

APPENDIX A:

UNITED STATES v. BLUE CHIP STAMP CO., ET AL.

CIVIL NO. 63-1552-F

JUDGMENT ENTERED JUNE 5, 1967

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Blue Chip Stamp Co.; Alexander's Markets; Lucky Stores, Inc.; Market Basket; Purity Stores, Inc.; Ralphs Grocery Co.; Safeway Stores, Inc.; Thriftmart, Inc.; Thrifty Drug Stores Co., Inc.; and Von's Grocery Co., U.S. District Court, C.D. California, 1967 Trade Cases ¶72,087, (Jun. 5, 1967)

United States v. Blue Chip Stamp Co.; Alexander's Markets; Lucky Stores, Inc.; Market Basket; Purity Stores, Inc.; Ralphs Grocery Co.; Safeway Stores, Inc.; Thriftmart, Inc.; Thrifty Drug Stores Co., Inc.; and Von's Grocery Co.

1967 Trade Cases ¶72,087. U.S. District Court, C.D. California. Civil Action No. 63-1552-F. Entered June 5, 1967. Case No. 1771 in the Antitrust Division of the Department of Justice.

Sherman Act

Injunctive Relief—Divestiture—Jointly Owned Trading Stamp Firm—Consent Decree.—A trading stamp firm owned by California retailers was required by a consent judgment to reorganize or sell its assets and, after the reorganization or sale, the firm was required to sell one-third of its then existing business, the business to be offered for sale being located within a contiguous geographic area within Southern California. The decree requires the firm to continue its business until reorganization or divestiture is accomplished, and enjoins it from refusing to provide services to retailers because of the retailers' rates of issuance of stamps.

Injunctive Relief—Restraints and Monopolization—Owners of Trading Stamp Firm—Consent Decree.—Retailers jointly owning a trading stamp firm were prohibited by a consent decree from restraining or monopolizing the trading stamp business in the State of California, agreeing with other users of trading stamps to refrain from using particular or all trading stamp services, limiting the rate of issue employed in distributing trading stamps to their respective customers in California, or acting with other users in the same line of business to organize or acquire a trading stamp company to operate in the state.

For the plaintiff: Donald F. Turner, Assistant Attorney General; Gordon B. Spivack, Stanley E. Disney, and Lawrence W. Somerville, Attorneys, Department of Justice.

For the defendants: O'Melveny & Myers, William W. Alsup, Allyn O. Kreps, Wilmer, Cutler & Pickering, Arnold M. Lerman, by William W. Alsup and Arnold M. Lerman, for Blue Chip Stamp Co.; O'Melveny & Myers, William W. Alsup, Allyn O. Kreps, by William W. Alsup, for Von's Grocery Co., Alexander's Markets, Ralphs Grocery Co., and Thrifty Drug Stores Co., Inc.; Donahue, Richards & Gallagher, Joseph A. Woods, Jr., O'Melveny & Myers, William W. Alsup, Allyn O. Kreps, by Joseph A. Woods, Jr., for Lucky Stores, Inc.; Pillsbury, Madison & Sutro, William E. Mussman, David T. Steffen, O'Melveny & Myers, William W. Alsup, Allyn O. Kreps, by David T. Steffen, for Safeway Stores, Inc.; Thelen, Marrin, Johnson & Bridges, Gordon Johnson, Chester H. Brandon, by Chester H. Brandon, for Purity Stores, Inc.; McCutchen, Black, Verleger & Shea, G. Richard Doty, by G. Richard Doty, for Market Basket; Tinning & DeLap, James E. Cox, William J. Curren, Jr., by James E. Cox, for Thriftmart, Inc.

Final Judgment

FERGUSON, D. J.: Plaintiff, United States of America, having filed its complaint in the United States District Court for the Southern District of California, Central Division, on December 26, 1963; each of the defendants having appeared and filed its answer denying the substantive allegations thereof; and the plaintiff and the defendants, by their attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, without the taking of any evidence, and without this Final Judgment constituting any evidence or admission by any party in respect to any issue of fact or law herein;

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

Ordered, Adjudged and Decreed as follows:

I.

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto. The complaint states claims for relief against the defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890, as amended, entitled "An Act to protect trade and commerce against unlawful restraint and monopolies," commonly known as the Sherman Act.

II.

[*Definition*]

For the purposes of this Final Judgment:

- (A) "Person" shall mean an individual, partnership, firm, association, corporation or other legal or business entity;
- (B) "Trading stamp business" shall mean the distribution for compensation, of trading stamps to any person for issuance to its customers, employees or others, and the redemption of said stamps for merchandise or money;
- (C) "Trading stamp company" shall mean a person engaged in the trading stamp business;
- (D) "Capital Assets" shall mean land, buildings, leasehold improvements, furniture and fixtures, warehouse equipment, delivery equipment and automobiles.
- (E) "Southern California" is that part of California south of the line formed by the northern boundaries of San Luis Obispo, Kern and San Bernardino Counties.
- (F) "New Blue Chip" shall mean a purchaser of, or any other successor to, Blue Chip's trading stamp business pursuant to Section VI herein or a reorganized company pursuant to Sections V or VII herein.
- (G) "Reorganization" shall mean a re-constitution of the stock structure of Blue Chip and shall include the creation of a new company to which the assets and liabilities of Blue Chip are transferred, or into which Blue Chip is consolidated or merged.

III.

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant and any person agreeing to be bound shall also apply to each of its subsidiaries, successors, assigns, officers, directors, and employees, and to all other persons in active concert or participation with such defendant or persons who shall have received actual notice of this Final Judgment by personal service or otherwise, but shall not apply to transactions solely between or among such defendant or person and its officers, directors, employees, parent company, subsidiaries and affiliates, or any of them.

IV.

[*Prohibited Activities*]

Each of the retailer defendants is enjoined and restrained from:

- (A) Combining or conspiring to restrain trade in, or monopolizing or attempting to monopolize the trading stamp business in the State of California; or carrying out, directly or indirectly, any such combination, conspiracy, attempt to monopolize or monopolization;
- (B) Entering into any contract, agreement or understanding with any other user of trading stamps in the same line of business:

- (i) To refrain, in the State of California or in particular areas thereof, from using trading stamp services entirely or from using the trading stamp services of any particular person or persons; or
 - (ii) To limit the rate of issue employed in distributing trading stamps to their respective customers in such state;
- (C) Acting jointly with any other user of trading stamp services in the same line of business to organize or acquire a trading stamp company to operate in the State of California except as provided in Sections V, VI or VII hereof.

Provided, that this Section IV shall not apply to a retailer defendant, acting independently: (1) in obtaining or entering into any contract to obtain trading stamp services from any trading stamp company; or (ii) when such defendant is engaged in the trading stamp business (either directly or through a subsidiary or affiliate), in furnishing or entering into any contract to furnish trading stamp services to any person, and provided further that this Section IV shall not apply to the provision of trading stamp services by any trading stamp company which is not named as a defendant herein.

V.

[*Reorganization*]

Blue Chip is ordered and directed to present to the Court, within 60 days following the date of entry of this Final Judgment, a plan for the reorganization of Blue Chip Stamp Company. The plan shall be substantially in accordance with either of the plans heretofore furnished to plaintiff. Upon approval of the plan by the Court, Blue Chip shall make bona fide and diligent efforts to reorganize the company pursuant to the said plan. If at any time, in plaintiff's judgment, such efforts are not being made, plaintiff may apply to the Court for an order directing that this Section V shall no longer apply. In the event that such order issues, Blue Chip shall be required to divest pursuant to Section VI or to reorganize pursuant to Section VII hereof.

VI.

[*Divestiture*]

(A) In the event that Section V becomes inapplicable Blue Chip is ordered and directed to divest, with all due diligence, within 15 months from the date upon which Section V shall no longer apply, all of the company's capital assets, goodwill, and the right to the service mark and to the use of the name "Blue Chip," and, following such divestiture, to discontinue issuance of trading stamps, cease doing business as an operating company and thereafter to wind up its affairs and dissolve consistent with the applicable laws of the State of California. The divestiture shall be made upon the following terms and conditions:

- (1) The purchaser or successor to Blue Chip's trading stamp business shall agree to enter its appearance in this proceeding and shall furnish its written consent to be bound by the applicable provisions of this Final Judgment.
- (2) The purchaser or successor shall agree to engage in the trading stamp business in California for a reasonable period of time.
- (3) The purchaser or successor shall contract with Blue Chip on mutually satisfactory terms for the redemption of all outstanding trading stamps theretofore issued by Blue Chip and said contract shall insure discharge of Blue Chip's redemption obligations and shall require the purchaser or successor to redeem its stamps interchangeably with the trading stamps theretofore issued by Blue Chip.
- (4) The purchaser or successor shall assume such other obligations as Blue Chip and it may agree and Blue Chip shall transfer such cash, securities or other assets as it and Blue Chip may agree.

The said divestiture may be made by a sale of assets, a sale of stock of a corporation which controls the assets, or in any other manner not otherwise inconsistent with the terms of this decree. Provided, that in the event that all of the stockholders of Blue Chip dispose of their stock to a purchaser or successor said disposal shall be regarded as a divestiture by Blue Chip for the purposes of this Final Judgment.

(B) Blue Chip shall make known the availability of the assets for sale. Blue Chip shall furnish to bona fide prospective purchasers making inquiry to it, such information as is reasonably necessary for them to proceed with negotiations looking toward the ultimate acquisitions of the assets to be divested and shall furnish plaintiff concurrently with the name of any such prospective purchaser. Blue Chip shall render quarterly reports to the Assistant Attorney General in charge of the Antitrust Division concerning its efforts to effectuate the divestiture required, the first such report to be rendered within 30 days of the date that Section V shall no longer apply.

(C) At least 30 days in advance of the closing date specified in any contract for sale, Blue Chip shall supply plaintiff with the name of the proposed purchaser, the purchase contract, and with such other information in its possession as is material to the proposed sale. If plaintiff requests, the said closing date shall be extended to the extent necessary to afford plaintiff 60 days between the date of the receipt of the said information and the closing date. Blue Chip may close any sale unless plaintiff serves upon Blue Chip, at least 15 days in advance of the closing date, written notice that plaintiff objects thereto. If plaintiff serves such written notice with respect to a sale to a purchaser engaged in the trading stamp business, or a purchaser engaged in the operation of retail food stores in the State of California, such sale shall not be closed. If plaintiff serves such written notice with respect to any other sale, the sale shall not be closed unless approved by the Court. The time period set forth in Section VI (A) above shall be tolled during the pendency of any extension or of any proceeding under this Section VI(C).

(D) The divestiture ordered and directed by Section VI (A) of this Final Judgment shall be made in good faith and shall be absolute and unqualified except as follows:

(1) Nothing herein contained shall be deemed to prohibit Blue Chip from retaining, accepting and enforcing a bona fide lien, mortgage, deed of trust or any other form of security reasonably necessary to secure full payment of the price at which the divested property is disposed of or sold or to secure any other obligation of a purchaser or successor, provided that if Blue Chip shall regain ownership of or control over the property divested as a result of any lien, mortgage, deed of trust, or other undertaking Blue Chip shall be required to terminate such ownership or control within 18 months thereafter.

(2) In the event that Blue Chip receives, as a result of any divestiture hereunder, stock of a corporation which controls the divested assets:

(a) Blue Chip shall be required: (i) to dispose of any amount of such stock in excess of 10% of the outstanding common stock of such corporation within one year following the date of receipt thereof or within 22 months following the date Section V shall no longer apply, whichever is earlier, provided that in no event shall such disposal be required within less than three months following the date of receipt of such excess; and (ii) to dispose of the balance of such stock no later than the date of final distribution in liquidation; and (iii) pending disposal, to cause any voting rights of such stock to be exercised by a financial institution or other third party who is acceptable to plaintiff or approved by the Court; and

(b) In the event Blue Chip distributes such stock to its shareholders, no distribution shall be made pursuant to which any Blue Chip shareholder will retain more than 1% of the outstanding common stock of the said corporation unless the plan of distribution is acceptable to plaintiff or approved by the Court.

VII

[*Reorganization*]

In the event that Section V becomes inapplicable, Blue Chip may also enter into a reorganization pursuant to a plan for the reorganization of Blue Chip Stamp Company acceptable to the Court. The plan shall substantially in accordance with either of the plans heretofore furnished to plaintiff or in accordance with any other plan acceptable to Blue Chip and to plaintiff.

VIII

[*Continuation of Business*]

(A) Blue Chip is ordered and directed to continue its trading stamp business and to continue to promote its trading stamp service until completion of the reorganization set forth in Sections V or VII above or until the divestiture set forth in Section VI above. Until such reorganization or divestiture Blue Chip is enjoined and restrained from:

(1) Refusing to provide a trading stamp service or imposing any limitation on such service to any person because of: (i) the presence in the same locality of any establishment operated by another person using Blue Chip's stamp service; (ii) the rate of issue employed by such person in offering Blue Chip's or any other person's stamps; or (iii) the use by such person of any other trading stamp service;

(2) Coercing or compelling any person: (i) to limit the rate of issue employed in offering Blue Chip's or any other person's stamps; or (ii) to refrain from using any other trading stamp service.

(B) New Blue Chip, in the event that it is not already a party hereto, shall enter its appearance in this proceeding and give its consent to be bound by the applicable provisions of this Final Judgment. A purchaser of assets pursuant to Section IX hereof shall enter its appearance in this proceeding and give its consent to be bound by the applicable provisions of this Final Judgment. New Blue Chip and such purchaser are enjoined and restrained from:

(1) Refusing to provide a trading stamp service or imposing any limitation on such service to any person because of: (i) the presence in the same locality of any establishment operated by another person using the company's stamp service; (ii) the rate of issue employed by such person in offering the company's or any other person's stamps; or (iii) the use by such person of any other trading stamp service;

(2) Coercing or compelling any person (i) to limit the rate of issue employed in offering the company's or any other person's stamps; or (ii) to refrain from using any other trading stamp service;

(3) Having as an officer or employee any person who, while holding such position, also serves as an officer, director, or employee of any person using trading stamp services; or from having, for a period of ten years following the date of entry of this Final Judgment, as a director, any person who, while holding such position, also serves as an officer, director or employee of any person who was a Blue Chip stockholder in 1956 or 1957.

(C) Each of the retailer defendants is enjoined and restrained for a period of ten years following the date of entry of this Final Judgment:

(1) From having as an officer, director, or employee any person who, while holding such position, also serves as an officer, director or employee of New Blue Chip; or

(2) From exercising any right which it might acquire to vote for the election of any official of New Blue Chip; *provided* that a retailer defendant may cause such right to be exercised independently by a financial institution or other third party acceptable to plaintiff or approved by the Court. Each retailer defendant shall be free to utilize or not utilize the trading stamp services of Blue Chip and New Blue Chip and, except as provided in this Section VIII(C), to exercise the same rights and privileges available to every other user of the stamp services of Blue Chip or New Blue Chip.

IX.

[*Post-reorganization Requirements*]

New Blue Chip shall, within 30 months after the date of completion of the reorganization under Sections V or VII above or the divestiture under Section VI above present for the approval of the Court a plan which shall include the following terms:

(1) New Blue Chip shall offer for sale one-third of its then existing trading stamp business in the State of California. The business to be offered for sale shall be located within a contiguous geographic area within Southern California.

(2) A purchaser shall be permitted to acquire the business only upon the condition that it enter its appearance in this proceeding and agree: (i) to be bound by the applicable provisions of Sections VIII (B), IX, X and XI of this

Final Judgment and (ii) to engage in the trading stamp business for a reasonable period of time. A purchaser shall have the right, if it so elects, to redeem New Blue Chip trading stamps within the contiguous area for the period of one year following the consummation of the sale. Plaintiff shall have the right to object to a purchaser in the same manner as it may object to a purchaser under Section VI(C) above.

(3) New Blue Chip shall not, during the period of one year following the consummation of the sale: (i) knowingly allow any person operating retail establishments in the contiguous area to issue New Blue Chip stamps to customers of such establishments; or (ii) furnish New Blue Chip stamps to any person with knowledge that the stamps will be issued to customers at any retail establishment in the contiguous area; or (iii) otherwise engage in the trading stamp business in the contiguous area except that, if the purchaser does not elect to redeem New Blue Chip stamps or if the purchaser fails to perform in accordance with his redemption obligations, New Blue Chip shall have the right to redeem its outstanding stamps in said area. Following the said one year period, New Blue Chip shall offer its trading stamp service in the contiguous area.

X.

[*Inspection and Compliance*]

For the purpose of securing compliance with this Judgment and for no other purpose:

(A) Any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to any defendant, New Blue Chip, or any purchaser under Section IX hereof, made to its principal office, and subject to any legally recognized privilege, be permitted:

(1) Access during the office hours to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of any person specified in this Section X(A) related to any matters contained in this Judgment;

(2) Subject to the reasonable convenience of, and without restraint or interference from, any person specified in this Section X(A), to interview officers or employees of any such person who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, any defendant, New Blue Chip or a purchaser under Section IX shall submit such additional reports in writing with respect to the matters contained in this Final Judgment as may be requested. Provided that no information obtained by the means provided for 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 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.

XI.

[*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 direction as may be necessary or appropriate for construction, carrying out, modification, termination or enforcement of or compliance with the provisions of this Final Judgment and for the punishment of violations thereof.