

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

KANSAS CITY MUSIC OPERATORS
ASSOCIATION; B & G AMUSEMENT
COMPANY; B & G CIGARETTE
VENDING COMPANY; PARAMOUNT
MUSIC COMPANY, INC.; CHARLES
W. BENGIMINA and NICHOLAS
EVOLA,

Defendants.

CIVIL ACTION

NO. 18238-4

Filed: August 17, 1971

Entered: September 18, 1971

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on March 30, 1970, and the plaintiff and the defendants, by their respective attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or an admission by any party signatory hereto with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties as aforesaid, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties hereto, and the complaint

states claims upon which relief may be granted against the defendants and each of them under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

As used in this Final Judgment:

(A) "Person" means any individual, corporation, partnership, association, firm or other business or legal entity;

(B) "Vending machine" means a machine or mechanical device which, when coins are inserted therein, dispenses cigarettes, plays phonograph records, or activates a table or other facility for playing amusement games such as pool, bowling, or shuffle-board;

(C) "Vending machine product" means cigarettes sold through cigarette vending machines and records played in juke boxes;

(D) "Customer" means a person who operates a business or other establishment where vending machines are placed and includes, but is not limited to, restaurants, retail stores, offices, hotels, motels, banks, factories, taverns, service stations and bowling alleys;

(E) "Vending machine business" means the business of placing and seeking to place vending machines and vending machine products at customers' locations, the servicing and repairing of such vending machines, and the selling of cigarettes and furnishing of record music and game facilities through said machines;

(F) "Vending machine operator" means a person engaged in the vending machine business;

(G) "B & G Companies" means defendants B & G Cigarette Vending Company and B & G Amusement Company;

(H) "Paramount" means defendant Paramount Music Company, Inc.;

(I) "Association" means defendant Kansas City Music Operators Association.

III

The provisions of this Final Judgment applicable to any defendant shall apply to each such defendant, to its successors and assigns, to each of their respective officers, directors, agents, servants and employees, and to all persons in active concert or participation with any such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Each defendant is enjoined and restrained from entering into, adhering to, enforcing or claiming any rights under, any contract, agreement, understanding, plan or program

(A) With any vending machine operator or any manufacturer or seller of vending machines or vending machine products, not owned or controlled by such defendant, to directly or indirectly:

- (1) Fix, determine, maintain, stabilize, or adhere to prices, commissions or other terms or conditions of sale of any vending machine products to any third person;

(2) Fix, determine, maintain, stabilize, or adhere to commissions or other terms or payments to customers for the right to place or maintain vending machines and vending machine products at customer locations; and

(3) Refrain from purchasing vending machines with the purpose or effect of restricting the placement of new or improved vending machines at any location.

(B) With any vending machine operator or any manufacturer or seller of vending machine products, not owned or controlled by such defendant, to, directly or indirectly, fix, determine, maintain, stabilize, or adhere to prices or other terms or conditions for the purchase or repair of any vending machines.

(C) With any person, not owned or controlled by such defendant, to directly or indirectly, divide, allocate, or apportion markets, territories or customers, or refrain from soliciting or accepting vending machines business from customers doing business with other vending machine operators.

V

Each defendant is enjoined and restrained from, directly or indirectly:

(A) Using threats, coercion or persuasion to prevent or attempt to prevent any vending machine operator from soliciting any customer of another vending machine operator or from expanding its vending machine business;

(B) Using threats or coercion to prevent or attempt to prevent any customer from discontinuing the use of any vending machine or vending machine product of any vending machine operator;

(C) Threatening to put any vending machine operator or customer out of business;

(D) Causing, or threatening to cause, physical harm or property damage to any actual or potential vending machine operator or customer, to any of their owners, officers, directors, agents, servants, or employees, or to any family members of such owners, officers, directors, agents, servants, or employees;

(E) Discussing or exchanging with any vending machine operator the prices to be charged for vending machine products dispensed through vending machines, the commissions to be paid to customers, or the types of vending machines to be purchased or to be placed at a customer's location;

(F) Joining, participating in, or belonging to any trade association, organization, or other group of vending machine operators with knowledge that any of the activities thereof are inconsistent with any terms of this Final Judgment;

(G) Causing any person, not owned or controlled by such defendant, to boycott or refuse to sell vending machines or vending machine products, or repair services to any vending machine operator or customer.

VI

Each defendant is enjoined and restrained from performing the following acts for the purpose or with the effect of eliminating or destroying a competitor or competitors: (i) placing or offering to place vending machines in a location or potential location on terms or conditions which involve below cost prices or commissions, (ii) giving or offering to give lump sum cash payments to the customer, or (iii) giving or offering to give free services, gratuities, or other similar inducements to obtain the right or renewal of a right, to place vending machines at any customer's location.

VII

Within sixty days of the entry of this Final Judgment, defendant Association shall distribute a copy of this Final Judgment to each of its members and former members as shown on the attached list designated as Schedule A, shall file with this Court and serve upon plaintiff an affidavit as to the fact and manner of compliance with this Section VII, and then shall dissolve forthwith. The remaining assets, if any, shall be applied to the outstanding fine levied against the defendant Association as part of the Final Judgment in United States v. Charles W. Bengimina et al., Criminal No. 23078-1 (W.D. Mo.).

VIII

Within sixty days of the entry of this Final Judgment, defendants Paramount and B & G Companies shall each distribute a copy of this Final Judgment to each of its customers and shall file with this Court and serve upon plaintiff an affidavit as to the fact and manner of compliance with this Section VIII.

IX

For the purpose of securing compliance with this Final Judgment, 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, and on reasonable notice to any defendant made to its principal office, be permitted, subject to any legally recognized privilege (a) reasonable access during the office hours of such defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment, and (b) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, partners or employees of such defendant, who may have counsel present, regarding any such matters. A defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice made to its principal office, shall submit reports in writing with respect to any of the matters contained in this Final Judgment as may from time to time be

requested. No information obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person except a duly authorized representative of the Executive Branch of the United States and 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.

X

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 or directions as may be necessary or appropriate for the construction or the carrying out of this Final Judgment, for the modification or termination of any of the provisions hereof for the purpose of enabling the plaintiff to apply to this Court for the enforcement of compliance herewith and for the punishment of violations hereof.

Dated: September 18, 1971

/s/ JOHN W. OLIVER

United States District Judge

SCHEDULE A

The following is a list of names and addresses of persons and firms who are members or former members of the defendant, Kansas City Music Operators Association:

<u>Company</u>	<u>Individual</u>	<u>Address</u>
Intercity Music	Jim Morris	11 North 7th Street Kansas City, Kansas
Kansas City Music Co.	Tom Turner	10905 Hickman Mills Dr. Kansas City, Missouri
Howe Amusement Company	Elmer "Red" Howe	4135 Truman Kansas City, Missouri
Missouri-Valley Amusement Company	John Masters	213 S. E. Main Kansas City, Missouri
Boulevard Music Service Company	Louis Renner Charles Eagan	2429 South Mill Kansas City, Kansas
Gilbert Amusement Company	Robert Gilbert, Jr.	3427 Main Kansas City, Missouri
United Music Company	Carl Hoelzel	3410 Main Kansas City, Missouri
American Music Company	Charles Carrola	401 North Fifth Kansas City, Missouri
Filger Enterprises	Frederick F. Filger, Jr.	2400 W. Vivion Road Kansas City, Missouri
Advance Music	Dave Cooper	1604 Grand Kansas City, Missouri
Lee Food and Vending Service	Lee Licausi	3001 Mercier Kansas City, Missouri
Donaldson Amusement Co.	Harry T. Donaldson	6140 Walnut Kansas City, Missouri
Double S. Vending Company	Sam Stallone	2603 East 18th Street Kansas City, Missouri
Waldo Vending Co.	Joseph Fasone	1300 East Eighth Street Kansas City, Missouri