

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Ross Trucking, Inc., Standard Fruit and Steamship Co., and Castle & Cooke, Inc., U.S. District Court, E.D. New York, 1973-1 Trade Cases ¶74,386, (Apr. 17, 1973)

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United States v. Ross Trucking, Inc., Standard Fruit and Steamship Co., and Castle & Cooke, Inc.
1973-1 Trade Cases ¶74,386. U.S. District Court, E.D. New York. 70 Civ. 1228. Entered April 17, 1973. Case No. 2131, Antitrust Division, Department of Justice.

Sherman Act

Tying Arrangements—Transportation and Bananas—Consent Decree.—An importer of bananas was prohibited by a consent decree from requiring wholesalers or retailers to use a designated agent. However, for purchases of quantities of 300 boxes or less, truckers could be designated. Where designated trucks are not used, the firm could require prior notification of arrival at the point of discharge, and could designate starting times for loading.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, Norman H. Seidler, Ralph T. Giordano, Charles J. Walsh, Erwin L. Atkins, and Melvin Lublinski, Dept. of Justice. **For defendants:** Milbank, Tweed, Hadley & McCloy, by Briscoe R. Smith, New York, N. Y.

Final Judgment as to Standard Fruit and Steamship Co. and Castle & Cooke

ZAVATT, D. J.: The Original Complaint having been filed on September 28, 1970 and the Supplemental Complaint having been filed on October 2, 1972, the plaintiff and the defendants Standard Fruit and Steamship Company and Castle & Cooke, Inc., 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 evidence or admission by any party with respect to any issue of fact or law herein;

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 of the action and of the parties hereto. The Original Complaint and the Supplemental Complaint state claims upon which relief may be granted against the defendant Standard Fruit and Steamship Company, and the Supplemental Complaint states a claim upon which relief may be granted against the defendant Castle & Cooke, Inc., 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, as amended.

II

[*Definitions*]

As used in this Final Judgment:

- (A) "Standard" means Standard Fruit and Steamship Company and each of its subsidiaries and affiliates.
- (B) "Castle & Cooke" means Castle & Cooke, Inc. and each of its subsidiaries and affiliates.

(C) "Jobber" means any person engaged in whole or in part in the business of buying bananas, ripening the bananas, and selling them to wholesalers or retailers for resale.

(D) "Port of New York" means the various piers, docks, and related port facilities in the States of New York and New Jersey lying on or adjacent to the Hudson River south of Spuyten Duyvil Junction, the East River, The Narrows, Newark Bay, Kill Van Kill and Arthur Kill.

(E) "Metropolitan New York area" means the area generally included in the five boroughs of New York City, Nassau, Suffolk and Westchester Counties in the State of New York, and Essex, Bergen, Hudson, Union, Middlesex, Monmouth, Morris and Passaic Counties in the State of New Jersey.

(F) "Boxes" means any containers holding approximately 95 to 115 bananas and weighing approximately 40 to 45 pounds.

(G) "Person" means any individual, partnership, corporation or other legal or business entity.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to Standard, Castle & Cooke and their subsidiaries, successors and assigns, and to each of their respective officers, directors, agents and employees, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Designated Transport Agents*]

Except upon the written consent of the Department of Justice or, after days notice, upon a showing to this Court that it will not unreasonably lessen competition or tend to create a monopoly in the trucking of bananas, Standard and Castle & Cooke are enjoined and restrained from, directly or indirectly:

(A) Selling or offering to sell bananas to any jobber, supermarket or other customer, located anywhere in the United States, upon any condition, requirement or understanding that such jobber, supermarket or other customer hire or use a designated person or persons to transport the bananas;

(B) Selling or offering to sell bananas to any jobber, supermarket or other customer, located anywhere in the United States, upon any condition, requirement or understanding which deprives such jobber, supermarket or other customer of the option of taking delivery of the bananas by its own truck or the truck of any person of its choosing; and

(C) Preventing, hindering or impeding or attempting to prevent, hinder or impede any jobber, supermarket or other customer, located anywhere in the United States, from using its own truck or the truck of any person of its choosing to transport bananas purchased from Standard or Castle & Cooke.

Provided, however, that this Final Judgment shall not prohibit Standard or Castle & Cooke from requiring that jobbers, supermarkets and other customers give at least one day's prior notification of the arrival at the point of discharge at the Port of New York of their own trucks or those of any persons of their choosing; and *provided further* that this Final Judgment shall not prohibit Standard or Castle & Cooke from requiring that jobbers, supermarkets and other customers which seek to transport bananas in quantities of 300 boxes or less, or their equivalent weight, from the Port of New York, hire or use a person or persons selected by Standard or Castle & Cooke for such purpose.

V

[*Starting Times*]

Standard and Castle & Cooke shall designate a starting time when, during the discharge at the Port of New York of each of their shipments of bananas, the loading of the trucks of jobbers, supermarkets and other customers

located within the Metropolitan New York area, or those of persons of their choosing, shall begin. Standard and Castle & Cooke shall use their best efforts to provide that such trucks are loaded expeditiously and without unnecessary delay upon their arrival at the point of discharge at or subsequent to such designated starting time, it being understood that such trucks will await their turn for loading and shall receive no preference in that regard.

VI

[*Notification*]

(A) Standard and Castle & Cooke are ordered and directed, within 60 days from the date of entry of this Final Judgment, to mail to each person within the Metropolitan New York area which purchases bananas from them, a conformed copy of this Final Judgment.

(B) Standard and Castle & Cooke are ordered and directed, within 90 days from the date of entry of this Final Judgment, to file with the Clerk of this Court and to mail to the plaintiff, an affidavit setting forth the fact and manner of compliance with subsection (A) of this Section VI.

VII

[*Reports*]

For a period of 10 years from the date of entry of this Final Judgment, Standard and Castle & Cooke are ordered to file with the plaintiff, on each anniversary date of this Final Judgment, a report setting forth the steps they have taken during the prior year to advise their appropriate officers, directors and employees of their obligations under this Final Judgment.

VIII

[*Inspection and Compliance*]

For the purpose of securing or determining compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, 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 Standard and Castle & Cooke made to their principal offices, be permitted (a) access during the office hours of Standard or Castle & Cooke to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Standard or Castle & Cooke, relating to any of the matters contained in this Final Judgment and (b) subject to the reasonable convenience of Standard or Castle & Cooke and without restraint or interference from them, to interview officers or employees of Standard or Castle & Cooke, who may have counsel present, regarding any such matters.

Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, Standard and Castle & Cooke shall submit such reports in writing to the Department of Justice with respect to any matters contained in this Final Judgment as from time to time may be requested.

No information obtained by the means provided 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 United States, 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.

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