

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Wallpaper Institute, et al., U.S. District Court, E.D. Pennsylvania, 1950-1951 Trade Cases ¶62,642, (Jun. 8, 1950)**

Federal Antitrust Cases

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United States v. The Wallpaper Institute, et al.

1950-1951 Trade Cases ¶62,642. U.S. District Court, E.D. Pennsylvania. Civil No. 8621. June 8, 1950.

**Headnote**

**Sherman Antitrust Act**

**Wallpaper Consent Decree—Price Fixing, Quota Arrangements, and Discrimination-Statistical Activities of Association.**—Manufacturers of wallpaper and the association of which they are members are in a final judgment consented to by them required to refrain from making agreements fixing prices, allocating manufacturing quotas, suppressing competition among themselves, or granting discounts to favored customers. The association is prohibited from collecting and processing statistical information relating to production, prices and patterns unless the information relates to past transactions, is available to the whole trade and not just to the association members, and is not used as the basis for agreements elsewhere prohibited.

For the plaintiff: Tom C. Clark, Attorney General; Herbert A. Bergson, Assistant Attorney General; W. Wallace Kirkpatrick, Special Assistant to the Attorney General, all of Washington, D. C.; Gerald A. Gleeson, United States Attorney, Philadelphia, Pennsylvania.

For the defendants: Wise, Corlett & Canfield, New York City, for the Wallpaper Institute, J. C. Eisenhart Wall Paper Co., Imperial Paper & Color Corp., The Prager. Co., Inc., York Wall. Paper Co., and Atlas Wall Paper Mills, with, Frank H. Elmore, Jr. associate counsel; Raichle, Tucker & Moore, Buffalo, N. Y., for The Birge Co., Inc.; David Bortin, Philadelphia, for Enterprise Wall Paper Mfg. Co.; Palmer & Series, New York City, for United Wallpaper Inc.; Donovan, Leisure, Newton, Lumbard & Irvine, New York City, for all defendants.

**Final Judgment**

Plaintiff, United States of America, having filed its complaint herein on June 18, 1948; the defendants herein having filed their several answers to said complaints denying any violations of law; and the plaintiff and said defendants, by their respective attorneys, having severally consented to the entry of this Final Judgment without the taking of any testimony, without trial or adjudication of any issue of fact or of law and without admission by any party herein in respect of any such issue;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

**ARTICLE I**

**[ Definitions]**

As used in this judgment:

(1) "Institute" means the defendant The Wallpaper Institute, an unincorporated association organized and existing under the laws of the State of New York, and having its principal place of business in New York, New York.

(2) "Corporate Defendants" means the defendant Atlas Wallpaper Mills, Inc., a corporation organized and existing under the laws of the State of Illinois and having its principal place of business at Coal City, Illinois; the defendant The Birge Co., Inc., a corporation organized and existing under the laws of the State of New York and having its principal place of business at Buffalo, New York; the defendant J. C. Eisenhart Wallpaper Co., a corporation organized and existing under the laws of the State of Pennsylvania and having its principal place of business at Hanover, Pennsylvania; the defendant Enterprise Wallpaper Mfg. Co., a corporation organized and existing under the laws of the State of Pennsylvania and having its principal place of business at Penndel, Pennsylvania; the defendant Imperial Paper and Color Corp., a corporation organized and existing under the laws of the State of New York and having its principal place of business at Glens Falls, New York; the defendant The Prager Co., Inc., a corporation organized and existing under the laws of the State of New York and having its principal place of business at Worcester, Massachusetts; the defendant United Wallpaper, Inc., a corporation organized and existing under the laws of the State of Delaware and having its principal place of business at Chicago, Illinois; and the defendant York Wallpaper Co., a corporation organized and existing under the laws of the State of Pennsylvania and having its principal place of business at York, Pennsylvania.

## ARTICLE II

### [ *Jurisdiction* ]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states a cause of action against the Institute and the corporate defendants 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, and acts amendatory thereof and supplemental thereto.

## ARTICLE III

### [ *Scope of Provisions* ]

Whenever reference is made herein to any corporate defendant, it shall be deemed, to include such defendant, its subsidiaries and affiliates. The provisions of this judgment applicable to any defendant shall apply to such defendant, its subsidiaries, affiliates, successors, assigns, officers, directors, agents, employees and any other person acting or with authority to act under, through, or for such defendant.

## ARTICLE IV

### [ *Price Fixing Enjoined* ]

The corporate defendants and the Institute are hereby enjoined and restrained from agreeing, combining, or conspiring, or from performing or adhering to any agreement, understanding, or arrangement, directly or indirectly with each other or with any other person with respect to wall paper,

(1) To fix, establish, maintain, or control prices, discounts, or allowances for sale or resale to any third person, or terms or conditions of such sales or resales relating to prices, discounts, or allowances;

(2) To urge, advise, or suggest prices, terms, or conditions for resale to paper-hangers or consumers;

(3) To fix, establish, maintain, control, urge, advise, or suggest allowances or discounts to be granted to third persons for cash payment; or charges, allowances, or discounts to third persons in connection with:

(a) The sale of types or patterns no longer in current demand;

(b) Samples or sample books;

(c) Purchases made during particular months or seasons of the year;

(d) Freight on shipments to customers of manufacturers;

(e) Sales to wholesalers, paperhangers, or other classes of dealers.

## ARTICLE V

[ *Quotas Prohibited*]

The corporate defendants and the Institute are hereby enjoined and restrained from agreeing, combining, or conspiring, or from performing or adhering to any agreement, understanding, or arrangement, directly or indirectly with each other or with any other manufacturer with respect to wall paper,

- (1) To offer or not to offer for sale any designs at particular times or within particular time intervals;
- (2) To produce or sell only, or not to produce or sell, any particular grade, style, or pattern of wall paper;
- (3) To fix, establish, maintain, or allocate quantities or quotas to be produced for the general market or sold to any third persons;
- (4) To refrain from manufacture, sale, or distribution.

**ARTICLE VI**

[ *Discrimination Prohibited*]

The corporation defendants are severally and jointly enjoined and restrained from:

- (1) Requiring or exerting pressure on any purchaser of wall paper to resell such wall paper at prices, discounts, or allowances or on terms or conditions relating to prices, discounts, or allowances determined by any defendant or anyone other than such purchaser for resale;
- (2) Refusing to sell, restricting the sale of, or discriminating in the sale of wall paper to any purchaser because of the prices, discounts, or allowances, or terms and conditions relating to the prices, discounts, or allowances at which such purchaser proposes to resell or had sold such wall paper;
- (3) Disclosing, disseminating, or communicating to any other person engaged in the manufacture, sale, or distribution of wall paper, or to any trade association of, or central agency for, persons so engaged any statistics or information relating to the manufacture, sale, or distribution of wall paper for the purpose or with the effect of initiating, promoting, or carrying on any acts or course of conduct prohibited by the provisions of Articles IV, V, VI, and VII of this Final Judgment.

**ARTICLE VII**

[ *Limitations on Association Activities*]

The Institute is hereby enjoined and restrained from:

- (1) Collecting, soliciting, utilizing, distributing, or disclosing statistics or other information, or sponsoring or encouraging any program or plan for collection, solicitation, utilization, distribution, or disclosure of statistics or other information, relating to prices, or costs or elements of costs in connection with the manufacture, sale, or distribution of any grade, style, or pattern of wall paper.
- (2) Collecting, soliciting, utilizing, distributing, or disclosing any other statistics or any other information, or sponsoring or encouraging any program or plan for collection, solicitation, utilization, distribution, or disclosure of any other statistics or any other information relating to the manufacture, sale, or distribution of wall paper, except where such statistics or other information
  - (i) relate to past transactions;
  - (ii) when distributed to members of The Wallpaper Institute, are also available to the wall paper industry generally on a non-discriminatory basis (as between members and non-members);
  - (iii) do not contain any supplemental or additional comments, analysis, recommendations or explanations having the purpose or effect of initiating, promoting, or carrying out any acts or course of conduct prohibited by the provisions of Articles IV, V, VI, and VII of this Final Judgment; and

(iv) are collected, solicited, utilized, distributed, and disclosed in such a manner as not to disclose any data or information relating to individual members of individual transactions concerning the subjects to which the injunctions in Articles IV, V, and VI relate;

The burden shall be on the defendants to go forward with proof that the distribution or disclosure of any statistics or other information, distributed or disclosed less than 90 days after the last transaction or event to which they relate, is not prohibited by the provisions of this or the preceding section;

(3) Urging, or systematically suggesting or advising, the utilization or employment of any particular cost accounting methods or system, or any organization or person for cost accounting purposes, or any method of freight equalization or other method of dealing with freight rates;

(4) Urging, suggesting, or advising any limitation whatsoever as to the amount of wall paper to be produced, distributed, or sold;

(5) Urging, suggesting, or advising any course of action with respect to resale prices, charges, discounts, allowances, or other terms or conditions relating to prices, discounts, or allowances;

(6) Urging, suggesting, or advising the adherence to or the adoption of any trade rule or practice with respect to times when new designs of wall paper should be offered.

#### ARTICLE VIII

##### [ *Rescission of Rules Required* ]

(1) The Institute is hereby ordered and directed to take such action as may be necessary to rescind and make inoperative and of no effect its trade regulations ratified and adopted at the organization meeting of June 28, 1935, together with all subsequent amendments, relating to terms, freight allowances, offer and sale of jobs, sample allowances and sample books, and shall report with respect to such action to the Attorney General or the Assistant Attorney General in charge of the Antitrust Division within 60 days from the date of this Final Judgment.

(2) The Institute is hereby enjoined and restrained from hereafter adopting, requiring its members to adhere to, or enforcing any regulation or course of conduct for the purpose, or with the effect, of maintaining, reviving, or reinstating any trade regulation referred to in subsection (1) of this section or any regulation similar thereto.

#### ARTICLE IX

##### [ *Inspection and Compliance* ]

For the purpose of securing compliance with this judgment, duly authorized representatives of the Department of Justice, shall upon written request of the Attorney General or an Assistant Attorney General and on reasonable notice to any defendant, be permitted, subject to any legally recognized privilege (1) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this judgment, and (2) subject to the reasonable convenience of said defendant and without restraint or interference from it to interview officers or employees of said defendant, who may have counsel present, regarding any such matters. For the purpose of securing compliance with this judgment any defendant upon the written request of the Attorney General or an Assistant Attorney General, shall submit such reports with respect to any of the matters contained in this judgment as from time to time may be necessary for the purpose of enforcement of this judgment. No information obtained by the means permitted by this article shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department of Justice, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this judgment or as otherwise required by law.

#### ARTICLE X

##### [ *Jurisdiction Retained* ]

Jurisdiction is retained for the purpose of enabling any of the parties to this 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 judgment or for the modification or termination of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violation thereof.