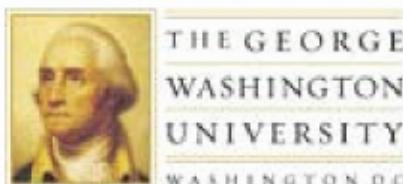


# The Burger Court Opinion Writing Database

*FTC v. Sperry & Hutchinson Co.*  
405 U.S. 233 (1972)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

February 28, 1972

CHAMBERS OF  
THE CHIEF JUSTICE

No. 70 - 70 -- FTC v. Sperry & Hutchinson

Dear Byron:

Please join me.

Regards,



Mr. Justice White

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

February 19, 1972

Dear Byron:

In No. 70-70 - FTC v. Sperry  
& Hutchinson Co., please join me in your  
opinion.

*W. O. D.*

Mr. Justice White  
cc: The Conference

*2/8*  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 8, 1972

RE: No. 70-70 - F.T.C. v. Sperry and  
Hutchinson Co.

Dear Byron:

Please join me.

Sincerely,

*Wm. J. Brennan, Jr.*

Mr. Justice White

cc: The Conference

3  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

February 16, 1972

No. 70-70 -  
FTC v. Sperry and Hutchinson

Dear Byron,

I am glad to join your opinion for the  
Court in this case.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

3  
/

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

From: White, J.

~~SUPREME COURT OF THE UNITED STATES~~

Circulated: 2-7-72

Recirculated: \_\_\_\_\_

No. 70-70

Federal Trade Commission,  
Petitioner,  
v.  
The Sperry and Hutchinson  
Company. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Fifth  
Circuit.

[February —, 1972]

MR. JUSTICE WHITE delivered the opinion of the Court.

In June of 1968 the Federal Trade Commission held the largest and oldest company in the trading stamp industry.<sup>1</sup> Sperry and Hutchinson (S&H), guilty on three counts of violating § 5 of the Federal Trade Commission Act, 15 U. S. C. § 45 (a)(1). The Commission found that S&H improperly regulated the maximum rate at which trading stamps were dispensed by its retail licensees; that it combined with others to regulate the rate of stamp dispensation throughout the industry; and that it attempted (almost invariably successfully) to suppress the operation of trading stamp exchanges and other "free and open" redemption of stamps. The Commission entered cease and desist orders accordingly.

S&H appealed only the third of these orders. Before the Fifth Circuit Court of Appeals it conceded that it

<sup>1</sup> On the nature of the industry, see generally Comment, Trading Stamps, 37 N. Y. U. L. Rev. 1090 (1962). The Trade Commission proceedings in the instant case are discussed in Comment. The Attack on Trading Stamps—An Expanded Use of Section 5 of the Federal Trade Commission Act, 57 Georgetown Law Journal 1082 (1969).

✓ Stylistic changes and  
for 2 repositioned as for 6.  
See pp. 2, 14, 15, 17

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press. FTR

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
~~Mr.~~ Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: White, J.

**SUPREME COURT OF THE UNITED STATES**

No. 70-70

Recirculated: 2-28-75

Recirculated: 2-28-75

Federal Trade Commission,  
Petitioner,  
v.  
The Sperry and Hutchinson  
Company. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Fifth  
Circuit.

[March 1, 1972]

MR. JUSTICE WHITE delivered the opinion of the Court.

In June of 1968 the Federal Trade Commission held that the largest and oldest company in the trading stamp industry,<sup>1</sup> Sperry and Hutchinson (S&H), was violating § 5 of the Federal Trade Commission Act, 15 U. S. C. § 45 (a)(1), in three respects. The Commission found that S&H improperly regulated the maximum rate at which trading stamps were dispensed by its retail licensees; that it combined with others to regulate the rate of stamp dispensation throughout the industry; and that it attempted (almost invariably successfully) to suppress the operation of trading stamp exchanges and other "free and open" redemption of stamps. The Commission entered cease and desist orders accordingly.

S&H appealed only the third of these orders. Before the Fifth Circuit Court of Appeals it conceded that it

<sup>1</sup> On the nature of the industry, see generally Comment, *Trading Stamps*, 37 N. Y. U. L. Rev. 1090 (1962). The Trade Commission proceedings in the instant case are discussed in Comment, *The Attack on Trading Stamps—An Expanded Use of Section 5 of the Federal Trade Commission Act*, 57 Georgetown Law Journal 1082 (1969).

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 8, 1972

Re: No. 70-70 - FTC v. Sperry and Hutchinson

Dear Byron:

Please join me.

Sincerely,

  
T.M.

Mr. Justice White

cc: The Conference

*M*  
*AB*  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 10, 1972

Re: No. 70-70 - FTC v. Sperry & Hutchinson Co.

Dear Byron:

Please join me.

Sincerely,

*H.A.B.*

Mr. Justice White

cc: The Conference