

DOCKETED

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable ROBERT L. WILL

Cause No. 68076

Date Sept. 26, 1972

Title of Cause

U.S.A. vs. Tapes Associates, Inc.

Brief Statement
of Motion

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and
Addresses of
moving counsel

Representing

Names and
Addresses of
other counsel
entitled to
notice and names
of parties they
represent.

Reserve space below for notations by minute clerk

Final judgment entered in compliance
with mandate of the U.S. Supreme Court.
(Draft)

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
-vs-) CIVIL ACTION
)
TOPCO ASSOCIATES, INC.,) NO. 68 C 76
)
Defendant.)

FINAL JUDGMENT

Plaintiff filed its Complaint in this action on January 15, 1968. On November 16, 1970, after a trial on the merits, this Court entered Findings of Fact, Conclusions of Law and a Final Judgment dismissing the Complaint. On appeal by plaintiff, the Supreme Court of the United States reversed the Judgment of this Court and remanded this case for the entry of a decree in conformity with its Opinion.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, in compliance with the mandate of the Supreme Court:

I

The defendant and its member firms have engaged in a combination and conspiracy in unreasonable restraint of

interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. §1) by restricting the territories within which or the customers to whom the member firms may sell Topco brand products.

II

The provisions of this Final Judgment shall apply to the defendant and to its officers, directors, agents, employees, successors and assigns, and to all other persons in active concert or participation with any of them who receive notice of this Final Judgment by personal service or otherwise.

III

Defendant is ordered and directed, within 210 days from the entry of this Final Judgment, to amend its bylaws, Membership and Licensing Agreements, resolutions, rules and regulations to eliminate therefrom any provision which in any way limits or restricts the territories within which or the persons to whom any member firm may sell Topco brand products.

IV

Defendant is enjoined and restrained from adopting any bylaw, resolution, rule or regulation and from maintaining,

adhering to, entering into or enforcing any contract, agreement, arrangement, understanding, plan or program in which Topco limits or restricts the territories within which or the persons to whom any member firm may sell products procured from or through Topco.

V

Notwithstanding the foregoing provisions, nothing in this Final Judgment shall prevent defendant from creating or eliminating areas or territories of prime responsibility of member firms; from designating the location of the place or places of business for which a trademark license is issued; from determining warehouse locations to which it will ship products; from terminating the membership of any organization which does not adequately promote the sale of Topco brand products; from formulating and implementing passovers or other procedures for reasonable compensation for good will developed for defendant's trademarks in geographic areas in which another member firm begins to sell trademarked products; or from engaging in any activity rendered lawful by subsequent legislation enacted by the Congress of the United States.

VI

Defendant is ordered and directed, within 60 days from the entry of this Final Judgment, to send a copy of this

Final Judgment to each member firm and, for a period of 10 years following the date of this decree, to send a copy of this Final Judgment to each new member and to each person making application for membership.

VII

Defendant is ordered to file with the plaintiff, on the anniversary date of the entry of this Final Judgment for a period of ten years, a report setting forth the steps it has taken during the prior year to advise its appropriate officers, directors and employees of its and their obligations under this Final Judgment.

VIII

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division upon reasonable notice to defendant made to its principal office be permitted, subject to any legally recognized privilege:

- (A) access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or control of defendant relating to any of the matters contained in this Final Judgment; and
- (B) subject to the reasonable convenience of defendant and without restraint or interference from it, to interview the officers and employees of defendant who may have counsel present, regarding any such matters.

For the purpose of securing compliance with this Final Judgment, 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 relating to any of the matters contained in this Final Judgment as may from time to time be reasonably requested. No information obtained by the means provided in this Section

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 to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX

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

Dated:

Sept. 26, 1972Robert H. Keene
United States District Judge