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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 UNITED STATES OF AMERICA,)
12)
13) Plaintiff,)
14)
15) vs.)
16) ARDEN-MAYFAIR, INC.;)
17) CARNATION COMPANY;)
18) CONSOLIDATED DAIRY PRODUCTS)
19) COMPANY; and)
20) FOREMOST-McKESSON, INC.,)
21)
22) Defendants.)
23)
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25)
26)
27)
28)
29)
30)

Civil No. 189-71C2

Filed: Feb. 20, 1973

Entered: March 23, 1973

19 FINAL JUDGMENT

21 Plaintiff, United States of America, having filed its
22 Complaint herein on September 29, 1971, and plaintiff and
23 the defendants, by their respective attorneys, having consented
24 to the entry of this Final Judgment, without trial or adjudi-
25 cation of any issue of fact or law herein, and without admission
26 by any party with respect to any such issue, and without this
27 Final Judgment constituting evidence or admission by any party
28 with respect to any such issue;

29 NOW, THEREFORE, before the taking of any testimony
30 and without adjudication of any issue of fact or law herein and upon

1 the consent of the parties hereto, it is hereby:

2 ORDERED, ADJUDGED and DECREED as follows:

3 I

4 This Court has jurisdiction of the subject matter
5 of this action and of all parties hereto. The Complaint
6 states a claim against the defendants upon which relief may be
7 granted under Section 1 of the Act of Congress of July 2,
8 1890, entitled "An Act to protect trade and commerce against
9 unlawful restraints and monopolies," as amended (15 U.S.C. §1),
10 commonly known as the Sherman Act.

11 II

12 As used in this Final Judgment:

13 (A) "Raw milk" means unprocessed cows' milk sold
14 or delivered by producers to processor-distributors for
15 processing into dairy products;

16 (B) "Dairy products" means pasteurized and homogenized
17 milk, two-percent milk, skim milk, buttermilk, whipping and
18 table cream, half and half, sour cream, yogurt, cottage cheese,
19 chocolate and other flavored milk, ice cream and ice milk,
20 certified raw milk, butter, cheese, and margarine; and, in
21 addition, means related products which are not processed from
22 raw milk but which are regularly marketed by processor-
23 distributors, consisting of orange and other fruit drinks,
24 sherbet, water ices, popsicles and similar frozen novelties;

25 (C) "Wholesale prices" means those list prices,
26 discounts, and other terms and conditions of sale at which
27 dairy products are to be sold by processor-distributors to
28 grocery stores, restaurants and others who purchase dairy
29 products for resale;

30 (D) "Processor-distributor" means any person who

1 either processes raw milk into dairy products or purchases
2 dairy products from processors for resale and distribution
3 to wholesale customers;

4 (E) "Wholesale customer" means grocery stores,
5 restaurants and others who purchase dairy products for resale;

6 (F) "Person" means any individual, partnership,
7 corporation, firm, association, or other business or legal
8 entity.

9 III

10 The provisions of this Final Judgment unless
11 otherwise expressly limited shall apply throughout the
12 United States to each of the defendants, their subsidiaries,
13 successors and assigns and to their respective officers,
14 directors, agents and employees, and shall also apply to
15 all persons in active concert or participation with any of
16 them who receive actual notice of this Final Judgment by
17 personal service or otherwise, but shall not apply to
18 activities between a defendant and its officers, directors,
19 agents and employees, nor to activities between a defendant
20 and its subsidiary companies or affiliated companies of
21 which 50% or more of the common stock is owned by said
22 defendant or which is in fact controlled by said defendant;
23 provided further that this Final Judgment shall not deprive
24 any defendant of any right which it may enjoy under Section 6
25 of the Clayton Act (15 U.S.C. §17) and/or the Capper-Volstead
26 Act (7 U.S.C. §§291-292) or prohibit any defendant from
27 complying with any other federal or state law or regulation.

28 IV

29 Each of the defendants acting as a processor-
30 distributor is enjoined and restrained from directly or
31 indirectly in any manner entering into, adhering to, or
32 claiming or maintaining any right under any contract,
agreement, arrangement, understanding, plan or program with
any other person:

1 (A) To fix, raise, maintain or stabilize
2 prices for the sale of dairy products to any third person;

3 (B) To submit collusive or rigged bids on dairy
4 products to any agency of the local, state, or federal
5 government, or to any other person;

6 (C) To allocate or rotate customers or dairy
7 product business among processor-distributors.

8 V

9 Each of the defendants is enjoined and restrained
10 from:

11 (A) Communicating to or exchanging with any other
12 processor-distributor any information concerning prices
13 and terms or conditions of sale for dairy products that
14 are contained in any bid or are to be contained in any
15 bid to any third person prior to the opening of any such
16 bid, or, in the absence of a bid opening, prior to the
17 release by such third person of such information to the
18 public;

19 (B) Communicating to or exchanging with any other
20 processor-distributor any actual or proposed price, price
21 change, discount, or other terms or conditions of sale
22 at which any dairy product is to be, or has been, sold
23 to any third person, prior to the communication of such
24 information to the public or to customers generally.

25 Nothing in this paragraph V shall be construed
26 to enjoin or restrain any defendant from communicating to or
27 exchanging with any other processor-distributor any information
28 concerning prices, terms or conditions of sale of bona fide
29 sales of dairy products between said defendant and such other
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1 processor-distributor; provided, however, that any such
2 transactions shall be subject to the prohibitions of Section
3 IV(A), (B) and (C) above.

4 VI

5 Each defendant is ordered and directed to individually
6 and independently review and determine its prices, discounts,
7 and other terms and conditions for the sale of dairy products
8 to wholesale customers in the States of Washington and Alaska,
9 put into effect those prices, discounts, terms, and conditions
10 so determined, and file with this Court within ninety (90) days
11 affidavits certifying that these requirements have been fulfilled.

12 VII

13 Each defendant is ordered and directed to:

14 (A) Serve within ninety (90) days after the entry of
15 this Final Judgment a conformed copy of this Final Judgment
16 upon each of its respective officers, directors, managing agents
17 and employees who have any responsibility for establishing
18 wholesale prices, or bids for the sale of dairy products by
19 said defendant;

20 (B) Serve forthwith a conformed copy of this Final
21 Judgment upon each successor officer, director, managing agent
22 and employee who shall have any responsibility for establishing
23 wholesale prices or bids for the sale of dairy products by said
24 defendant;

25 (C) Advise and inform each such officer, director,
26 managing agent and employee upon whom the Final Judgment has
27 been served as described in subparagraphs (A) and (B) above,
28 that violation by him of the terms of this Final Judgment could
29 result in a conviction for contempt of court and could subject
30 him to imprisonment and/or fine;

1 (D) Within one hundred twenty (120) days after the
2 entry of this Final Judgment, to file with this Court and
3 to serve upon the plaintiff affidavits concerning the fact
4 and manner of compliance with subsection (A) of this Section
5 VII.

6 VIII

7 For a period of ten (10) years from the date of entry
8 of this Final Judgment, each defendant is ordered to file
9 with the plaintiff, on each anniversary date of such entry,
10 a report setting forth the steps which it has taken during
11 the prior year to advise the defendant's appropriate officers,
12 directors and employees of its and their obligations under
13 this Final Judgment.

14 IX

15 A. For the purpose of determining or securing
16 compliance with this Final Judgment, duly authorized
17 representatives of the Department of Justice shall, upon the
18 written request of the Attorney General, or the Assistant
19 Attorney General in charge of the Antitrust Division, and upon
20 reasonable notice to each defendant made to its principal office,
21 be permitted, subject to any legally recognized privilege:

22 (a) Access, during office hours of each
23 defendant, to all books, ledgers, accounts,
24 correspondence, memoranda, and other records
25 and documents in the possession of or under
26 the control of said defendant relating to any
27 of the matters contained in this Final Judgment;
28 and

29 (b) Subject to the reasonable convenience
30 of each defendant to interview the officers and

1 employees of said defendant, who may have counsel
2 present, regarding any such matters.

3 B. Upon the written request of the Attorney General or
4 the Assistant Attorney General in charge of the Antitrust
5 Division, made to its principal office, each defendant shall
6 submit such written reports with respect to any of the matters
7 contained in this Final Judgment as from time to time may be
8 requested.

9 C. No information obtained by the means provided in
10 this Section IX shall be divulged by any representative of
11 the Department of Justice to any person other than a duly
12 authorized representative of the Executive Branch of the
13 plaintiff except in the course of legal proceedings to which
14 the United States is a party for the purpose of securing com-
15 pliance with this Final Judgment, or as otherwise required by
16 law.

17 X

18 Jurisdiction is retained for the purpose of enabling
19 any of the parties to this Final Judgment to apply to this
20 Court at any time for such further orders and directions as
21 may be necessary or appropriate for the construction or
22 carrying out of this Final Judgment, for the modification of any
23 of the provisions thereof, for the enforcement of compliance
24 therewith and for punishment of violations thereof.

25 DATED this 23rd day of March, 1973.

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28 /s/ WALTER T. McGOVERN
29 UNITED STATES DISTRICT JUDGE
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