

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. National Electric Sign Association, et al., U.S. District Court, N.D. Illinois, 1954 Trade Cases ¶67,724, (Apr. 5, 1954)

United States v. National Electric Sign Association, et al.

1954 Trade Cases ¶67,724. U.S. District Court, N.D. Illinois, Eastern Division. Civil Action No. 51C2064. Filed April 05, 1954. Case No. 1114 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Consent Decree—Trade Association—Membership—By-laws—Meetings.—An electric sign trade association was required by the terms of a consent decree to grant equal and non-discriminatory membership to any parts manufacturer, jobber, or sign manufacturer wishing to join, and amendment of the association's by-laws to incorporate certain provisions of the decree was required. The association was enjoined from calling, sponsoring, or participating in any sectional or national meeting without notice and equal opportunity for all members to attend.

Consent Decree—Conspiracy—Practices Enjoined—Price Fixing—Restraint of Trade —Allocation of Markets—Evaluation of Manufacturers or Jobbers.—An electric sign trade association and three individuals consented to the entry of a decree restraining them from combining or conspiring to (1) fix prices or sales terms for the sale or lease of electric signs or parts, (2) restrict or prevent any person from manufacturing, selling, purchasing, or distributing electric signs or sign parts, (3) allocate markets, (4) induce or persuade any parts jobber or manufacturer to refrain from manufacturing, selling, or leasing signs or parts to any person or group, (5) refuse to purchase or sell sign parts, and (6) evaluate or rate any of the qualifications of any parts manufacturer, jobber, or sign manufacturer. However, the defendant association was not prohibited from operating a bona fide credit bureau for the exchange of credit information.

Consent Decree—Practices Enjoined—Dissemination of Trade Information.—An electric sign trade association and three individuals consented to the entry of a decree prohibiting them from combining or conspiring to collect, disseminate or communicate among themselves or to any other person any information (1) concerning prices, terms, or conditions for the manufacture, sale, or distribution of electric signs or parts, or (2) concerning the qualification of any parts manufacturer, parts jobber, or sign manufacturer. However, the exchange of information between a seller and a bona fide purchaser or prospective purchaser in actual individual transactions was not forbidden.

Consent Decree—Practices Enjoined—Restraint of Trade—Participation in Certain Association Activities.—An electric sign trade association and three individuals were enjoined by a consent decree from (1) influencing or suggesting to any parts manufacturer, jobber, or sign manufacturer prices or sales terms for the sale, distribution or lease of electric signs or parts to any third person, (2) hindering or preventing any other person from manufacturing, selling or distributing electric signs or parts, (3) hindering or preventing any person from purchasing, selling, or leasing electric signs or parts from or to any other person or group, and (4) knowingly being a member of, contributing anything of value to, or participating in the activities of any organization or association the activities or purposes of which are inconsistent with the decree.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General, Earl A. Jinkinson, Special Assistant to the Attorney General, Charles W. Houchins, Trial Attorney, William D. Kilgore, Jr., and Harry N. Burgess, Attorneys.

For the defendants: Simon H. Alster and Frank M. Ely (for Natl. Electric Sign Assn., Maurice R. Ely, and Henry K. Lambke), and Thomas S. Tyler (for John K. Lamb).

Final Judgment

WILLIAM KNOCH, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on December 18, 1951; defendant Sidney C. Fraser having died and the complaint against him having been dismissed by separate Order of the Court; defendants National Electric Sign Association, Maurice R. Ely,

John K. Lamb, and Henry K. Lambke having appeared and filed their answers to such complaint, denying the substantive allegations thereof; and plaintiff and defendants National Electric Sign Association, Maurice R. Ely, John K. Lamb, and Henry K. Lambke, by their attorneys herein, having severally consented to the entry of this Final Judgment 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 the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

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

II

[*Definitions*]

As used in this Final Judgment:

- (A) "Person" means any individual, partnership, firm, association, corporation or any other legal entity;
- (B) "Association" means the defendant National Electric Sign Association;
- (C) "Defendants" shall mean the National Electric Sign Association, Maurice R. Ely, John K. Lamb, and Henry K. Lambke, or any of them;
- (D) "Electric signs" means advertising or display signs of the neon or electric bulb type customarily used by commercial and industrial establishments in the United States, and components and parts thereof;
- (E) "Sign parts" means the various components and parts used in the construction of electric signs, including, but not limited to, such items as tubing, electrodes, transformers and timers;
- (F) "Parts manufacturer" means a person engaged in the manufacture and sale of sign parts;
- (G) "Parts jobber" means a person engaged in the purchase of sign parts from parts manufacturers for resale;
- (H) "Sign manufacturer" means a person engaged in the manufacture or assembly of electric signs for sale or lease to users thereof.

III

[*Applicability*]

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

IV

[*Action Required and Practices Prohibited*]

(A) Defendant Association is ordered and directed to grant equal, uniform and non-discriminatory membership in said Association, upon application therefor, to any parts manufacturer, parts jobber or sign manufacturer. Membership dues for all members shall be determined upon a uniform basis.

(B) Defendant Association is ordered and directed within one hundred and twenty (120) days after the date of entry of this Final Judgment to amend its By-Laws so as to incorporate therein Sections V and VI of this Final Judgment, and to furnish to each of its present and future members a copy of this Final Judgment by registered mail, return receipt requested.

(C) Defendant Association is enjoined and restrained from calling, sponsoring or participating in:

(i) any regional or sectional meeting of the members of said Association unless all the members of such Association within said region or section are given notice of such meeting and equal opportunity to attend;

(ii) any national convention, or meeting of the members of said Association unless all such members thereof are given notice of such meeting or convention and equal opportunity to attend.

V

[*Combinations and Conspiracies Prohibited*]

Defendants are jointly and severally enjoined and restrained from combining or conspiring with, or from entering into, adhering to, maintaining or furthering, or claiming any rights under, any contract, agreement or understanding, with any person, directly or indirectly, to:

(A) Fix, determine, suggest or maintain prices or other terms or conditions for the sale or lease of electric signs or sign parts to third persons;

(B) Hinder, restrict or prevent any person from manufacturing/selling or distributing electric signs or sign parts;

(C) Hinder, restrict or prevent any person from purchasing or selling electric signs or sign parts from or to any person or group of persons;

(D) Allocate or divide; markets or customers, for the manufacture, sale or distribution of electric signs or sign parts;

(E) Induce or persuade or attempt to induce or persuade any parts jobber to refrain from manufacturing, selling or leasing electric signs, or to induce or persuade, or attempt to induce or persuade any parts manufacturer or parts jobber to refrain from selling or distributing sign parts to any person or group of persons;

(F) Refuse to sell sign parts to any parts jobber or sign manufacturer, or to refuse to purchase sign parts from any parts manufacturer;

(G) Hinder, restrict or prevent, or attempt to hinder, restrict or prevent the manufacture, sale or distribution of sign parts by any parts manufacturer or parts jobber, or the manufacture, sale or lease of electric signs by any person;

(H) Evaluate or rate any of the qualifications of any parts manufacturer, parts jobber or sign manufacturer. This subsection (H) shall not prohibit the defendant Association from operating or maintaining a bona fide credit bureau for the exchange of credit information;

(I) Collect, compile, publish, disseminate or communicate among themselves or to any other person any information

(i) concerning prices or terms or conditions of any particular person or persons for the manufacture, sale or distribution of electric signs or sign parts, or

(ii) concerning the qualification of any parts manufacturer, parts jobber or sign manufacturer. This subsection (I) shall not prohibit the exchange of information between a seller and a bona fide purchaser or prospective purchaser in actual individual transactions.

VI

The defendants are enjoined and restrained from:

(A) Influencing or suggesting, or attempting to influence or suggest, to any parts manufacturer, parts jobber or sign manufacturer the price or prices, terms or conditions upon which such parts manufacturer, parts jobber or sign manufacturer shall sell, distribute or lease any electric signs or sign parts to any third person;

(B) Hindering, restricting or preventing, or attempting to hinder, restrict or prevent, any person, including specifically any parts jobber or parts manufacturer, from engaging in the manufacture, sale or distribution of electric signs or sign parts;

(C) Hindering, restricting or preventing, or attempting to hinder, restrict or prevent, any person from purchasing, selling or leasing electric signs or sign parts from or to any other person or group of persons;

(D) Knowingly being a member of, contributing anything of value to or participating in the activities of, any organization or association the activities or purposes of which are, in any manner, inconsistent with any of the provisions of this Final Judgment.

VII

(A) The defendant Association is ordered and directed to use every reasonable effort to prevent violation of this Final Judgment by any of its members.

(B) Any action taken by defendant Association, or any failure by defendant Association to take any action as hereinabove provided for in subsection (A) of this Section shall not, in any manner, affect any action, criminal or otherwise, which may be taken by the United States against any such offending member of defendant Association because of any alleged violation by such member of any of the provisions of this Final Judgment.

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 any defendant, 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 Final Judgment, and (b) subject to the reasonable convenience of such defendant, and without restraint or interference, to interview officers and employees of such defendant who may have counsel present, regarding any such matters. For the purpose of securing compliance with this Final Judgment any defendant upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of enforcement of this Final Judgment. 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 Department 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.

IX

[*Jurisdiction Retained*]

Jurisdiction 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 of any of the provisions thereof, for the enforcement of compliance therewith and punishment of violations thereof.