

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. M. Lowenstein & Sons, Inc., U.S. District Court, S.D. New York, 1970 Trade Cases ¶73,251, (Jul. 31, 1970)

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United States v. M. Lowenstein & Sons, Inc.

1970 Trade Cases ¶73,251. U.S. District Court, S.D. New York. Civil No. 70-2830. Entered July 31, 1970. Case No. 2116 in the Antitrust Division of the Department of Justice.

Sherman Act

Resale Price Fixing—Sheets—Consent Decree.—A textile manufacturer, charged with stabilizing retail prices of its prime line sheets and pillowcases in the national market, was prohibited by a consent decree from making agreements to fix, maintain or stabilize prices, markups or other terms or conditions relating to price for the sale of its sheets to any third person. The decree also bars the company for four years from fair trading, or suggesting, directly or indirectly, retail prices for the sale of its sheets to any third person.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen., William D. Kilgore, Jr., Norman H. Seidler, Morris F. Klein, Paul D. Sapienza, David M. Winer, Norah C. Taranto, and Ernest S. Carsten, Attys., Dept. of Justice.

For the defendant: White & Case, by Haliburton Fales.

Final Judgment

PALMIERI, D. J.: Plaintiff, United States of America, having filed its complaint herein on June 30, 1970, defendant having appeared by its counsel, 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 this Final Judgment constituting evidence or an admission by either party with respect to 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 the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed, as follows:

I

[Jurisdiction]

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 Section 1 of the Act of Congress of July 2, 1890, entitled, "An act to protect trade and commerce against unlawful restraints and monopolies," as amended (15 U. S. C. § 1), commonly known as the Sherman Act.

II

[Definitions]

As used in this Final Judgment:

- (A) "Sheets" shall mean bed sheets and pillowcases;
- (B) "Defendant's sheets" shall mean sheets manufactured or sold by defendant; and
- (C) "Person" shall mean any individual, partnership, firm, corporation or other business or legal entity.

III

[Applicability]

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

IV

[Resale Prices]

Defendant is enjoined and restrained from directly or indirectly entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding, plan or program with any wholesaler or retailer in the United States to fix, maintain or stabilize prices, markups or other terms or conditions relating to price for the sale of defendant's sheets to any third person.

V

[Price Lists]

Defendant is enjoined and restrained for a period of four years from the date of entry of this Final Judgment from publishing, distributing, circulating or otherwise communicating to any wholesaler or retailer in the United States, directly or indirectly, prices or markups, or any formula for computing such prices or markups, proposed, suggested or recommended by defendant, for the sale of any defendant's sheets to any third person.

VI

[Fair Trading]

Nothing in Section IV or Section V above shall prohibit defendant, after four years from the date of entry of this Final Judgment, from exercising such lawful rights, if any, as it may have under the Miller-Tydings Act, 50 Stat. 693 (1937) and the McGuire Act, 66 Stat. 632 (1952).

VII

[Notification]

(A) Within 90 days from the date of entry of this Final Judgment, defendant shall send to each of its current wholesalers and to each of the retailers in the United States to which defendant has within the preceding eight months sold sheets, a notice as to the entry of this Final Judgment, a summary of the terms of Sections IV, V and VI herein, and advising each that each wholesaler and retailer is free to sell defendant's sheets at such prices, terms and conditions as the wholesaler or retailer may desire.

(B) Within 120 days from the date of entry of this Final Judgment, defendant shall file with the plaintiff an affidavit as to the fact and manner of compliance with subsection (A) of this Section VII.

VIII

[Reports]

For a period of ten years from the date of entry of this Final Judgment, defendant is ordered and directed each year on the anniversary date of the Final Judgment to file a report with the plaintiff setting forth the steps which it has taken during the prior year to advise the defendant's appropriate officers, employees and agents of its and their obligations under the provisions of this Final Judgment.

IX

[Inspection and Compliance]

For the purpose of securing or determining 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 defendant made to its principal office, be permitted, subject to any legally recognized privilege:

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

(B) Subject to the reasonable convenience of defendant, and without restraint or interference from it, to interview officers or employees of defendant, 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, defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means permitted in this Section IX shall be divulged by any representatives 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.

X

[Retention of Jurisdiction]

Jurisdiction is retained by this Court for the purpose of enabling either party 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 modification of any of the provisions contained therein, for the enforcement of compliance therewith and for the punishment of violations thereof.