

APPENDIX A:

UNITED STATES v. FRITO-LAY, INC., ET AL.

CIVIL NO. 70-1175-R

JUDGMENT ENTERED: OCT. 21, 1974



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL NO. 70-1175-R
)	
FRITO-LAY, INC.,)	
BBF LIQUIDATING, INC.,)	<u>FINAL JUDGMENT</u>
GRANNY GOOSE FOODS, INC.,)	
PET INCORPORATED, and)	
BELL BRAND FOODS, INC.,)	Entered: Oct. 21, 1974
)	
Defendants.)	

Plaintiff, United States of America, having filed its complaint herein on May 26, 1970, and plaintiff and the defendants, Frito-Lay, Inc., Granny Goose Foods, Inc., Pet Incorporated, BBF Liquidating, Inc., and Bell Brand Foods, Inc., by their respective attorneys each 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 consenting hereto with respect to 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 the parties hereto,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states claims 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 (15 U.S.C. § 1, as amended), under Section 4 A of the Act of Congress of October 15, 1914, commonly known as the Clayton Act, as amended (15 U.S.C. § 15 A), and under the False Claims Act (31 U.S.C. §§ 231-233).

II

As used in this Final Judgment:

(a) "Person" means any individual, partnership, firm, corporation, association, or other business or legal entity;

(b) "Snack foods" means potato chips, corn chips, barbecue flavored chips, and tortilla chips;

(c) "Subject area" means the States of California, Arizona and Nevada.

III

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

parent or subsidiary companies.

IV

(A) The defendants are jointly and severally enjoined and restrained from directly or indirectly entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding, plan or program with any other manufacturer, wholesaler or distributor, to:

(1) Fix, determine, establish, maintain or stabilize the prices or other terms for the sale of snack foods to any third person;

(2) Fix or adopt uniform snack food package sizes or weights;

(3) Reduce, curtail, or limit the supply of snack foods to any third person;

(4) Submit noncompetitive, collusive, complementary or rigged bids or quotations for snack foods to any other person;

(5) Allocate or divide customers, territories, or markets;

(6) Exclude or eliminate any other person from competing in the production, marketing or sale of snack foods;

(B) The defendants are enjoined and restrained from using the facilities or organization of any trade association or other group to accomplish any activity contrary to or inconsistent with the provisions of this Final Judgment.

V

This Final Judgment is not intended to apply to the mere suggestion by any defendant of the prices to be charged by any wholesaler or distributor for the resale of such defendant's snack foods, provided, however, that any suggestion of such prices in the subject area shall include a statement

that each wholesaler or distributor is free to sell such snack foods at any price he may choose.

VI

Nothing in this Final Judgment shall be deemed to prevent defendants from jointly or severally doing anything required by, or refraining from doing anything prohibited by, the provisions of the Fair Packaging and Labeling Act, 15 U.S.C. § 1451 et seq. (and regulations promulgated thereunder).

VII

Within sixty (60) days of the entry of this Final Judgment, each of the defendants is ordered and directed to individually and independently review, determine and establish its prices and other terms and conditions of sale for snack foods in the subject area, and within ninety (90) days of the entry of this Final Judgment to file with the Court and with the plaintiff a copy of such prices and other terms and conditions of sale for snack foods. In lieu of the foregoing, any or all of the defendants may file its current price list together with an affidavit indicating that its prices and other terms and conditions of sale for snack foods in the subject area have been individually and independently established within the past nine months.

Nothing contained in this paragraph or elsewhere in this decree shall operate or be construed to operate to prevent any defendant from negotiating or modifying or otherwise changing at any time the prices determined in accordance with the requirements of this Section VII.

VIII

Each defendant is ordered and directed for a period of five years from the date of entry of this Final Judgment:

(A) At the time of every succeeding change in

published price list and/or discount sheet relating to the sale of snack foods in the subject area, to certify by affidavit signed by the official responsible for such decision, that said change was independently arrived at by said defendant and was not the result of an agreement or understanding with any other seller of snack foods; and further that each consenting defendant retain in its files the aforesaid certifications which shall be made available to plaintiff for inspection upon reasonable written demand.

(B) To annex to every written offer or bid for the sale of snack foods by it to any Federal authority, agency, or instrumentality thereof in the subject area, a written certification, in the form attached as Appendix A to this Final Judgment, that such bid was not in any way the result, directly or indirectly, of any agreement, understanding, plan or program between the defendant and any other seller of snack foods. Such certification under this subsection (B) shall be treated for all purposes as a sworn statement made under oath subject to the provisions of Title 18 U.S.C. § 1001, relating to fraud and the making of false statements, and to the provisions of Title 31 U.S.C. §§ 231-233, relating to the making of false claims.

IX

For a period of ten (10) years from the date of entry of this Final Judgment the defendants are 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 defendants' directors, officers, agents and employees who have pricing responsibility in connection with the sale of snack foods in the subject area of its and their obligations under this Final Judgment.

X

(A) For the purpose of determining or 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 the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted, subject to any legally recognized privilege:

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

(B) For the purpose of determining or securing compliance with this Judgment and for no other purpose, defendants, or any of them, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and subject to any legally recognized privilege, shall submit such reports in writing to the Department of Justice with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

(C) No information obtained by the means provided in this section shall be divulged by any representative of the

Department of Justice to any person other than a duly authorized representative of the Executive Branch of the plaintiff, or 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.

XI

Within sixty (60) days after the date of entry of this Final Judgment, each defendant is ordered and directed to serve a copy of this Final Judgment upon its directors, officers, regional managers, plant managers and sales managers, regional and local, who have pricing responsibility in connection with the sale of snack foods in the subject area. Within ninety (90) days after the date of entry of this Final Judgment, each defendant shall file an Affidavit of Compliance with the Court, copy to plaintiff's counsel, reciting the steps taken to comply with the provisions of this Final Judgment.

XII

The defendants, in full settlement of plaintiff's claims of damages, shall pay to plaintiff the following aggregate sums within thirty (30) days of entry of this Final Judgment.

In settlement of damages under Count 2 ...	\$557,000
In settlement of actual damages only	
under Count 3	48,000
In settlement of all other claims	
under Count 3	2,000

XIII

Defendant BBF Liquidating, Inc., shall be excused from the provisions of Sections VII, VIII, IX and XI of this Final Judgment upon its compliance along with other defendants,

U.S. Mot. and Mem. to Term.

Page 16

Appendix A [p.8 of 10]

with Section XII of this Final Judgment.

XIV

Jurisdiction of this cause 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 in relation to the construction of or carrying out of this Final Judgment, for the modification of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

DATED: October 21, 1974

/s/ MANUEL REAL
UNITED STATES DISTRICT JUDGE

APPENDIX A

The undersigned hereby certifies that, to the best of his knowledge and belief, the annexed offer or bid has not been prepared in collusion with any other producer or competitive seller of snack foods. It is further certified that the contents of such offer or bid have not been communicated and will not be communicated to any person prior to the official opening of said bid other than to another representative of the corporation by whom the undersigned is employed, or of the parent, subsidiary or affiliate of said corporation. This certification shall be treated for all purposes as a sworn statement made under oath, and subject to the provision of Title 18 U.S.C. § 1001, relating to fraud and the making of false statements and to the provisions of Title 31 U.S.C. §§ 231-233, relating to the making of false claims.

DATED:

Signature of Official having
authority to determine the price
or prices bid or quoted and to
bind the Corporation by whom he
is employed.

SUBSCRIBED and SWORN to before
me this ____ day of _____ 1974.

Notary Public - California