

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 TOPCO ASSOCIATES, INC.,)
)
 Defendant.)

CIVIL ACTION NO. 68 C 76

FILED: January 15, 1968

C O M P L A I N T

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the above-named defendant and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted against the defendant under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 4), commonly known as the Sherman Act, in order to prevent and restrain continuing violation by defendant, as hereinafter alleged, of Section 1 of the Sherman Act (15 U.S.C. § 1).

2. The defendant maintains offices, transacts business, and is found within the Northern District of Illinois.

II.

THE DEFENDANT

3. Topco Associates, Inc., (hereinafter referred to as "Topco") is hereby made the defendant. Topco is a corporation organized and existing under the laws of Wisconsin, with its principal place of business in Skokie, Illinois. Topco operates as a buying organization for its shareholder-licensees (hereinafter referred to as "member firms"), supplying these member firms with a broad line of grocery and related non-food items bearing Topco-controlled brand names. Topco's member firms have been and are independent persons, firms and corporations engaged in the wholesale and retail sale and distribution of grocery and related non-food products.

III.

CO-CONSPIRATORS

4. Each of the member firms, not made defendants herein, has participated as a co-conspirator and is a party with Topco in the combination and conspiracy in violation of Section 1 of the Sherman Act as hereinafter alleged. Each of these co-conspirator member firms has executed a membership agreement with defendant Topco.

IV.

DEFINITIONS

5. "Topco-controlled brands" means grocery and related non-food products which are procured, produced and distributed by Topco to its member firms under Topco's tradenames and trademarks.

V.

NATURE OF TRADE AND COMMERCE

6. Topco has approximately 25 member firms located in various cities and States throughout the United States. These member firms are licensed by Topco to sell one or more of the Topco-controlled brands under Topco tradenames and trademarks.

7. During the period of time covered by this Complaint, Topco has sold and shipped in interstate commerce Topco-controlled brands from the States in which its warehouses and distribution centers are located to member firms located in thirty-four States.

8. In the year 1966, the combined retail sales of grocery and related non-food items of the Topco member firms exceeded \$2,500,000,000. During 1966 Topco sold and distributed to its member firms Topco-controlled brands valued at approximately \$100,000,000.

VI.

OFFENSE CHARGED

9. Beginning at least as early as 1960 and continuing up to and including the date of the filing of this Complaint, Topco and the co-conspirator member firms have engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. §1). The offense is continuing and will continue unless the relief prayed for herein is granted.

10. The combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the co-conspirator member firms acting through Topco, the substantial terms of which have been

and are that each co-conspirator member firm will sell Topco-controlled brands only within the marketing territory allocated to it, and will refrain from selling Topco-controlled brands outside such marketing territory.

11. In effectuating and carrying out the aforesaid combination and conspiracy, Topco and the co-conspirator member firms have done those things which, as herein alleged, they conspired and agreed to do.

VII

EFFECTS

12. The foregoing offense has had the following effects, among others:

(a) Competition among the co-conspirator member firms in the sale and distribution of Topco-controlled brands has been eliminated;

(b) Competition among the co-conspirator member firms in the sale and distribution of other grocery and related non-food products has been eliminated;

(c) Consumers have been denied the benefits of free and open competition between member firms in the sale of Topco-controlled products and in the sale of other grocery and related non-food products.

VIII

PRAYER

WHEREFORE, plaintiff prays:

1. That the aforesaid combination and conspiracy in unreasonable restraint of trade and commerce be adjudged and decreed to be unlawful

and in violation of Section 1 of the Sherman Act.

2. That the defendant, its successors, officers, directors, managers, agents and representatives, and all persons acting or claiming to act for or on behalf of defendant, be perpetually enjoined and restrained from continuing, reviving or renewing the aforesaid combination and conspiracy, and from entering into, maintaining or participating in any contract, agreement, understanding, plan, program or other arrangement having the purpose or effect of continuing, reviving, maintaining or renewing this combination and conspiracy.

3. That the defendant, its members, officers, directors, managers, agents, employees and representatives and their respective successors, assignees and transferees be perpetually enjoined from entering into, adhering to or maintaining any contract, agreement, arrangement, understanding, plan or program to limit or restrict the territories within which or the customers to whom any member firm may sell Topco-controlled brands.

4. That Topco be directed to furnish to each of its members and to each person, firm or corporation which hereafter becomes a member a copy of any final judgment which may be entered in this case.

5. That the plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper.

6. That the plaintiff recover the costs of this action.

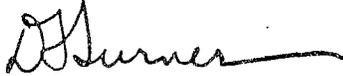
Dated: January 15, 1968



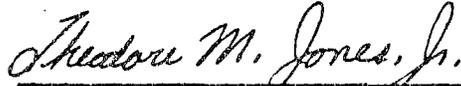
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