

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) CIVIL NO. 87-60
)
 WESTERN NEWSPAPER UNION, et al.,)
)
 Defendants.)

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on June 29, 1951 in the United States District Court for the Southern District of Florida, Jacksonville Division; and said United States District Court for the Southern District of Florida, Jacksonville Division, having made and entered its Order herein dated July 29, 1953, transferring venue herein from the Southern District of Florida, Jacksonville Division, to the Southern District of New York; and all of the parties to this proceeding, by their respective attorneys, having appeared and severally 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 any evidence or admission in respect to any such issue;

NOW, THEREFORE, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law herein, and upon consent of all parties hereto, it is hereby

ORDERED, ADJUDGED and DECREED, as follows:

I

The Court has jurisdiction of the subject matter herein and of the parties hereto. The Complaint states a cause of action against the defendants, and each of them, under Section 2 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against

unlawful restraints and monopolies," as amended, commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Person" means an individual, partnership, firm, association, corporation or other legal entity;

(B) "Defendants" means the defendants Western Newspaper Union, E. C. Palmer & Co., Ltd. and Harry W. Brintnall Company, and each of them;

(C) "Weekly newspaper" means any newspaper of general circulation which is published less than daily;

(D) "Rural printer" means any person, as hereinabove defined, who owns, publishes or prints any weekly newspaper;

(E) "Printing machinery" means any mechanical device, or devices, used or useful in connection with the business of a rural printer.

Without in any manner limiting the generality of the foregoing, the term "machinery" includes, but is not limited to, typesetting machines, cylinder presses, platen presses, electric motors, numbering machines, mailing equipment, stitching punches, perforating machinery and type-and-plate-making equipment;

(F) "Printing supplies" means any non-mechanical article or device used or useful in connection with the business of a rural printer.

Without in any manner limiting the generality of the foregoing, the term "supplies" includes, but is not limited to, newsprint (including newsprint in the form of ready-print, as hereinafter defined), mats, stereotypes, type, metal, ink, office supplies, etc.;

(G) "Printers' services" means national advertising, prepared editorials, syndicated newspaper articles, comic strips and other feature materials, customarily sent to rural printers in the form of ready-print, mats or stereotypes, or otherwise;

(H) "Ready-print" means a sheet of partially pre-printed newsprint paper in which national advertising, editorials, syndicated

articles, comic strips, or other feature materials are printed prior to shipment to a rural printer.

III

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 under, through or for such defendant.

IV

The defendants are jointly and severally enjoined and restrained from enforcing, after the date of the entry of this Final Judgment, any provision of any contract, agreement or understanding between any such defendant and any other person which hinders, restricts, limits or prevents such other person from engaging, in any manner, in the manufacture, sale or distribution of printing supplies, printing machinery or printers' services, or the publication of any weekly newspaper.

V

To the extent that, and within the territories in which, any of the defendants shall, after the date of the entry of this Final Judgment, engage in the manufacture, sale or distribution of ready-print, printing supplies, printing machinery or printers' services, the defendants are, jointly and severally, ordered and directed to offer to sell, and to sell, to any rural printer requesting the same, upon reasonable, non-discriminatory prices, terms and conditions of sale (including credit terms where the extension of credit is justified by reasonable business standards):

A. Ready-print, either with or without national advertising, the purchaser to have the option of purchasing such ready-print either with or without such national advertising;

B. Any and all printing supplies, printing machinery or printers' services in the manufacture, sale or distribution of which such defendant may be regularly engaged either on its own account or as sales or distribution agent for the manufacturer thereof.

VI

The defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under, any contract, agreement, understanding or concerted plan of action with any other person to:

(A) Allocate, divide or apportion territories, markets or customers for the manufacture, sale or distribution of printing supplies, printing machinery or printers' services; provided that this subsection (A) shall not, subject to Section IX, subsection (D) of this Final Judgment, prevent any manufacturer of printing machinery from appointing any defendant as the sales or distributing agent of such manufacturer in any designated territory or locality;

(B) Fix, determine or maintain the price, or prices, terms or conditions for the sale of printing supplies, printing machinery or printers' services to third persons. For the purpose of this subsection (B) the term "price" or "prices" includes, but is not limited to, discounts, trade-in values for used printing machinery or printing supplies and charges on account of freight or other transportation.

VII

Nothing contained in Sections IV, V and VI of this Final Judgment shall be construed so as to affect any lawful rights or obligations which any defendant may have under the Miller-Tydings amendment to the Sherman Antitrust Act or the so-called McGuire amendment to the Federal

Trade Commission Act with respect to the sale or distribution of printing supplies, printing machinery or printers' services manufactured by others.

VIII

The defendants are jointly and severally enjoined and restrained from knowingly permitting any of its officers, directors, agents or employees to serve, at the same time, also as an officer, director, agent or employee of any other person engaged in the manufacture, sale or distribution of printing supplies, printing machinery or printers' services: Provided, however, that the provisions of this Section VIII shall not prohibit John H. Perry, Jr. from serving on the Board of Directors or as an officer of Western Newspaper Union, or prohibit F. W. Perry from serving on the Board of Directors or as an officer of the Pensacola News Journal Company or the Jacksonville Journal Company, or either John H. Perry, Jr. or F. W. Perry from serving on the Board of Directors, or as an officer, of Perry Enterprises, Inc., or from being a partner in John H. Perry Associates.

IX

The defendants are jointly and severally enjoined and restrained from, directly or indirectly:

(A) Selling or causing to be sold printing supplies or printers' services (1) below cost, or (2) at unreasonably low or discriminatory prices for the purpose or with the effect of destroying a competitor or suppressing competition;

(B) Bidding in response to any invitation for bids issued by any public authority, if any defendant, or any agent or employee of a defendant has aided or assisted such public authority in the preparation of the specifications relating to any such invitation for bids;

(C) Urging, influencing or suggesting, or attempting to urge, influence or suggest, any advertiser to refrain from advertising in any weekly newspaper or otherwise doing any business with any rural printer;

(D) Coercing, or attempting to coerce, in any manner, any person engaged in the manufacture of printing supplies, printing machinery or printers' services to grant to such defendant an exclusive contract for the sale or distribution of any such printing supplies, printing machinery or printers' services;

(E) Selling, or offering for sale, or otherwise furnishing or offering to furnish, any printing machinery, printing supplies or printers' services, upon any condition, agreement or understanding that the purchaser will purchase or otherwise obtain from such defendant any other printing machinery, printing supplies or printers' services;

(F) Hindering, restricting, limiting or preventing any person from engaging in business as a rural printer or from publishing a weekly newspaper.

X

The provisions of this Final Judgment shall not, in any manner, operate as a bar or estoppel against any suit or proceedings which the United States may institute at any time after the date of the entry of this Final Judgment based in whole or in part upon any acquisition by any defendant herein of any of the capital stock, physical assets, business or good will of any person engaged in the manufacture, sale or distribution of printing supplies, printing machinery or printers' services and regardless of whether any such acquisition occurred prior to or after the date of the entry of this Final Judgment. In any such suit or proceeding instituted by the United States, the United States shall not, by virtue of any of the provisions of this Final Judgment, be required to show or establish any change in material circumstances occurring subsequent to the date of the entry of this Final Judgment, nor, in any manner, be barred or estopped, by virtue of any of the provisions of this Final Judgment, from introducing any testimony or evidence relating to any acquisition by any defendant, either prior to or after the date of the entry of this Final Judgment, of any of the

capital stock, physical assets, business or good will of any person engaged in the manufacture, sale or distribution of printing supplies, printing machinery or printers' services.

XI

For the purpose of securing compliance with this Final Judgment and for no other purpose, 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 principal office, be permitted, subject to any legally recognized privilege, (1) access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment and (2) subject to the reasonable convenience of said 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 such request any defendant shall submit such reports in writing 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 XI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department, 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.

XII

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 construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.

Dated: August 18, 1953.

/s/ David N. Edelstein
United States District Judge

We hereby consent to the entry of the foregoing Final Judgment:

For the Plaintiff:

/s/ Stanley N. Barnes
Stanley N. Barnes
Assistant Attorney General

/s/ Edwin H. Pewett
Edwin H. Pewett

/s/ Harry N. Burgess

Attorneys

For the Defendants:

/s/ Bruce R. Tuttle
Dwight, Royall, Harris, Koegel & Caskey