

UNITED STATES DISTRICT COURT

DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, ) CIVIL ACTION NO. 73-0-144  
 )  
 v. ) Filed: Feb. 22, 1973  
 )  
 ED. PHILLIPS & SONS CO., ) Equitable Relief Sought  
 )  
 Defendant. )

COMPLAINT

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 defendant named herein and complains and alleges as follows:

I

JURISDICTION AND VENUE

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

2. The defendant is found, transacts business, and maintains its principal place of business within the District of Nebraska.

II

DEFENDANT

3. Ed. Phillips & Sons Co. (hereinafter referred to as "Phillips of Omaha") is made a defendant herein.

Phillips of Omaha is a Nebraska corporation, with its principal place of business at 10100 J Street, Omaha, Nebraska. Said defendant is a wholly owned subsidiary of Ed. Phillips & Sons Co., a Minnesota corporation, which is an importer, rectifier and wholesale distributor of distilled spirits and wines with principal offices located in Minneapolis, Minnesota. Alco Standard Corporation, a diversified publicly held corporation, headquartered in Valley Forge, Pennsylvania, acquired all of the issued and outstanding capital stock of Ed. Phillips & Sons Co., the parent corporation of the defendant, on September 30, 1971 in exchange for its common stock.

### III

#### CO-CONSPIRATORS

4. Various retailers of distilled spirits and wines in the State of Nebraska, not made defendants herein, have participated as co-conspirators with the defendant in the offense alleged herein.

### IV

#### TRADE AND COMMERCE

5. Phillips of Omaha sells distilled spirits and wines to approximately 2,400 retail accounts located throughout Nebraska. Its business is carried on under a license issued by the Nebraska Liquor Control Commission. It is managed and operated independently from other subsidiaries of its parent corporation by a resident vice president and general manager. It is

the leading distributor of distilled spirits in Nebraska having sold 262,889 net cases accounting for about 30 percent of all distilled spirits sold at wholesale by Nebraska distributors in 1971.

6. Phillips of Omaha is the exclusive distributor in Nebraska for distilled spirits imported and rectified by its parent as well as products of Bacardi Imports, Inc., California Wine Growers Association, National Distillers and Chemical Corp., Hiram Walker, Inc., The Paddington Corp. and United Vintners, Inc. The brands distributed by it are among the most popular and best selling and include Bacardi Rum, Old Crow, Gilbey's Gin, Windsor Supreme, Old Grandad, Old Taylor, Gilbey's Vodka, Sunny Brook, Canadian Club, Imperial, Ten High, Hiram Walker Gin, Hiram Walker Cordials and J & B Scotch.

7. There are no distilleries or wineries in Nebraska. All distilled spirits and wines sold at wholesale in Nebraska are shipped and sold in substantial quantities in interstate and foreign commerce and in continuous flow into Nebraska from States other than Nebraska and foreign countries.

#### V

#### Violation Alleged

8. Beginning prior to January 1, 1968, the exact date being unknown to plaintiff, and continuing to the date of the filing of this complaint, Phillips of Omaha and the co-conspirators have been engaged in a combination and conspiracy, and have been parties to unlawful agreements and understandings in unreasonable restraint of

the aforesaid trade and commerce in distilled spirits and wines in violation of Section 1 of the Sherman Act.

9. The aforesaid combination and conspiracy has consisted of agreements and concert of action between Phillips of Omaha and the co-conspirators, the substantial terms of which have been and are that:

- (a) Nebraska retailer customers of Phillips of Omaha will not advertise brands distributed by Phillips of Omaha at prices less than suggested retail prices; and
- (b) Phillips of Omaha will refuse to fill orders from Nebraska liquor retailers until they agree to discontinue advertising brands distributed by Phillips of Omaha at prices less than suggested retail prices.

10. Pursuant to and in effectuation of the aforesaid combination and conspiracy, the defendant Phillips of Omaha and the co-conspirators have done those things which they have conspired and agreed to do.

## VI

### EFFECTS

11. The aforesaid violation has had the following effects, among others:

- (a) Competition between Nebraska liquor retailers in the sale of brands distributed by Phillips of Omaha has been suppressed; and
- (b) The aforesaid trade and commerce in distilled spirits and wines has been unreasonably restrained.

PRAYER

WHEREFORE, the plaintiff prays:

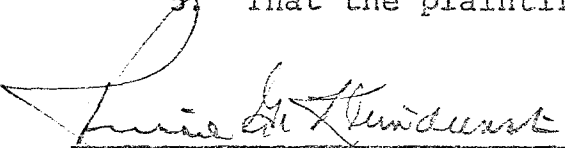
1. That the Court adjudge and decree that the defendant has combined and conspired to unreasonably restrain the aforesaid interstate trade and commerce in distilled spirits and wines in violation of Section 1 of the Sherman Act.

2. That the defendant, its successors, assignees, and transferees, and its officers, employees, and all persons acting or claiming to act on its behalf, be perpetually enjoined from directly or indirectly entering into, continuing, maintaining, enforcing, or renewing the aforesaid combination and conspiracy and from engaging in any practices or agreements having a like or similar purpose or effect.


3. That the defendant be required to notify and advise all Nebraska liquor retailers that they may advertise and sell brands distributed by defendant at prices of their own determination so long as not in violation of the laws of the United States or the State of Nebraska.

4. That the plaintiff have such other and further relief as the Court may deem just and proper.

5. That the plaintiff recover its costs of this action.

  
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RICHARD G. KLEINDIENST  
Attorney General

  
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THOMAS E. KAUPER  
Assistant Attorney General

  
\_\_\_\_\_  
BADDIA J. RASHID

\_\_\_\_\_  
JOHN E. SARBAUGH

Attorneys, Department of Justice

\_\_\_\_\_  
WILLIAM K. SCHAPHORST  
United States Attorney

\_\_\_\_\_  
JOHN L. BURLEY

Attorney, Department of Justice

Room 2634  
Everett M. Dirksen Bldg.  
Chicago, Illinois 60604  
(312) 353-6975