

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Hamilton Cosco, Inc., U.S. District Court, S.D. New York, 1959 Trade Cases ¶69,394, (Jun. 29, 1959)

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United States v. Hamilton Cosco, Inc.

1959 Trade Cases ¶69,394. U.S. District Court, S.D. New York. Civil Action No. 147-345. Filed June 29, 1959. Case No. 1465 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Resale Price Fixing—Consent Decree—Practices Enjoined—Resale Price Agreements —Fair Trade Agreements with Wholesalers.—A furniture manufacturer was prohibited by a consent decree from entering into any agreement with any wholesaler to fix prices for the sale of the manufacturer's products to any third person. The manufacturer was also prohibited from entering into or enforcing any wholesale "fair trade" agreements.

Resale Price Fixing—Consent Decree—Practices Enjoined—Resale Price Fixing—Boycott—Coercion.—A furniture manufacturer was prohibited by a consent decree from requiring, compelling, or coercing any wholesaler or retailer to maintain prices fixed or suggested by the manufacturer or any wholesaler for the sale of the manufacturer's products to any third person. The decree also prohibited the manufacturer from (1) boycotting or otherwise refusing to deal with any of its regularly' designated wholesalers who adequately represented it in selling its products and who complied with its reasonable standards, not inconsistent with the decree, for wholesalers, (2) entering into any agreement with any wholesaler to limit or restrict the persons to whom, or the terms under which, any wholesaler might sell the manufacturer's products, or (3) restricting the free choice of any wholesaler in selecting its customers for the manufacturer's products.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief —Cancellation of Furniture Manufacturer's Fair Trade Contracts with Wholesalers.—A furniture manufacturer charged with conspiring with wholesalers to fix minimum prices to be charged for its products was ordered by a consent decree to cancel all wholesale "fair trade" agreements to which it was a party.

Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions—Fair Trade Agreements with. Retailers.—A provision in a consent decree prohibiting a furniture manufacturer from requiring, compelling, or coercing any wholesaler or retailer to maintain fixed or suggested resale prices was not to be construed as denying the manufacturer the right to enter into and enforce fair trade contracts against retailers.

For the plaintiff: Robert A. Bicks, Acting Assistant Attorney General; and W. D. Kilgore, Jr., Baddia J. Rashid, Richard B. O'Donnell, Augustus A. Marchetti, and Paul D. Sapienza, Attorneys, Department of Justice.

For the defendant: Cahill, Gordon, Reindel & Ohl, by Jerrold G. Van Cise (D. A. O'Mara and Sheldon Oliensis, of counsel).

Final Judgment

[*Consent Decree*]

ARCHIE O. DAWSON, District Judge [*In full text*] : Plaintiff, United States of America, having filed its complaint herein on June 29, 1959; the defendant having appeared and filed its answer to the complaint denying the material allegations thereof; and the plaintiff and the defendant, by their respective attorneys, 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 either party hereto in any respect of any such issue;

Now, Therefore, before the taking of any testimony 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

[*Jurisdiction*]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states a claim upon which relief against the defendant may 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

[*Definitions*]

As used in this Final Judgment :

- (A)"Wholesale fair trade agreement" means any resale price maintenance contract, or supplement thereto, pursuant to which the resale price of Cosco products on sales by wholesalers is fixed, established or maintained under Federal law and under State fair trade laws in accordance with either [Section 1 of the Sherman Act](#) or Section 5(a) of the Federal Trade Commission Act, as amended;
- (B)"Wholesaler" means any person insofar as such person purchases Cosco products for resale to persons other than consumers;
- (C)"Cosco products" means metal and plastic furniture manufactured and sold by defendant under the brand name "Cosco";
- (D)"Retailer" means any person who purchases Cosco products for resale to consumers;
- (E) "Person" shall mean any individual, partnership, corporation, association or legal entity.

III

[*Applicability*]

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

IV

[*Wholesale Fair Trade Agreements—Cancellation*]

The defendant is ordered to cancel all wholesale fair trade agreements to which it is now a party, and the defendant is enjoined from entering into, adhering to or enforcing, directly or indirectly, any wholesale fair trade agreement.

V

[*Prohibited Agreements*]

The defendant is enjoined from entering into, adhering to, maintaining, furthering or reviving, directly or indirectly, any combination, contract, agreement or understanding with any wholesaler:

- (A) To fix, maintain or adhere to prices or minimum prices for the sale of Cosco products to any third person;
- (B) To limit or restrict the persons to whom or the terms under which any wholesaler may sell Cosco products.

VI

[*Price Fixing—Coercion*]

The defendant is enjoined from requiring, compelling or coercing or from attempting to require, compel or coerce, directly or indirectly, any wholesaler or retailer to maintain or adhere to prices or minimum prices fixed or suggested by defendant or any wholesaler for sales of Cosco products to any third person; provided, however, that nothing in this Section VI shall be construed to deny the right of defendant to directly enter into, adhere or enforce against any retailer fair trade contracts with retailers for sales of Cosco products to consumers.

VII

[*Boycotting*]

The defendant is enjoined from:

(A) Boycotting or otherwise refusing to deal with, or from threatening to boycott or otherwise to refuse to deal with any wholesaler regularly designated by defendant to act as a wholesaler for the sale of Cosco products' who adequately represents defendant in the sale of Cosco products and who complies with defendant's reasonable standards for wholesalers of Cosco products not inconsistent with any of the terms of this Final Judgment;

(B) Impeding or restricting, or from attempting to impede or restrict, directly or indirectly, the free choice of any wholesaler in selecting the latter's customers for Cosco products.

VIII

[*Notice of Judgment*]

Defendant is ordered to mail, within ninety days after the date of entry of this Final Judgment, a true and complete copy of this Final Judgment to each wholesaler on defendant's current distribution list for sales or advertising materials or with whom defendant has in effect on the date of entry of this Final Judgment a wholesale fair trade agreement.

IX

[*Enforcement and Compliance*]

For the purpose of securing compliance with this Final Judgment, 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 the defendant, made to the principal office of the defendant, be permitted (1) access during the office hours of the defendant to books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant relating to any subject matter contained in this Judgment and (2) subject to the reasonable convenience of the defendant and without restraint or interference from it to interview officers and employees of the defendant, who may have counsel present, regarding any such matters. Upon such written request, said defendant 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 purpose of enforcement of this Final Judgment. No information obtained by the means provided 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 Executive Branch of the plaintiff 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.

X

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any party hereto 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.

XI

[*Modification*]

Defendant may, at any time after the expiration of three years from date of entry of this Final Judgment, and upon one month's notice to plaintiff, with consent of the plaintiff, or in the absence of such consent, in five years, petition the Court to modify this Final Judgment to permit defendant to enter into, adhere to and enforce wholesale fair trade agreements, and, upon such application, the Court may so modify this Final Judgment if the defendant establishes to the satisfaction of this Court that the defendant is entitled to exercise such rights under applicable Federal and State legislation.