

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

Equitable Relief Sought

Filed: March 30, 1970

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 defendants named herein, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is 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 violations by the defendants, as hereinafter alleged, of Section 1 of said Act.

2. Each of the defendants transacts business and is found within the Western District of Missouri.

II

THE DEFENDANTS

3. Kansas City Music Operators Association (hereinafter referred to as "the Association"), an unincorporated trade association with its principal office in Kansas City, Kansas, is hereby made a defendant herein. Its membership consists of vending machine operators in the Kansas City area.

4. B & G Amusement Company and B & G Cigarette Vending Company, partnerships existing under the laws of the State of Missouri, with their principal places of business in Kansas City, Missouri, are hereby made defendants herein. These defendants are engaged in the vending machine business in the Kansas City area.

5. Paramount Music Company, Inc., a corporation organized and existing under the laws of the State of Missouri with its principal place of business in Kansas City, Missouri, is hereby made a defendant herein. It is engaged in the vending machine business in the Kansas City area.

6. Charles W. Bengimina is hereby made a defendant herein. Within the period covered by this complaint he has been a partner in B & G Amusement Company and B & G Cigarette Vending Company which are engaged in the vending machine business in the Kansas City area.

7. Nicholas Evola is hereby made a defendant herein. Within the time covered by this complaint he has been president of Paramount Music Company, Inc., a firm engaged in the vending machine business in the Kansas City area.

3

III

CO-CONSPIRATORS

8. Various firms, corporations and individuals, not named as defendants in this complaint, including but not limited to all vending machine operators who were members of the Association, participated as co-conspirators in the offense charged herein and have performed acts and made statements in furtherance thereof.

IV

DEFINITIONS

9. As used herein:

- (a) "Kansas City area" means Kansas City, Missouri and the remaining portion of Jackson County; the counties of Clay, Platte and Cass in the State of Missouri; and the counties of Wyandotte, Johnson and Leavenworth in the State of Kansas;
- (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 shuffleboard;
- (c) "Vending machine product" means cigarettes sold through cigarette vending machines and records played in juke boxes;
- (d) "Location" means a business or other establishment where vending machines are placed and

includes, but is not limited to, establishments such as 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 in 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 or company engaged in the vending machine business.

V

NATURE OF TRADE AND COMMERCE

10. For several years past, the defendants (except the defendant Association) and most of the co-conspirator vending machine operators have had their principal places of business in Missouri. They have during this period of time placed their vending machines in locations in both the Missouri and Kansas sectors of the Kansas City area and in connection therewith have regularly transported in interstate commerce substantial (a) numbers of vending machines, (b) quantities of vending machine products, and (c) amounts of monies collected from said vending machines. There is thus a regular, continuous and substantial flow of vending machines, vending machine products and monies obtained from said machines in interstate commerce between the States of Missouri and Kansas.

11. For the past several years, one of the co-conspirator vending machine operators has transported in interstate commerce substantial (a) numbers of vending machines, and (b) quantities of vending machine products from its principal place of business in the Kansas sector of the Kansas City area to locations in the Missouri sector of said area. Almost daily, monies collected by employees of said co-conspirator from its 300 or more vending machines in its Missouri locations have been transported in interstate commerce to said co-conspirator's place of business in the State of Kansas.

12. In 1968 and 1969 the defendant and the co-conspirator vending machine operators had over 2,000 vending machines in locations in the Kansas City area. Approximately 1,000 of said vending machines were placed in locations in the Kansas City area by the defendants (except the defendant Association). Most of these vending machines are in locations in Kansas City, Missouri, which is the largest city in the Kansas City area in population and where most of the business and commercial activities of the area are carried on.

VI

OFFENSE CHARGED

13. Beginning some time prior to 1960, the exact date being to the plaintiff unknown, and continuing thereafter up to and including the date of the filing of this complaint, the defendants and their co-conspirators have engaged in a combination and conspiracy in unreasonable restraint of the above described interstate trade and commerce in the vending machine business in the Kansas City area in violation of Section 1 of the Act of Congress of July 2, 1890 (15 U.S.C. § 1), as amended, commonly known as the Sherman Act.

14. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators, the substantial terms of which have been to suppress, restrict, eliminate, and exclude competition in the solicitation and acceptance of vending machine business, and to increase and fix the prices of vending machine products.

15. In furtherance of the aforesaid combination and conspiracy the defendants and co-conspirators have done various things and have performed various acts including, among others, the following:

- (a) used threats, coercion and persuasion to prevent and attempt to prevent vending machine operators from soliciting locations of other vending machine operators or expanding their vending machine businesses;
- (b) refrained from soliciting, or accepting vending machine business from, each other's locations, except during the thirty (30) day period following a change of location ownership;
- (c) used threats, coercion and persuasion to prevent or attempt to prevent location owners or managers from discontinuing the use of the vending machines and vending machine products of the defendants and co-conspirators;
- (d) increased and fixed the prices at which cigarettes were sold in vending machines, and increased and fixed the prices at which records were played in juke boxes.

VII

EFFECTS

16. The aforesaid offense has had the following effects, among others:

- (a) competition among the defendants and other vending machine operator co-conspirators in the vending machine business has been suppressed and restrained;
- (b) locations served by the defendants and other vending machine operator co-conspirators have been deprived of free and open competition in the vending machine business;
- (c) the public has been required to pay higher prices for vending machine products;
- (d) the public has been deprived of the opportunity of purchasing vending machine products in a free and competitive market;
- (e) vending machine operators have been prevented from soliciting locations.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the Court adjudge and decree that defendants, and each of them, have combined and conspired to unlawfully restrain interstate trade and commerce in the vending machine business in the Kansas City area in violation of Section 1 of the Sherman Act.

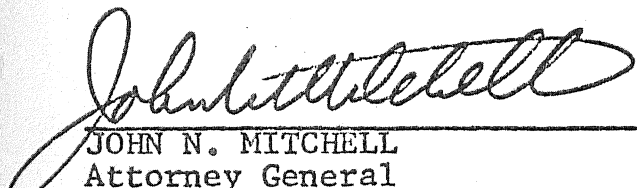
2. That each of the defendants, their successors, assignees, transferees, officers, directors, members, agents, and employees and all persons acting or claiming to act on their behalf be perpetually enjoined and restrained from, directly or indirectly, continuing, maintaining, or renewing the aforesaid combination and conspiracy to restrain interstate trade and commerce as hereinbefore alleged, or from engaging in any other combination or conspiracy having a similar purpose or effect, or from adopting or following any practice, plan, program, or device having a similar purpose or effect.

3. That the defendant Association be dissolved within 60 days of the entry of such decree and that the defendants be prohibited from organizing, joining, or continuing membership in any association having any similar objective or purpose.

5. That the defendant vending machine operators be required to distribute to each of their customers a copy of any final judgment or decree within 60 days of the date of entry of such judgment or decree.

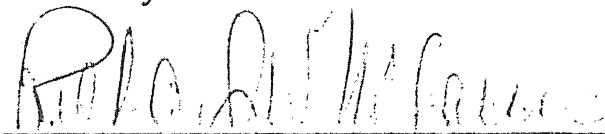
6. That the plaintiff shall have such other and further relief as the Court may deem just and proper.

7. That the plaintiff recover the costs of
this suit.



JOHN N. MITCHELL
Attorney General

THOMAS S. HOWARD



RICHARD W. McLAREN
Assistant Attorney General

ROBERT L. EISEN



BADDIA J. RASHID

JAMES E. MANN

JOHN E. SARBAUGH

Attorneys, Department of Justice

Attorneys, Department of Justice
Room 2634 United States Courthouse
Chicago, Illinois 60604
353-7519

BERT C. HURN
United States Attorney