UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA	)	Filed:
v.	)	Criminal No.
RACK SHOP (DE), INC., and ISLAND PERIODICALS, L.L.C.,	)	15 U.S.C. §§ 1, 3
Defendants.	)	

PLEA AGREEMENT

Defendant RACK SHOP (DE), INC. ("RACK SHOP"), the successor of a company that formerly owned business operations engaged in the wholesale distribution and sale of magazines in the United States, including in the Dallas, Fort Worth, Waxahachie and surrounding areas of the State of Texas, and Defendant ISLAND PERIODICALS, L.L.C. ("ISLAND PERIODICALS"), an affiliated company of RACK SHOP engaged in the wholesale distribution of magazines in Puerto Rico, the U.S. Virgin Islands, and elsewhere, hereinafter jointly referred to as Defendants, through their authorized representative, and the United States of America agree as follows:

RIGHTS OF DEFENDANTS

1. Defendants understand their rights:

   (a) to be represented by an attorney;

   (b) to plead not guilty;

   (c) to have a trial by jury; and

   (d) to confront and cross-examine witnesses and to call witnesses in their defense.

WAIVER OF RIGHTS AND OFFENSE CHARGED

2. Defendants waive the rights set out in 1(b)-1(d) above. Defendants will waive indictment and will each plead guilty to a one-count criminal Information, copies of which will be attached to this Plea Agreement at the time of filing. One Information will charge Defendant RACK SHOP with participating in a continuing conspiracy to allocate territories and customers in the distribution and sale of magazines and periodicals in the Dallas, Fort Worth, Waxahachie, and surrounding areas of the State of Texas from at least as early as the fall of 1990 through at least late 1995, in violation of Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1). The other Information will charge Defendant ISLAND PERIODICALS with participating in a continuing conspiracy to allocate territories and customers in the distribution and sale of magazines and periodicals in Puerto Rico, the U.S. Virgin Islands, and elsewhere from at least as early as 1986 into 1999, in violation of Sections 1 and 3 of the Sherman Antitrust Act (15 U.S.C. §§ 1, 3). Defendant ISLAND PERIODICALS waives venue with respect to the Information related to its collusion in Puerto Rico, the U.S. Virgin Islands, and elsewhere, and Defendant ISLAND PERIODICALS agrees that the Information related to this illegal conduct may be filed in the Northern District of Texas, along with the Information related to Defendant RACK SHOP'S collusion in Dallas, Fort Worth and Waxahachie. Defendants agree that this Court has the authority to impose sentence in connection with both Informations. Defendants, through their authorized representative, will make a factual admission of guilt to the Court in accordance with Rule 11 of the Federal Rules of Criminal Procedure. (*See* Attachments I and II, *Elements Of Offense And Factual Resume*) The United States will file the Plea Agreement, Informations, and supporting materials within 90 days after the Plea Agreement has been agreed to and executed by all parties.

3. Defendants waive their rights to assert at trial or on appeal any defects or errors arising from the Informations, the Information process, venue, or the fact that they have been prosecuted by way of Information; provided, however,

that Defendants reserve the right to correct and comment upon any misstatements of fact made by the United States in the course of the presentence investigation, the sentencing or other proceedings.

POSSIBLE MAXIMUM SENTENCE

4. Defendants agree and understand that the Court may impose the following statutory maximum sentence for each violation of the Sherman Antitrust Act (15 U.S.C. §§ 1, 3; and 18 U.S.C. § 3571(c) and (d)):

(a) a fine in an amount equal to the greatest of:

(1) $10 million;

(2) twice the gross pecuniary gain derived from the crime; or

(3) twice the gross pecuniary loss caused to the victims of the crime; and

(b) mandatory special assessments, as described below in Paragraph 10.

The Court may also order Defendants to pay restitution.

5. Defendants agree and understand that sentencing for the crimes to be charged will be under the United States Sentencing Guidelines Manual (Nov. 1998) ("U.S.S.G."). The sentence as to each of these cases will be imposed by the Court.

SENTENCING AGREEMENT

6. Pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure, the United States and Defendants agree that the appropriate disposition for the crimes to be charged are fines totaling $1 million, comprised of: (1) a fine of $750,000 to be paid by Defendant RACK SHOP for the charge related to the Dallas-Fort Worth-Waxahachie conspiracy; and (2) a fine of $250,000 to be paid by Defendant ISLAND PERIODICALS for the charge related to the conspiracy in Puerto Rico, the U.S. Virgin Islands, and elsewhere. The agreed-upon fine related to each Information is within the range of the Court's discretion. The parties agree that as to each Information, calculation of the gain or the loss would unduly

complicate or prolong the sentencing process. 18 U.S.C. § 3571(c) and (d); U.S.S.G. § 8C2.4(c). Therefore, the parties agree that such calculations are not appropriate for the crimes to be charged. The parties also agree that calculation of loss for purposes of possible restitution would unduly complicate or prolong the sentencing process and thereby outweigh the need for the Court to order restitution to be provided to any victims. Therefore, the parties agree that restitution is not an appropriate part of the sentencing process for the crimes to be charged. 18 U.S.C. § 3663 (a)(1)(B)(ii); U.S.S.G. § 8B1.1(b)(2). Defendants agree that the total fine of $1 million is to be paid to the United States and agree not to propose or advocate that any payment be made, or service rendered, to any person, organization, institution or agency in lieu of the fine or any part of the fine. Defendants agree that they will not, absent a written agreement with the United States, file any motion to reduce, modify or alter the fine imposed upon them by the Court so long as the total fine for both Informations does not exceed $1 million, and that in no event will Defendants seek to reduce the total fine for both Informations to less than $1 million.

7. In connection with the determination of the appropriate fine set out in the sentencing agreement in Paragraph 6, above, Defendant RACK SHOP understands, and does not object to, the United States' analysis and calculations under the Sentencing Guidelines for the charge related to collusion in the Dallas-Fort Worth-Waxahachie conspiracy:

(a) The applicable guideline is U.S.S.G. § 2R1.1, and the base offense level is 10, pursuant to U.S.S.G. § 2R1.1(a).

(b) The offense level is increased by six (6) levels because the volume of commerce attributable to the Defendant is more than $37,500,000, but not more than $100,000,000, pursuant to U.S.S.G. § 2R1.1(b)(2)(F). The affected volume of commerce that the United States currently is prepared to prove is approximately $85 million.

(c) The base fine is 20 percent of the volume of commerce,

pursuant to U.S.S.G. § 2R1.1(d)(1) and §§ 8C2.4(a) and (b), or approximately $17,000,000.

(d) The culpability score is six (6), pursuant to U.S.S.G. § 8C2.5 (§§ 8C2.5(a), (b)(3)(A)(i), and (g)(2)). Accordingly, pursuant to U.S.S.G. § 8C2.6, the minimum multiplier to be applied to the base fine is 1.20 and the maximum multiplier is 2.40. Thus, under the Sentencing Guidelines, the fine range is $20,400,000 to $40,800,000.

8. In connection with the determination of the appropriate fine set out in the sentencing agreement in Paragraph 6, above, Defendant ISLAND PERIODICALS understands, and does not object to, the United States' analysis and calculations under the Sentencing Guidelines for the charge related to the conspiracy in Puerto Rico, the U.S. Virgin Islands, and elsewhere:

(a) The applicable guideline is U.S.S.G. § 2R1.1, and the base offense level is 10, pursuant to U.S.S.G. § 2R1.1(a).

(b) The offense level is increased by four (4) levels because the volume of commerce attributable to the Defendant is more than $6,250,000, but not more than $15,000,000, pursuant to U.S.S.G. § 2R1.1(b)(2)(D). The affected volume of commerce that the United States currently is prepared to prove is approximately $13,000,000.

(c) The base fine is 20 percent of the volume of commerce, pursuant to U.S.S.G. § 2R1.1(d)(1) and §§ 8C2.4(a) and (b), or approximately $2,600,000.

(d) The culpability score is six (6), pursuant to U.S.S.G. §8C2.5 (§§ 8C2.5(a), (b)(3)(A)(i), and (g)(2)). Accordingly, pursuant to U.S.S.G. § 8C2.6, the minimum multiplier to be applied to the base fine is 1.20 and the maximum multiplier is 2.40. Thus, under the Sentencing Guidelines, the fine range is $3,120,000 to $6,240,000.

9. In consideration of the past and continuing cooperation and assistance of Defendants and Brian L. Weiner in the investigation and prosecution of other corporations and individuals in the magazine distribution industry, the United

States agrees to file a Motion before sentencing pursuant to U.S.S.G. § 8C4.1 requesting that the Court depart from the sentences calculated pursuant to the Sentencing Guidelines and impose the agreed-upon sentence set out in Paragraph 6, above. Further, the United States agrees to specify in its § 8C4.1 Motion the full nature, extent, significance, usefulness and timeliness of the cooperation and assistance provided by Defendants and Brian L. Weiner. In the event the Court denies the Motion to depart, this entire Plea Agreement shall be rendered null and void and Defendants will be free to withdraw their guilty pleas. Defendants understand and agree that acceptance of the United States' § 8C4.1 Motion is in the sole discretion of the Court and that the Court may defer sentencing to determine the full extent of Defendants' and Brian L. Weiner's cooperation and assistance. Defendants further understand that the United States may, at its sole discretion, request the Court to defer sentencing for a reasonable period of time not to exceed six months after the Probation Office has completed its presentence investigation and issued its presentence report to the Court.

10. At the time of sentencing, Defendant RACK SHOP agrees to pay a $200 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B), in connection with the charged Dallas-Fort Worth-Waxahachie conspiracy, since the collusive conduct related to this charge did not extend beyond April 23, 1996. Defendant ISLAND PERIODICALS agrees to pay a $400 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B), in connection with the charged Puerto Rico-U.S. Virgin Islands-Caribbean Islands conspiracy, since the collusive conduct related to this charge extended beyond April 23, 1996. Defendants agree to pay at the time of sentencing the fines agreed upon in Paragraph 6, above.

11. Defendants understand that the Court has absolute discretion, pursuant to Fed. R. Crim. P. Rule 11(e)(2), to accept or reject the sentencing agreement set out in Paragraph 6, above. Defendants understand that should the Court reject the sentencing agreement, each Defendant may withdraw its guilty plea as a matter of right under Fed. R. Crim. P. 11(e)(4), and the guilty pleas, if withdrawn, shall not be admissible against Defendants in any criminal or civil proceeding, as provided by Fed. R. Crim. P. 11(e)(6). Pursuant to U.S.S.G. § 1B1.8, the parties agree that any additional self-incriminating information provided to the United States by Defendants or Brian L. Weiner after the date the parties sign this Plea Agreement and in the course of Defendants' or Brian L. Weiner's cooperation with the United States cannot be used in determining the applicable guideline range under the Sentencing Guidelines, except to the extent provided for in U.S.S.G. § 1B1.8(b).

12. In the event the Court rejects the sentencing agreement set out in Paragraph 6, above, this Plea Agreement shall be rendered null and void.

DEFENDANTS' COOPERATION

13. Defendants agree that they will cooperate fully with the United States in the prosecution of any organizations or persons and in the conduct of any federal grand jury or other federal criminal investigation involving the magazine and periodical distribution industry, and in any trial, proceeding or other litigation arising or resulting therefrom to which the United States is a party. Defendants' cooperation will include, but is not limited to:

(a) providing, without requirement of subpoena, all non-privileged documents or other items under their control or which may come under their control;

(b) making their representative, Brian L. Weiner, available for interviews and document review, upon reasonable notice, as the United States may require, at Defendants' expense, such interviews to take place in Cleveland, Ohio, unless another mutually convenient location is agreed to by the parties; making

Brian L. Weiner available, on reasonable notice, without requirement of subpoena, to testify before any federal grand jury investigating the magazine and periodical distribution industry; and making Brian L. Weiner available, on reasonable notice, without requirement of subpoena, to testify in any trial, proceeding or litigation resulting or arising from the United States' investigation of the magazine and periodical distribution industry; and

(c) using their best efforts to secure the full, truthful, candid and continuing cooperation of any current or former director, officer or employee of Defendants whom the United States or Defendants determine may have knowledge of, or who would be of assistance to any federal criminal investigation of, any antitrust violation in the magazine and periodical distribution industry, including making any such officer, director or employee available, at Defendants' expense, for interviews and document review, and making any such officer, director or employee available, without requirement of subpoena, for grand jury testimony and trial testimony in connection with any proceeding or litigation resulting or arising from the United States' investigation of the magazine and periodical distribution industry to which the United States is a party.

Interviews and testimony pursuant to this Paragraph shall be subject to the penalties of perjury (18 U.S.C. § 1621), making a false declaration in any grand jury or court proceeding (18 U.S.C. § 1623), or making a false statement to a government agent (18 U.S.C. § 1001). The cooperation of Brian L. Weiner shall be full, truthful, candid and continuing.

14. Any current or former director, officer or employee of Defendants who may have knowledge relevant to the ongoing grand jury investigation or the government's investigation of anticompetitive conduct in the magazine and periodical distribution industry may, within sixty (60) days from the date of filing of the Plea Agreement, or if filed under seal, sixty (60) days from the date of the unsealing of the plea agreement, unless extended by the United States in writing, provide the Antitrust Division with a proffer, first through an attorney, then in

person, generally outlining the substance of his or her knowledge. If, in the sole judgment of the Antitrust Division, the proffer is full, truthful and candid, such person shall not be prosecuted under the federal antitrust laws (15 U.S.C. §§ 1, 3), or the mail or wire fraud statutes (18 U.S.C. §§ 1341; 1343), for any offense arising out of any collusion, combination or conspiracy to allocate customers or territories in the magazine and periodical distribution industry committed prior to the date of this Plea Agreement and while such person was employed by Defendants. The agreement described in this Paragraph does not apply to any violations of federal tax or securities laws, or civil matters of any kind. If, in the sole judgement of the Antitrust Division, such person's cooperation is not full, truthful, candid and continuing, the director, officer or employee shall be subject to prosecution for any federal crime. Such prosecution may be based upon any information provided by any such person during his or her proffer. Any agreement not to prosecute a person under this Paragraph will be contingent on the continuing cooperation of such person, which shall include such person providing, upon reasonable notice, relevant personal documents and records to the United States; making himself or herself available in Cleveland, Ohio, or at another location agreed to by the United States, for interviews or document review; and testifying, upon reasonable notice, without requirement of subpoena, in any trial, grand jury or other proceeding in connection with any litigation or proceeding resulting or arising from the United States' investigation of the magazine and periodical distribution industry to which the United States is a party.

THE UNITED STATES' AGREEMENT

15. Subject to the full, truthful, candid and continuing cooperation of Defendants and Brian L. Weiner, as described in Paragraph 13, above, and the fulfillment of all of the other terms and conditions of the this Plea Agreement, the United States agrees not to bring further criminal charges against Defendants (including the Defendants' affiliated companies listed in Attachment III to this Plea Agreement), or to bring any criminal charges against Brian L. Weiner, under the

federal antitrust statutes (15 U.S.C. § 1, et seq.), the mail and wire fraud statutes (18 U.S.C. §§ 1341; 1343), or any other criminal statutes for any act or offense committed before the date of this Plea Agreement which arise out of any collusion, combination, or conspiracy to allocate customers or territories in the magazine and periodical distribution industry. The agreement described in this Paragraph does not apply to any violations of federal tax or securities laws, or civil matters of any kind.

16. Upon the request of either Defendant, the United States will bring to the attention of any governmental or regulatory authority the nature and extent of Defendants' cooperation in the investigation and any proceedings arising out of the investigation.

WAIVER OF RIGHT TO APPEAL SENTENCE

17. Except as otherwise provided in this Plea Agreement, the Defendants expressly waive their right to appeal any sentence on any ground, provided that the total fines do not exceed $1 million, including any appeal rights conferred under 18 U.S.C. § 3742, and Defendants further agree not to contest any sentence in any post-conviction proceeding, including, but not limited to, a proceeding under 28 U.S.C. § 2255.

REPRESENTATION OF COUNSEL

18. Defendants and Brian L. Weiner have thoroughly reviewed all legal and factual aspects of this case with their attorneys and are fully satisfied with their attorneys' legal representation. Defendants and Brian L. Weiner have received explanations satisfactory to them from their attorneys concerning each paragraph of this Plea Agreement and the alternatives available to them other than entering into this Plea Agreement. After conferring with counsel, Defendants and Brian L. Weiner have concluded that it is in each Defendant's own best interests: to enter into this Plea Agreement and to waive the rights set out in Paragraph 1(b)-(d) above; to waive indictment; for Defendant ISLAND PERIODICALS to waive

venue with respect to the filing and disposition of the Information related to the charged conspiracy involving Puerto Rico, the U.S. Virgin Islands, and other areas; and to waive the right to appeal the sentence as provided in Paragraph 17, above, rather than to proceed to trial in these cases.

VOLUNTARY PLEA

19. The pleas of guilty have been freely and voluntarily made and are not the result of force, or threats, or of promises or representations apart from those set forth in this Plea Agreement. There have been no representations or promises from anyone as to what sentence this Court will impose.

VIOLATION OF PLEA AGREEMENT

20. During the period of time of the United States' investigation into criminal violations in the magazine and periodical distribution industry, and any prosecution, proceedings or litigation resulting or arising therefrom, Defendants agree that should they, or Brian L. Weiner, fail to provide full, truthful, candid and continuing cooperation or otherwise violate any other provision of this Plea Agreement, the United States, in its sole discretion, may void any of its obligations under this Plea Agreement, and Defendants and Brian L. Weiner shall be subject to prosecution for any federal crime of which the United States has knowledge, including, but not limited to, obstruction of justice and any substantive offense arising from this investigation into the magazine and periodical distribution industry. Should any other part of the Plea Agreement become void, Defendants and Brian L. Weiner agree to waive, for a period beginning on the date of the execution of this Plea Agreement and ending two years after receiving notice from the United States of the government's decision to void any other part of the Plea Agreement, any defense to any charge which Defendants, or Brian L. Weiner, might otherwise have under any statute of limitations or the Speedy Trial Act. Should the United States violate the Plea Agreement, Defendants reserve the right to pursue any remedy provided for by law.

ENTIRETY OF AGREEMENT

21. This Plea Agreement constitutes the entire agreement between the United States and Defendants concerning the disposition of the charges in these cases. This Agreement cannot be modified other than in writing signed by the parties.

AGREED TO AND SIGNED this ____ day of _____, 19___.

_____
BRIAN L. WEINER

_____
GERALD L. GOLDSTEIN, Esq.
Attorney for Brian L. Weiner
State Bar No. 08101000

_____
REESE L. HARRISON, JR., Esq.
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