

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

United States v. Stamps-Conhaim-Whitehead, Inc.

Civil Action No. 1338

Year Judgment Entered: 1963



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Stamps-Conhaim-Whitehead, Inc., U.S. District Court, N.D. Iowa, 1963 Trade Cases ¶70,857, (Aug. 29, 1963)

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United States v. Stamps-Conhaim-Whitehead, Inc.

1963 Trade Cases ¶70,857. U.S. District Court, N.D. Iowa, Western Division. Civil Action No. 1338. Entered, August 29, 1963. Case No. 1731 in the Antitrust Division of the Department of Justice.

Sherman Act

Refusal to Deal—Customer Selection—Newspaper Advertising Mats—Exclusive Use by One Newspaper in a Community—Consent Judgment.—A manufacturer of newspaper advertising mats was prohibited under the terms of a consent judgment from refusing to sell its advertising mats to any newspaper, and required to stop giving exclusive use of its advertising mats to only one newspaper in a community, and to cancel all of its existing exclusive contracts.

For the plaintiff: Earl A. Jinkinson, Department of Justice, Chicago, Ill.

For the defendant: Wiley E. Mayne, Sioux City, Iowa, Frank C. McAleer, Kahn, Adsit & Arnstein, and Jerome J. Friedman, Chicago, Ill.

Final Judgment

HANSON, Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on December 28, 1962, and defendant having appeared through its attorneys, and the parties through their respective attorneys having consented to the entry of this Final Judgment, without any admission by any party in respect to the facts or issues herein, and without trial or adjudication of any fact or law:

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

I

[Sherman Act]

This Court has jurisdiction of the subject matter herein and of the parties 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.

II

[Definitions]

As used in this Final Judgment:

(A) "Defendant" shall mean Stamps-Conhaim-Whitehead, Inc., a corporation organized and existing under the laws of the State of New York with its principal place of business at New York, New York, and its successor, SCW Inc., an Illinois Corporation.

(B) "Advertising service" shall mean a newspaper advertising mat service consisting of a catalog of illustrations, art work and suggested advertisements a newspaper may use to assist local advertisers in the preparation of some of their advertising. Such mats are a paper-like substance used to produce a substitute for a cut or engraving for the reproduction of display advertising.

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1

(C) "Newspaper" shall mean a daily or weekly publication published under one trade name whether the publication is sold or distributed gratis.

III

[*Applicability*]

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

IV

[*Practices Enjoined*]

Defendant is enjoined and restrained from:

(A) Refusing to sell or license use of its advertising services on a non-discriminatory and non-exclusive basis to any newspaper making a written request therefor; or

(B) Entering into or carrying out any agreement or understanding to grant to any newspaper the sole or exclusive right to purchase or license defendant's advertising service.

V

[*Permissive Provisions*]

Nothing contained in this Final Judgment shall be deemed to prohibit defendant from refusing to sell or license its advertising service to any newspaper where

(A) A newspaper does not agree to pay defendant's list price, royalty, or licensing fee for the use of such advertising service by such separate newspaper in each city in which the advertising service will be used.

(B) A newspaper has an inadequate credit rating or for other sound business reasons of a non-discriminating nature.

(C) A newspaper refused to enter an agreement to purchase or use defendant's monthly advertising service for at least one year.

VI

[*Termination of Contracts*]

The defendant is ordered and directed within nine (9) months of the date of the entry of this Final Judgment to terminate and cancel all such portions of its contracts or licenses as are contrary to or inconsistent with any of the provisions of Paragraph IV of this Final Judgment and to notify its subscribers, customers, and licensees of such termination and cancellation.

VII

[*Copyright*]

The defendant shall be entitled to all rights and privileges accruing to it by reason of the copyright laws unless such rights and privileges be contrary to or inconsistent with any of the provisions of Paragraph IV of this Final Judgment.

VIII

[*Compliance*]

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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 defendant, at its principal office, be permitted:

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

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

Defendant, upon the 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 as from time to time may be necessary for the enforcement of this Final Judgment.

No information obtained by the means provided in this Section 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 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 Retained]

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

United States v. Metro Associated Services, Inc.

Civil Action No. 1337

Year Judgment Entered: 1964



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Metro Associated Services, Inc., U.S. District Court, N.D. Iowa, 1964 Trade Cases ¶71,078, (May 4, 1964)

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United States v. Metro Associated Services, Inc.

1964 Trade Cases ¶71,078. U.S. District Court, N.D. Iowa, Western Division. Civil Action No. 1337. Entered May 4, 1964. Case No. 1730 in the Antitrust Division of the Department of Justice.

Sherman Act

Refusal to Deal—Customer Selection—Newspaper Advertising Mats—Exclusive Use by One Newspaper in a Community—Consent Judgment.—A manufacturer of newspaper advertising mats would be prohibited under the terms of a consent judgment from refusing to sell its advertising mats to any newspaper, required to stop giving exclusive use of its advertising mats to only one newspaper in a community, and required to cancel all of its existing exclusive contracts.

For the plaintiff: William H. Orrick, Jr., Assistant Attorney General, William D. Kilgore, Jr., Harry G. Sklarsky, Donald E. O'Brien, United States Attorney, Earl A. Jinkinson, Francis C. Hoyt, and John J. Lannon, Attorneys, Department of Justice.

For the defendant: Stewart H. M. Lund and Maxwell E. Sparrow, New York, N. Y.

Final Judgment

HANSON, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on December 28, 1962, and defendant having appeared through its attorneys, and the parties through their respective attorneys having consented to the entry of this Final Judgment, without any admission by any party in respect to the facts or issues herein, and without trial or adjudication of any fact or law:

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

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter herein and of the parties hereto, and the complaint states a claim upon which relief may be granted against the defendant under Section I 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) "Defendant" shall mean Metro Associated Services, Inc., a corporation organized and existing under the laws of the State of New York with its principal, place of business at New York, New York.

(B) "Advertising service" shall mean a newspaper advertising mat service consisting of a catalog of illustrations, art work and suggested advertisements a newspaper may use to assist local advertisers in the preparation of some of their advertising. Such mats are a paper-like substance used to produce a substitute for a cut or engraving for the reproduction of display advertising.

(c) "Newspaper" shall mean a daily or weekly publication published under one trade name whether the publication is sold or distributed gratis.

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III

[*Applicability*]

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

IV

[*Prohibited Practices*]

Defendant is enjoined and restrained from:

- (A) Refusing to sell or license use of its advertising services on a non-discriminatory and non-exclusive basis to any newspaper making a written request therefor; or
- (B) Entering into or carrying out any agreement or understanding to grant to any newspaper the sole or exclusive right to purchase or license defendant's advertising service.

V

[*Permissive Provisions*]

Nothing contained in this Final Judgment shall be deemed to prohibit defendant from refusing to sell or license its advertising service to any newspaper where

- (A) A newspaper does not agree to pay defendant's list price, royalty, or licensing fee for the use of such advertising service by such separate newspaper in each city in which the advertising service will be used.
- (B) A newspaper has an inadequate credit rating or for other sound business reasons of a non-discriminating nature.
- (C) A newspaper refused to enter an agreement to purchase or use defendant's monthly advertising service for at least one year.

VI

[*Cancellation of Contracts*]

The defendant is ordered and directed within nine (9) months of the date of the entry of this Final Judgment to terminate and cancel all such portions of its contracts or licenses as are contrary to or inconsistent with any of the provisions of paragraph IV of this Final Judgment and to notify its subscribers, customers, and licensees of such termination and cancellation.

VII

[*Copyright Protection*]

The defendant shall be entitled to all rights and privileges accruing to it by reason of the copyright laws unless such rights and privileges be contrary to or inconsistent with any of the provisions of paragraph IV of this Final Judgment.

VIII

[*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

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request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to defendant, at its principal office, be permitted:

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

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

Defendant, upon the 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 as from time to time may be necessary for the enforcement of this Final Judgment.

No information obtained by the means provided in this section 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 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 Retained*]

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

United States v. Iowa Beef Packers, Inc.

Civil No. 69-C-3008-W

Year Judgment Entered: 1970; modified in 1974, 1976, and 1977



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Iowa Beef Packers, Inc., U.S. District Court, N.D. Iowa, 1970 Trade Cases ¶73,089, (Mar. 20, 1970)

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United States v. Iowa Beef Packers, Inc.

1970 Trade Cases ¶73,089. U.S. District Court, N.D. Iowa, Western Division. Civil No. 69-C-3008-W. Entered March 20, 1970. Case No. 2043 in the Antitrust Division of the Department of Justice.

Clayton Act

Acquisition of Competitor—Beef Packers—Consent Decree.—A beef packer was required by the terms of a final consent judgment to divest itself of the assets of a competitor that it had acquired. The decree also prohibited the packer from acquiring all or any part of the assets or stock of a competitor in a four-state area for a period of ten years without consent of the government.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen., Baddia J. Rashid, Charles D. Mahaffie, Jr., W. D. Kilgore, Jr., J. E. Waters, Robert B. Greenbaum and John J. McLoone, Jr., Attys., Dept. of Justice.

For the defendant: E. Houston Harska.

Final Judgment

HANSON, D. J.: Plaintiff, United States of America, having filed its complaint herein on February 24, 1969, and defendant, Iowa Beef Packers, Inc., having filed its Answer thereto, and plaintiff having filed its amended complaint on December 5, 1969; and plaintiff and defendant, Iowa Beef Packers, Inc., having consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence or admission by any party hereto with respect to any such issue;

Now, Therefore, before the taking of any testimony, 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 this action and of the parties hereto. The amended complaint states a claim upon which relief may be granted against the defendant under Section 7 of the Act of Congress of October 15, 1914, as amended (15 U. S. C., §18), commonly known as the Clayton Act.

II.

[Definitions]

As used in this Final Judgment:

(A) "IBP" means defendant, Iowa Beef Packers, Inc., a corporation organized and existing under the laws of the State of Delaware, with its principal office in Dakota City, Nebraska.

(B) "Blue Ribbon" means the former Blue Ribbon Beef Pack, Inc., acquired by IBP on August 1, 1969.

(C) "Eligible purchaser" means a person which represents that it intends to operate Blue Ribbon or the Blue Ribbon facilities as an operating business in competition with other firms engaged in the slaughter and processing of fed cattle and which is approved by plaintiff, or failing such approval, by the Court.

III.

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[*Applicability*]

The provisions of this Final Judgment applicable to defendant shall apply to such defendant, its subsidiaries, successors and assigns and to each respective officer, agent, servant, employee and to all persons in active concert or participation with defendant who receive actual notice of this Final Judgment by personal service or otherwise. None of the provisions of this Final Judgment shall apply to any person or persons which acquires any of the assets disposed of pursuant to this Final Judgment.

IV.

[*Divestiture*]

(A) Within two years from the date of this Final Judgment, IBP shall sell, upon terms and conditions to be approved by the Court, to an eligible purchaser or purchasers either the assets of Blue Ribbon as a going business or the Mason City and Le Mars plants of Blue Ribbon separately as going businesses.

(B) In accomplishing the divestiture ordered by paragraph IV(A), IBP shall make known the availability for sale of the Blue Ribbon assets by ordinary and usual means and it shall employ one or more brokers to assist it in such divestiture. IBP shall furnish to all bona fide prospective purchasers all necessary information, including current financial statements regarding the Blue Ribbon, assets and operations and shall permit such prospective purchasers to make such inspection as may be reasonably necessary.

(C) Pending any sale pursuant to the terms of this Final Judgment and subject to the provision of this Court's order of October 6, 1969, IBP shall continue the normal operations of Blue Ribbon and shall take no action with respect to the personnel or assets of Blue Ribbon which would impair IBP's ability to accomplish the divestiture ordered in paragraph IV(A).

(D) The divestiture ordered in paragraph IV(A) shall be made in good faith and shall be absolute and unqualified; provided, however, that IBP may accept and enforce any bona fide lien, mortgage, deed of trust or other form of security on all or any portion of the divested assets given for the purpose of securing to IBP payment of any unpaid portion of the purchase price thereof or performance of the sale transaction and may also enforce any other terms and conditions of the sale transaction as therein provided or as provided by law. In the event that IBP, as a result of the enforcement of any bona fide lien, mortgage, deed of trust or other form of security, reacquires possession of the divested assets, then IBP shall be required thereafter to divest itself of such assets in accordance with the terms of this Final Judgment.

(F) Following the entry of this Final Judgment and continuing until completion of the divestiture ordered by paragraph IV(A) IBP shall render bi-monthly reports to the Assistant Attorney General outlining in detail the efforts made by it and by its broker or brokers to accomplish the divestiture ordered in paragraph IV(A). The first such report shall be rendered within sixty (60) days after the date of entry of this Final Judgment.

V.

[*Acquisition of Competitors*]

IBP is enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from acquiring all, or any part of the assets (other than assets acquired in the ordinary course of business) or all or any part of the stock of any individual, partnership, firm, corporation, association or other business or legal entity engaged in the business of slaughtering or processing fed cattle in the States of Iowa, Nebraska, Minnesota or South Dakota without the consent of the Department of Justice or failing such consent, the approval of the Court upon a showing that such acquisition may not substantially lessen competition or tend to create a monopoly.

VI.

[*Compliance & Inspection*]

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

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request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to the defendant made to its principal office, be permitted:

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

For the purpose of securing compliance with this Final Judgment, the defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal offices, 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 enforcement of this Final Judgment.

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

VII.

[*Jurisdiction 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 or termination 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. Iowa Beef Processors, Inc., U.S. District Court, N.D. Iowa, 1974-1 Trade Cases ¶75,014, (Feb. 27, 1974)

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United States v. Iowa Beef Processors, Inc.

1974-1 Trade Cases ¶75,014. U.S. District Court, N.D. Iowa, Western Division. Civil No. 69-C-3008-W. Filed February 27, 1974. Case No. 2043, Antitrust Division, Department of Justice.

Clayton Act

Acquisitions and Mergers—Divestiture—Beef Packers—Modification of Decree—Changed Conditions—Appointment of Trustee.—Iowa beef processors' motion to vacate the divestiture provisions of a consent decree on the grounds that conditions had so changed in the cattle slaughter industry, especially as it related to location of cattle feeding and cattle slaughter operations, that divestiture was no longer an appropriate remedy to effectuate the purpose of the decree was denied, since there was no evidence that an acknowledged trend in the shift of cattle feeding operations to the southern plains started only after 1970 when the decree was entered. A trustee was appointed for purposes of divestiture, pursuant to the court's conclusion that the appointment was appropriate and necessary as asserted by the government in its Petition for Appointment of Trustee.

Memorandum and Order

HANSON, D. J.: On February 4, 1969 the United States filed this cause of action challenging the acquisition by Iowa Beef Processors, Inc. of Blue Ribbon Beef Pack, Inc., which operated plants at Le Mars and Mason City, Iowa. On August 1, 1969 with the Court's permission, the acquisition was consummated, with certain conditions attached to assure that the Blue Ribbon assets could be divested as a going business.

The consent decree entered on March 20, 1970 required Iowa Beef Processors, Inc., to divest to an "eligible purchaser" the two plants as a whole or separately within two years. "Eligible purchaser" is defined as "an operating business in competition with other firms engaged in the slaughter or processing of feed cattle" and who is approved by the Government or the Court.

On July 17, 1972, the Court extended the time for the sale of the two plants by one year upon application of Iowa Beef. At the hearing upon this request, the Court received extensive testimony as to the unsuccessful attempts of Iowa Beef to sell these plants and the failure to comply with the consent decree. It was upon this basis and the representations of Iowa Beef as to efforts that would be made to divest the plants if an extension were granted, that the Court entered its July 17, 1972 order.

This time extension has passed and Iowa Beef has still been unable to divest these plants under the original consent decree.

Iowa Beef now presents to the Court a Motion to Vacate Divestiture Provisions of Consent Decree. The thrust of this motion is that conditions have so changed in the cattle slaughter industry, especially as it relates to location of cattle feeding and cattle slaughter operations that divestiture is no longer an appropriate remedy to effectuate the purpose of the consent decree.

The Government has not accepted Iowa Beef's contention as it relates to modifying the consent order and the Government asserts that divestiture is still appropriate under the original consent decree.

The Government has reurged its request, originally presented to the Court immediately following the first two year period for sale of assets, that a trustee be appointed to dispose of the former Blue Ribbon plants.

This Court allowed Iowa Beef Processors, Inc., an opportunity to pursue discovery and to present evidence relating to their claim that divestiture is no longer an appropriate remedy in this instance. On October 23, 1973, this Court received evidence relating to the motion to vacate consent order.

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At this hearing Iowa Beef introduced substantial evidence relating to the relative stagnation of the feed cattle business in the Midwest versus the Southern Plains region, where the industry is expanding rapidly. This evidence indicates that the number of cattle fed in the Midwest has stabilized while cattle feeding in the Southern Plains region has been expanding.

Iowa Beef contends that the stabilization or decrease in the cattle feeding industry in this area has produced substantial overcapacity of slaughter facilities which has increased competition for available cattle supplies and has created a "sellers" market for cattle feeders and substantial premium prices in this area versus the Southern Plains.

Iowa Beef argues that the addition of more bidders in face of declining cattle supplies will only drive more competitors out of business and leave the situation unchanged as it relates to competition for feed cattle.

Iowa Beef argues that this market situation is the reason that they have been unable to find any bidders for these two plants at any price.

While Iowa Beef has presented convincing testimony to this Court as it relates to the shift in cattle feeding operations to the Southern Plains as a result of competitive advantages, there is no convincing evidence that this trend started only after 1970 when the consent order was entered.

The Court strongly suspected that this phenomenon has been known for some time and this suspicion is confirmed in this record.

In considering the questions presented to this Court, the dictates of the *U. S. Supreme Court in United States v. Swift & Co.* [1932-1939 TRADE CASES ¶ 55,005], 286 U. S. 106,119 (1932) must be considered:

"There is need to keep in mind steadily the limits of inquiry proper in the case before us. We are not framing a decree. We are asking ourselves whether anything has happened that will justify us now in changing a decree. The injunction, whether right or wrong, is not subject to impeachment in its application to the conditions that existed at its making. We are not at liberty to reverse under the guise of readjusting. Life is never static, and the passing of a decade has brought changes to the grocery business as it has to every other. The inquiry for us is whether the changes are so important that dangers, once substantial, have become attenuated to a shadow. No doubt the defendants will be better off if the injunction is relaxed, but they are not suffering hardship so extreme and unexpected as to justify us in saying that they are the victims of oppression. *Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead us to change what was decreed after years of litigation with the consent of all concerned.*" (Emphasis added)

The question this Court must address is whether a "grievous wrong evoked by new and unforeseen conditions" would result from strict enforcement of the consent decree.

Iowa Beef has demonstrated changing conditions emerging in the cattle feeding and cattle slaughtering industry as a result of the emergence of the Southern Plains as a major factor in this industry. Iowa Beef has demonstrated difficulty in acquiring reasonable bids for the Le Mars and Mason City plants or any bids. Iowa Beef has raised questions to this Court as to whether these plants can be sold and operated as viable economic entities by other firms, given the market conditions in the industry. The fact that few or no reasonable offers were received by Iowa Beef reinforces these arguments. Iowa Beef, however, has not met their burden at this time as it relates to overturning the consent decree.

This Court believes it still may be possible to achieve the goals of the consent order and that the Court should explore the possibility of doing so by the appointment of a trustee with limited powers to dispose of the Iowa Beef plants at Le Mars and Mason City.

In the event that the trustee is unable to obtain a buyer at a reasonable price, this will be an indication to this Court that market conditions are such that the plants cannot be purchased and operated by a purchaser other than Iowa Beef as viable economic entities and that to divest the plants would not achieve the objectives of the consent decree.

This Court believes that a divestiture of these plants to a purchaser who could not operate them as viable entities would not further the objectives of this cause of action and that the Government could not insist in good faith that carrying out this consent order in such a manner that liquidation of the plants resulted would accomplish any antitrust objectives. If, however, a trustee who is not under the control of Iowa Beef can find a purchaser who can operate the plants as viable economic entities, this should be done.

The Court, having found that the defendant has not complied with prior orders of this Court requiring the defendant to divest the assets of Blue Ribbon Pack by March 20, 1973, concludes that the appointment of a trustee to sell these assets is appropriate and necessary in accordance with the Petition for Appointment of Trustee submitted by plaintiff,

Accordingly, It Is Hereby Ordered that:

- (1) David J. Neubauer is appointed trustee at a reasonable compensation to be fixed by the Court and paid by defendant Iowa Beef Processors, Inc. (IBP). IBP will transfer to the trustee, within one week of his appointment, all rights and powers necessary to permit him to divest the Blue Ribbon assets in accordance with the provisions of this Order. Pending such divestiture, IBP shall continue to remain responsible for the operations of these assets in accordance with the provisions of the Final Judgment of March 20, 1970.
- (2) The trustee shall sell, as quickly as possible, the former Blue Ribbon beef slaughtering plants located at Mason City and Le Mars, Iowa to an "eligible purchaser" or "eligible purchasers" as defined in the original decree who will undertake in good faith to continue the slaughtering operations of the plants as a going business or businesses. IBP shall be entitled to the net proceeds of such sale or sales.
- (3) As soon as the terms of sale have been agreed upon and at least thirty days before consummating the proposed sale, the trustee shall so advise the Court, with notice to plaintiff, identifying the purchaser or purchasers and setting forth in appropriate detail the price, terms and conditions of the proposed sale. Within thirty days of said notice to plaintiff, plaintiff may file with the Court and serve upon the trustee a statement of its objections to the proposed sale, and in such event the proposed sale shall not be consummated unless approved by the Court.
- (4) The trustee shall have full authority to retain such consultants, attorneys or other representatives as are reasonably necessary to assist him in the disposition of the plants. IBP shall be notified of proposed expenditures in excess of \$500, and shall have an opportunity to present objections to this Court if they desire. Delays caused by said objections shall extend the trustee's time in which to dispose of said plants.
- (5) The trustee shall also be entitled to reimbursement from IBP for reasonable expenses incurred by him as trustee in carrying out his duties, subject to the right of IBP to be heard by this Court on the allowance and the amount of such expenses.
- (6) The trustee shall submit a report to this Court every ninety (90) days on the progress he has made in disposing of the plants. The trustee may at any time submit such additional reports to the Court as he may consider warranted. A copy of each report he submits to the Court shall be furnished plaintiff and defendant.
- (7) For the purpose of carrying out his duties under this Order the trustee, upon reasonable notice, shall be entitled to access to those records and documents in the possession or under the control of IBP which relate to the Blue Ribbon plants, or to the functions and duties of the trustee; to interview officers or employees of IBP regarding such matters; and to secure from IBP reasonable reports regarding such matters.
- (8) If either or both plants remain unsold one year from, the date of his appointment, then the trustee's authority under this Order terminates; provided, however, such period may be extended by the Court for an additional period of time on the representation by the trustee that he is currently engaged in negotiations which may effect the divestiture required by this Order. Any delays in the divestiture of these plants caused by IBP shall extend the time for divestiture in accordance with the delay caused.
- (9) If the trustee is unable to sell either or both plants, then IBP is relieved from the divestiture provisions of the Final Judgment.

(10) Any party may apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, modification, or termination of any of the provisions of this Order, for the enforcement of compliance therewith, and for the punishment of violations thereof.

(11) Except as provided for in this Order, the terms of the Final Judgment remain in full force and effect.

IBP has raised certain objections to the appointment of David J. Neubauer as trustee for the sale of these plants. The Court has reviewed these objections and the affidavit submitted to the Court relating to this patent matter by the trustee himself.

The Court finds that this trustee appears to be well-qualified to accomplish the goals outlined in this Order and that the patent dispute is not of such nature as to prevent the trustee from performing his duties.

It is expected that the trustee and IBP will keep the Court informed of any developments that would prevent the trustee from carrying out his duties as trustee under this Order.

It Is Further Ordered that the Court reserves jurisdiction of this facet of the action as it relates to any further orders that may be necessitated to finally dispose of this matter. Neither party has raised the issue of a requirement of bond for the trustee appointed by this Order. If the parties feel that it is necessary to have a bond set, such application should be made to the Court and the Court will consider the matter.



Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Iowa Beef Packers, Inc., U.S. District Court, N.D. Iowa, 1976-1 Trade Cases ¶60,721, (Jan. 12, 1976)

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United States v. Iowa Beef Packers, Inc.

1976-1 Trade Cases ¶60,721. U.S. District Court, N.D. Iowa, Western Division. Civil No. 69-C-3008-W. Entered January 12, 1976. Case No. 2043, Antitrust Division, Department of Justice.

Clayton Act

Acquisition of Competitor—Beef Packers—Amendment of Consent Decree,—On January 12, 1976, the court amended the consent judgment of March 20, 1970 (CCH 1970 TRADE CASES ¶73,089), by striking the word "fed" from the term "fed cattle" in the definition of "Eligible purchaser" in paragraph 11(C) of the judgment.



FILED

SIoux CITY OFFICE, WESTERN DIV.
NORTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

K. W. FUELLING, Clerk
By: M. H. [Signature] DEPUTY

UNITED STATES OF AMERICA,
Plaintiff,

v.

IOWA BEEF PROCESSORS, INC.,
Defendant.

CIVIL NO. 69-C-3008-W

ORDER MODIFYING CONSENT DECREE

Pursuant to Iowa Beef Processors' Motion to Modify Consent Decree dated May 10, 1977, and with the consent of Counsel for the United States, the final judgment in this action dated March 20, 1970, as previously amended by this Court's Orders of February 26, 1974 and December 29, 1975, is further modified in the following respects:

Iowa Beef Processors, Inc., having reacquired the former Blue Ribbon Packing plant at Mason City, Iowa from Mason City Dressed Beef, Inc. on January 24, 1977, is relieved of any further obligation to divest that plant and, instead, shall be permitted to retain the real and personal property comprising the plant assets, subject to the following restrictions:

1. Iowa Beef Processors, Inc. shall raze the the plant structure, salvaging any equipment that may be usable elsewhere; and

2. Iowa Beef Processors, Inc. may not use the land on which the plant exists for the purpose of constructing another beef slaughtering plant within five (5) years from the date of this order.

DATED: May 10, 1977

BY THE COURT:

William C. Hanson
William C. Hanson
Judge
United States District Court