

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Harry F. Stern, Herman Shmukler, Arthur Gelfont, and Stern Fish Co., U.S. District Court, E.D. Pennsylvania, 1952-1953 Trade Cases ¶67,319, (Jul. 16, 1952)

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United States v. Harry F. Stern, Herman Shmukler, Arthur Gelfont, and Stern Fish Co.

1952-1953 Trade Cases ¶67,319. U.S. District Court, E.D. Pennsylvania. Civil Action No. 10415. Filed July 16, 1952. Case No. 1002 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decrees—Practices Enjoined—Disparaging Quality or Condition— Fish Wholesalers.—Fish wholesalers are enjoined by a consent decree from disparaging the quality or condition of live fish sold or offered for sale by any wholesaler or any other person.

Consent Decrees—Practices Enjoined—Exclusive Dealing and Related Practices— Fish Wholesalers.—Fish wholesalers are enjoined by a consent decree from selling live fish on the condition that the purchaser shall not purchase live fish or any other kind of fish sold by any other wholesaler or any other person, from selling any fish other than live fish on the condition that the purchaser will purchase live fish sold by the defendant wholesalers, from selling any fish other than live fish on the condition that the purchaser will not purchase live fish sold by any particular source, and from refusing to sell or discriminating in the sale of live fish or any other kind of fish to any person because such person does not purchase live fish from any particular source.

Consent Decrees—Practices Enjoined—Pricing Practices—Fish Wholesalers.—Fish wholesalers are enjoined by a consent decree from purchasing live fish at unreasonably high prices from the source of supply of any other wholesaler; from discriminating as to price of live fish among purchasers of the same class; and from conspiring with any wholesaler to determine, fix, maintain or adhere to prices, discounts or other terms or conditions for the sale or purchase of live fish to or from third persons.

Consent Decrees—Specific Relief—Dissolution of Partnership—Fish Wholesalers.—Fish wholesalers are ordered by a consent decree to dissolve and terminate a partnership between them. Each of the wholesalers is enjoined from reviving the partnership, and from hereafter creating, forming or establishing with any wholesaler in a certain area any partnership, firm, corporation or other legal entity to carry on the business of a wholesaler.

For the plaintiff: Newell A. Clapp, Acting Assistant Attorney General; Gerald A. Gleeson, United States Attorney; Edwin H. Pewett, Special Assistant to the Attorney General; William L. Maher, Acting Chief, Middle Atlantic Office, Antitrust Division; and W. D. Kilgore, Jr. and Lawrence A. Robie, Attorneys for the United States.

For the defendants: Cornelius C. O'Brien, Jr. and Harry A. Rutenberg, Philadelphia, Pa.

Final Judgment

CLARY, District Judge *[In full text]*: Plaintiff, United States of America, having filed its complaint herein on December 16, 1949, defendants having severally appeared and filed notices of appearance, and the plaintiff and defendants by their attorneys having severally consented to the entry of this Final Judgment;

Now, therefore, without any testimony or evidence having been taken herein and upon the consent of the parties hereto, it is hereby Ordered, adjudged and decreed as follows:

I

[Cause of Action Under Sherman Act]

The Court has jurisdiction of the subject matter herein and the parties hereto. The complaint states a cause of action against the defendants 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,” commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

- (A) “Live Fish” shall mean any edible fish, alive at the time of purchase by wholesalers, and consisting primarily of carp and chub;
- (B) “Wholesaler” shall mean a person engaged in the business or selling live fish to retail dealers who resell to consumers;
- (C) “Person” shall mean any individual, partnership, firm, corporation, association, trustee or any other business or legal entity.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any defendant shall apply to such defendant, his or its officers, directors, agents, employees, subsidiaries, successors and assigns, partner or partners, actual or nominal, and all other persons acting under, through or for such defendant.

IV

[*Practices Enjoined*]

Each of the defendants Stern, Shmukler, Gelfont and Stern Fish Co. is hereby enjoined and restrained from:

- (a) Disparaging the quality or condition of live fish sold or offered for sale by any wholesaler or any other person;
- (b) Selling or offering for sale live fish on the condition, agreement or understanding, express or implied, that the purchaser shall not purchase, use or deal in, or attempt to purchase, use or deal in, live fish or any other kind of fish sold or offered for sale by any other wholesaler or any other person;
- (c) Selling or offering for sale any fish other than live fish on the condition, agreement or understanding, express or implied, that the purchaser will purchase, use or deal in, or attempt to purchase, use or deal in, live fish sold by the defendant;
- (d) Selling or offering for sale any fish other than live fish on the condition, agreement or understanding, express or implied, that the purchaser will not purchase, use or deal in, or attempt to purchase, use or deal in, live fish sold or distributed by any particular source;
- (e) Refusing to sell or discriminating in the sale of live fish or any other kind of fish to any person because such person does not purchase, or attempt to purchase, live fish from any particular source;
- (f) Purchasing or offering to purchase live fish at unreasonably high prices from the source of supply of any other wholesaler;
- (g) Discriminating as to price, terms or other conditions of sale of live fish among purchasers of the same class.

V

Each of the defendants Stern, Shmukler, Gelfont and Stern Fish Co. is hereby enjoined and restrained from combining or conspiring or from entering into, adhering to, renewing, maintaining or furthering, directly or indirectly, or claiming any rights under any contract, agreement, understanding plan or program with any wholesaler to:

- (a) Refrain from selling or offering for sale any live fish;

- (b) Refrain from purchasing or attempting to purchase live fish;
- (c) Determine, fix, maintain or adhere to prices, discounts or other terms or conditions for the sale or purchase of live fish to or from third persons.

VI

[*Dissolution of Partnership Ordered*]

(a) Each of the defendants Stern, Shmukler and Gelfont is hereby ordered and directed to forthwith dissolve and terminate the partnership between them, operating under the name Philadelphia Fish Company, and within 10 days following entry of this Final Judgment to file with this Court, after notice to the Attorney General, proof of such dissolution;

(b) Each of the defendants Stern, Shmukler and Gelfont is enjoined and restrained from:

- (1) reviving or renewing the partnership ordered to be dissolved in paragraph (a) above,
- (2) hereafter creating, forming or establishing with any wholesaler in the Philadelphia, Pennsylvania, area any partnership, firm, corporation or other legal entity to carry on the business of a wholesaler.

VII

[*Compliance Provisions*]

For the purpose of securing compliance with this Final Judgment duly authorized representatives of the Department of Justice, upon the written request of the Attorney General or Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendants made to their principal offices, shall be permitted: (a) access, during the office hours of said defendants, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of or under control of said defendants relating to any of the matters contained in this Judgment; and (b) subject to the reasonable convenience of said defendants and without restraint or interference from them, to interview officers or employees of defendants, 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 Assistant Attorney General, and upon reasonable notice to the defendants, shall submit such written 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 provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized person 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 Judgment, or as otherwise required by law.

VIII

[*Jurisdiction Retained*]

Jurisdiction of this cause is retained for the purpose of enabling any parties to this 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 Judgment or 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.