

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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UNITED STATES OF AMERICA, :  
 :  
Plaintiff, :  
 :  
v. :  
 :  
TOBACCO DISTRIBUTORS' ASSOCIATION OF :  
N.J.; : Civil No. 79-1003 (FBL)  
CONSOLIDATED SERVICE DISTRIBUTORS, INC.; : Filed: November 27, 1979  
EISLER & COMPANY, INC.; :  
GLIKIN BROTHERS; :  
J. COSTAGLIOLA, INC.; : Entered: March 28, 1980  
J. MINKIN TOBACCO & CANDY CO.; :  
JERSEY CITY TOBACCO COMPANY; :  
PATERSON TOBACCO & CONFECTIONERY CO.; :  
PINE LESSER & SONS, INC.; and :  
WILLIAM SCHOENBERG, INC., :  
 :  
Defendants. :  
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FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on April 2, 1979, and plaintiff and defendants by their respective attorneys, having 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 any evidence against or an admission by any party 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 hereto, 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 consenting hereto. The Complaint states a claim upon which relief may be granted against each defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

## II

As used in this Final Judgment:

A. "Distributor" means any person licensed by the State of New Jersey to bring unstamped cigarettes into the State of New Jersey, to affix tax stamps to each pack of cigarettes, and to sell the tax stamped packs of cigarettes in carton quantities to subjobbers and retailers licensed by the State of New Jersey.

B. "Subjobber" means any person licensed by the State of New Jersey to purchase cigarettes from a distributor with the New Jersey cigarette tax stamp imprinted for resale in carton quantities to subjobbers and retailers licensed by the State of New Jersey.

C. "Person" means any individual, corporation, association or other business or legal entity.

## III

This Final Judgment applies to the defendants and to their officers, directors, agents, employees, subsidiaries, successors and assigns and to all other persons in active concert or participation with any of them 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, maintaining, furthering or enforcing directly or indirectly any agreement, understanding, plan or program with any other distributor or subjobber to:

- (1) Raise, fix, stabilize or maintain prices or other terms or conditions at which cigarettes are offered for sale; or
- (2) Establish or determine dates for any change in price at which cigarettes are offered for sale.

V

Each defendant is enjoined and restrained from communicating information directly or indirectly to any distributor or subjobber, or from arranging, sponsoring, attending or participating in any meeting or other assembly of distributors or subjobbers in which proposals or statements are made, concerning:

- (1) The prices of any cigarettes offered for sale; or
- (2) The date or dates for any changes in the prices of cigarettes offered for sale;

provided however, that nothing contained in this paragraph shall restrict any defendant, in connection only with a bona fide sale of cigarettes to a distributor, subjobber or retailer, to announce the price or any contemplated change in price of such cigarettes to that purchaser.

VI

Each distributor defendant shall require as a condition of the sale or other disposition of all, or substantially all of the assets used by the defendant in the distribution of cigarettes, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with this Court and serve upon the plaintiff its consent to be bound by this Final Judgment at least fifteen (15) days prior to the transfer of ownership.

VII

Each distributor defendant is ordered to furnish a copy of this Final Judgment to each of its officers and agents and to each employee having any responsibility for the pricing of cigarettes within sixty (60) days from the date of entry of this Final Judgment or within sixty (60) days of the appointment or other designation of any person to such office or duty and, within the sixty (60) days immediately following

the furnishing of a copy of this Final Judgment as hereinbefore described, the distributor defendant shall file with this Court and serve upon the plaintiff an affidavit as to the fact and manner of its compliance with this Section VII.

#### VIII

The defendant Tobacco Distributors' Association of N.J.:

- (1) is enjoined and restrained from directly or indirectly receiving and collecting any information concerning present or proposed future prices for cigarettes and distributing it by printed price list or otherwise; provided however, that nothing contained in this subparagraph shall restrict the said defendant from receiving and collecting any such information if so requested in writing by the Division of Taxation of the Department of the Treasury of the State of New Jersey and communicating it to that Division in connection with or in furtherance of its enforcement activities; provided further that nothing contained in this subparagraph shall restrict the said defendant from receiving and collecting information pertaining to a distributor's cost of selling cigarettes for the purpose of communicating it to the Legislature of the State of New Jersey or the Congress of the United States in connection with pending or proposed legislation;

- (2) within thirty (30) days after the date of entry of this Final Judgment, shall mail to each of its members a complete copy of this Final Judgment;
- (3) within sixty (60) days after date of entry of this Final Judgment, shall file with this Court and serve upon the plaintiff an affidavit as to the fact and manner of its compliance with subparagraph (2) of this Section VIII;
- (4) within thirty (30) days following the enrollment of a new member or re-enrollment of a former member of the said defendant, shall mail to each such new or re-enrolled member a complete copy of this Final Judgment;
- (5) shall establish a program for dissemination of, education as to, and compliance with this Final Judgment, advising each of its officers, its executive director, and its members of its and their obligations under this Final Judgment. This program shall include this Final Judgment in whole or in part or an explanation thereof and a statement of corporate compliance policy thereunder, in an appropriate manual or internal memorandum; and
- (6) within one hundred and twenty (120) days after the entry of this Final Judgment shall serve upon the plaintiff, and thereafter upon written request by the plaintiff on or about the anniversary dates of this Final Judgment for a

period of five (5) consecutive years from the date of its entry, an account of all steps it has taken during the preceding year to discharge its obligations under subparagraph (5) of this Section VIII and to include with said account copies of all written directives issued during the prior year with respect to compliance with the terms of this Final Judgment.

#### IX

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted:

- (1) Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and
- (2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees and agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at the time information or documents are furnished by defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which that defendant is not a party.

X

Jurisdiction is retained by this Court 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 and directions as may be necessary or appropriate for the construction

or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith and for the punishment of any violation hereof.

XI

This Final Judgment shall expire ten (10) years from the date of its entry.

XII

Entry of this Final Judgment is in the public interest.

Dated: Newark, New Jersey

/s/ Frederick B. Lacey  
HONORABLE FREDERICK B. LACEY  
UNITED STATES DISTRICT JUDGE