

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Meredith Publishing Company; Periodical Distributors of Greater New York Inc.; Bookazine Co. Inc.; The Baker & Taylor Company; and Bessie Dimondstein and Dorothy Mashman, d/b/a Dimondstein Book Co., U.S. District Court, S.D. New York, 1956 Trade Cases ¶68,359, (May 15, 1956)

United States v. Meredith Publishing Company; Periodical Distributors of Greater New York Inc.; Bookazine Co. Inc.; The Baker & Taylor Company; and Bessie Dimondstein and Dorothy Mashman, d/b/a Dimondstein Book Co.

1956 Trade Cases ¶68,359. U.S. District Court, S.D. New York. Civil Action No. 109-292. Filed May 15, 1956. Case No. 1280 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Resale Price Fixing-Fair Trade—Consent Decree—Practices Enjoined—Fixing and Maintaining Resale Prices.—A book publisher and wholesale distributor of books were each prohibited by consent decrees from entering into any understanding with any person (1) to fix or maintain the prices for the sale or resale of the publisher's books to or by any third person, (2) to prevent any such other person or persons from selling the publisher's books at prices other than the prices suggested or approved by the publisher, or (3) to limit or restrict the persons to whom any person may resell the publisher's books to those selling at prices suggested or approved by the publisher.

Resale Price Fixing-Fair Trade—Consent Decree—Practices Enjoined—Fair Trade Arrangements Between Competitors.—A book publisher was prohibited by a consent decree from making or enforcing any agreement, with any person in the New York metropolitan area with whom it is competing in the sale of books to retailers in that area, which provides for the enforcement or maintenance of minimum or stipulated resale prices for its books in that area. However, the book publisher could, at any time after the expiration of one year from the date of the entry of the decree, petition the Court to modify the decree by eliminating the above prohibition, and the Court was required to modify the decree in such manner, if it should determine that the agreements prohibited by the decree are then permitted under federal law.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Restrictions on Sale.—Wholesale distributors of books were prohibited by a consent decree from entering into any understanding among themselves or with any other person to hinder, restrict, or prevent a defendant book publisher from selling its books to any person.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief —Notice of Cancellation of Fair Trade Contracts.—A book publisher was required by a consent decree to give notice to each person in the New York metropolitan area from whom it has obtained a fair trade resale price maintenance contract for its books, and to each person in the New York metropolitan area against whom it has sought to enforce minimum or stipulated prices established by fair trade contracts for its books, that such contracts have been cancelled and are of no effect, and that its books are no longer fair traded in the New York metropolitan area.

Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions—Miller-Tydings Act—McGuire Act.—A consent decree entered against a book publisher provided that nothing contained in the decree should prevent the publisher from availing itself of the benefits under the Miller-Tydings Act or the McGuire Act (1) from the date of the entry of the decree with respect to sales by the publisher of its books to persons outside of the New York metropolitan area or with respect to sales by the publisher of its books for resale to persons outside of the area, and (2) after the expiration of one year from the date of the entry of the decree with respect to any sales. A similar provision was contained in a consent decree entered against wholesale distributors of books.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; Worth Rowley, Harry N. Burgess, W. D. Kilgore, Jr., Richard B. O'Donnell, John J. Galgay, Vincent A. Gorman, and Joseph T. Maioriello, Attorneys, Department of Justice.

For the defendants: Walker Smith of McDermott, Will & Emery, Chicago, 111.; Gerald D. Thornton, Des Moines, Iowa; and Frank A. F. Severance of Dunnington, Bartholow & Miller, New York, N. Y., for Meredith Publishing Co. Milton S. Lebe for Bookazine Co. Inc. and Henry T. Stetson for The Baker & Taylor Company.

Final Judgment as to Meredith Publishing Company

E. J. DIMOCK, District Judge [*In full text*] : Plaintiff, United States of America, having filed its complaint herein on May 11, 1956; defendant Meredith Publishing Company having appeared and filed its answer to the complaint denying the substantive allegations thereof; and the plaintiff and defendant Meredith Publishing Company, 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 admission by either of them in respect to 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 the parties signatory hereto, 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 signatory hereto. The complaint states a claim for relief against the defendant Meredith Publishing Company 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) "New York metropolitan area" means that part of the State of New York which includes the City of New York and the Counties of Nassau, Suffolk, Westchester, Putnam and Rockland, and that part of the State of New Jersey which includes the Counties of Essex, Union and Hudson;

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

(c) "Meredith" means defendant Meredith Publishing Company which, together with its officers, directors, employees, agents and subsidiaries, shall be considered to be one person;

(d) "Meredith books" mean the hardbound books which it now publishes, which are its New Cook Book, Baby Book, Story Book, Garden Book, Handyman's Book, Diet Book and Junior Cook Book, or any of them, and any and all similar hardbound books which it may in the future publish.

III

[*Applicability of Judgment*]

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

IV

[Enforcement of Agreements]

Meredith is enjoined and restrained from enforcing, in whole or in part, any agreement, obligation or understanding arising out of the letters dated November 16, 1954 from Edwin Shaffer of Meredith to The Baker & Taylor Co., Bookazine Co., Inc., Dimondstein Book Co., and Periodical Distributors of Greater N. Y., Inc., or arising out of pledges in response to those letters.

V

[Notices of Cancellation]

Meredith is ordered and directed to give due notice, within thirty (30) days from the date of entry of this Final Judgment, to each person named in paragraph IV and to each person in the New York metropolitan area, who buys or sells Meredith books and whom Meredith has informed of the letters or pledges described in paragraph IV, that any agreement, obligation or understanding arising out of said letters, and any agreement, obligation or understanding arising out of pledges in response to said letters, is cancelled and is of no effect.

VI

Meredith is ordered and directed to give due notice, within thirty (30) days from the date of entry of this Final Judgment, to each person in the New York metropolitan area from whom Meredith has obtained a fair trade resale price maintenance contract for Meredith books, and to each person in the New York metropolitan area against whom Meredith has sought to enforce minimum or stipulated prices established by fair trade contracts for Meredith books, that said contracts have been cancelled and are of no effect, and that Meredith books are no longer fair traded in the New York metropolitan area.

VII

[Pricing Practices Enjoined—Permissive Provision]

Meredith is enjoined and restrained from entering into, adhering to or maintaining any contract, agreement, understanding, plan or program with any other person or persons:

- (A) To fix or maintain the price or prices for the sale or resale of Meredith books to or by any third person;
- (B) To prevent any such other person or persons from selling Meredith books at a price or prices other than the price or prices suggested or approved by Meredith;
- (C) To limit or restrict the persons to whom any person or persons may resell Meredith books to persons selling at prices suggested or approved by Meredith.

Nothing contained in this Section VII shall prevent Meredith from availing itself of the benefits, if any, accruing to it by virtue of the Act of Congress of August 17, 1937, commonly called the Miller-Tydings Act, or the Act of Congress of July 14, 1952, commonly known as the McGuire Act:

- (1) From the date of the entry of this Final Judgment (a) with respect to sales by Meredith of its books to persons outside of the New York metropolitan area or (b) with respect to sales by Meredith of its books for resale to persons outside of said area.
- (2) After the expiration of one year from the date of entry of this Final Judgment, with respect to any sales.

VIII

[Agreements Between Defendant and Competitors]

Meredith is enjoined and restrained from proposing, making, adhering to, or enforcing any contract or agreement with any person in the New York metropolitan area with whom Meredith is then competing in the sale of books to retailers in that area, which contract or agreement provides for the enforcement or maintenance or minimum or stipulated resale prices for Meredith books in that area; Provided, however, that Meredith may, at any time after the expiration of one year from the date of entry of this Final Judgment, petition the Court to modify it by

eliminating this paragraph VIII, and the Court shall modify it by eliminating this paragraph VIII if the Court shall determine that the making or entering into contracts or agreements prohibited by this paragraph VIII is then permitted under federal law.

IX

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney-General or the Assistant Attorney-General in charge of the Antitrust Division, and on reasonable notice to Meredith made to its principal office, be permitted, subject to any legally recognized privilege:

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

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

(C) Upon written request, Meredith shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

No information obtained by the means permitted in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice 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.

X

[*Retention of Jurisdiction*]

Jurisdiction is retained by this Court for the purpose of enabling any of the parties of 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 amendment, or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.