

[Trade Regulation Reporter - Trade Cases \(1932 - 1992\), United States v. Wohl Shoe Co., Nordstrom's Albuquerque, Inc., Paris Shoe Stores, and Penobscot Shoe Co., U.S. District Court, D. New Mexico, 1972 Trade Cases ¶74,100, \(Aug. 21, 1972\)](#)

Federal Antitrust Cases

Trade Regulation Reporter - Trade Cases (1932 - 1992) ¶74,100

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United States v. Wohl Shoe Co., Nordstrom's Albuquerque, Inc., Paris Shoe Stores, and Penobscot Shoe Co.

1972 Trade Cases ¶74,100. U.S. District Court, D. New Mexico. Civil Action No. 9187. Entered August 21, 1972. Case No. 2193, Antitrust Division, Department of Justice.

Headnote

Sherman Act

Price Fixing—Retail Prices—Markups—Shoes—Retailers' Activities—Dealers and Manufacturers—Consent Decree.—Shoe retailers were barred by a consent decree from agreeing among themselves or with others to 'fix or to induce, compel, or coerce any person to establish, adopt, issue, adhere to or to police or enforce adherence to prices, markups, terms or conditions at which shoes should be sold or offered for sale by any retail dealer to customers. Also covered by the decree were information exchanges between dealers, joining together with retailers to restrict manufacturers from selling any line of shoes to any other retail dealer, advocating to manufacturers that they refuse to sell to any dealer for price reasons, and exchanging with or divulging to manufacturers information concerning or relating to the refusal of any retail dealer to charge or adhere to any particular price. Compliance with fair trading would not be barred by the decree.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, James J. Coyle, Lawrence W. Somerville, Richard E. Neuman and Harry N. Burgess, Dept. of Justice, Antitrust Div., and Victor R. Ortega, U. S. Atty., Albuquerque, N. M.

For defendants: Bryan, Cave, McPheeters & McRoberts, St Louis, Mo. and Standley, Witt and Quinn, Santa Fe, N. M., for Wohl Shoe Co.; D. Wayne Gittinger, and Matthew R. Kenney, of Lane, Powell, Moss & Miller, Seattle, Wash., and John B. Tittman, of Kelher & McLeod, Albuquerque, N. M., for Nordstrom's Albuquerque, Inc.; Botts, Botts & Mauney, and Modrall, Sperling, Roehl, Harris & Sisk, Albuquerque, N. M., for Paris Shoe Stores; Poole, Tinnin, Dansfelter & Martin, Albuquerque, N. M., John H. Schafer, of Covington & Burling, Washington, D. C., and Gene Carter, of Rudman, Rudman & Carter, Bangor, Me., for Penobscot Shoe Co.

Final Judgment

PAYNE, D. J.: Plaintiff, United States of America, having filed its Complaint herein on October 19, 1971, all the defendants herein having appeared and severally filed their answers thereto denying the substantive allegations of the Complaint, and the parties hereto by their respective attorneys having each 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; and this Court having determined pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay in entering a Final Judgment as to ail of the Plaintiff's claims asserted in such Complaint against defendants Nordstrom's Albuquerque, Inc., and Paris Shoe Stores;

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

[*Jurisdiction*]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The Complaint states claims upon which relief may be granted against each said 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*]

- (a) "Person" shall mean any individual, partnership, corporation, firm, association or other business or legal entity.
- (b) "Defendants" shall mean Nordstrom's Albuquerque, Inc. and Paris Shoe Stores.
- (c) "Manufacturer" shall mean any person engaged in the manufacture of shoes.
- (d) "Retail dealer" shall mean any person engaged in the business of reselling shoes at retail to customers.
- (e) "Manufacturer's suggested retail price" shall mean any specific suggested retail price on shoes or any markup or formula for pricing shoes at retail, which a manufacturer communicates to retail dealers either in writing or orally.
- (f) "Customer*" shall mean a purchaser of shoes at retail from a retail dealer.
- (g) "Shoes" shall mean any men's, women's, or children's footwear, excluding hosiery.

III

[*Applicability*].

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant and to each of its subsidiaries, successors and assigns, and to each of its officers, directors, partners, agents and employees, when acting in such capacities, and 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, but shall not apply to activities between any defendant, its officers, directors, partners, employees and agents and its parent or subsidiary companies, or affiliated corporations in which 50% or more of the voting stock is owned by a defendant's parent or subsidiary companies or which is in fact owned or controlled by the defendant or such defendant's parent or subsidiary companies.

IV

[*Prices*]

The defendants are jointly and severally enjoined and restrained in perpetuity from entering into, adhering to, maintaining, furthering, or enforcing, directly or indirectly any agreement, understanding, plan or program among themselves, or with any person to:

- (A) Raise, fix, stabilize, or maintain prices, markups, or other terms or conditions at which shoes are offered for sale by retail dealers to customers;
- (B) Induce, compel, or coerce any person to establish, adopt, issue, adhere to, or to police or enforce adherence to prices, markups, terms or conditions at which shoes shall be sold or offered for sale by any retail dealer to customers.

V

[*Communications— Dealers and Manufacturers*]

Each of the defendants is perpetually enjoined and restrained from directly or indirectly:

- (A) Communicating to or exchanging with any other retail dealer any information concerning any markup which any retail dealer proposes to utilize in formulating a retail selling price, or any proposed price, price change, discount, or other term or condition of sale at, or upon which, shoes are to be sold at retail to any customer;
- (B) Suggesting, in any manner, to any retail dealer of shoes that such retail dealer establish any markup or price or adhere to any manufacturer's suggested retail price or markup on any item or line of shoes offered for sale or to be offered for sale by such retail dealer;
- (C) Joining together with any other retail dealer to hinder, limit or prevent, or attempt to hinder, limit or prevent any manufacturer of shoes from selling any line of shoes to any other retail dealer;
- (D) Advocating, suggesting, urging, compelling, coercing, or attempting to influence any manufacturer (i) to refuse to sell shoes to any retail dealer by reason of such retail dealer's refusal or failure to abide by specified or suggested prices, discounts or other terms or conditions for the sale of shoes, or (ii) to take any action to compel, advise, or encourage any retail dealer to advertise or sell shoes at any particular price;
- (E) Exchanging with, or divulging to any manufacturer of shoes information concerning or relating to the refusal of any retail dealer to charge or adhere to any particular price.

VI

[*Fair Trade Compliance*]

Nothing in this Final Judgment shall be deemed to prevent any retailer defendant from pricing shoes at retail in compliance with, and pursuant to, the lawful exercise by a manufacturer or other vendor of such rights, if any, as may be reserved to such manufacturer or other vendor by the Miller-Tydings Act, 50 Stat. 693 (1937), and the McGuire Act, 66 Stat 632 (1952).

VII

[*Compliance Reports*]

For a period of 10 years from the date of entry of this Final Judgment, each defendant is ordered to file with the plaintiff, on each anniversary date of this Final Judgment, a report setting forth the steps it has taken during the prior year to advise such defendant's appropriate officers, directors, employees and members of its and their obligation under this Final Judgment

VIII

[*Inspection and Compliance*]

For the purpose of securing or determining compliance with this Final Judgment and subject to any legally recognized privilege, 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 any defendant made to its principal office, be permitted:

- (A) Access during reasonable office hours of such defendant, who may have counsel present, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in possession or under the control of such defendant relating to any of the matters contained in this Final Judgment;
- (B) Subject to the reasonable convenience of such defendant, and without restraint or interference from it, to interview officers or employees of such defendant, who may have counsel present, regarding any such matters; and upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust

Division, such defendant shall submit such reports in writing, under oath if so requested, with respect to the matters contained in this Final Judgment, as may from time to time be reasonably requested.

No information obtained by 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 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 the Final Judgment, or as otherwise required by law.

IX

[*Jurisdiction Retained*]

Jurisdiction is retained by this Court 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 construction or carrying out of this Final Judgment, or for the modification or termination of any of the provisions hereof, and for the enforcement of compliance therewith and punishment of violations thereof.