

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. H. P. Hood&Sons, Inc., et al., U.S. District Court, D. Massachusetts, 1952-1953 Trade Cases ¶67,404, (Dec. 31, 1952)

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United States v. H. P. Hood&Sons, Inc., et al.

1952-1953 Trade Cases ¶67,404. U.S. District Court, D. Massachusetts. Civil Action No. 7866. Dated December 31, 1952. Case No. 948 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decrees—Specific Relief—Disposition of Stations—Practices Enjoined—Re-Acquisition of Interests and Use of Plants—Milk.—A defendant, engaged in the business of purchasing milk from producers and processing and selling such milk to business establishments and consumers, is ordered by a consent decree to dispose of all its interest in the country milk receiving stations owned by it in specified cities and towns. Such dispositions shall be completed within one year and, if by sale, dispositions shall be to a party other than a defendant in the suit, or one owned, controlled by, or affiliated with, or related to any such defendant. Such sale shall be subject to the approval of the court upon reasonable notice to the Attorney General.

The defendant and its president are enjoined from (1) re-acquiring the country milk receiving stations in a town heretofore sold on a specified date, and from (2) renewing a specified lease of a country milk receiving station upon its termination. Such defendants are enjoined from using specified milk plants owned by the defendant-company as country milk receiving stations, except such plants may be used for the purpose of receiving milk to be distributed locally; and from using a specified milk plant owned by the defendant-company as a country milk receiving station for a period of three years, except such defendants may ship fluid milk therefrom to a specified marketing area to the extent that such shipments are necessary to retain said plant as a “regulated plant” within the meaning of a specified Federal Marketing order, or to the extent that said shipments are ordered or requested by the Market Administration under said order.

Consent Decrees—Practices Enjoined—Acquisitions.—A defendant and its president, engaged in the business of purchasing milk from producers and processing and selling such milk to business establishments and consumers, are enjoined by a consent decree from acquiring and holding ownership or control of the business, physical assets (except milk or milk products bought in or incidental to the ordinary course of business), or good will, or any part thereof, or any capital stock or securities, of another such defendant. Such other defendant and its president likewise are enjoined from acquiring and from holding such interests of the first named defendant.

The decree further enjoins the defendant and its president from acquiring, and from holding, for a period of three years, ownership or control of the business, good will or physical assets, or any part thereof, in a specified area, of any handler distributing milk in such area, or the capital stock or securities of any such handler.

Consent Decrees—Practices Enjoined—Performance of Contracts—Agreements Not to Compete.—Defendants, engaged in the business of purchasing milk from producers and processing and selling such milk to business establishments and consumers, are enjoined by a consent decree from the further performance of specified contracts and from adopting any course of conduct for the purpose of reviving such contracts; and from enforcing any contract or understanding made whereby any handler undertook or agreed not to compete with a named defendant in the distribution of milk.

For the plaintiff: Newell A. Clapp, Acting Assistant Attorney General; Edwin H. Pewett; George F. Garrity, United States Attorney; and Gerald J. McCarthy, Robert L. Grant, John J. Galgay, Alfred Karsted, and W. D. Kilgore, Jr., Attorneys for the United States.

For the defendants: Robert G. Dodge; Charles B. Reilly, and Ropes, Gray, Best, Coolidge and Rugg for H. P. Hood&Sons, Inc. and Harvey P. Hood; and E. L. Twomey for Whiting Milk Co. and Alfred A. Stickler.

Final Judgment

[Consent to Entry of Decree]

FORD, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on September 27, 1948; and the parties hereto by their attorneys having severally consented to the entry of this Final Judgment herein without trial or adjudication of any issue of fact or law herein, and without admission by any party in respect of 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 the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

[Sherman Act Cause of Action]

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 Sections 1 and 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 (15 U. S. C, Secs. 12).

II

[Definitions]

As used in this Final Judgment:

- (A) "Milk" shall mean cows' milk produced for human consumption in the form of fluid milk;
- (B) "Producer" shall mean any person owning or possessing one or more cows and selling a part or all of the milk produced by such cows to handlers;
- (C) "Handler" shall mean any person engaged in the business of purchasing milk from producers and distributing such milk to retailers and consumers;
- (D) "County milk receiving station" shall mean the land, buildings, facilities and equipment maintained by a handler, in the area of milk production and outside the area of resale to consumers, at which milk is received directly by the handler from producers' farms and which is used only for receiving, weighing, sampling, testing, grading, pooling and transferring the milk for shipment in bulk to a marketing area and not for processing or manufacturing the milk;
- (E) "Greater Boston, Massachusetts, marketing area" shall mean the territory included within the boundary lines of the following Massachusetts cities and towns: Arlington, Belmont, Beverly, Boston, Braintree, Brookline, Cambridge, Chelsea, Dedham, Everett, Lexington, Lynn, Maiden, Marblehead, Medford, Melrose, Milton, Nahant, Needham, Newton, Peabody, Quincy, Reading, Revere, Salem, Saugus, Somerville, Stoneham, Swampscott, Wakefield, Waltham, Watertown, Wellesley, Weymouth, Winchester, Winthrop and Woburn;
- (F) "Hood" shall mean the defendant H. P. Hood & Sons, Inc., a corporation organized and existing under the laws of the Commonwealth of Massachusetts and having its principal place of business in the City of Boston, Massachusetts;
- (G) "Whiting" shall mean Whiting Milk Company, a corporation organized and existing under the laws of the Commonwealth of Massachusetts and having its principal place of business in the City of Boston, Massachusetts;
- (H) "Person" shall mean an individual, partnership, firm, corporation, association, trustee or other business or legal entity.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant and each of its officers, directors and subsidiaries, and to each of its or his agents, employees, successors and assigns, and to each person acting or claiming to act under, through or for them or any of them.

IV

[*Performance of Contracts Prohibited*]

Defendants are each enjoined and restrained from the further performance of any of the following contracts, agreements, arrangements or understandings (which have heretofore been cancelled) and from adopting, adhering to or furthering any course of conduct for the purpose or with the effect of maintaining, reviving or reinstating any such contracts, agreements, arrangements or understandings:

(A) Agreement of February 14, 1946, between defendants Harvey P. Hood, Alfred A. Stickler, and Hood, and The First National Bank of Boston, which is set forth as Exhibit A of the complaint herein;

(B) Agreement of January 22, 1947, between defendant Alfred A. Stickler, Myrtle L. Stickler, his wife, and Marion Jule Stickler, his daughter, and Hood, which is set forth as Exhibit B of the complaint herein.

V

[*Disposition of Stations Ordered— Use of Plants Prohibited*]

(A) Defendant Hood is hereby ordered and directed to dispose of all its interest in the country milk receiving stations owned by it in Harmony, Maine, New Sharon, Maine, Island Pond, Vermont and Derby, Vermont. The said dispositions shall be completed within one year from the date of the entry of this Final Judgment and, if by sale, shall be to a party other than a defendant herein, or one owned, controlled by, or affiliated with, or related to any such defendant and such sale shall be subject to the approval of this Court upon reasonable notice to the Attorney General.

(B) Defendants Hood and Harvey P. Hood are each enjoined and restrained (1) from re-acquiring, directly or indirectly, the country milk receiving station at Livermore Falls, Maine, heretofore sold by defendant Hood on January 21, 1947; and (2) from renewing, upon its termination on April 1, 1954, the lease from St. Lawrence Co-operative Dairies, Inc. to defendant Hood of the country milk receiving station at Norfolk, New York, and from continuing to perform under or adhere to said lease after such termination.

(C) Defendants Hood and Harvey P. Hood are each enjoined and restrained from using the milk plants owned by defendant Hood in Fryeburg, Maine and Burlington, Vermont as country milk receiving stations, provided, however, that this shall not prohibit the use by said defendants of said plants, or either of them, for the purpose of receiving milk to be distributed locally.

(D) Defendants Hood and Harvey P. Hood are each enjoined and restrained, for a period of three years from the date of entry of this Final Judgment, from using the milk plant owned by defendant Hood at Newport, Maine, as a country milk receiving station, provided, however, that defendants, may ship fluid milk therefrom to the Greater Boston, Massachusetts, marketing area to the extent that such shipments are necessary to retain said plant as a "regulated plant" within the meaning of Federal Marketing Order No. 4, Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area, as amended, or to the extent that said shipments are ordered or requested by the Market Administrator under said Order.

VI

[*Contracts and Acquisitions Prohibited*]

Defendants Hood and Harvey P. Hood are each enjoined and restrained:

(A) From enforcing any contract, covenant, agreement, understanding or arrangements heretofore made whereby any handler undertook or agreed not to compete with Hood in the distribution of milk;

(B) From acquiring, directly or indirectly, by purchase, merger, consolidation or otherwise, and from holding or exercising. after such acquisition, ownership or control of the business, physical assets (except milk or milk products bought in or incidental to the ordinary course of business), or good will, or any part thereof, or any capital stock or securities, of defendant Whiting;

(C) For a period of three years from the date of entry of this Final Judgment from acquiring, directly or indirectly, by purchase, merger, consolidation or other wise, and from holding or exercising after such acquisition, ownership, or control of the business, good will or physical assets, or any part thereof, in the Greater Boston,Massachusetts, marketing area or in or immediately adjacent to the cities of Portland, Maine, Fall River, Massachusetts, Springfield, Massachusetts, or Providence, Rhode Island, of any handler distributing milk in said area or in any of said cities, or the capital stock or securities of any such handler.

VII

Defendants Whiting and Alfred A. Stickler are each enjoined and restrained from acquiring, directly or indirectly, by purchase, merger, consolidation or otherwise; and from holding or exercising after such acquisition, ownership or control of the business, physical assets (except milk or milk products bought in or incidental to the ordinary course of business), or good will, or any part thereof, or any capital stock or securities, of defendant Hood.

VIII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, and for no other' purpose, duly authorized representatives of the Department Of Justice shall, on written request of the Attorney General in charge of the Antitrust Division and on notice to any defendant, made to such defendant at its principal office, be permitted (A) reasonable 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 of the matters, contained in this judgment; and (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. Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, on reasonable notice to any defendant herein made to its principal office, such defendant shall submit such reports in writing as may from time to time be necessary to the enforcement of this Final Judgment. Information obtained pursuant to the provisions of this Section VIII shall not 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, or as otherwise required by law.

IX

[*Jurisdiction Retained*]

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 orders and directions as may be necessary or appropriate for the construction, modification or carrying out of this Final Judgment, for the enforcement of compliance therewith, and for the punishment of violations thereof.