

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Northern California Plumbing and Heating Wholesalers Association, et al., U.S. District Court, N.D. California, 1954 Trade Cases ¶67,635, (Dec. 17, 1953)

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United States v. Northern California Plumbing and Heating Wholesalers Association, et al.

1954 Trade Cases ¶67,635. U.S. District Court, N.D. California, Southern Division. Civil No. 29170. Dated December 17, 1953. Case No. 992 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decree—Practices Enjoined—Price Fixing, Contributions to Price Publication, and Dissemination of Price Information—Publisher of Price Books—Wholesale Plumbing and Heating Supplies.—In an action against a plumbing and heating wholesalers' association, plumbing and heating wholesalers, and a publisher of price books, a consent decree was entered enjoining the publisher from entering into any plan with any other defendant or with any other wholesaler which has the effect of (1) fixing prices through the use of pricing formulas, (2) fixing discounts, mark-ups, delivery charges, or freight allowances, or (3) using prices, pricing formulas, discounts, mark-ups, delivery charges, or freight allowances contained in any publication designated by the defendants or any of them. Also, the publisher was enjoined from knowingly contributing to the preparation or distribution of any publication which contains prices or pricing formulas of other than identified sellers; from preparing, publishing, or disseminating any price, discount, delivery charge, or freight allowance which is not the actual bona fide price, discount, charge, or allowance; and from failing to identify by name any wholesaler whose actual bona fide prices he may publish.

Consent Decree—Permissive Provision—Practices Not Specifically Enjoined and Credit Practices.—In an action against a plumbing and heating wholesalers' association, plumbing and heating wholesalers, and a publisher of price books, a consent decree entered against the publisher provided that nothing contained in the decree shall be deemed to adjudicate the legality or illegality of (1) any activity of the publisher relating to prices or pricing formulas not specifically enjoined, or (2) the activities of any defendant in the granting or withholding of credit, exchanging credit information with other interested parties, or participating in the activities of any bona fide credit organization.

Consent Decree—Applicability of Provisions—Activities in Specified Area.—A consent decree provided that the provisions of the decree applicable to any defendant shall apply to such defendant, its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons acting or claiming to act under, through, or for such defendant insofar as such defendant conducts business in the Northern California-Area.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; William D. Kilgore, Jr., Special Assistant to the Attorney General; and Lyle L. Jones and Marquis L. Smith, Trial Attorneys.

For the defendant: Joseph L. Alioto for George W. Lysaght.

For a consent decree entered as to other defendants in the U. S. District Court, Northern District of California, Southern Division, see [1952-1953 Trade Cases ¶ 67,563](#).

Final Judgment as to Defendant George W. Lysaght

[*Consent Decree*]

GOODMAN, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on September 27, 1949, and the defendant having appeared and filed his answer to such complaint denying the substantive allegations thereof and the plaintiff and defendant having each 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 such issue;

Now, therefore, before any testimony has been taken 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

[*Sherman Act*]

The Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states a cause of action against the 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," commonly known as the Sherman Act, as amended.

II

[*Defendant*]

The defendant who is party to this Final Judgment is George W. Lysaght. Said defendant is a resident of San Francisco, California.

III

[*Definitions*]

As used in this Final Judgment:

(A) "Northern California Area" shall mean that part of the State of California north of 35 degrees 45 minutes north latitude and includes the counties of Monterey, Kings, Tulare, Inyo and all counties north thereof;

(B) "Plumbing supplies" shall mean the various commodities used in the plumbing industry, including enamelware and vitreous chinaware fixtures, brass goods and trim, pipes, valves and fittings, sheet metal as used in the plumbing industry, lead, solder, oakum and plumber's tools;

(C) "Wholesaler" shall mean a person engaged in the business of purchasing plumbing supplies from various sources for resale to plumbing contractors, governmental agencies, industrial and other users and to retailers; a manufacturer who sells plumbing supplies to such purchasers through its own sales offices and branches located in the Northern California Area is also a wholesaler as defined herein only with respect to such sales;

(D) "Person" shall mean an individual, partnership, firm, association or corporation, or any other business or legal entity;

(E) "Prices" shall mean the selling prices of wholesalers for plumbing supplies;

(F) "Pricing formulas" shall mean any figures, discounts, mark-ups, charges or methods used by a wholesaler to compute and determine actual prices.

IV

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons acting or claiming to act under, through or for such defendant insofar as such defendant conducts business in the Northern California Area.

V

[*Price Fixing*]

Defendant is, with respect to the sale of plumbing supplies to third persons, enjoined from entering into, adhering to, maintaining, or furthering any agreement, understanding, plan or program with any other defendant or with any other wholesaler which has the purpose or effect of:

- (A) Fixing, determining, maintaining, or stabilizing prices, through the use of pricing formulas or otherwise;
- (B) Fixing, determining, maintaining or stabilizing discounts, mark-ups, delivery charges, freight additions or allowances or other terms or conditions applicable to the sale or offering for sale of any item or class of items of plumbing supplies;
- (C) Using prices, pricing formulas, discounts, mark-ups, delivery charges or freight additions or allowances contained in any publication or other document designated by the said defendants or any of them.

VI

[*Pricing Publication—Contributions*]

Defendant is enjoined from knowingly contributing to the preparation or distribution of any publication of any other defendant or any other person which contains prices or pricing formulas for plumbing supplies of other than identified sellers.

VII

[*Dissemination of Prices*]

Defendant is enjoined from:

- (A) Preparing, publishing or otherwise disseminating any price, discount, delivery charge, freight addition or allowance for any item or class of items for plumbing supplies (including any so-called average, typical, representative, approximate or suggested price) which is not the actual bona fide price, discount, charge or allowance at which an identified seller sells or offers to sell such item or class of items;
- (B) Failing to identify by name any wholesaler whose actual bona fide prices he may publish.

Nothing contained in this Final Judgment shall be deemed to adjudicate the legality or illegality of or to affect any activity of defendant relating to prices or pricing formulas not specifically enjoined herein.

VIII

[*Permissive Provision*]

Nothing herein shall be deemed to adjudicate the legality or illegality of the activities of any defendant in the granting or withholding of credit, exchanging credit information with other interested, parties, or participating in the activities of any bona fide credit organization.

IX

[*Inspection and Compliance*]

For the purpose of securing 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 his principal office, be permitted, (A) reasonable access, during the 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 of the matters contained in this Final Judgment, and (B) subject to the reasonable convenience of defendant, and without restraint or interference from him, to interview employees of defendant who may have counsel present, regarding any such matters. Upon such request, defendant shall submit such written information with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of the enforcement of this Final Judgment. No information obtained by the means permitted 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 Department 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

[Jurisdiction Retained]

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