

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. United Scenic Artists Local 829 of the Brotherhood of Painters, Decorators and Paperhangers of America., U.S. District Court, S.D. New York, 1962 Trade Cases ¶70,592, (Jan. 21, 1963)

United States v. United Scenic Artists Local 829 of the Brotherhood of Painters, Decorators and Paperhangers of America.

1962 Trade Cases ¶70,592. U.S. District Court, S.D. New York. Civil Action No. 118-92. Entered January 21, 1963. Case No. 1325 in the Antitrust Division of the Department of Justice.

Sherman Act

Labor Unions—Boycotts—Price Fixing—Selection of Customers—Proposed Consent Judgment.—United Scenic Artists Local 829 of the Brotherhood of Painters, Decorators and Paperhangers of America, a union composed of costume and scenery designers, producers and workers in the theatrical industry, was prohibited, under a consent judgment, from coercing or compelling (1) non-member designers into joining the union, (2) producers of theatrical productions to refrain from contracting with non-member designers, (3) members to refrain from working with non-member designers solely because of their non-membership, and (4) designer-members who operate studios or manufacture costumes to refrain from performing work designed by non-members. Charges of fixing minimum prices and fees to be charged by members were dismissed.

For the plaintiff: Lee Loevinger, Assistant Attorney General, William D. Kilgore, Jr., John J. Galgay, John D. Swartz, David H. Harris, and Louis Perlmutter, Attorneys, Department of Justice.

For the defendant: Erwin Feldman.

Final Judgment

RYAN, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on March 5, 1957; the defendant, by its attorneys, having appeared and filed its answer to such complaint denying the substantive allegations thereof; and the parties, by their attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of any issue of fact or law;

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 hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

The Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states a cause of action, upon which relief can be granted, 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

As used in this Final Judgment:

(A) "Person" shall mean any individual, partnership, firm, corporation, association, labor union, or any other business or legal entity;

(B) "Attraction" shall mean any play, musical, operetta, Opera, ballet or any other type of theatrical production utilizing costumes, scenery or lighting or any combination thereof. An "attraction" as herein defined is performed in person by professional actors, singers or dancers;

(C) "Producer", shall mean any person who produces, or is responsible for the production of, any attraction. As used herein the term "producer" shall also mean and include the manager of any attraction and any other person who may act for or on behalf of the producer thereof;

(D) "Contract designer" shall mean any person who, on the basis of a fee (whether stated in terms of a flat sum of money, percentage participation in the gross earnings of an attraction, royalty, or any combination thereof) contracts with a producer to provide for an attraction (a) working models, sketches, color schemes, designs or specifications for scenery and/or lighting, or (b) sketches, color schemes, designs or specifications for costumes, or, to select or find clothes or accessories. A "contract de signer" as herein defined may supervise, (but usually does not himself perform), the actual execution, by others, of the de signs and specifications for scenery, lighting and/or costumes prepared by him;

(E) "Studio" shall mean any person who, on the basis of models, sketches, color schemes, designs or specifications for scenery or lighting previously prepared by a contract designer, actually builds, constructs or provides such scenery and/or lighting pursuant thereto;

(F) "Costume manufacturer" shall mean any person who, on the basis of sketches, color schemes, designs or specifications for costumes, previously prepared by a contract designer, actually manufactures or produces the costumes pursuant thereto for an attraction.

III

This Final Judgment does not, in any manner, adjudicate or determine the legality or illegality of membership in defendant of contract designers, nor does this Final Judgment, in any manner, adjudicate or determine the relationship, in fact or law, between any contract designer and any other person including the defendant, nor shall this Final Judgment constitute or create any bar or estoppel against the plaintiff, or any agency or instrumentality thereof, in any suit or proceeding which may hereafter be brought by the plaintiff, or any such agency or instrumentality, in which an issue is or may be the propriety or legality of membership in defendant of any such contract designer or contract designers.

IV

(A) The provisions of this Final Judgment applicable to the defendant shall apply also to each of its officers, directors, members, agents, servants and employees, and to all persons in active concert of participation with the defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

Defendant is ordered and directed forthwith to serve a copy of this Final Judgment, by registered mail, return receipt requested, upon (i) the national headquarters of the Brotherhood of Painters, Decorators and Paperhangers of America, and (ii) each of its officers and directors;

Defendant is ordered and directed forthwith to (i) display prominently, in a place accessible to its general membership at its local headquarters, a copy of this final judgment and to maintain the same upon such display for a period not less than fifty (50) days, (ii) incorporate in its notices of meetings for the two general membership meetings next succeeding the date of the entry of this final judgment, a notice to the effect that this final judgment will be read at each of such meetings, (iii) to read this final judgment at each of the two general membership meetings next succeeding the date of the entry of this final judgment and to announce at each of said meetings that a copy of this final judgment is available to all members of the defendant, and (iv) to make a copy of this final judgment available to each of the members of the defendant.

(D) Defendant is ordered and directed, not later than sixty (60) days after the entry of this Final Judgment, to file with this Court, and serve upon the plaintiff, an affidavit setting forth the fact and manner of its compliance with subsections (B) and (C) of this Section IV.

V

Defendant is ordered and directed forthwith, and in any event, not later than ninety (90) days after the date of the entry of this Final Judgment, to (i) cancel each and every provision of its Constitution, By-laws, Rules or Regulations (including specifically, but without limitation, its "Working Rules") which is, or may be, in any manner, contrary to, or inconsistent with, any of the provisions of this Final Judgment, and (ii) to serve upon the plaintiff a copy of its new Constitution, By-laws, Rules and Regulations as revised.

VI

Defendant is enjoined and restrained from, directly or indirectly:

(1) Coercing or compelling or attempting, in any manner to coerce or compel:

(a) any contract designer to become a member of defendant;

(b) any producer to refrain from entering into and performing any contract for the design of scenery, costumes or lighting with a contract designer for the reason that he is not a member of defendant;

(c) any member of defendant to refrain from assisting any contract designer who is not a member of defendant in the preparation of designs, sketches and models for scenery, costumes or lighting and from working upon any scenery, costumes or lighting for the reason that the contract designer who designed such scenery, costumes or lighting is not a member of defendant;

(d) any studio or costume manufacturer to refrain from commencing and performing work for any producer for the reason that the designs of scenery, costumes or lighting were designed by a contract designer who is not a member of defendant.

VII

Nothing in this Final Judgment shall be construed as prohibiting defendant, as a labor union, from bargaining collectively for and on behalf of its members and making or entering into lawful contracts respecting terms and conditions of employment, or exercising any and all of its lawful rights.

VIII

For the purpose of determining and securing compliance by defendant with this Final Judgment, 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 such defendant or other person to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of or under the control of such defendant, or such other person, who may have counsel present, relating, in his opinion, to any of the matters contained in this Final Judgment; and

(b) subject to the reasonable convenience of such defendant, or such other person, and without restraint or interferences, to interview the officers or employees of defendant, or such other person, who may have counsel present, regarding any such matters.

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, such defendant, or such other person, 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 permitted 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 the Plaintiff, 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.

IX

Jurisdiction of this cause is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the Court at any time for further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification or termination of any of the provisions thereof, for the enforcement of compliance therewith, and for punishment of violation thereof.