

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Tri-County Beer Distributors Association; Sangamon County Retail Beverage Dealers Association, Chapter No. 1; and Association of Tavern and Package Liquor Dealers., U.S. District Court, S.D. Illinois, 1958 Trade Cases ¶69,021, (Apr. 25, 1958)

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United States v. Tri-County Beer Distributors Association; Sangamon County Retail Beverage Dealers Association, Chapter No. 1; and Association of Tavern and Package Liquor Dealers.

1958 Trade Cases ¶69,021. U.S. District Court, S.D. Illinois, Southern Division. Civil Action No. 2385. Dated April 25, 1958. Case No. 1355 in the Antitrust Division of the Department of Justice

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing.—Three local trade associations comprised of beer distributors and retailers were prohibited by a consent decree from entering into any agreement among themselves or with any person to control or fix wholesale or minimum retail prices, wholesale mark-ups, or retail margins of profit at which beer may be sold in Sangamon County, Illinois.

Combinations and Conspiracies—Resale Price Fixing—Consent Decree—Practices Enjoined—Coercion and Intimidation.—Three local trade associations comprised of beer distributors and retailers were prohibited by a consent decree from entering into any agreement among themselves or with any person to (1) induce or coerce retailers to adhere to so-called fair trade prices adopted as a result of any concerted plan to fix wholesale or minimum retail beer prices, (2) induce or coerce any person to adhere to or enforce adherence to prices at which beer will be sold to any person, or to any group or class of persons, (3) induce or coerce any wholesaler to establish or enforce minimum or suggested resale prices, mark-ups, margins of profit or discounts at which beer is sold to third persons, (4) induce or coerce any wholesaler to refrain from selling or otherwise discriminating in the sale of beer to any person, or to any group or class of persons, or (5) induce or coerce any person to boycott or otherwise refuse to deal with any person engaged in the purchase, sale, or distribution of beer. Each of the members of any defendant was prohibited, for a period of three years, from suggesting, persuading, or coercing any wholesaler to establish, issue, or enforce minimum or suggested resale prices for beer.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Trade Association Membership.—Three local trade associations comprised of beer distributors and retailers were prohibited by a consent decree from entering into any concerted plan or program to police the retailing of beer in Sangamon County, Illinois, to detect advertising of sales below agreed upon prices. The decree prohibited each of the members of the defendants from organizing, becoming a member of or participating in the activities of any trade association or other organization, the purposes or functions of which relate to the distribution or sale of beer contrary to any provisions of the decree.

Resale Price Fixing—Consent Decree—Practices Enjoined—Refusal to Deal.—Three local trade associations comprised of beer distributors and retailers were prohibited by a consent decree from entering into any agreement among themselves or with any person to boycott or refuse to supply beer to retailers selling beer at prices lower than so-called fair trade prices adopted as the result of any concerted plan to fix wholesale or minimum retail beer prices, or to boycott or refuse to buy beer from wholesalers who fail to enforce the so-called fair trade prices.

Resale Price Fixing—Consent Decree—Practices Enjoined—Information Exchange and Price Lists.—Three local trade associations comprised of beer distributors and retailers were prohibited by a consent decree from entering into any understanding among themselves or with any other person to publish or circulate as so-called fair trade prices in Sangamon County, Illinois, minimum retail prices fixed as a result of any agreement or concerted plan, except as permitted by Illinois law, but subject to the provisions of the decree.

Resale Price Fixing—Fair Trade—Consent Decree—Practices Enjoined—Maintaining Fair Trade

Contracts.—Members of three local trade associations comprised of beer distributors and retailers were each prohibited by a consent decree from adhering to or maintaining any fair trade contract which fixes or controls the resale price of beer in Sangamon County, Illinois, and, to the extent that members of any defendant elected to make sales of beer in Sangamon County, Illinois, during the period of three years from the effective date of the decree, to do so at prices individually determined, without reference to fair trade prices.

Department of Justice Enforcement and Procedure—Enforcement of Consent Decrees —Trade

Associations—Consent of Member to Decree as Condition of Membership.—Members of three local trade associations comprised of beer distributors and retailers were each required, within three months from the date of entry of a consent decree, to indicate their consent to be bound by the terms of the decree. No person failing to sign and file such consent shall remain a member of any of the associations.

Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions—

Proposing Legislation.—A consent decree entered against three local trade associations comprised of beer distributors and retailers provided that nothing contained in a specified provision of the decree should be deemed to prohibit them from proposing or supporting legislation or the adoption of local, state or federal regulations relating to the purchase, sale or distribution of beer, or from individually taking action required by local, state or federal legislation or regulation.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; W. D. Kilgore, Jr., Worth Rowley, Earl A. Jinkinson, Raymond D. Hunter, and Raymond P. Hernacki, Attorneys, Department of Justice; and Marks Alexander, U. S. Attorney, Springfield, I11.

For the defendants: Ensel, Martin, Jones & Blanchard, by James B. Martin, Springfield, I11., for Tri-County Beer Distributors Assn.; C. Victor Cardose, Springfield, I11., for Sangamon County Retail Beverage Dealers Assn., Chapter No. 1; and Oison & Cantrill, by Herbert L. Cantrill, Springfield, Ill., for Association of Tavern and Package Liquor Dealers.

Final Judgment

BRIGGLE, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on August 2, 1957, and the defendants having filed their several answers to said complaint denying the substantive allegations thereof and any violation of law; and the plaintiff and said defendants, by their 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 admission by any party in respect to any such issue; and the Court having considered the matter and being duly advised :

Now, therefore, without the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent, as aforesaid, it is hereby

Ordered, Adjudged and Decreed, as follows :

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The complaint states a claim upon which relief may be granted against the defendants 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

[*Definitions*]

As used in this Final Judgment:

- (A) "Person" shall mean an individual, partnership, firm, corporation, association, trustee, or any other business or legal entity;
- (B) "Beer" shall mean a beverage produced by the alcoholic fermentation of an infusion or concoction in water, of barley or other grain, malt, and hops, and includes among other things beer, ale, stout, lager beer, and porter;
- (C) "Wholesaler" shall mean any firm or person who is engaged in Sangamon County, Illinois, in the purchasing, storing, possessing, or warehousing of beer for resale to a retailer;
- (D) "Retailer" shall mean any firm or person who sells, or offers for sale, beer for use or consumption and not for resale;
- (E) "Defendants" shall mean each and all of the following defendants:
Tri-County Beer Distributors Association;
Sangamon County Retail Beverage Dealers Association Chapter No. 1;
Association of Tavern and Package Liquor Dealers.

III

[*Applicability of Decree*]

The provisions of this Final Judgment, applicable to any of the defendants, shall apply to such defendants, their members, officers, agents, servants, employees, successors and assigns, and to all other persons in active concert or participation with any defendant who shall have received actual notice of this Final Judgment by Personal service or otherwise.

IV

[*Practices Prohibited*]

Defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, concerted plan or program among themselves or with any other person, to:

- (A) Control, fix, raise, adopt, stabilize or maintain wholesale or minimum retail prices, wholesale mark-ups, or retail margins of profit at which beer is or may be sold in Sangamon County, Illinois;
- (B) Adopt, publish or circulate as so-called fair trade prices in Sangamon County, Illinois, minimum retail prices fixed as a result of any contract, agreement, understanding, concerted plan or program as aforesaid, except as permitted by Illinois law, but subject to Section VI hereof;
- (C) Induce, coerce or compel, or attempt to induce, coerce or compel, retailers to observe or adhere to the so-called fair trade prices adopted as aforesaid or to police the retailing of beer in Sangamon County, Illinois, to detect advertising or sales below said prices adopted as aforesaid;
- (D) Boycott or refuse to supply beer to retailers selling beer at prices lower than the so-called fair trade prices adopted as aforesaid ;
- (E) Boycott or refuse to buy beer from wholesalers who fail to enforce the so-called fair trade prices adopted as aforesaid;
- (F) Induce, coerce or compel, or attempt to induce, coerce or compel any person to adhere to or enforce adherence to prices at which beer will be sold to any person, or to any group or class of persons;
- (G) Induce, coerce or compel any wholesaler to establish, adopt, issue or enforce minimum or suggested resale prices, mark-ups, margins of profit or discounts at which beer is sold or offered for sale to third persons;
- (H) Induce, coerce or compel any wholesaler to refrain from selling or otherwise discriminating in the sale of beer to any person, or to any group or class of persons;

(l) Induce, coerce or compel, or attempt to induce, coerce or compel, any person to boycott or otherwise refuse to deal with any person engaged in the purchase, sale or distribution of beer.

Nothing in this Section IV shall be deemed to prohibit defendants from proposing or supporting legislation or the adoption of local, state or federal regulations, relating to the purchase, sale or distribution of beer or from individually taking action required by local, state or federal legislation or regulation.

V

[*Specific Relief*]

(A) Each defendant is ordered and directed to mail to each of its members, within twenty days after the date of entry of this Final Judgment, a copy of said Final Judgment.

(B) Within three months from the date of entry of this Final Judgment, each member of each defendant shall indicate its consent to be bound by the terms of this Final Judgment. Such consent shall be evidenced by such member executing in duplicate a consent annexed to a copy of this Final Judgment, one to be filed with this Court and one to be served upon plaintiff herein. No person failing to sign and file such consent shall remain a member of any defendant.

(C) Each defendant is ordered and directed, within ninety days from the entry of this Final Judgment, to institute and complete such proceedings as may be appropriate and necessary to amend its Charter and By-Laws so as to incorporate therein Sections IV and VI of this Final Judgment, and require as a condition of membership that all present and future members be bound thereby.

VI

[*Fair Trade Contracts*]

(A) Each of the members of any defendant is enjoined and restrained from adhering to or maintaining any fair trade contract which fixes or controls the resale price of beer in Sangamon County, Illinois. To the extent that members of any defendant elect to make sales of beer in Sangamon County, Illinois, during the period of three years from the effective date of this Final Judgment, such sales shall be at prices individually determined without reference to fair trade prices.

(B) Each of the members of any defendant is enjoined and restrained for the three-year period provided for in subsection (A) of this Section VI from urging, suggesting, persuading or coercing any wholesaler to establish, adopt, issue or enforce minimum or suggested resale prices for beer.

(C) Each of the members of any defendant is enjoined and restrained from organizing, becoming a member of or participating in the activities of, directly or indirectly, any trade association or other organization, the purposes or functions of which relate to the distribution or sale of beer contrary to any provisions of this Final Judgment.

VII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on 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) Access, during regular office hours, to those parts of the books, ledgers, accounts, correspondence, memoranda and other documents and records in the possession or under the control of defendant which relate to any matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of defendant, and without restraint or interference from it, to interview its officers or employees, who may have counsel present, regarding any such matters.

(C) Upon such written request defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be necessary to the enforcement of this Final Judgment.

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

VIII

[*Jurisdiction Retained*]

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 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 thereof, for the enforcement of compliance therewith, and for the punishment of violation thereof.