

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Wichita Eagle Publishing Company, Inc., and Wichita Eagle, Inc., U.S. District Court, D. Kansas, 1959 Trade Cases ¶69,400, (Jun. 29, 1959)

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United States v. Wichita Eagle Publishing Company, Inc., and Wichita Eagle, Inc.

1959 Trade Cases ¶69,400. U.S. District Court, D. Kansas. Civil Action No. W-1876. Entered June 29, 1959. Case No. 1466 in the Antitrust Division of the Department of Justice.

Sherman and Clayton Antitrust Acts

Combinations and Conspiracies—Monopolies—Exclusive Dealing—Consent Decree—Practices Prohibited—“Tying” Arrangements—“Combination :”Sales of Newspapers and Advertising.—Two newspaper publishers were prohibited by a consent decree from (1) refusing to sell “display” advertising separately in their morning, evening, or Sunday newspapers, (2) refusing to sell “classified” advertising separately in their morning, evening, or Sunday newspapers, and (3) refusing to sell separately their morning, evening, and Sunday newspapers to home subscribers and carriers. However, the publishers could require their carriers to service subscribers to all three of the newspapers. In addition, the publishers were prohibited from coercing or requiring advertisers to purchase more space in the newspapers than the advertisers desired.

Combinations and Conspiracies—Monopolies—Exclusive Dealing—Consent Decree—Practices Prohibited—Exclusive Dealing Arrangements—Publishers' Restrictions on Advertisers' Use of Other Advertising Media.—Two newspaper publishers were prohibited by a consent decree from (1) publishing advertisements on the condition that its advertisers would not use other advertising media, (2) refusing to sell advertising in their morning newspaper until their advertisers refrained from using other advertising media, (3) refusing advertisers certain space, location, or arrangement of advertisements until the advertisers refrained from using other advertising media, and (4) granting advertisers special space, location, or arrangement of advertisements on the condition that they would not use other advertising media. In addition, the publishers were prohibited from limiting or restricting advertisers' use of other advertising media by discriminating as to rates charged among advertisers of the same general category, or by discriminating as to space, location, or arrangement of advertisements.

Combinations and Conspiracies—Monopolies—Consent Decree—Practices Prohibited —Refusal to Deal —Refusal to Publish Newspaper Advertisements.—Two newspaper publishers were prohibited by a consent decree from refusing to publish advertisements which, along with the advertiser, met reasonable standards uniformly applied by the publishers.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief —Notice of Decree—Publication of Terms of Decree in Defendants' Newspapers.—Newspaper publishers charged with exclusive dealing and “tie-in” sales of their newspapers and advertisements published therein were ordered by a consent decree to publish once weekly, for three weeks, the full terms of the decree.

For the plaintiff: Robert A. Bicks, Acting Assistant Attorney General; and William D. Kilgore, Jr., Charles Whittinghill, Earl A. Jinkinson, Raymond P. Hernacki, Robert L. Eisen, and Sam J. Betar, Jr., Attorneys, Department of Justice.

For the defendants: Wayne Coulson, Paul R. Kitch, and John Paul Stevens.

Final Judgment

[*Consent Decree*]

DELMAS C. HILL, District Judge [*In full text*] : Plaintiff, United States of America, having filed its complaint herein on June 29, 1959; defendants having appeared and filed their answer to said complaint denying the substantive allegations thereof, and the plaintiff and defendants by their respective attorneys having consented to the entry

of this Final Judgment without adjudication of any issue of fact or law herein and without admission by any party with respect to any such issue,

Now, Therefore, before taking any testimony and without trial or adjudication of any facts or law herein, and upon consent as aforesaid of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

The Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states claims upon which relief may be granted against defendants under Sections 1 and 2 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, and under Section 3 of the Act of Congress of October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes" commonly known as the Clayton Act.

II

[*Definitions*]

As used in this Final Judgment:

- (A) "Metropolitan Wichita" shall mean the Wichita City Zone, as defined by the Audit Bureau of Circulation;
- (B) "Person" shall mean any individual, partnership, firm, corporation, association or other business or legal entity;
- (C) "Display advertising" shall mean any advertising carried in a newspaper of a defendant except classified advertising;
- (D) "Classified advertising" shall mean any advertising carried in the classified columns of a newspaper of a defendant.

III

[*Applicability*]

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 in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Refusal to Sell*]

Defendants are enjoined' and restrained from:

- (A) Refusing to contract to sell, or refusing to sell, display advertising separately in the morning, evening or Sunday newspapers published by any defendant; provided, however, that this subsection (A) shall not prohibit defendants from granting discounts on such advertising on multiple insertions (within a period not to exceed five days) of identical copy and size in said morning and evening newspapers which do not exceed twenty per cent (20%) of the sum of the rates for the same amount of advertising when purchased separately, provided that change of copy is not permitted;
- (B) Refusing to contract to sell, or refusing to sell, classified advertising separately in the morning, evening or Sunday newspapers published by any defendants; provided, however, that this subsection (B) shall not prohibit defendants from granting discounts on such advertising on multiple successive insertions (without a time lag) of

identical copy and size in said morning and evening newspapers which do not exceed twenty-five per cent (25%) of the sum of the rates for the same amount of advertising when purchased separately, provided that change of copy is not permitted;

(C) Refusing to contract to sell, or refusing to sell to home subscribers or to carriers of defendants *The Wichita Eagle, The Evening Eagle, or The Wichita Sunday Eagle*, separately, provided that defendants may require their carriers to service their morning and evening and Sunday subscribers. Defendants shall permit their subscribers in Metropolitan Wichita to purchase defendants' morning, evening and Sunday newspapers on the following options:

- Option A Morning only (6 newspapers)
- Option B Evening only (6 newspapers)
- Option C Sunday only (1 newspaper)

Provided, however, that, for a period of two years following the date of entry of this Final Judgment:

(1) Each of defendants' prices for Option A, Option B and Option C to subscribers in Metropolitan Wichita shall be no lower than their current prices for the same options, except that if the subscription prices actually paid by persons who subscribe to the daily newspaper published by defendants' competitor in Metropolitan Wichita are lower than such prices in any area, or areas, defendants shall be entitled to meet such lower prices in such area or areas;

(2) Defendants may offer any combination of the three above specified options, however, the price for any such combination shall be no less than the total of the options forming the combination;

(3) Defendants' rates to their carriers for any combination of Options A, B, and C shall be not less than the total of the options forming the combination, and shall not be reduced with the effect of causing a reduction contrary to paragraph (1) of this subsection (C);

(4) Nothing contained in this subsection (C) shall prohibit defendants from offering prizes or awards to their carriers or some gratuity to new subscribers as a form of short-term promotional inducement customarily used in newspaper subscription campaigns, except that any reduction in price to such a subscriber shall not exceed a two-month period and provided that nothing in this subsection (C) shall prevent defendants from granting the same promotional inducements offered by defendants' competitor in the daily newspaper field in Metropolitan Wichita.

Following the expiration of the said two year period, defendants may at any time apply to the Court, after reasonable notice to plaintiff, for approval to institute or reduce combination rates, and in seeking such court approval, defendants shall have the burden of proving:

(a) That there is no reasonable probability that said combination rates will substantially injure, destroy or prevent competition in the daily newspaper field in Metropolitan Wichita; and

(b) That there is sound justification, such as actual or anticipated cost savings in publication, sales or distribution, for any discount sought on any combination of Options A, B and or C.

V

[*Exclusive Dealing*]

Defendants are jointly and severally enjoined and restrained from directly or indirectly:

(A) Limiting or restricting, or attempting to limit or restrict any advertiser's use of any other advertising medium by discriminating:

(1) As to rates charged for advertising among advertisers of the same general category; or

(2) As to the space, location or arrangement of advertisements except as such discrimination may be necessitated by the objective dictates of the makeup of the paper;

Provided, however, that nothing contained in this subsection (A) shall prohibit defendants from granting concessions as to rates, space, location or arrangement of advertising, which represent no more than the good faith meeting of like concessions afforded by competing advertising media;

(B) Refusing to publish or threatening to refuse to publish advertisements where the advertiser and the advertisements meet the reasonable standards uniformly applied by defendants;

(C) Coercing or requiring advertisers to purchase more advertising space in defendants' newspapers than they desire; provided, however, that the mere refusal to publish promotional material as requested by advertisers shall not be considered coercion;

(D) Negotiating for publication, accepting for publication, or publishing advertisements, or entering into contracts for the publication of advertisements, on or accompanied by the condition, agreement or understanding that the advertiser shall not use, or shall limit or restrict his use of other advertising media;

(E) Refusing to contract to sell, or refusing to sell, advertising in the morning newspaper published by defendants until such time as the advertiser refrains from using, or limits or restricts his use of, other advertising media;

(F) Refusing an advertiser certain space, location or arrangement of advertising, until such time as the advertiser refrains from using, or limits or restricts his use of, other advertising media, or granting an advertiser special space, location or arrangement of advertising on the condition, agreement or understanding that the advertiser shall not use, or shall limit or restrict his use of, other advertising media;

(G) Publishing classified advertising without designating it as classified advertising and without the use of sub-heads of the kind customarily used to designate divisions or classes of classified advertising.

VI

[*Notice of Decree*]

Defendant, Wichita Eagle Publishing Company, Inc., is ordered and directed upon entry of this Final Judgment:

(A) To publish for three weeks, once weekly in all editions of *The Morning Eagle*, *The Evening Eagle*, and *The Wichita Sunday Eagle* in a conspicuous location on the front page thereof, the new subscription rates for the defendants' newspapers, in the size of type used for general news;

(B) Publish for three weeks, once weekly in all editions of *The Morning Eagle*, *The Evening Eagle*, and *The Wichita Sunday Eagle* the full terms of this Final Judgment, in the size of type used for general news;

(C) Notify promptly all regular advertisers (except such as have already received such notice) the rates applicable to them in conformity with the terms and conditions of this Final Judgment;

(D) Advise promptly, in writing, all officers, advertising agents, advertising solicitors and employees in its advertising departments of the terms of this Final Judgment and of the fact that each and every such person is subject to the provisions of this Judgment; and it shall make readily available to such persons a copy of this Final Judgment and inform them of such availability.

VII

[*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 any defendant made to its or his principal office, be permitted:

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

(B) Subject to the reasonable convenience of such defendant and without restraint or interference from it or him, to interview officers or employees of such defendant who may have counsel present regarding any such matters. Upon such request said defendants shall submit such reports in writing to the Department of Justice with respect to 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 provided 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 to 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 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 carrying out of this Final Judgment or the modification of any of the provisions thereof and for the purpose of enforcement of compliance therewith and punishment for violation thereof.

IX

[*Duration of Judgment*]

This Final Judgment shall terminate twelve (12) years from the date of its entry.