

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

v.

TULSA BOTTLERS ASSOCIATION;
LAKE COUNTRY BEVERAGE, INC.;
BEVERAGE PRODUCTS CORPORATION; and
COCA-COLA BOTTLING COMPANY OF
TULSA, INC.,

Defendants.

Civil Action No. 72 C 230

Filed: June 29, 1972

Equitable Relief Sought

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 above-named defendants, 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, as amended (15 U.S.C. § 4), commonly known as the Sherman Act, in order to prevent and restrain continuing violation by the defendants, as hereinafter alleged, of Section 1 of the Sherman Act (15 U.S.C. § 1).

2. Each of the defendants transacts business and is found within the Northern District of Oklahoma.

II

DEFENDANTS

3. Tulsa Bottlers Association is made a defendant herein. Tulsa Bottlers Association is an unincorporated association organized and existing within the City of Tulsa, Oklahoma. Its present membership consists of Lake Country Beverage, Inc., Beverage Products Corporation, and Coca-Cola Bottling Company of Tulsa, Inc.

4. Lake Country Beverage, Inc. (hereinafter referred to as "Lake Country") is made a defendant herein. Lake Country is a corporation organized and existing under the laws of the State of Oklahoma with its principal place of business in Tulsa, Oklahoma.

5. Beverage Products Corporation (hereinafter referred to as "Beverage Products") is made a defendant herein. Beverage Products is a corporation organized and existing under the laws of the State of Oklahoma and has its principal place of business in Tulsa, Oklahoma.

6. Coca-Cola Bottling Company of Tulsa, Inc. (hereinafter referred to as "Coca-Cola Bottling") is made a defendant herein. Coca-Cola Bottling is a corporation organized and existing under the laws of the State of Oklahoma and has its principal place of business in Tulsa, Oklahoma.

III

DEFINITIONS

7. As used herein:

- (a) "Soft drinks" shall mean non-alcoholic beverages containing concentrated syrups, sugar or sugar substitutes, carbonated or non-carbonated water, and flavor; and

- (b) "Bottling" shall mean filling bottles, cans or similar containers.

IV

TRADE AND COMMERCE

8. Lake Country produces and bottles soft drinks in Tulsa, Oklahoma. It sells soft drinks under the trade names of "Royal Crown Cola", "7-Up" and "Diet Rite Cola", in Tulsa and the surrounding areas. In the fiscal year ending September 30, 1970, Lake Country had total sales of \$3.2 million; its sales for the year ending September 30, 1969 were \$1.9 million.

9. Beverage Products produces and bottles soft drinks in Tulsa, Oklahoma. It sells soft drinks under the trade names of "Pepsi-Cola" and "Diet Pepsi" in Tulsa and the surrounding areas. In the year ending December 31, 1970, Beverage Products had total sales of \$10.8 million; its sales for the year ending December 31, 1969 were \$9.8 million.

10. Coca-Cola Bottling produces and bottles soft drinks in Tulsa, Oklahoma. It sells soft drinks under the trade name of "Coca-Cola" and "Fresca" in Tulsa, Oklahoma. In the year ending May 31, 1970, Coca-Cola Bottling had total sales of approximately \$2.0 million; its sales for the year ending May 31, 1969 were \$1.8 million.

11. Defendant corporations bottle and sell over 90 percent of the soft drinks sold by independent bottling companies in Tulsa, Oklahoma.

12. Defendant corporations order and purchase sugar, concentrated syrups and other soft drink ingredients from companies located outside the State of Oklahoma. Defendants are conduits through which these products flow in a continuous and uninterrupted stream in interstate commerce from the states in which they are produced to the bottling facilities of defendants in Tulsa, Oklahoma, where they are incorporated into soft drinks, and from which they are sold and delivered to customers.

13. Defendant corporations order and purchase containers, bottling machines and other equipment from companies located outside the State of Oklahoma. Defendant corporations engage in interstate commerce in the purchase of equipment used in the production of soft drinks.

V

VIOLATION ALLEGED

14. Beginning at least as early as January 1971, the exact date being unknown to the plaintiff, and continuing thereafter up to and including the date of the filing of this complaint, the defendants have been and are now engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce, in violation of Section 1 of the Sherman Act. The aforesaid combination and conspiracy will continue unless the relief hereinafter prayed for in this complaint is granted.

15. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among defendants to unreasonably restrain

competition in the sale of soft drinks in Tulsa, Oklahoma.

16. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants have done those things which they combined and conspired to do, including, among other things, the following:

- (a) Establish the amounts of deposit to be charged for bottles, cartons and hulls in which soft drinks are sold;
- (b) Raise and stabilize the prices of soft drinks; and
- (c) Discuss and exchange economic facts and information concerning deposit charges, bottling costs, competitive practices, and the need for price increases.

VI

EFFECTS

17. The aforesaid combination and conspiracy has had the following effects, among others:

- (a) Price competition in the sale of soft drinks in Tulsa, Oklahoma has been restrained;
- (b) Competition in the amounts of deposit required from the purchasers of soft drinks in Tulsa, Oklahoma has been eliminated; and
- (c) Customers of the corporate defendants have been deprived of the opportunity to purchase soft drinks in an open and competitive market.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the Court adjudge and decree that each of the defendants has engaged in a combination and conspiracy, as alleged herein, in unreasonable restraint of the aforesaid interstate trade and commerce in the sale of soft drinks in Tulsa, Oklahoma, in violation of Section 1 of the Sherman Act.

2. That each of the corporate defendants, its successors, assignees, transferees, directors, officers, agents, employees, representatives and all other persons or corporations acting or claiming to act for or on its behalf be perpetually enjoined and restrained from continuing, maintaining or renewing directly or indirectly the combination and conspiracy hereinbefore alleged, and from engaging in any other combination, conspiracy, contract, agreement, understanding or concert of action having a similar purpose or effect and from adopting or following any practice, plan, program or device having a similar purpose or effect.

3. That the defendant Tulsa Bottlers Association be dissolved and disbanded and that each of the corporate defendants be enjoined and restrained from organizing, joining, participating in or belonging to any other trade association, organization or industry group with the knowledge that any of the activities of such association, organization or group are inconsistent with any term of any judgment entered herein.

4. That each of the corporate defendants, its successors, assignees or transferees and their respective officers, directors, agents or employees thereof and all persons acting or claiming to act on behalf thereof be perpetually enjoined and restrained from entering into any agreements, arrangements and understandings to:

- (a) restrain or suppress competition in the sale of soft drinks;
- (b) fix or maintain prices, terms or conditions of the sale of soft drinks; and
- (c) exchange with competitors competitive or economic facts or information concerning prices, terms and conditions of sale, costs of production, and pricing and competitive philosophies in the sale of soft drinks.

5. That the corporate defendants, their officers, directors, agents and employees be perpetually enjoined and restrained from giving any prior notice of any change or contemplated change in prices, terms, or conditions in the sale of soft drinks to any other bottler of soft drinks.

6. That the plaintiff have such other, further and different relief, as the Court deems just and proper.

7. That plaintiff recover the costs of this suit.

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