

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Eastern Electrical Wholesalers Association, et al., U.S. District Court, S.D. New York, 1950-1951 Trade Cases ¶62,712, (Oct. 17, 1950)

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United States v. Eastern Electrical Wholesalers Association, et al.

1950-1951 Trade Cases ¶62,712. U.S. District Court, S.D. New York. Civil Action File No. 59-82. Filed October 17, 1950.

Sherman Antitrust Act

Consent Decree—Electrical Supplies Trade Channels—Association Activities.—A consent decree entered in a government action against an electrical wholesalers' association and members prohibits agreements for or practices of influencing or fixing of prices of electrical supplies, or forcing manufacturers to supply at certain prices; hindering advertising, setting of prices, selling, purchasing, selecting of customers, or other conduct of business by industry members; discriminating in the advertising facilities offered industry members, discriminating in purchases from manufacturers, or refusing to buy from certain manufacturers; classifying or rating industry members, or publishing and disseminating classifications and ratings, or publishing any trade directory similar to the one presently used; allocating markets or customers among industry members; or requiring payment of commissions or bonuses when sales are made by a manufacturer direct to a purchaser. Members of the association are required to file consents to the decree or cease to be members of the association.

For the plaintiff: Wm. Amory Underhill, Acting Assistant Attorney General; Sigmund Timberg, Melville C. Williams, and Allen A. Dobey, Special Assistants to the Attorney General; Irving H. Saypol, United States Attorney; Maurice Silverman, Trial Attorney; Harry N. Burgess, William H. Glenn, Raymond K. Carson, and Joseph J. Saunders, Special Attorneys.

For the defendants: Paul G. Reilly.

Final Judgment

BONDY, D. J.: [*In full text*] The plaintiff, the United States of America, having filed its complaint herein on June 23, 1950, and the defendants having appeared herein; the parties by their attorneys herein having consented to the entry of this final judgment herein without trial or adjudication of any issue of fact or law herein, and without admission by any defendant in respect of any such issue;

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 parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED, as follows:

I

[*Jurisdiction*]

The Court has jurisdiction of the subject matter herein and of all the parties hereto. The complaint of the United States of America herein states a cause of action 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, and acts amendatory thereof and supplemental thereto.

II

[*Definitions*]

For the purposes of this judgment:

“Person” means an individual, partnership, firm, association, corporation, or other legal entity engaged in the business of purchasing and distributing electrical supplies.

“EEWA” means the defendant Eastern Electrical Wholesalers Association.

III

[*Application*]

The provisions of this judgment applicable to any defendant shall apply to such defendant, its members, officers, directors, agents, employees, successors, assigns, and all other persons acting, or claiming to act, under, through, or for such defendant.

IV

[*Consents of Association Members*]

A. Defendant EEWA is ordered and directed to mail to each of its members, within twenty days after the date of the entry of this judgment, a copy of this judgment.

B. Within three months from the date of the entry of this judgment, all persons, firms or corporations who now are, or were on June 23, 1950, members of EEWA shall indicate their consent to be bound and obligated by the terms of the within judgment. Such consent shall be evidenced by such person, firm or corporation executing in duplicate a consent annexed to a copy of the within judgment, and one of such duplicate consents shall be filed herein and the other duplicate consent shall be delivered to the Assistant Attorney General in charge of the Antitrust Division. No person, firm or corporation now a member of EEWA failing to sign and file such consent shall remain a member of EEWA from and after three months from the date of the entry of this judgment.

C. Defendant EEWA is ordered within ninety days from the entry of this judgment to institute and complete such proceedings as may be appropriate and necessary to amend its Charter and By-Laws so as to incorporate therein Sections V and VI of this judgment, and require as a condition of membership that all present and future members be bound thereby.

D. Upon the entry of this judgment, defendant EEWA shall immediately suspend all of its activities provided that upon the expiration of ninety days from the entry of this judgment or such earlier date as it complies with Subsection C hereof and has certified to the Assistant Attorney General in charge of the Antitrust Division a complete list of its members who have (a) consented to be bound by the judgment herein, (b) refused to be so bound and have accordingly been dropped from membership, and (c) who have resigned from membership since June 23, 1950, the defendant EEWA may resume publication of its bulletin in conformity with the provisions of this judgment, and, in addition, from and after the date hereof, the defendant EEWA may perform any and all functions, activities and services necessary and incident to the representation of its members or other persons in the negotiation or administration of any labor contract or the adjustment, arbitration, settlement or disposition of any labor problems or disputes. Upon the expiration of eighteen months from the date the defendant EEWA is permitted to resume publication of said bulletin, the defendant EEWA may assume and perform any function, service or activity not forbidden by the terms of this judgment or otherwise.

V

[*Agreements Prohibited*]

The defendants are jointly and severally enjoined and restrained from combining or conspiring with, or from entering into, adhering to, renewing, maintaining, or furthering, directly or indirectly or claiming any rights under any contract, agreement, understanding, plan or program with any other person to:

1. Fix, determine, suggest, maintain or adhere to prices, differentials, commissions, discounts or other terms or conditions of sale for electrical supplies.
2. Hinder, restrict or prevent the sale in any manner of electrical supplies by any manufacturer thereof to any purchaser.
3. Hinder or restrict any person in the free and independent selection of customers by such person.

4. Hinder, restrict or prevent any person from purchasing, distributing or selling electrical supplies produced by any manufacturer.
5. Classify or rate manufacturers, manufactures' agents or purchasers or distributors of electrical supplies at any industry level.
6. Collect, compile, disseminate, publish or otherwise circulate any information regarding any classification or rating of any manufacturer, manufacturer's agent, purchaser or distributor of electrical supplies, or any document containing any list classifying manufacturers or manufacturers' agents, or any list of purchasers or distributors of electrical supplies, or any information regarding the price, sales, or distribution policies of any manufacturer of electrical supplies or any other person.
7. Collect, compile, disseminate, publish or otherwise circulate any book, pamphlet, bulletin, or other document containing advertising matter of any manufacturer of electrical supplies or any other person unless equal opportunity for advertising in the same book, pamphlet, bulletin or other document is granted to any such other manufacturers or other person requesting the same upon non-discriminatory terms and conditions, and without regard to the sales price or distribution policies of any such manufacturer or other person.
8. Refrain from or urge, suggest, or coerce any other person to refrain from purchasing, selling or distributing electrical supplies produced by any manufacturer.
9. Allocate or divide markets, customers or territories for the purchase, sale or distribution of electrical supplies.
10. Hinder, restrict or prevent, in any manner, any person from advertising electrical supplies for sale or distribution, or from announcing the prices, terms or other conditions of sale for electrical supplies to be sold or distributed by such person.
11. Force, urge or coerce, or attempt to force, urge or coerce any manufacturer of electrical supplies to pay to any person a commission, bonus or other thing of value because, or on account of, or based upon, any direct sale of electrical supplies to any purchaser.

VI

[*Practices Prohibited*]

The defendants are jointly and severally enjoined and restrained from:

1. Influencing or controlling, or attempting to influence or control, the price, sales or distribution policies of any other person.
2. Forcing, urging, coercing or attempting to force, urge or coerce, any manufacturer to sell electrical supplies to any other person at prices or upon terms or conditions of sale other than those freely and independently determined by such manufacturer.
3. Forcing, urging or coercing or attempting to force, urge or coerce any other person:
 - (a) To refrain from purchasing, selling or distributing electrical supplies produced by any manufacturer; or
 - (b) To purchase, sell or distribute electrical supplies produced by any manufacturer or group of manufacturers in preference to electrical supplies produced by any other manufacturer or group of manufacturers.
4. Hindering, restricting or preventing, or attempting to hinder, restrict or prevent any other person from engaging in the purchase, sale or distribution of electrical supplies.
5. Compiling or distributing "Weir's Directory of Independent Electrical Wholesalers" or any publication similar thereto, or selling or transferring any rights with respect to "Weir's Director of Independent Electrical Wholesalers."

VII

[*Investigation and Reports*]

For the purpose of securing compliance with this judgment, and for no other purpose, duly authorized representatives of the Department of Justice, shall, on written request of the Attorney General or any Assistant Attorney General, and on reasonable notice to any defendant, 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 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. For the purpose of securing compliance with this judgment any defendant upon the written request of the Attorney General, or an Assistant Attorney General, shall submit such reports with respect to any of the matters contained in this judgment as from time to time may be necessary for the purpose of enforcement of this judgment. No information obtained by the means permitted in this paragraph shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department except in the course of legal proceedings for the purpose of securing compliance with this judgment in which the United States is a party or as otherwise required by law.

VIII

[Jurisdiction Retained]

Jurisdiction of this action is retained for the purpose of enabling any of the parties to this 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 judgment, for the modification or termination of any of the provisions thereof, for the enforcement of compliance therewith and punishment of violations thereof.