

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. National Institute of Diaper Services, Inc., U.S. District Court, S.D. New York, 1963 Trade Cases ¶70,916, (Nov. 21, 1963)

[Click to open document in a browser](#)

United States v. National Institute of Diaper Services, Inc.

1963 Trade Cases ¶70,916. U.S. District Court, S.D. New York. Civil Action No. 63 Civ. 3103. Entered November 21, 1963. Case No. 1760 in the Antitrust Division of the Department of Justice.

## Sherman Act

### **Combination and Conspiracy—Trade Association—Territorial Restrictions—Admission of Members.—**

A trade association representing 66 diaper service firms was prohibited under the terms of a consent judgment from restricting sales territories of its member firms and refusing membership to firms which compete with member firms.

For the plaintiff: William H. Orrick, Jr., Assistant Attorney General, Harry G. Sklarsky, William D. Kilgore, Jr., John J. Galgay, John D. Swartz, Augustus A. Marchetti, and Lionel E. Bolin, Attorneys, Department of Justice.

For the defendant: Stanley Posner and Mervin C. Pollak, for National Institute of Diaper Services, Inc.

## Final Judgment

MCLEAN, District Judge [ *In full text*]: Plaintiff, United States of America, having filed its complaint herein on October 22, 1963, the defendant having appeared generally and having waived service of process, and the parties hereto 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 any admission by or estoppel of any party as to any such issue:

Now therefore, it is

Ordered, adjudged and decreed as follows:

### I.

#### [ *Sherman Act* ]

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim upon which relief may be granted against defendant under Sections 1 and 3 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 herein:

(A) "Diaper service business" shall mean the business of delivering cleaned and treated fabric diapers to customers on a regular rental basis and collecting used diapers from such customers for processing and subsequent customer reuse;

(B) "Diaper service operator" shall mean a person engaged in the diaper service business;

(C) "NIDS" shall mean defendant National Institute of Diaper Services, Inc.;

(D) "NIDS member" shall mean a diaper service operator who is a member of NIDS;

(E) "Qualified NIDS applicant" shall mean an applicant for membership in NIDS who shall be engaged in business as a diaper service operator and who will agree upon becoming a NIDS member to pay dues and assessments and to fulfill, on the same basis as other NIDS members, all of the other reasonable obligations and duties imposed on a non-discriminatory basis on NIDS members by the by-laws, rules, and regulations of NIDS;

(F) "Person" shall mean any individual, firm, partnership, corporation or other business or legal entity.

### **III.**

#### **[ Applicability]**

The provisions of this Final Judgment shall apply to NIDS, its present and future members, officers, directors, employees, agents, successors and assigns, and to those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

### **IV.**

#### **[ Territorial Restrictions]**

NIDS is enjoined and restrained from adopting, participating in, maintaining or enforcing any by-law, rule, regulation, policy, contract, agreement, understanding, plan, program or course of conduct in concert with any NIDS member or members, or with any person:

(A) Restricting or limiting the territories or markets within which any person may engage in the diaper service business or the customers to whom diaper service may be furnished;

(B) Requiring any NIDS member or other diaper service operator to refrain from engaging and competing in the diaper service business in any area or market;

(C) Establishing or recognizing any area or market in which any NIDS member or other diaper service operator shall become or remain free of competition from NIDS members or from other diaper service operators;

(D) Refusing or denying membership in NIDS to any qualified NIDS applicant;

(E) Preventing or precluding any person from distributing free from restriction of any kind any merchandise or supplies used by diaper service operators, including, but not limited to, the antiseptic diaper rinse produced by W. A Geary Corporation of New Brunswick, New Jersey, under the trade name PMAS.

### **V.**

#### **[ Membership Restrictions]**

NIDS is enjoined and restrained from expelling from membership in NIDS, or otherwise penalizing or discriminating against, in any way, any NIDS member because such member engages in the diaper service business in any area or market in which one or more other NIDS. members is or are engaged in the diaper service business.

### **VI.**

#### **[ Compliance]**

NIDS is ordered and directed:

(A) To accept as a NIDS member, without discrimination, every qualified NIDS applicant;

(B) To extend to all NIDS members without discrimination,. all of the, rights, privileges and benefits of NIDS membership, including the use of the service mark "Diaseptic Process";

(C) Rescind all of its by-laws, rules, and regulations which contravene or conflict in any way with the provisions of this Final Judgment;

(D) Within 30 days after the entry of this Final Judgment, to serve by mail upon each present NIDS member a conformed copy of this Final Judgment, and thereafter to file with this Court an affidavit describing compliance with this section (D) and setting forth the name and address of each person so served;

(E) To furnish a copy of this Final Judgment to each person who becomes a member of NIDS after the entry hereof, at the time the membership of each such person commences; to obtain from each such person a written, signed acknowledgment of the receipt of such a copy hereof; and to keep each such acknowledgment in the files of NIDS so long as such membership continues and for a period of not less than five years thereafter.

## **VII.**

### **[ Inspection]**

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

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

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

Upon such written request NIDS 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 VII 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 in which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

## **VIII.**

### **[ Jurisdiction Retained]**

Jurisdiction is retained by this Court 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 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.