

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Hawaiian Holidays Tours, Inc., Hawaiian Holidays, Inc., Inter-Island Travel Service, Ltd., d. b. a. Trade Wind Tours of Hawaii, International Travel Brokers, Inc., and Hawaii Unlimited., U.S. District Court, D. Hawaii, 1978-2 Trade Cases ¶62,386, (Nov. 16, 1978)

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United States v. Hawaiian Holidays Tours, Inc., Hawaiian Holidays, Inc., Inter-Island Travel Service, Ltd., d. b. a. Trade Wind Tours of Hawaii, International Travel Brokers, Inc., and Hawaii Unlimited.

1978-2 Trade Cases ¶62,386. U.S. District Court, D. Hawaii, Civil No. 76-0371 Entered November 16, 1978.

(Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 42822). Case No. 2540, Antitrust Division, Department of Justice.

## Sherman Act

**Price Fixing: Exchange of Information: Bona Fide Sales: Pooling Agreements: Group Package Tour Industry: Consent Decree.**— Five Hawaiian tour operators were barred by a consent decree from agreeing to fix prices or exchanging information in connection with the sale of group package tours. The prohibitions contained in the decree would not apply to proposed or actual bona fide sales of tour components nor to pooling agreements in connection with the number of passengers to be provided an airplane flight. Any acquiring party should show consent to the prohibitions of the decree.

**For plaintiff:** John H. Shenefield, Asst. Atty. Gen., and William E. Swope, Charles F. B. McAleer, Anthony E. Desmond, Don B. Overall, and Steven L. Weinstein, Attys., Dept. of Justice. **For defendants:** Alexander Anolik, San Francisco, Cal., for Inter-Island Travel Service, Ltd., and Hawaii Unlimited; Lawrence B. Kahn, Great Neck, N. Y., for International Travel Brokers, Inc.; and Thomas H. Baer, of Baer & McGoldrick, New York, N. Y., for Hawaiian Holidays Tours, Inc., and Hawaiian Holidays, Inc.

## Final Judgment

King, J.: Plaintiff, United States of America, having filed its complaint herein on October 5, 1976, and the Plaintiff and the Defendants, by their respective attorneys, having 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 against or admission by any party with respect to any issue of fact or law herein:

Now Therefore, without any testimony being taken herein, and without trial or adjudication of any issue of fact or law herein, and upon the consent of all parties hereto, it is hereby Ordered, Adjudged and Decreed:

### I.

#### [ *Jurisdiction* ]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The Complaint states a claim upon which relief may be granted against the Defendants under [Section 1 of the Sherman Act](#) (15 U. S. C. §1).

### II.

#### [ *Definitions* ]

As used in this Final Judgment:

(a) "Person" means any individual, corporation, partnership, firm, association or other business or legal entity;

- (b) "Hawaii" means the State of Hawaii;
- (c) "Mainland" means all of the States of the United States except the State of Hawaii;
- (d) "GIT tour package" means a bundle of components generally consisting of air transportation, hotel accommodations and sightseeing features offered for group travel to Hawaii based on a discounted airfare known as a "group inclusive tour" fare;
- (e) "Tour operator," sometimes also known in the industry as a "wholesaler," means any company engaged in the assembling, sale and operation of GIT tour packages; and
- (f) "Pooling" means the method by which two or more tour operators jointly provide passengers for the same airplane flight in order to utilize a GIT airfare.

**III.**

**[ Applicability ]**

The provisions of this Final Judgment are applicable to all Defendants herein and shall also apply to each of said Defendants' officers, directors, agents, employees, subsidiaries, successors and assigns, 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.

**IV.**

**[ Price Fixing; Exchange of Information ]**

Each Defendant is enjoined and restrained from:

- (a) Directly or indirectly entering into, adhering to, enforcing, maintaining, furthering, or claiming any right under any contract, agreement, understanding, plan, or program, concert of action, combination or conspiracy with any person, directly or indirectly to fix, maintain or stabilize the prices, terms or conditions of sale, or markups of GIT tour packages, or
- (b) Suggesting to, discussing with or expressly or implicitly furnishing to or requesting from any tour operator or person associated with or employed by any tour operator any price, markup, term or condition with respect to GIT tours.

**V.**

**[ Permitted Activities ]**

Nothing contained in Section IV above or this Final Judgment shall apply to any negotiation or communication between the Defendants or a Defendant and another tour operator or person associated with or employed by a tour operator, the sole purpose of which is a bona fide proposed or actual purchase or sale of tour components for GIT tours.

Nothing contained in Section IV above or this Final Judgment shall prohibit pooling agreements between the Defendants or a Defendant and another person to the extent that such agreements may provide for a specific number of passengers each member of a pool must produce for each airplane flight and any penalties to be assessed to a member of a pool for failure to provide the required number of passengers.

**VI.**

**[ Acquiring Party's Consent ]**

Each Defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of the assets used by it that the acquiring party agree to be bound by the provisions of this Final Judgment. The

acquiring party shall file with the Court, and serve upon the Plaintiff, its consent to be bound by this Final Judgment.

## VII.

### [ Notice]

Each Defendant is ordered and directed:

- (a) To furnish within sixty (60) days after entry of this Final Judgment a copy thereof to each of its officers and directors, and to each of its managing agents and employees having any responsibility for or authority over the establishment of the pricing or markup on or price of any tour or component thereof which said Defendant sells or proposes to sell or for the establishment of commissions to be paid travel agents therefor;
- (b) To furnish a copy of this Final Judgment to each person who becomes an officer or director, or managing agent or employee described in Subsection (a) of this Section VII, within sixty (60) days after such person is employed by or becomes associated with such Defendant;
- (c) To take additional affirmative steps to advise each of its officers and directors, and each managing agent and employee described in Subsection (a) of this Section VII of its and their obligations under this Final Judgment and of the criminal penalties for violation of Section IV of this Final Judgment, including written directives setting forth corporate compliance policies, distribution of Final Judgments, and meetings to review its terms and the obligations it imposes.
- (d) To file with the Court and serve upon the Plaintiff, within ninety (90) days from the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with Subsection (a) of this Section VII; and
- (e) To obtain, from each person described in Subsection (a) or (b) of this Section VII, a written statement evidencing such person's receipt of a copy of this Final Judgment, and to retain such statements in its files.

## VIII.

### [ Inspection]

For the purpose of determining or securing compliance with this Final Judgment, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division or his agent, subject to any legally recognized privilege:

(a) On reasonable notice to a Defendant made to its principal office duly authorized representatives of the Department of Justice shall be permitted:

1. Access, during office hours of such Defendant, to inspect and copy 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 such Defendant and without restraint or interference from it, to interview officers, directors, employees or agents of such Defendants, any of whom may have counsel present, regarding any matters contained in this Final Judgment.

(b) Each Defendant shall submit such reports in writing, under oath if requested, with respect to matters contained in this Final Judgment as may from time to time be so requested.

No information or documents 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 executive branch of the Plaintiff, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by a Defendant to Plaintiff, such Defendant represents and identifies in writing the material in any such information or documents of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said Defendant marks each pertinent page of such material, "Subject to

claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,” then 10 days notice shall be given by Plaintiff to such Defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the Defendant is not a party.

**IX.**

**[ Retention of Jurisdiction]**

Jurisdiction is retained by the 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 modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

**[ Public Interest]**

Entry of this Final Judgment is in the public interest.