

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The American News Company and The Union News Company., U.S. District Court, S.D. New York, 1955 Trade Cases ¶68,128, (Sept. 1, 1955)

United States v. The American News Company and The Union News Company.

1955 Trade Cases ¶68,128. U.S. District Court, S.D. New York. Civil Action No. 77-193. Filed September 1, 1955. Case No. 1139 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief —Purchase and Sale of Magazines and Answers to Distribution Inquiries.—A retailer of magazines was ordered in a consent decree (1) to buy, display and sell magazines on the basis of its own interests as a seller of magazines, provided that it should not be required to display or offer for sale as large a number of magazines as it displays or offers for sale at the time of the entry of the decree or be prevented from meeting in good faith the competition of, other newsstands, and (2) to act upon written inquiries or applications by publishers or distributors for the sale or display of magazines on its newsstands within a reasonable time and without using the interests of a wholesale distributor of magazines, its parent company, as a basis for such action. The decree required the retailer, for a period of ten years, to inform, in writing, publishers or distributors of the disposition of their written inquiries or applications and the reason therefor within seven days after disposition of such inquiries or applications. The wholesaler was prohibited from, taking any action with respect to the policies of the retailer which, would interfere with compliance by the retailer or prevent the retailer from complying with the above requirements.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined— Tying Agreements.—A wholesale distributor of magazines and its subsidiary, a retailer of magazines, were prohibited from combining or conspiring to condition the acceptance of any application for the sale of magazines on the subsidiary's newsstands upon the requirement that the magazines be distributed by the wholesaler nationally or locally to retail outlets other than the subsidiary. Also, the wholesaler was prohibited from claiming or making any representations, that it can obtain any preferential treatment in the acquisition, sale, or display of magazines by the retailer.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; William D. Kilgore, Jr., Worth Rowley, and Richard B. O'Donnell, Special Assistants to the Attorney General; Paul W. Williams, United States Attorney; John S. James, Stanley Blecher, Elliott H. Feldman, and Philip Bloom, Trial Attorneys.

For the defendants: Simpson, Thacher & Bartlett by Albert C. Bickford.

Final Judgment

EDWARD WEINFELD, District Judge [*In full text*]: Plaintiff, United. States of America, having filed its complaint herein on July 17, 1952, the defendants herein having appeared and filed their answer to the complaint, denying the substantive allegations thereof, and the plaintiff and 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, and without this Final Judgment constituting evidence or admission of any wrongful act, criminal or civil, by either defendant in respect to any such issue;

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

Ordered, adjudged and decreed as follows:

I.

[*Sherman Act*]

The Court has jurisdiction of the subject matter herein and of all the parties hereto. The complaint states a claim for relief against the defendants 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.

[Definitions]

As used in this Final Judgment:

- (A) "American" shall mean defendant The American News Company, a corporation organized and existing under the laws of the State of Delaware;
- (B) "Union" shall mean defendant The Union News Company, a corporation organized and existing under the laws of the State of New York;
- (C) "Magazines" shall mean any periodical publications sold or offered for sale to the reading public by retail dealers within the United States, its territories or possessions;
- (D) "Publisher" shall mean any person engaged in the business of publishing magazines;
- (E) "Distributor" shall mean any person engaged in the wholesale distribution or sale of magazines;
- (F) "Person" shall mean any individual, firm, partnership, corporation, association, trustee, or other business or legal entity.

III.

[Applicability of Judgment]

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

IV.

[Inquiries by Publishers and Distributors]

- (A) Union is ordered and required, (1) in considering written inquiries or applications by publishers or distributors for the sale or display of magazines on Union newsstands, to act upon such inquiries or applications within a reasonable time, and without using the interests of American as a basis for such action, and (2) to buy, display and sell magazines on the basis of Union's own interests as a seller of magazines; provided that Union shall not be required thereby to display or offer for sale as large a number of; magazines as it displays or offers for ; sale at the time of the entry of this Final Judgment, or be prevented thereby from meeting in good faith the competition of other newsstands.
- (B) Union is ordered and directed, for a period of ten (10) years from the date of entry of this Final Judgment, to inform in writing publishers or distributors of the disposition of their written inquiries or applications and the reason therefor within seven (7) days after disposition thereof. Union; shall keep full and complete records of each such application, inquiry and disposition for a period of five (5) years after each such disposition.

V.

[Interference— Preferential Treatment]

American is enjoined and restrained from:

- (A) Taking-any action with respect to the policies of Union which will interfere with compliance by Union, or prevent Union from complying with the requirements of Section IV of this Final Judgment.

(B) Claiming, indicating, or making any representations, directly or indirectly, that American can obtain any preferential treatment in the acquisition, sale or display of magazines by Union.

VI.

[Tying Agreements]

Defendants are jointly and severally enjoined and restrained from combining, conspiring, entering into, adhering to, directly or indirectly, any contract, agreement or understanding to condition the acceptance of any application for sale of magazines on Union newsstands upon the requirement that said magazines be distributed by American. (1) nationally or (2) locally, to retail outlets other than Union.

VII.

[Inspection and Compliance]

For the purpose of securing compliance with this Final Judgment, and for no other purpose, 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 either defendant made to its principal office, subject to any legally recognized privilege, be permitted:

(A) 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, who may have counsel present, 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 the officers and employees of such defendant, who may have counsel present, regarding any such matters.

For the purpose of securing compliance with this Final Judgment defendants, upon the written request of the Attorney General, or an Assistant Attorney General, and upon reasonable notice to its principal office, shall submit such written 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 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 for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

VIII.

[Jurisdiction Retained]

Jurisdiction is retained for the purpose of enabling, any parties to this Judgment, and no others, to apply to this Court at any time for such further orders and directions as may be necessary for the construction or carrying out of this Judgment, for the modification or termination of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.