEMPO TRUCKING & TRANSFER CORP.;

TETERBORO AIR FREIGHT; and

VTR TRUCKING CORP..

Defendants.

71 Civ. 563

Entered: August 29, 1974

-----X  
FINAL JUDGMENT

Plaintiff, UNITED STATES OF AMERICA, having filed its complaint hereon on May 13, 1971, and the parties by their respective attorneys having consented to the entry of this Final Judgment without trial or adjudication of any issues of fact or law, and without this Final Judgment constituting evidence or admissions by either party with respect to any such issues:

NOW, THEREFORE, without trial, adjudication or the taking of any testimony with respect to any issue of fact or law, 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 consenting hereto. The complaint states a claim upon which relief may be granted against the defendants 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 (15 U.S.C. § 1).

II

As used in this Final Judgment

A. "import airfreight" shall mean commodities or goods which have been transported by airplane from points outside of the United States, its territories and possessions, for delivery to consignees located in the United States; and

B. "truckman" shall mean any person, firm, or corporation engaged in the business of transporting airfreight, including import airfreight, via motor vehicle.

III

The provisions of this Final Judgment shall apply to each defendant, and to each of its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert and participation with any of them who receive notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall not apply to acts or transactions of the defendants which do not affect import airfreight of the United States.

IV

(A) Each consenting defendant is enjoined and restrained from directly or indirectly entering into, adhering to, maintaining, enforcing or claiming any rights under any contract, agreement, understanding, plan or program with any other truckman to:

1. Refrain from soliciting or accepting business from any import airfreight customer;
2. Fix, establish, maintain or stabilize prices or rates for picking up or delivering import airfreight;
3. Refuse to pick up at or deliver import airfreight from the terminals of air carriers.

(B) Defendant National Association for Air Freight is ordered to be dissolved within ninety (90) days from the date of entry hereof; and all defendants are permanently enjoined from establishing any organization having like or similar purposes to those enjoined under Section IV hereof.

V

Nothing contained in this Final Judgment shall be deemed to prohibit any defendant from lawfully taking such action as it may be required to take pursuant to the Interstate Commerce Act (49 U.S.C. § 1fff), the Federal Aviation Program (49 U.S.C. § 1301ff), the Federal Energy Program, and pursuant to the applicable statutes and regulations pertaining to the Port of New York Authority (N.Y. Unconsol. Laws §§ 6401ff (McKinney) and N.J.S.A. 32:1-ff), Waterfront and Airport Commission Act (N.Y. Unconsol. Laws §§ 9961ff (McKinney) and N.J.S.A. 32:23-160ff) and any state agency or New York City agency which has regulatory authority over the defendants.

VI

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

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

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

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, made to such principal office, any defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means permitted 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 in 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, for the modification thereof, for the enforcement of compliance therewith, and for the punishment of any violation thereof.

/s/ JOHN R. BARTELS  
JOHN R. BARTELS  
United States District Judge

Dated: August 29, 1974

DOI-1974-69

U.S. v. UNITED ARTISTS THEATRE CIRCUIT, INC., ET AL.  
Civil No.: 71-C-609  
Year Judgment Entered: 1976



**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. United Artists Theatre Circuit, Inc. and United Artists Eastern Theatres, Inc., U.S. District Court, E.D. New York, 1977-1 Trade Cases ¶61,389, (Dec. 27, 1976)**

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

United States v. United Artists Theatre Circuit, Inc. and United Artists Eastern Theatres, Inc.

1977-1 Trade Cases ¶61,389. U.S. District Court, E.D. New York, No. 71 Civ. 609, Entered December 27, 1976, (Competitive impact statement and other matters filed with settlement: 41. *Federal Register* 32445, 54998).

Case No. 2167, Antitrust Division, Department of Justice.

**Clayton Act**

**Acquisitions: Motion Picture Theaters: Divestiture by Sale or Lease for Minimum Periods: Consent Decree.**— A motion picture theater operator was required by a consent decree to divest by sale or lease (for minimum periods of 5 to 20 years) somewhat more than half of those motion picture theaters it acquired from a competitor in alleged violation of Sec. 7 of the Clayton Act. A trustee would be appointed to complete divestiture, if not accomplished within 5 years. Acquisitions of theaters would be prohibited for 10 years without government or court approval.

**For plaintiff:** Thomas E. Kauper, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Bernard Wehrmann, Ralph T. Giordano, Erwin L. Atkins, and Charles W. Brooks, Attys., Dept. of Justice. **For defendants:** Wachtell, Lipton, Rosen & Katz.

**Final Judgment**

Mishler, D. J.: Plaintiff, United States of America, having filed its complaint herein on May 20, 1971, and the defendants United Artists Theatre Circuit, Inc. and United Artists Eastern Theatres, Inc., having appeared and filed their answer to the complaint denying the material allegations thereof and raising certain affirmative defenses and the plaintiff and the defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or admission by any party 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 without this Final Judgment constituting any evidence or admission by any party with respect to any such issue and upon the consent of the parties, 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 a claim upon which relief may be granted against the defendants under Section 7 of the Act of Congress of October 15, 1914 (15 U. S. C. §18), commonly known as the Clayton Act, as amended.

II

**[ Definitions]**

As used in this Final Judgment:

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1

(A) "UATC" means defendants United Artists Theatre Circuit, Inc. and United Artists Eastern Theatres, Inc., and each of their subsidiaries.

(B) "Eligible Purchaser" means any person or persons, proposing to purchase, lease or sublease any theatre for theatre purposes, to which the plaintiff, after notice, does not object, or if the plaintiff does object, of which the Court approves.

(C) "Person" means any individual, partnership, corporation or other business or legal entity other than UATC or its subsidiaries.

(D) "Non-theatre purpose" means that the proposed use of a theatre will be for other than the exhibition of feature motion pictures except on a possible temporary interim basis.

(E) "New York Metropolitan Area" means the five Counties of the City of New York, the Counties of Westchester, Rockland, Nassau and Suffolk in the State of New York, the Counties of Bergen, Essex, Hudson, Passaic and Union in the State of New Jersey and the County of Fairfield in the State of Connecticut.

### III

#### [ Applicability ]

The provisions of this Final Judgment shall apply to UATC, its subsidiaries, successors and assigns, to each of their respective officers, directors, agents and employees, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. Any Eligible Purchaser who acquires any assets by means of a divestiture pursuant to this Final Judgment shall not be considered a successor or assign of UATC.

### IV

#### [ Divestiture ]

(A) UATC is ordered and directed to divest to Eligible Purchasers, within 60 months from the date of entry of this Final Judgment, each of the theatres listed in Appendix A to this Final Judgment [not reproduced--CCH].

(B) Divestiture of the theatres listed in Appendix A shall be accomplished in the following ways:

(1) UATC may sell or, subject to the provisions of Section IV(C) of this Final Judgment, leave any such theatre owned by it in fee;

(2) UATC may assign the lease of any such theatre of which it is the lessee or, subject to the provisions of Section IV(E) of this Final Judgment, sublease such theatre.

(C) With respect to any theatre which is divested by lease (hereinafter "Lease"):

(1) The term of the Lease shall be not less than 20 years for any theatre listed in Group 1 of Appendix A, except that the Lease shall grant the lessee the right to terminate the Lease effective as of the end of the tenth year of the term; not less than 10 years for any theatre listed in Group 2; and not less than 5 years for any theatre listed in Group 3. (Such periods of 20, 10 and 5 years are referred to hereinafter as the "Minimum Lease Term".)

(2) UATC may, during the Minimum Lease Term, sell, lease, or otherwise dispose of its fee in any such theatre to any person for any use, provided that such sale, lease or other disposition is made subject to the Lease and the rights of the lessee under the Lease continue until the termination of the Lease.

(3) The Lease for any theatre listed in Group 1 or Group 2 of Appendix A, which is entered into prior to the appointment of a trustee pursuant to Section V of this Final Judgment, may provide that if the fee is purchased by an Eligible Purchaser during the Minimum Lease Term, such Lease may be terminated at the option of the Eligible Purchaser. No such provision, however, may be contained in any Lease negotiated by a trustee pursuant to Section V of this Final Judgment.

(4) The Lease for any theatre listed in Group 3 of Appendix A, which is entered into prior to the appointment of a trustee pursuant to Section V of this Final Judgment, may provide that UATC may terminate the Lease during the Minimum Lease Term if UATC accepts a bona fide offer by a third person to purchase the fee for non-theatre purposes or to lease the fee for non-theatre purposes for a term of not less than 20 years and such a sale or lease is consummated. UATC may, however, exercise its right of termination under such a provision only to the extent permitted by paragraph D of this Section IV. No such provision may be contained in any Lease negotiated by a trustee pursuant to Section V of this Final Judgment.

(5) The Lease shall grant the lessee an option as provided for in the Lease to purchase the fee at any time during the term of the Lease, provided that such option shall terminate if the lessee, within 60 days after written notice to it by UATC of receipt of a bona fide offer by a third person to purchase the fee, including any offer contemplated by subparagraphs (2), (3), or (4) of this Section IV(C), shall refuse to purchase the fee upon the same economic terms offered by the third person. Such option, however, shall be reinstated if the sale to the third person is not consummated.

(D) As to not more than 2 of the theatres listed in Group 3 of Appendix A, UATC, at any time after the entry of this Final Judgment and whether before or after the making of a Lease as to such theatre, shall have the right to accept a bona fide offer to purchase the fee for non-theatre purposes or to lease the fee for non-theatre purposes for a term of not less than 20 years, and UATC may terminate the Lease of any such theatre upon the consummation of such sale or lease if the Lease was entered into prior to the appointment of a trustee pursuant to Section V of this Final Judgment. In no event may UATC, pursuant to the provisions of this paragraph D, sell or lease for non-theatre purposes, the fee of more than 2 of the theatres listed in Group 3 of Appendix A, but nothing herein shall be construed to abrogate any rights of UATC to dispose of its fee ownership in any such theatre pursuant to the provisions of subparagraph (2) of Section IV(C), and subparagraphs (2) and (3) of Section VII(C) of this Final Judgment.

(E) With respect to any theatre which is divested by sublease (hereinafter "Sublease"), such Sublease shall be for the entire remaining present term of the master lease less one day provided that if the remaining term of the master lease is in excess of 10 years the Eligible Purchaser may, at its option, enter into a Sublease for a period of not less than 10 years, with a right effective as of the end of the Sublease term to renew for the remaining term of the master lease less one day or any portion thereof (such periods are hereinafter referred to as the "Minimum Sublease Term").

(F) UATC shall make known the availability of the theatres listed in Appendix A by customary and usual means, including appropriate advertising. UATC shall furnish, on an equal and nondiscriminatory basis, to all bona fide prospective purchasers who so request, all necessary information regarding said theatres and shall permit them to make such inspection of the facilities and operations of the theatres as is reasonably necessary for a prospective purchaser to advise itself properly.

(G) Ninety days after the date of entry of this Final Judgment and every 90 days thereafter until UATC has divested each of the theatres listed in Appendix A, UATC shall submit written reports to the plaintiff, describing the steps which have been taken to comply with this Section IV. Each report shall include the name and address of each person who, during the preceding 90 days, had made an offer, expressed a desire, or entered into negotiations to purchase, lease or sublease any theatre, together with full details of same. Each report shall also include the name and address of each person who, during the preceding 90 days, UATC has sought to interest in the purchase, lease or sublease of any theatre, together with full details of same.

(H) At least 60 days before the consummation, pursuant to this Section IV, of a divestiture to a proposed Eligible Purchaser of any theatre listed in Appendix A, UATC shall furnish in writing to the plaintiff the name and address of the proposed Eligible Purchaser, together with the terms and conditions of the proposed divestiture. At the same time, UATC shall list the name and address of each person not previously reported who offered or expressed a desire to purchase, lease or sublease such theatre, together with full details of same. Within 20 days of the receipt of this information, the plaintiff may request in writing additional information concerning the transaction and parties thereto. If no request is made for additional information, the plaintiff shall advise UATC



in writing no later than 20 days prior to the scheduled consummation date whether it has any objections to the proposed divestiture. If a request for additional information is made, the plaintiff shall advise UATC in writing within 30 days after receipt of all such information or within 30 days after receipt of a statement in writing from UATC that it does not have the requested information, whether it has any objections to the proposed divestiture. If the plaintiff does not object within the periods specified, then the divestiture may be consummated. If the plaintiff does so object, the proposed divestiture shall not be consummated unless UATC obtains approval from the Court or the plaintiff's objection is withdrawn.

V

**[ Trustee--Failure to Divest]**

If UATC does not divest itself, in accordance with the provisions of this Final Judgment, of each of the theatres listed in Appendix A within 60 months from the date of entry of this Final Judgment, the Court shall on application of the plaintiff appoint a trustee for the purpose of divesting the remaining theatres in accordance with the provisions of this Final Judgment. The trustee shall dispose of each of the remaining theatres by sale, assignment, Lease or Sublease. Any such Lease or Sublease shall be for the applicable Minimum Lease or Sublease Term. The trustee shall act with all deliberate speed to dispose of each of the remaining theatres. Each divestiture by the trustee shall be in accordance with the provisions of this Final Judgment and subject to prior approval of the Court after the parties have had an opportunity to be heard with respect to each such proposed divestiture and the price and terms thereof. The trustee shall serve, at the cost and expense of UATC, on such terms and conditions as the Court sees fit. The appointment of a trustee by the Court shall not preclude UATC itself from divesting any of the remaining theatres in accordance with the provisions of this Final Judgment.

VI

**[ Use; Rental]**

(A) Any contract of sale, assignment, Lease, or Sublease to an Eligible Purchaser of a theatre listed in Appendix A shall require the Eligible Purchaser to file with this Court its representation that it proposes to operate the theatre for the exhibition of feature motion pictures.

(B) No Lease or Sublease shall contain any rental provisions based upon a share of the profits of the theatre covered by the Lease or Sublease or of any other theatre, provided, however, that rental provisions may be based upon a percentage of the gross receipts of the leased or subleased theatre.

VII

**[ Terms of Divestiture]**

(A) UATC shall be in full control of the operations and management of each theatre listed in Appendix A until the theatre has been divested in accordance with the provisions of this Final Judgment. Pending initial divestiture, UATC shall continue to operate each theatre for the exhibition of feature motion pictures and shall not close or curtail its operations without the prior written consent of the plaintiff or, if such consent is refused, upon the approval of the Court.

(B) UATC shall not participate in any way, directly or indirectly, in the management, operation or control of any theatre listed in Appendix A after it has been divested pursuant to this Final Judgment, nor shall UATC book or buy feature motion pictures for any such theatre after it has been divested. Where a theatre has been divested by Lease or Sublease, these prohibitions shall be expressly set forth in the Lease or Sublease.

(C) Notwithstanding the provisions of paragraph (B) of this Section VII:

(1) UATC may accept and enforce a bona fide lien, mortgage or other form of security received by it to secure full payment of any unpaid portion of the purchase price. UATC may also enforce the terms and conditions of any Lease or Sublease in accordance with its provisions or as provided by law, and may exercise the rights of a

lessor or sublessor in the event of a default. If two or more theatres are divested to a single Eligible Purchaser, such Lease, Sublease, lien, mortgage, or other form of security may not provide that a default by the lessee or mortgagor with respect to one such theatre shall constitute a default with respect to all such theatres, provided, however, that such provision may be contained in any such Lease, Sublease, lien, mortgage, or other form of security, if reasonably necessary to the security of UATC.

(2) If UATC, by enforcement of any bona fide lien, mortgage or any other form of security interest reacquires ownership, possession or control of any divested theatre or in the event of reacquisition or repossession by UATC prior to the expiration of the Minimum Lease or Sublease Term of a leased or subleased theatre divested hereunder, UATC shall promptly notify the plaintiff in writing and shall divest such theatre by sale, assignment, Lease or Sublease to an Eligible Purchaser within 12 months of reacquisition or repossession in accordance with the provisions of this Final Judgment. The minimum duration of any such subsequent Lease or Sublease shall be the applicable Minimum Lease or Sublease Term less the period of time such theatre was operated by an Eligible Purchaser prior to reacquisition or repossession by UATC. If UATC is unable to divest any such theatre to an Eligible Purchaser within 12 months of reacquisition or repossession, UATC may, with the prior written consent of the plaintiff, or, if such consent is refused, upon approval of the Court, sell, lease or otherwise dispose of such theatre to any person for non-theatre purposes. In no event may UATC, directly or indirectly, operate such theatre for more than 18 months after reacquisition or repossession by UATC without the prior written consent of the plaintiff or, if such consent is refused, upon approval of the Court.

(3) If UATC reacquires or repossesses any divested theatre after the expiration of the applicable Minimum Lease or Sublease Term, or if it reacquires or repossesses any theatre disposed of by sale or lease pursuant to Section IV(D) of this Final Judgment, UATC may sell, lease or otherwise dispose of any such theatre to any person for any purpose, but in no event may UATC, directly or indirectly, operate such theatre for more than 18 months after such reacquisition or repossession without the prior written consent of the plaintiff or, if such consent is refused, upon approval of the Court.

#### VIII

##### [ Acquisition Ban]

(A) UATC is enjoined and restrained for a period of 10 years from the date of entry of this Final Judgment from acquiring any part of the assets or stock of any operating motion picture theatre in the Counties of Queens, Nassau and Suffolk in the State of New York, other than the Whitman Theatre located in Huntington, New York, except with the prior written consent of the plaintiff, or if such consent is refused, then upon the approval by this Court after a determination by this Court that the effect of any such acquisition of assets or stock will not be to substantially lessen competition or tend to create a monopoly in the exhibition of feature motion pictures in any section of the country.

(B) For a period of 10 years from the date of entry of this Final Judgment, UATC is ordered and directed to give the plaintiff written notice of its intention to acquire any part of the assets or stock of any operating motion picture theatre in any of the Counties of the New York Metropolitan Area, other than the Counties of Queens, Nassau and Suffolk, at least 60 days before the closing of any such acquisition.

#### IX

##### [ Inspection and Compliance]

(A) For the purpose of determining or securing compliance with this Final Judgment and for no other purpose, UATC shall permit duly authorized representatives of the Department of Justice on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice, subject to any legally recognized privilege:

(1) Access during the business hours of UATC, who may have counsel present, to those books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession, custody or under the control of UATC which relate to any matters contained in this Final Judgment;

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

(B) UATC shall submit such reports in writing, with respect to the matters contained in this Final Judgment, as may from time to time be requested in writing by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division.

(C) No information obtained by the means provided in this Section IX of this Final Judgment shall be divulged by a 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 determining or securing compliance with this Final Judgment or as otherwise required by law.

X

**[ Retention of Jurisdiction]**

Jurisdiction of this action 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 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 punishment of violations thereof.

XI

**[ Public Interest]**

Entry of this Final Judgment is in the public interest.

U.S. v. COMPOSITION ROOFERS & WATERPROOFERS EMPLOYERS ASSOCIATION OF NEW  
YORK CITY AND VICINITY, ET AL.

Civil No.: 75-C-1275

Year Judgment Entered: 1978



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
COMPOSITION ROOFERS & WATERPROOFERS	:	
EMPLOYERS ASSOCIATION OF NEW YORK	:	
CITY AND VICINITY;	:	Civil No. 75 C 1275
LONG ISLAND & BROOKLYN ROOFING & SHEET	:	
METAL CONTRACTORS ASSOCIATION, INC.;	:	Filed: December 12, 1977
NASSAU & SUFFOLK ROOFING AND SHEET METAL	:	
EMPLOYERS ASSOCIATION, INC.;	:	Entered: March 22, 1978
SHEET METAL & AIR CONDITIONING CONTRACTORS'	:	
NATIONAL ASSOCIATION, NEW YORK CITY	:	
CHAPTER, INC.; and	:	
SHEET METAL & ROOFERS EMPLOYERS	:	
ASSOCIATION OF SOUTHEASTERN NEW YORK,	:	
INC.,	:	
Defendants.	:	

----- x

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on August 8, 1975; and Defendants, by their respective attorneys, having each appeared and filed its Answer to the Complaint denying the material allegations thereof and raising certain affirmative defenses, and Plaintiff and Defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or admission by any of the parties 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 without this Final Judgment constituting any evidence or admission by any of the parties with respect to any such issue and upon the consent of the parties, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

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 against the Defendants under Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 1), commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Defendants" means Composition Roofers & Waterproofers Employers Association of New York City and Vicinity; Long Island & Brooklyn Roofing & Sheet Metal Contractors Association, Inc.; Nassau & Suffolk Roofing and Sheet Metal Employers Association, Inc.; Sheet Metal & Air Conditioning Contractors' National Association, New York City Chapter, Inc.; and Sheet Metal & Roofers Employers Association of Southeastern New York, Inc.;

(B) "Person" means any individual, individual proprietorship, firm, corporation or any other legal entity; and

(C) "Installation of roofs" means the construction of new and replacement roofs, the fabrication of sheet metal in conjunction with such construction, and includes such other related services as waterproofing, dampproofing, repairing of roofs, inspecting of roofs, and estimating the cost of repair or installation of roofs.

III

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

IV

Each Defendant is enjoined and restrained from, unilaterally or in concert with any other person:

(A) Fixing, establishing, stabilizing or maintaining the terms or length of any guarantee or any other term or condition of sale in connection with the installation of roofs;

(B) Urging, recommending, or suggesting that any of its members or any other person adopt or adhere to the terms or length of any guarantee in connection with the installation of roofs;

(C) Advertising, publishing or distributing information relating to the terms or length of any guarantee in connection with the installation of roofs;

(D) Adopting, publishing, distributing or recommending any printed form of contract or guarantee containing provisions relating to the terms or length of any guarantee for use in connection with the installation of roofs, provided, however, that neither the defendants nor any of their members shall be prohibited from recommending any bonds which are sold by national roofing manufacturers in connection with the installation of roofs purchased from them; and

(E) Adopting, adhering to, maintaining, enforcing or claiming any rights under any bylaw, rule, regulation, plan or program which restricts or limits the right of any member to give or offer, in accordance with his own business judgment, any terms or length of guarantee or any other term or condition of sale in connection with the installation of roofs.

V

Each Defendant is ordered and directed within ninety (90) days after the entry of this Final Judgment to eliminate from its charter, constitution and bylaws, code of ethics, rules and regulations, and other documents governing its operations, any provision which is contrary to or inconsistent with any of the provisions of this Final Judgment.

VI

Within ninety (90) days after the entry of this Final Judgment, Defendants are ordered and directed to mail a copy of a letter in the form attached hereto as Exhibit A to:

(A) Each person who was sent a letter dated February 1968 or May 1968 addressed to "Architects, General Contractors, Specification Writers and Builders" by the "Committee for Roofing and Sheet Metal Guarantee;" and

(A) Each person who was sent a letter dated September 1971 addressed to "Construction Specifications Writers" or "To Whom it May Concern" by the "Committee for Roofing and Sheet Metal Guarantee".

VII

Within thirty (30) days following compliance with Section VI of this Final Judgment, Defendants are ordered and directed to take such action as may be necessary to dissolve the "Committee for Roofing and Sheet Metal Guarantee".

VIII

(A) Each Defendant is ordered and directed to mail within ninety (90) days after the date of entry of this Final Judgment, a copy of this Final Judgment to each of its members and to each person who was a member at any time from January 1, 1968 to the date of entry of this Final Judgment; and

(B) Each Defendant is ordered and directed to furnish a copy of this Final Judgment to each person who becomes a member of Defendant within five years after the date of the entry of this Final Judgment.

IX

Within one hundred and twenty (120) days from the date of entry of this Final Judgment, each Defendant is ordered and directed to file with the Clerk of this Court, an affidavit setting forth the fact and manner of compliance with Sections V, VI, VII and VIII (A) of this Decree.

X

For a period of five (5) years from the date of entry of this Final Judgment, each Defendant is ordered to file with the Plaintiff, on each anniversary date of such entry, a report setting forth the steps which it has taken during the prior year to advise the Defendant's directors, officers, agents, members, and employees of its and their obligations under this Final Judgment.



XI

(A) For the purpose of determining or 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, and subject to the right of such Defendant, if it so desires, to have counsel present:

1. Access during its office hours 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 directors, officers, agents or employees of such Defendant, which persons if they wish may have counsel of their choosing present, relating to any matters contained in this Final Judgment.

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

XII

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

XIII

Entry of this Final Judgment is in the public interest.

Dated: March 22, 1978

/s/ George C. Pratt  
UNITED STATES DISTRICT JUDGE

