

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Addison-Wesley Publishing Co., Bantam Books, Inc., Columbia Broadcasting System, Inc., Dell Publishing Co., Inc., Doubleday & Company, Inc., Grosset & Dunlap, Inc., Harcourt Brace Jovanovich, Inc., Harper & Row, Publishers, Inc., Houghton Mifflin Co., Intext, Inc., Litton Educational Publishing, Inc., MacMillan, Inc., McGraw-Hill, Inc., Oxford University Press, Inc., Penguin Books, Inc., Prentice-Hall, Inc., Random House, Inc., Simon & Schuster, Inc., The Times Mirror Co., The Viking Press, Inc., and John Wiley & Sons, Inc., U.S. District Court, S.D. New York, 1976-2 Trade Cases ¶61,225, (Nov. 24, 1976)

United States v. Addison-Wesley Publishing Co., Bantam Books, Inc., Columbia Broadcasting System, Inc., Dell Publishing Co., Inc., Doubleday & Company, Inc., Grosset & Dunlap, Inc., Harcourt Brace Jovanovich, Inc., Harper & Row, Publishers, Inc., Houghton Mifflin Co., Intext, Inc., Litton Educational Publishing, Inc., MacMillan, Inc., McGraw-Hill, Inc., Oxford University Press, Inc., Penguin Books, Inc., Prentice-Hall, Inc., Random House, Inc., Simon & Schuster, Inc., The Times Mirror Co., The Viking Press, Inc., and John Wiley & Sons, Inc.

1976-2 Trade Cases ¶61,225. U.S. District Court, S.D. New York. No. 74 Civ. 5176 (CES), Entered November 24, 1976 (Competitive impact statement and other matters filed with settlement: 41 *Federal Register* 32615, 49867). Case No. 2419, Antitrust Division, Department of Justice.

Sherman Act

Division of Markets—English Language Books—Import-Export Restrictions—Copyrights—Licensing—Consent Decree.—Charges of a division of world markets for the sale of English-language books were settled by a consent decree that (a) prohibited American publishers from engaging in market allocations, (b) barred American firms from agreeing with British publishers that the latter would grant back exclusive copyright licenses as a condition of the Americans' grant of exclusive copyrights to them, and (c) barred the firms from enforcing import or export restrictions on books lawfully published abroad in U. S. interstate or foreign commerce except where a statutory right existed to exclude the importation of such books. (At the time of the settlement, the U. S. Department of Justice said that it had received official notification from a British publishers group "that a so-called British Market Agreement (formerly called the 'British Publishers' Traditional Market Agreement') had been terminated and that notice of termination had been given to all members of the Association." The government said that the agreement was an undertaking by members of the British group not to accept a copyright license for a book from a foreign author or publisher unless the license included the exclusive rights for publication and distribution of the book in the British Traditional Market.)

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Elliott H. Moyer, Joel Davidow, Douglas E. Rosenthal, and Stephen P. Kilgriff, Attys., Dept. of Justice.

For defendants: Anthony R. Mansfield, of Seward & Kissel, New York, N. Y., for Addison-Wesley Publishing Co.; Peter D. Standish, of Weil, Gotshal & Manges, New York, N. Y., for Bantam Books, Inc., and The Times Mirror Co.; W. Mallory Rintoitl and Ronald E. Guttman, New York, N. Y., for Columbia Broadcasting System, Inc.; Allan M. Pepper, of Kaye, Scholer, Fierman, Hays & Handler, New York, N. Y., for Dell Publishing Co., Inc.; George C. Shively, of Satterlee & Stephens, New York, N. Y., for Doubleday & Co., Inc.; Paul N. Hodys, of Engel & Miller, New York, N. Y., for Grosset & Dunlap, Inc.; Edward Klagsbrun, of Linden & Deutsch, New York, N. Y., for Harcourt Brace Jovanovich, Inc., and Macmillan, Inc.; Edward A. Miller, New York, N. Y., for Harper & Row, Publishers, Inc.; John Boyer, of Cadwalader, Wickersham & Taft, New York, N. Y., for Houghton Mifflin Co.; R. Andrew Boose, of Greenbaum, Wolff & Ernst, New York, N. Y., for Intext, Inc.; Theodore F. Craver, Beverly Hills, Cal., for Litton Educational Publishing, Inc.; Robert N. Landes, Gen. Counsel, McGraw-Hill, New York, N. Y.,

and Edward Wolfe, of White & Case, New York, N. Y., for McGraw-Hill, Inc.; David Boies, of Cravath, Swaine & Moore, New York, N. Y., for Oxford University Press, Inc.; Harry I. Rand, of Botein, Hays, Sklar & Herzberg, New York, N. Y., for Penguin Books, Inc. and The Viking Press, Inc.; Ronald S. Daniels, of Townley, Updike, Carter & Rodgers, New York, N. Y., for Prentice-Hall, Inc.; Arthur H. Kahn, of Schnader, Harrison, Segal & Lewis, Philadelphia, Pa., for Random House, Inc.; Selig J. Levitan, New York, N. Y., for Simon & Schuster, Inc.; Philip H. Schaeffer, of Paskus, Gordon & Hymain, New York, N. Y., for John Wiley & Sons, Inc.

Final Judgment

STEWART, D. J.: Plaintiff, United States of America, having filed its Complaint herein on November 25, 1974; defendants, having appeared by their respective attorneys and filed answers; and the plaintiff and consenting defendants, 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 any 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 plaintiff and consenting defendants, 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 claims upon which relief may be granted against the defendants under Section 1 of the Act of Congress of July 2, 1890, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (15 U. S. C. § 1), commonly known as the Sherman Act.

II

[Definitions]

As used in this Final Judgment:

- (A) "Book" means a copyrighted, English language book;
- (B) "Series of Books" means a set of Books with a similar or uniform format and interrelated on the basis of authorship or theme;
- (C) "British Market Agreement" means the agreement executed by certain British members of the British Publishers Association, and any amendments or modifications thereof, which defines the British Traditional Market and which expresses the commitment generally to refrain from acquiring publication, rights for Books, unless these include exclusive rights of publication for the British Traditional Market;
- (D) "Publishers Association" means a membership association of publishing houses maintaining offices in the United Kingdom with its principal office located presently at 19 Bedford Square, London, England, and any successors thereof;
- (E) "British Traditional Market" means that group of approximately seventy (70) countries, as defined in the British Market Agreement, comprising present and former members of the British Commonwealth;
- (F) "Person" means any individual, partnership, firm, association, corporation, or other business or legal entity;
- (G) "United States" means the United States, any territory thereof, the District of Columbia and any insular possession or other place under the jurisdiction of the United States.

III

[Applicability]

The provisions of this Final Judgment applicable to any consenting defendant shall apply to each of its officers, directors, agents and employees, its subsidiaries, successors and assigns, and also to all other Persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment, each consenting defendant, its subsidiaries and companies under common control with such consenting defendant, and the officers, directors, agents and employees thereof, when acting in such capacity, shall be deemed to be one Person. Except for sales of Books to the plaintiff or any agency or public instrumentality thereof, this Final Judgment shall not apply to activities outside the United States which do not affect the foreign or domestic commerce of the United States.

IV

[*Book Markets*]

After the date of entry of this Final Judgment, with regard to the acquisition, grant or other transfer of copyright rights thereafter between a consenting defendant and a United Kingdom publisher, such consenting defendant is enjoined and restrained, directly or indirectly, from entering into, adhering to, cooperating with, maintaining, enforcing or claiming any rights under:

(A) Any agreement or understanding, including the British Market Agreement, with any association, or group comprising two or more publishers of Books, to allocate, divide or assign territories or customers for the publication, sale or distribution of Books, or to assign or conform to exclusive or allocated territories or customers among publishers; provided that two or more publishers either under common control, or engaged in a bona fide joint arrangement for the publication of a specified Book or a specified Series of Books for a specified country or countries, shall be deemed one publisher under this Subsection (A) of this Section IV; provided further that acquisitions, grants or other bona fide transfers of copyright licenses between a consenting defendant and each of two or more publishers with respect to a specified Book or a specified Series of Books shall not constitute an agreement or understanding within the meaning of this Subsection (A) of this Section IV;

(B) Any agreement or understanding that the acquisition, grant or other transfer of territorially exclusive copyright rights for a Book for an agreed, understood or specified group of countries be in return for a reciprocal agreement or understanding that the acquisition, grant or other transfer, of territorially exclusive copyright rights for any future Book not in the same Series be for an agreed, understood or specified group of countries.

V

[*Import-Export Restrictions*]

Each defendant is enjoined and restrained, directly or indirectly, from preventing or restricting any purchaser of a lawfully published Book from importing or exporting such Book to or from the United States or such purchaser from selling, distributing or providing for the resale of such Book to customers in United States interstate or foreign commerce.

VI

[*Copyrights*]

Nothing in this Final Judgment shall prevent any defendant, in and of itself, from acquiring, granting, or otherwise transferring exclusive or non-exclusive copyright rights, or from exercising or authorizing the exercise of such rights under the copyright law of any country, including the United States, or from the assertion of such other statutory rights as such defendant may have, provided that no foreign copyright law or other foreign statutory right may be used by any defendant to exclude or restrict the importation or resale in the United States of a lawfully published Book.

VII

[*Notification*]

Defendant is ordered and directed, for a period of two years from the date of entry of this Final Judgment, to furnish a copy of this Final Judgment to each publisher or literary agent to whom it transfers or from whom it receives exclusive rights to the publication or distribution of any Book in any country within the British Traditional Market.

VIII

[*Inspection and Compliance*]

For the purpose of securing or determining compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege:

(A) Any authorized representative of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or of an authorized representative of either, and on reasonable notice to any defendant made to its principal office, be permitted:

(1) Access, with defendant having a right to have counsel present, during office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or control of the defendant relating to any matters contained in this Final Judgment; and

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

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or of an authorized representative of either, made to such defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may, from time to time, be requested.

No information obtained by the means provided 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 to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX

[*Retention of Jurisdiction*]

Jurisdiction is retained for the purpose of enabling the parties consenting 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, carrying out or modification of any of the provisions of this Final Judgment and for the enforcement of compliance therewith and the punishment of the violation of any of the provisions contained herein.

X

[*Public Interest*]

Entry of this Final Judgment is in the public interest.