

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Florists' Transworld Delivery Association., U.S. District Court, E.D. Michigan, 1969 Trade Cases ¶72,717, (Mar. 20, 1969)

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United States v. Florists' Transworld Delivery Association.

1969 Trade Cases ¶72,717. U.S. District Court, E.D. Michigan, Southern Division. Civil Action No. 28784. Entered March 20, 1969. Case No. 1904 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Flowers-by-Wire Association—Injunction—Consent Decree.—A flowers-by-wire association was enjoined by a consent judgment from fixing, publishing, suggesting or circulating prices and transmission or service charges payable by customers purchasing from members, subject to qualifications. Also, the decree prohibits the denial of membership to applicants or expelling members without just cause and without a reasonable notice explaining why the association has rejected an applicant or has expelled a member.

For the plaintiff: Nicholas deB. Katzenbach, Donald F. Turner, Lawrence Gubow, Raymond P. Hernacki and Wm. T. Huyck, Chicago, Ill.

For the defendant: Dickinson, Wright, McKean & Cudlip; Arnold & Porter, by Norman Diamond, Washington, D. C.

Final Judgment

KAESS, J.: Plaintiff, United States of America, having filed its complaint herein on August 1, 1966, and defendant having filed its answer thereto denying the substantive allegations thereof, and plaintiff and defendant by their respective attorneys then having consented to the making and entry of this Final Judgment without admission by either party in respect to any issue;

Now, Therefore, before any testimony has been taken herein, 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 this action and of the parties hereto. The complaint states claims for relief 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 (15 U. S. C. §§ 1 and 2).

II

[Definitions]

As used herein:

- (A) "Defendant" means the defendant Florists' Transworld Delivery Association, a non-profit corporation organized and existing under the laws of the State of Michigan (hereinafter sometimes referred to as "FTD");
- (B) "Person" means any individual, corporation, partnership, association, firm or other legal entity;
- (C) The terms "member" and "member florist" mean a retail florist which is a member of defendant;

(D) "Floral association" means any association, organization, or other entity whose membership consists primarily of retail florists;

(E) "Retail florist" means any person engaged in the business of selling fresh flowers to the public;

(F) "Wire orders" means orders for flowers sent from one retail florist to another retail florist by telegram, telephone, mail, or other means of communication;

(G) "Wire order service" means any plan or program in which a retail florist, by telegram, telephone, mail, or other means of communication, requests another retail florist to fill a customer's order for flowers.

III

[*Applicability*]

The provisions of this Final Judgment applicable to the defendant shall apply to the defendant and its officers, agents, servants, employees, subsidiaries, successors, and assigns, and to all persons in active concert or participation with the defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

[*Price Fixing and Advertising— Membership*]

Defendant is enjoined and restrained from directly or indirectly:

(A) Fixing, publishing, suggesting or circulating any prices, transmission or service charges payable by any customer in purchasing flowers from any member florist; Provided, however, that this Section IV(A) shall not prohibit defendant from:

(1) Picturing floral arrangements in its Selection Guide or catalog and stating with reference thereto, that any of such floral arrangements may ordinarily be purchased at less than a price stated therein, so long as such Selection Guide (or catalog) also states, in clearly legible type, that each member of defendant is an independent businessman and free to charge whatever prices he may wish for any of such floral arrangements. Existing copies of any Selection Guide (or catalog) may be used by defendant until October 1, 1969;

(2) Publishing and mailing for any individual member catalogues or advertisements which state prices individually specified by such member;

(3) Requiring members to limit the transmission charge, if any, to an amount not exceeding the actual transmission cost, and requiring members truthfully to separately state on the sales slip or invoice furnished to the customer the amount of any transmittal charge or service charge or, if none is made, a statement to that effect;

(4) Publishing or circulating prices and transmission or service charges, in advertisements placed in FTD publications by persons other than FTD.

(B) Expelling any member or denying application for any reason except upon written notice to such member or applicant setting forth the exact reason or reasons for such expulsion or denial; Provided, however, that nothing herein shall prevent FTD from promulgating reasonable and nondiscriminating general standards for membership, not contrary or inconsistent with any of the provisions of this Final Judgment, limited to florist capability, credit responsibility, compliance with membership obligations, honesty in business dealings, soliciting business from bereaved persons, cleanliness of premises, availability of design and delivery service and adequacy of inventory, refrigeration, communication and delivery and record-keeping facilities, and additionally, in the case of an applicant connected with a mortuary or cemetery, operation of the florist business and florist delivery equipment under a different name.

(C) Restricting, limiting or preventing, or attempting to restrict, limit or prevent any member, from

(1) Engaging in or being affiliated with any other lawful business;

- (2) Being listed, by name or other description, in any directory or list of retail florists published by any person other than the defendant, except a directory or listing of certain FTD members, a purpose of which is to induce said members to exchange orders between themselves to the exclusion of other FTD members;
- (3) Being a member of or affiliated with any other floral association or wire order service;
- (4) Truthfully advertising (a) prices for goods and services, (b) the nature of services provided, and (c) delivery to any and all desired communities
- (i) in the advertising sections of the FTD News or any other publication of defendant in which member advertising is accepted, or
- (ii) in any other medium;
- (5) Designating one additional member town under which his shop name, address, telephone number and code number shall be listed in the monthly FTD Membership List, aside from the community in which he is located, at a charge which does not exceed the then current rate for FTD listing in a nonmember community; Provided, however, that this subsection (5) shall not prohibit defendant from requiring, with regard to the monthly membership list published by defendant, that a member designating a town other than that in which its place of business is located shall be separately listed following the listing for that community of all members whose places of business are located therein and under a heading stating "also served by" (or its equivalent).
- (D) Restricting or limiting or attempting to restrict or limit the location, of the place of business of any member or applicant for membership, unless the place of business is located in premises in which an unlawful enterprise is conducted.

V

[*Other Agreements*]

Defendant is enjoined and restrained from hereafter (a) entering into, adhering to, promoting, following any course of conduct, plan, program, practice or policy, or (b) entering into any agreement or understanding with any other person, which is prohibited by or contrary to any of the provisions of the foregoing Section IV of this Final Judgment.

VI

[*Membership*]

Defendant is enjoined and restrained from, directly or indirectly, (a) expelling any person from membership in defendant association; or (b) denying any person membership in defendant association, based, in whole or in part, upon any reason contrary to, or inconsistent with, any of the provisions of the foregoing Sections IV and V of this Final Judgment.

VII

[*Conformance to Decree— Notification*]

Defendant is ordered and directed to:

(A) Within 90 days after the date of entry of this Final Judgment, take such steps as may be necessary and appropriate to make its rules, regulations, by-laws, practices, and policies conform to the terms of this Final Judgment;

(B) Within 90 days after the date of entry of this Final Judgment, send a copy of this Final Judgment to its member florists, together with a letter explaining the significance thereof (which letter shall have been approved by the Government);

(C) Within 90 days after the date of entry of this Final Judgment, mail a copy thereof to each retail florist whose application for membership in defendant was rejected during the 5 years preceding such entry by reason in whole or in part of any policy or action prohibited by Sections IV, V or VI of this Final Judgment;

(D) Beginning 90 days after the date of entry of this Final Judgment, give every new member a copy of this Final Judgment and of the Final Judgment entered by this Court against defendant on June 1, 1956 in Civil Action No. 15748, within 7 days after his admission as a member; *Provided* that if and when this Final Judgment and the above-mentioned Final Judgment in Civil Action No. 15748 are printed in full in the FTD Answer Book, copies thereof may be given to a new member by forwarding a copy of the Answer Book with a letter of transmittal directing attention to the pages of the Answer Book containing the Final Judgments in this action and in Civil Action No. 15748.

VIII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant, be permitted, subject to any legally recognized privilege, (a) reasonable access, during the office hours of the defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, relating to any of the matters contained in this Final Judgment, and (b) subject to the reasonable convenience of the defendant, and without restraint or interference, to interview officers and employees of the defendant who may have counsel present, regarding any such matters. For the purpose of securing compliance with this Final Judgment, the defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be requested. No information 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 for the purpose of securing compliance with this Final Judgment in which the United States is a party or as otherwise required by law.

[*Jurisdiction Retained*]

Jurisdiction of this Court is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the 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 or termination of any of the provisions thereof, for the enforcement of compliance therewith and punishment of violations thereof.