

Trade Regulation Reporter, United States v. Florists' Telegraph Delivery Assn.; United States v. Florists' Transworld Delivery Assn., U.S. District Court, E.D. Michigan, 1996-1 Trade Cases ¶71,394, (Nov. 8, 1990)

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United States v. Florists' Telegraph Delivery Assn.; United States v. Florists' Transworld Delivery Assn.

1996-1 Trade Cases ¶71,394. U.S. District Court, E.D. Michigan. Civil Nos. 56-15748 and 66-28784. Dated November 8, 1990.

Case Nos. 1282 and 1904, U.S. Department of Justice Antitrust Division.

Sherman Act

Department of Justice Enforcement: Consent Decrees: Modification, Termination: Trade Associations: Florists.— A flower-by-wire association providing services to member florists was prohibited under the terms of a modified U.S. consent decree from denying, restricting, or limiting membership in an anticompetitive manner.

See ¶1685.24, ¶4630.72, ¶8840.

Modifying [1956 Trade Cases ¶68,367](#); terminating [1969 Trade Cases ¶72,717](#).

Enforced by [1996-1 Trade Cases ¶71,395](#).

**ORDER TERMINATING FINAL JUDGMENT IN CIVIL NO. 66-28784
AND MODIFYING FINAL JUDGMENT IN CIVIL NO. 56-15748**

GADOLA, D.J.: Florists' Transworld Delivery Association, the defendant herein (formerly known as Florists' Telegraph Delivery Association), having moved this Court for an order terminating the Final Judgments herein, and notice of the motion having been published in *The Wall Street Journal* and *Flower News*, and all interested persons having been given an opportunity to submit comments concerning the proposed termination of the Final Judgments, and plaintiff, the United States of America, having consented to said motion as to the Final Judgment in Civil No. 66-28784 [], and the plaintiff and defendant having agreed to a modification of the Final Judgment in Civil No. 56-15748 [], and the Court having considered all the papers that have been filed in connection with the motion of defendant, including the comments and *amicus curiae* briefs of third parties, and the Court finding that it is in the public interest to terminate the Final Judgment in Civil No. 66-28784 and [] to modify the Final Judgment in Civil No. 56-15748 [], it is

ORDERED that the Final Judgment entered in Civil No. 66-28784 on March 24, 1969, be terminated, and said Final Judgment shall be of no further force or effect, and it is

ORDERED that the Final Judgment in Civil No. 56-15748 be modified to read as follows:

MODIFIED FINAL JUDGMENT

The plaintiff, United States of America, having filed its complaint herein on June 1, 1956, and the defendant having appeared herein, and the plaintiff and the defendant, by their respective attorneys, having consented to the entry of a Final Judgment without trial or adjudication of any issue of fact or law herein, and without such Final Judgment constituting evidence or admission by the defendant in respect of any issue, and such Final Judgment having been entered on June 1, 1956 before any testimony or evidence had been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, and

This Court having retained jurisdiction for the purpose, *inter alia*, of enabling the parties to this Final Judgment to apply to the Court for the modification of any of the provisions thereof, and the parties have consented to a modification, it is hereby

ORDERED, ADJUDGED, AND DECREED as follows:

I

[Jurisdiction]

The Court has jurisdiction of the subject matter herein and all the parties hereto. The complaint states a claim 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

[Definitions]

As used in this Modified Final Judgment:

(A) "Wire association" means any entity which creates, manages, maintains, and regulates facilities, including, in some but not in all instances, a clearinghouse, for the sending, receiving, or payment of orders from a florist in one locality to or by a florist in another locality for delivery of flowers to members of the public, but shall not be deemed to include a retail flower shop or a public utility.

(B) "Member florist" means any retail flower shop which is a member of, or a subscriber to the services of, a wire association.

(C) "Wire Orders" means orders for flowers sent from one member florist to another member florist by telegram, telephone, electronic or other means of communication.

(D) "Person" means any individual, corporation, partnership, association, firm, or other legal entity.

III

[Applicability]

The provisions of this Modified Final Judgment applicable to defendant shall apply to defendant and its officers, agents, servants, employees, subsidiaries, successors, and assigns, and to all persons in active concert or participation with defendant who shall have received actual notice of this Modified Final Judgment by personal service or otherwise.

IV

[Prohibited Conduct—Membership Restrictions]

(A) Defendant is enjoined and restrained from entering into, adhering to, promoting, or following any course of conduct, practice or policy, or any agreement or understanding, having the purpose or effect of:

- (1) Excluding from membership in defendant any florist for the reason that such florist is a member or proposes to become a member of any other wire association; or
- (2) Restricting or limiting membership in defendant to florists who are not members of any other wire association.

(B) Defendant is enjoined and restrained from restricting or limiting the terms or conditions upon which any member of defendant may do business with any other wire association or with retail florists who are not members of defendant.

(C) Defendant is enjoined and restrained from expelling any member or denying application for any reason except upon written notice to such member or applicant setting forth the exact reason or reasons for such expulsion or denial; provided, however, that nothing herein shall prevent defendant from promulgating reasonable and nondiscriminating general standards for membership, not contrary or inconsistent with any of the provisions of this Modified Final Judgment, limited to florist capability, credit responsibility, compliance with membership obligations, honesty in business dealings, soliciting business from bereaved persons, cleanliness of premises, availability of design and delivery service and adequacy of inventory, refrigeration, communication and

delivery and record-keeping facilities, and additionally, in the case of an applicant connected with a mortuary or cemetery, operation of the florist business and florist delivery equipment under a different name.

(D) Defendant is enjoined and restrained from restricting, limiting or preventing any member or applicant for membership from:

- (1) Engaging in or being affiliated with any other lawful business; provided, however, that nothing herein shall restrict, limit or prevent defendant from establishing and maintaining a class, category or division of members engaged in or affiliated with any other lawful business that would have all of the rights and obligations of Active or Affiliate Membership in defendant, including the right to use a mark of the defendant designated for use by such class of membership, but (subject to a reasonable and appropriate reduction in assessments and in service and administrative charges for services and benefits not provided to such membership class, category or division) not the right to display or use in the rendering of their services or on their products the current official emblem and any other service marks, trademarks, trade names or trade dress owned or used by defendant, or any marks, trade names or trade dress confusingly similar thereto, or otherwise to offer for sale any products proprietary to defendant, so long as there is available to the members of such a class, category or division access on commercially acceptable terms to a wire association other than defendant which is capable of providing the transmission of wire orders through the same communication facility by which defendant transmits orders among its own members or through a comparable communication facility;
- (2) Being listed, by name or other description, in any directory or list of retail florists published by any person other than the defendant, except a directory or listing of certain members of defendant, a purpose of which is to induce said members to exchange orders between themselves to the exclusion of other members of defendant;
- (3) Truthfully advertising (a) prices for goods and services, (b) the nature of services provided, and (c) delivery to any and all desired communities
 - (i) in the advertising sections of the FTD NEWS or any other publication of defendant in which member advertising is accepted, or
 - (ii) in any other medium.

V

[Prohibited Conduct—Agreements]

Defendant is enjoined and restrained from hereafter (a) entering into, adhering to, promoting, or following any course of conduct, plan, program, practice, or policy, or (b) entering into any agreement or understanding with any other person that is prohibited by or contrary to any of the provisions of the foregoing Section IV of this Modified Final Judgment.

VI

[Prohibited Conduct—Expulsion, Denial of Membership]

Defendant is enjoined and restrained from (a) expelling any person from membership in defendant; or (b) denying any person membership in defendant, based, in whole or in part, upon any reason contrary to or inconsistent with any of the provisions of the foregoing Sections IV and V of this Modified Final Judgment.

VII

[Notice to Members]

Defendant is ordered and directed to:

- (1) Within 90 days after the date of entry of this Modified Final Judgment, circulate a copy of this Modified Final Judgment to its members; and

(2) Beginning 90 days after the date of entry of this Modified Final Judgment, give every new member of defendant a copy of this Modified Final Judgment upon admission to membership.

VIII

[Inspection and Compliance]

For the purpose of securing compliance with this Modified 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 the defendant, be permitted, subject to any legally recognized privilege, (a) reasonable access, during the office hours of the defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant relating to any of the matters contained in this Modified Final Judgment, and (b) subject to the reasonable convenience of defendant, and without restraint or interference, to interview officers and employees of the defendant who may have counsel present, regarding any such matters. For the purpose of securing compliance with this Modified Final Judgment, the defendant, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports with respect to any of the matters contained in this Modified Final Judgment as from time to time may be necessary for the purpose of enforcement of this Modified Final Judgment. No information obtained by the means permitted 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 Department except in the course of legal proceedings for the purpose of securing compliance with this Modified Final Judgment in which the United States is a party or as otherwise required by law.

IX

[Future Actions]

Neither the making nor the entry of this Modified Final Judgment shall be construed to bar or estop the plaintiff from instituting any proceedings under the antitrust laws, based on practices of defendant not complained of in the complaint filed herein.

X

[Duration]

This Modified Final Judgment shall terminate by its own terms and without further action of this Court ten (10) years from the date of its entry and shall be of no further force or effect thereafter unless, prior to that time, plaintiff shall move that this date be extended. Upon a showing of good cause, the Court may extend the termination date.

XI

[Retention of Jurisdiction]

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