

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Maryland State Licensed Beverage Association, Inc., et al., U.S. District Court, D. Maryland, 1959 Trade Cases ¶69,261, (Oct. 14, 1958)

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United States v. Maryland State Licensed Beverage Association, Inc., et al.

1959 Trade Cases ¶69,261. U.S. District Court, D. Maryland. Civil Action No. 9122. Final Judgments filed October 6, 1958, October 6, 1958, and October 14, 1958, respectively. Case No. 1302 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Monopolies—Resale Price Fixing—Prices Fixed by Agreement.—

Liquor manufacturers, a wholesaler, an association of retail dealers, and an officer of the retail association were prohibited by a consent decree from entering into any agreement to (1) fix prices at which alcoholic beverages not manufactured by them should be sold in the State of Maryland, (2) induce or compel any person to establish or enforce adherence to fixed prices, (3) suggest or prescribe the prices at which alcoholic beverages should be sold to any Monopoly County (County Liquor Control Board or Department of Liquor Control selling alcoholic beverages under a county dispensary system in the State of Maryland), or (4) induce or compel any manufacturer to make sales to any Monopoly County upon the condition that it resell at designated prices.

Combinations and Conspiracies—Monopolies—Resale Price Fixing—Practices Enjoined—Boycotts

—Refusal to Deal.—Liquor manufacturers, a wholesaler, an association of retail dealers, and an officer of the retail association were prohibited by a consent decree from entering into any agreement to (1) boycott or otherwise refuse to deal with any person engaged in the purchase, sale, or distribution of alcoholic beverages in the State of Maryland, (2) induce or compel any person to boycott or otherwise refuse to deal with any person engaged in the purchase, sale or distribution of alcoholic beverages in the State of Maryland, and (3) induce or compel any manufacturer to refuse to sell directly to any Monopoly County or to require that sales to such Monopoly County be made through wholesalers. The decree also prohibited the coercing of manufacturers for the purpose of requiring them to (1) enforce resale prices, (2) refrain from selling to any person or class of persons, or (3) boycott or otherwise refuse to deal with any person engaged in the purchase, sale or distribution of alcoholic beverages in the State of Maryland. Also, the manufacturers were prohibited from combining, conspiring, or agreeing to (1) refuse to sell to any Monopoly County, (2) refuse to sell to any Monopoly County at prices less than the customary wholesale price to licensed retailers, or (3) refuse to sell to any Monopoly County except upon the condition that it resell at designated prices.

Combinations and Conspiracies—Monopolies—Resale Price Fixing—Consent Decree—Practices

Enjoined—Coercion and Intimidation.—Liquor manufacturers, a wholesaler, an association of retail dealers, and an officer of the retail association were prohibited by a consent decree from (1) coercing any manufacturer to establish or enforce adherence to minimum or suggested resale prices for the sale of alcoholic beverages in Maryland, (2) communicating with any manufacturer, wholesaler, or other person for the purpose of coercing any manufacturer or wholesaler to refrain from selling to any person or class of persons, (3) giving preference to, or coercing any other person to give preference to, any specific brand of alcoholic beverage upon the condition that the manufacturer thereof enforce suggested resale prices, boycott, or otherwise refuse to deal with any person engaged in the purchase, sale, or distribution of alcoholic beverages, or (4) hindering the sale of, or coercing any other person to hinder the sale of, alcoholic beverages for the purpose of coercing the manufacturer thereof to enforce suggested retail prices, boycott, or otherwise refuse to deal with any person engaged in the purchase, sale, or distribution of alcoholic beverages.

Combinations and Conspiracies—Trade Associations—Consent Decree—Practices Enjoined—

Association Membership as Means of Trade Restraint.—An association of retail liquor dealers was prohibited by a consent decree from (1) discussing or acting upon, at any of its meetings, any matter or thing enjoined or restrained by the decree, (2) accepting contributions from any manufacturer or non-member, (3) having as a

member any wholesaler or distiller not engaged in the retail selling of alcoholic beverages, and (4) organizing, being a member of, or participating in the activities of any organization whose purposes are contrary to the decree.

Combinations and Conspiracies—Trade Associations—Consent Decree—Practices Enjoined—Coercion and Enforcement Provisions.—An association of retail liquor dealers was prohibited by a consent decree from (1) maintaining any program, shopping service, or other means for the purpose of policing or enforcing the prices of alcoholic beverages in the State of Maryland, (2) inducing or coercing any person to establish or police prices, or (3) inducing or coercing any person to boycott or otherwise refuse to deal with any person engaged in the purchase, sale, or distribution of alcoholic beverages.

Department of Justice Enforcement and Procedure—Consent Decree—Contingent Provisions—Cancellation of Fair Trade Contracts—Dissemination of Price Information.—A consent decree provided that upon the entry of a final judgment against one or more liquor manufacturers named in the complaint requiring a suspension of fair trading in the State of Maryland for any period of time, the consenting manufacturers, wholesaler, and individual, as to alcoholic beverages included in such suspension, shall (1) cancel all fair trade contracts to which he is a party and which fix or control the resale price of such alcoholic beverages, (2) be enjoined from entering into any fair trade contract, and (3) be enjoined from enforcing resale prices. The manufacturers and the wholesaler were also to be enjoined from disseminating price lists or other price information containing suggested resale prices, except as provided by Article 2B, § 109, Annotated Code of Maryland, 1957, which directs the state Comptroller to require the filing of schedules of prices and proposed price changes.

Department of Justice Enforcement and Procedure—Consent Decree—Specific Relief—Order to Sell on Non-Discriminatory Terms.—Liquor manufacturers were ordered by a consent decree to sell various brands of liquor to the Department of Liquor Control for Montgomery County, Maryland, at prices which were not higher than those charged to wholesalers, and without discrimination as to availability or other terms or conditions of sale.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; W. D. Kilgore, Jr., Wilford L. Whitley, Jr., John H. Earle, Charles F. B. McAleer, and John C. Fricano, Attorneys, Department of Justice; and Leon H. A. Pierson, United States Attorney.

For the defendants: Gerhard A. Gesell, James C. McKay, and J. Sarsfield Sweeny for Hiram Walker & Sons, Inc., Hiram Walker Inc., Gooderham & Worts Limited, and Jas. Barclay & Co. Limited; William L. Marbury and John Martin Jones, Jr., for Natl. Distillers and Chemical Corporation; Robert E. Coughlan, Jr., of Lord, Whip & Coughlan, for McKesson & Robbins, Inc.; Reuben Shiling for Maryland Package Liquor Stores Association, Inc., and Jack Wulfert; and F. Joseph Donohue for The Kronheim Co., Inc.

For a prior consent decree entered in the U. S. District Court, District of Maryland, see [1958 Trade Cases ¶ 69,142](#); for a prior opinion of the Court, see [1958 Trade Cases ¶ 69,213](#).

Final Judgment

[Hiram Walker & Sons, Inc.; Hiram Walker, Inc.; Gooderham & Worts Ltd; Jas. Barclay & Co. Ltd.; Natl. Distillers and Chemical Corp.; and McKesson & Robbins, Inc.—October 6, 1958]

THOMSEN, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on September 11, 1956, and the plaintiff and the undersigned defendants, by their respective 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 with respect to any such issue, and the Court having considered the matter and being duly advised,

Now, Therefore, upon consent of all the parties hereto, it is hereby

Ordered, Adjudged and Decreed, as follows:

[*Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and of all parties signatory hereto. The complaint states claims upon which relief may be granted against the defendants signatory hereto under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraint and monopolies," commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

- (A) "Person" means an individual, partnership, firm, corporation, association, trustee or any other business or legal entity, including County Liquor Control Boards and Departments of Liquor Control;
- (B) "Alcoholic Beverage" means any whiskey, rum, gin, brandy, cordial, wine, cider, alcohol or any other spirituous, vinous, malt or fermented liquor, liquid or compound, by whatever name called, containing one-half of one per centum or more of alcohol by volume, which is fit for beverage purposes, except any brewed alcoholic beverage including beer, ale, porter and stout;
- (C) "Manufacturer" means a person who operates a plant within the United States for distilling, rectifying, blending, fermenting or bottling any alcoholic beverage, or imports into the United States any alcoholic beverage from outside the United States for resale therein, or is a distributor selling to a wholesaler for resale to a retailer or other purchasers for resale;
- (D) "Wholesaler" means any person engaged in the business of purchasing or acquiring alcoholic beverages from manufacturers for resale or distribution to retailers or other purchasers for resale;
- (E) "Retailer" means any person engaged in the business of selling alcoholic beverages to consumers;
- (F) "Consenting defendants" means the defendants signatory hereto and each of them;
- (G) "Monopoly County" means any County Liquor Control Board or Department of Liquor Control selling alcoholic beverages under a county dispensary system in the State of Maryland.

III

[*Applicability*]

The provisions of this Final Judgment applicable to any consenting defendant shall apply to such defendant, its officers, agents, servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment, a consenting defendant and its affiliates (whether or not a defendant herein) and their respective officers, agents, servants and employees shall be deemed to be one person. An affiliate of a consenting defendant shall mean any company wholly-owned or substantially wholly-owned by such consenting defendant, any parent company that directly or indirectly wholly-owns or substantially wholly-owns such consenting defendant and any company wholly-owned or substantially wholly-owned by such parent.

IV

[*Price Fixing*]

- (A) The consenting defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining, furthering, or reviving, directly or indirectly, any contract, agreement, understanding, plan or program with any other person to:
 - (1) Control, fix, adopt, stabilize or maintain prices, markups, margins of profit, terms or conditions at which alcoholic beverages are sold or offered for sale to third persons in the State of Maryland;

(2) Induce, compel or coerce, or attempt to induce, compel or coerce, any person to establish, adopt, issue, adhere to, or to police or enforce adherence to prices, markups, margins of profit, terms or conditions at which alcoholic beverages shall be sold or offered for sale to third persons in the State of Maryland.

(B) The consenting defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining, furthering, or reviving, directly or indirectly, any contract, agreement, or understanding, plan or program with any other person to:

(1) Boycott or otherwise refuse to deal with, or threaten to boycott or otherwise refuse to deal with, any person engaged in the purchase, sale or distribution of alcoholic beverages in the State of Maryland;

(2) Induce, compel or coerce, or attempt to induce, compel or coerce, any person to boycott or otherwise refuse to deal with any person engaged in the purchase, sale or distribution of alcoholic beverages in the State of Maryland;

(3) Induce, compel or coerce, or attempt to induce, compel or coerce, any manufacturer or wholesaler to refuse to make sales of alcoholic beverages directly to any Monopoly County or to require sales to said Monopoly Counties to be made through wholesalers;

(4) Suggest, designate, prescribe or otherwise influence, or attempt to influence, the price or prices at which sale of alcoholic beverages shall be made by manufacturers or wholesalers to any Monopoly County;

(5) Induce, compel or coerce, or attempt to induce, compel or coerce, any manufacturer or wholesaler to make sales to any Monopoly County upon the condition or understanding that said Monopoly County resell alcoholic beverages at a suggested, prescribed or designated price or prices, or otherwise require said Monopoly County to resell at a suggested, prescribed or designated price or prices.

V

[*Coercing Manufacturers*]

Each of the consenting defendants is enjoined and restrained from, directly or indirectly:

(A) Requiring, compelling or coercing any manufacturer or wholesaler to establish, adopt, issue, adhere to, or police or enforce adherence to minimum or suggested resale prices, markups, margins of profit, terms or conditions of sale at which alcoholic beverages are sold or offered for sale in the State of Maryland;

(B) Communicating with any manufacturer, wholesaler or other person for the purpose or with the effect of urging, compelling or coercing any manufacturer or Wholesaler to refrain from selling alcoholic beverages to any person or to any group or class of persons in the State of Maryland;

(C) Urging, compelling or coercing, or attempting to urge, compel or coerce any person to promote the sale of, or give preference to, specific brands of alcoholic beverages not manufactured by such defendant upon any condition, agreement or understanding, that the manufacturer thereof establish, adopt, issue, adhere to, or police and enforce adherence to minimum or suggested resale prices, markups, margins of profit, terms or conditions of sale thereof, or boycott or otherwise refuse to deal with persons engaged in the purchase, sale or distribution of alcoholic beverages in the State of Maryland;

(D) In any manner hindering the sale of, or urging, compelling or coercing, or attempting to urge, compel or coerce any other person to refuse to buy, refuse to promote or in any manner hinder the sale of alcoholic beverages not manufactured by such defendant for the purpose or with the effect of urging, compelling or coercing the manufacturer thereof to establish, adopt, issue, adhere to, or police and influence adherence to minimum or suggested resale prices, markups, margins of profit, terms or conditions of sale thereof, or boycott or refuse to deal with any person engaged in the purchase, sale or distribution of alcoholic beverages in the State of Maryland.

[*Permissive Provisions*]

Nothing in Subsections. (B)(1) and (2) of Section IV, or Subsections (B) and (D) of Section V, shall be construed to prohibit any consenting defendant from negotiating, entering into and adhering to a contract designating a wholesaler as a distributor, on an exclusive basis or otherwise; provided, however, that such designation shall not directly or indirectly prevent any Monopoly County from acquiring alcoholic beverages direct from any source.

Nothing in this Final Judgment shall be deemed to prohibit the consenting defendants from (a) proposing or supporting legislation or the adoption of local, state or Federal regulations relating to the purchase, sale or distribution of alcoholic beverages, (b) from individually taking action required by local, state or Federal legislation or regulations, or (c), except as specifically provided to the contrary by Section VI hereof, from doing the things they may legally do under the fair trade laws of the United States and the State of Maryland.

VI

[*Contingent Provision*]

Upon the entry of a Final Judgment in this case not subject to further appeal against one or more of the defendant manufacturers named as such in the complaint in this case requiring any suspension of fair trading in the State of Maryland for any period of time, each consenting defendant shall:

(A) Within thirty days after the entry of such Final Judgment, cancel all fair trade contracts, for the State of Maryland to which it is a party and which fix or control the resale price of alcoholic beverages and shall give to all its Maryland customers and Maryland licensed retailers handling such products notice of such cancellation and termination, informing each of them that the retailer shall individually determine his resale price without reference to fair trade prices theretofore established thereon;

(B) Be enjoined and restrained from entering into or adhering to any fair trade contract in the State of Maryland for the shortest period of any such suspension or two years, whichever is less;

(C) Be enjoined and restrained for the shortest period of any such suspension, or two years, whichever is, less, from disseminating or preparing for dissemination to any person in the State of Maryland price lists or other price information containing minimum or suggested, resale prices, markups, margins of profit, terms or conditions at which such alcoholic beverages are to be resold or offered for sale, except as provided by Article 2B, Section 109 of the Annotated Code of Maryland;

(D) Be enjoined and restrained for the shortest period of any such suspension, or two years, whichever is less, from shopping, policing, reporting or otherwise enforcing, minimum suggested retail prices, markups, margins of profit, terms or conditions at which such alcoholic beverages are to be sold or offered for sale in the State of Maryland;

Provided that, if no such suspension is decreed as to any one of such defendant manufacturers, the provisions of Section VI shall not apply to the consenting defendants.

VII

[*Refusal to Sell— Specific Relief*]

(A) Consenting defendants are enjoined and restrained from conspiring, combining or agreeing with each other or with any Wholesale Association, Retail Association, or with any Manufacturer, Wholesaler or Retailer to refuse:

(1) To sell any alcoholic beverage to any Monopoly County;

(2) To sell any alcoholic beverage to any Monopoly County at prices less than the customary wholesale price to licensed retailers, or

(3) To sell any alcoholic beverage to any Monopoly County except upon the condition or understanding that the Monopoly County resell the alcoholic beverages at a suggested, prescribed or designated price or prices or otherwise require the Monopoly County to resell at a suggested, prescribed or designated price or prices.

(B) Each consenting defendant shall offer to sell and shall sell upon request to the Department of Liquor Control for Montgomery County those brands listed on Appendix A [not reproduced herein], and those brands which are hereafter offered for sale to any monopoly state, at prices which are not higher than those then currently charged to the wholesalers in Maryland, and without discrimination as to availability or other, terms or conditions of sale: Provided, however, that if any such brand is withdrawn by the consenting defendant from all markets of the United States, such defendant will not thereafter be obligated to sell or offer to sell such brand to the Department of Liquor Control for Montgomery County for such time as it is so withdrawn.

VIII

[*Enforcement and Compliance*]

(A) For the purpose of securing compliance with this Final Judgment and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives, of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any consenting defendant, made to its principal office, be permitted:

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

(B) Upon receipt of a written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division to any consenting defendant, said defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of said Judgment;

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

IX

[*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 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 thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

Final Judgment

[**Maryland Package Liquor Stores Assn, Inc., and Jack Wulfert—October 6, 1958**]

THOMSEN, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on September 11, 1956, and the plaintiff and defendants signatory hereto, by their respective 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 with respect to any such issue;¹ and the Court having considered the matter and being duly advised;

Now, therefore, upon consent of all the parties hereto, it is hereby

Ordered, Adjudged and Decreed, as follows:

[*Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and of all parties signatory hereto. The complaint states claims upon which relief may be granted against the defendants signatory hereto under Sections 1 and 2, 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" means an individual, partnership, firm, corporation, association, trustee or any other business or legal entity, including County Liquor Control Boards and Departments of Liquor Control;
- (B) "Alcoholic Beverage" means any whiskey, rum, gin, brandy, cordial, wine, cider, alcohol or any other spirituous, vinous, malt or fermented liquor, liquid or compound, by whatever name called, containing one-half of one per centum or more of alcohol by volume, which is fit for beverage purposes, except any brewed alcoholic beverage including beer, ale, porter, and stout;
- (C) "Manufacturer" means a person who operates a plant within the United States for distilling, rectifying, blending, fermenting or bottling any alcoholic beverage, or imports into the United States any alcoholic beverage from outside the United States, or is a distributor selling to a wholesaler for resale to a retailer;
- (D) "Wholesaler" means any person engaged in the business of purchasing or acquiring alcoholic beverages from manufacturers for resale or distribution to retailers or other purchasers for resale;
- (E) "Retailer" means any person engaged in the business of selling alcoholic beverages to consumers;
- (F) "Consenting defendants" means the defendants Maryland Package Liquor Stores Association, Inc., and Jack Wulfert, and each of them;
- (G) "Monopoly County" means any County Liquor Control Board or Department of Liquor Control selling alcoholic beverages under a county dispensary system in the State of Maryland.

III

[*Applicability*]

The provisions of this Final Judgment applicable to any consenting defendant shall apply to such defendant, its officers, agents, servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment, a defendant and its respective officers, agents, servants and employees shall be deemed to be one person.

IV

[*Price Fixing*]

- (A) The consenting defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining, furthering, or reviving, directly or indirectly, any contract, agreement, understanding, plan or program between themselves, or with any wholesaler or group of wholesalers or with any retailer or group of retailers, to:
 - (1) Control, fix, adopt, stabilize or maintain prices, markups, margins of profit, terms or conditions at which alcoholic beverages not manufactured by such defendant are sold or offered for sale to third persons in the State of Maryland;
 - (2) Induce, compel or coerce, or attempt to induce, compel, or coerce, any person to establish, adopt, issue, adhere to, or to police or enforce adherence to prices, markups, margins of profit, terms or conditions at which

alcoholic beverages not manufactured by such defendant shall be sold or offered, for sale to third persons in the State of Maryland.

(B) The consenting defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining, furthering, or reviving, directly or indirectly, any contract, agreement, or understanding, plan or program between themselves, or with any other person, to:

- (1) Boycott or otherwise refuse to deal with, or threaten to boycott or otherwise refuse to deal with, any person engaged in the purchase, sale or distribution of alcoholic beverages in the State of Maryland;
- (2) Induce, compel or coerce, or attempt to induce, compel or coerce, any person to boycott or otherwise refuse to deal with any person engaged in the purchase, sale or distribution of alcoholic beverages in the State of Maryland;
- (3) Induce, compel or coerce, or attempt to induce, compel or coerce, any manufacturer to refuse to make sales of alcoholic beverages directly to any Monopoly County or to require sales to said Monopoly Counties to be made through wholesalers;
- (4) Suggest, designate, prescribe or otherwise influence, or attempt to influence, the price or prices at which sales of alcoholic beverages shall be made by manufacturers or wholesalers to any Monopoly County;
- (5) Induce, compel or coerce, or attempt to induce, compel or coerce, any manufacturer or wholesaler to make sales to any Monopoly County upon the condition or understanding that said Monopoly County resell alcoholic beverages at a suggested, prescribed or designated price or prices, or otherwise require said Monopoly County to resell at a suggested, prescribed or designated price or prices.

[Permissive Provision]

Nothing in this Final Judgment shall be deemed to prohibit the said consenting defendants from proposing or supporting legislation or the adoption of local, state, or federal regulations, relating to the purchase, sale or distribution of alcoholic beverages or from individually taking action required by local, state or federal legislation or regulation.

V

[Coercing Manufacturers]

Each of the consenting defendants is enjoined and restrained from, directly or indirectly:

- (A) Urging, compelling or coercing any manufacturer to establish, adopt, issue, adhere to, or police or enforce adherence to minimum or suggested resale prices, markups, margins of profit, terms or conditions of sale at which alcoholic beverages are sold or offered for sale, in the State of Maryland;
- (B) Communicating with any manufacturer, wholesaler or other person for the purpose or with the effect of urging, compelling or coercing any manufacturer or wholesaler to refrain from selling alcoholic beverages to any person or to any group or class of persons;
- (C) Promoting the sale of, or giving preference to, or urging, compelling or coercing, or attempting to urge, compel or coerce any person to promote the sale of, or give preference to, specific brands of alcoholic beverages upon any condition, agreement or understanding, that the manufacturer thereof establish, adopt, issue, adhere to, or police and enforce adherence to minimum or suggested resale prices, markups, margins of profit, terms or conditions of sale thereof, or boycott or otherwise refuse to deal with persons engaged in the purchase, sale or distribution of alcoholic beverages;
- (D) Refusing to buy, refusing to promote the sale of, or in any manner hindering the sale of, or urging, compelling or coercing, or attempting to urge, compel or coerce any other person to refuse to buy, refuse to promote or in any manner hinder the sale of alcoholic beverages for the purpose or with the effect of urging, compelling or coercing the manufacturer thereof to establish, adopt, issue, adhere to, or police and influence adherence to

minimum or suggested resale prices, markups, margins of profit, terms or conditions of sale thereof, or boycott or refuse to deal with any person engaged in the purchase, sale or distribution of alcoholic beverages.

VI

[*Permissive Provision*]

Nothing in Subsections (B)(1) and (2) of Section IV, or Subsections (B) and (D) of Section V, shall be construed to prohibit defendant Jack Wulfert, acting as a retailer, from negotiating, entering into and adhering to a contract authorizing said defendant to sell alcoholic beverages with such defendant's private brand or label;' provided, however, that such designation shall not directly or indirectly prevent any monopoly county from acquiring alcoholic beverages direct from any source.

VII

[*Contingent Provision*]

Upon the entry of a Final Judgment in this case not subject to further appeal against one or more of the defendant manufacturers named as such in the complaint in this case requiring a suspension of fair trading in the State of Maryland for any period of time, consenting defendant Jack Wulfert as to alcoholic beverages included in such suspension which he sells, for and during the period of such suspension, shall:

- (A) Within thirty days after the entry of such Final Judgment, cancel all fair-trade contracts to which he is a party and which fix or control the resale price of such alcoholic beverages;
- (B) Be enjoined and restrained from entering into or adhering to any fair-trade contract;
- (C) Be enjoined and restrained from shopping, policing, reporting, or otherwise enforcing, minimum or suggested retail prices, markups, margins of profit, terms or conditions at which such alcoholic beverages are to be sold or offered for sale.

VIII

[*Association Activities*]

The defendant Maryland Package Liquor Stores Association, Inc. is enjoined and restrained from:

- (A) Discussing, evolving or acting upon any matter or thing enjoined and restrained by any provision of this Final Judgment in any meeting of its members, officers, directors or any committee meeting of the Association;
- (B) Accepting financial contributions from any manufacturer, non-member retailer or another non-member association;
- (C) Having as a member any wholesaler or distiller not also engaged in the business of retail sales of alcoholic beverages;
- (D) Organizing, being a member of, or participating in any trade association or other organization, the purposes or functions of which are contrary to any provision of this Final Judgment;
- (E) Maintaining any plan, program, shopping service or other means the purpose or effect of which is to determine, report to any person, police, supervise or enforce prices of alcoholic beverages in the State of Maryland;
- (F) Inducing, compelling or coercing, or attempting to induce, compel or coerce, any person to establish, adopt, issue, adhere to, or to police or enforce adherence to prices, markups, margins of profits, terms or conditions at which alcoholic beverages will be sold or offered for sale;
- (G) Inducing, compelling or coercing, or attempting to induce, compel or coerce, any person to boycott or otherwise refuse to deal with any person engaged in the purchase, sale or distribution of alcoholic beverages.

IX

[*Enforcement and Compliance*]

(A) For the purpose of securing compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any consenting defendant, made to its principal office, be permitted:

(1) Access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment; and

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

(B) Upon receipt of a written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of said Judgment;

(C) No information 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 such Department, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

X

[*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 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 thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.

Final Judgment

[The Kronheim Co.—October 14, 1958]

THOMSEN, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on September 11, 1956, and the plaintiff and the defendant, by their respective 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 with respect to any such issue; and the Court having considered the matter and being duly advised;

Now, Therefore, upon consent of all the parties hereto, it is hereby

Ordered, Adjudged and “Decreed, as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and of all parties signatory hereto. The complaint states claims upon which relief may be granted against the defendant signatory hereto under Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled “An act to protect trade and commerce against unlawful restraint and monopolies,” commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

- (A) "Person" means an individual, partnership, firm, corporation, association, trustee or any other business or legal entity, including County Liquor Control Boards and Departments of Liquor Control;
- (B) "Alcoholic Beverage" means any whiskey, rum, gin, brandy, cordial, wine, cider, alcohol or any other spiritous, vinous, malt or fermented liquor, liquid or compound, by whatever name called, containing one-half of one per centum or more of alcohol by volume, which is fit for beverage purposes, except any brewed alcoholic beverage including beer, ale, porter, and stout;
- (C) "Manufacturer" means a person who operates a plant within the United States for distilling, rectifying, blending, fermenting, or bottling any alcoholic beverage, or imports into the United States any alcoholic beverage from outside the United States, or is a distributor selling to a wholesaler for resale to a retailer;
- (D) "Wholesaler" means any person engaged in the business of purchasing or acquiring alcoholic beverages from manufacturers for resale or distribution to retailers or other purchasers for resale;
- (E) "Retailer" means any person engaged in the business of selling alcoholic beverages to consumers;
- (F) The "consenting defendant" means the Kronheim Co., Inc.;
- (G) "Monopoly County" means any County Liquor Control Board or Department of Liquor Control selling alcoholic beverages under a county dispensary system in the State of Maryland.

III

[*Applicability*]

The provisions of this Final Judgment shall apply to the defendant, its officers, agents, servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with said defendant who receive actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment, the defendant and its respective officers, agents, servants and employees shall be deemed to be one person.

IV

[*Price Fixing*]

- (A) The consenting defendant is jointly and severally enjoined and restrained from entering into, adhering to, maintaining, furthering, or reviving, directly or indirectly, any contract, agreement, understanding, plan or program with any wholesaler or group of wholesalers, or with any retailer or group of retailers, to:
 - (1) Control, fix, adopt, stabilize, or maintain prices, markups, margins or profit, terms or conditions at which alcoholic beverages not manufactured by such defendant are sold or offered for sale to third persons in the State of Maryland;
 - (2) Induce, compel or coerce, or attempt to induce, compel, or coerce, any person to establish, adopt, issue, adhere to, or to police or enforce adherence to prices, markups, margins of profit, terms or conditions at which alcoholic beverages not manufactured by such defendant shall be sold or offered for sale to third persons in the State of Maryland.
- (B) The consenting defendant is enjoined and restrained from entering into, adhering to, maintaining, furthering, or reviving, directly or indirectly, any contract, agreement, or understanding, plan or program with any other person, to
 - (1) Boycott or otherwise refuse to deal with, or threaten to boycott or otherwise refuse to deal with, any person engaged in the purchase, sale or distribution of alcoholic beverages in the State of Maryland;
 - (2) Induce, compel or coerce, or attempt to induce, compel or coerce, any person to boycott or otherwise refuse to deal with any person engaged in the purchase, sale or distribution of alcoholic beverages in the State of Maryland;

(3) Induce, compel or coerce, or attempt to induce, compel or coerce, any manufacturer to refuse to make sales of alcoholic beverages directly to any Monopoly County or to require sales to said Monopoly Counties to be made through wholesalers;

(4) Suggest, designate, prescribe or otherwise influence, or attempt to influence, the price or prices at which sales of alcoholic beverages shall be made by manufacturers or wholesalers to any Monopoly County;

(5) Induce, compel or coerce, or attempt to induce, compel or coerce, any manufacturer or wholesaler to make sales to any Monopoly County upon the condition or understanding that said Monopoly County resell alcoholic beverages at a suggested, prescribed or designated price or prices, or otherwise require said Monopoly County to resell at a suggested, prescribed or designated price or prices.

Nothing in this Final Judgment shall be deemed to prohibit the said defendant from proposing or supporting legislation or the adoption of local, state, or federal regulations, relating to the purchase, sale or distribution of alcoholic beverages or from taking action required by local, state or federal legislation or regulation.

V

[*Coercing Manufacturers*]

The consenting defendant is enjoined and restrained from directly or indirectly:

(A) Urging, compelling or coercing any manufacturer to establish, adopt, issue, adhere to, or police or enforce adherence to minimum or suggested resale prices, markups, margins of profit, terms or conditions of sale at which alcoholic beverages are sold or offered for sale in the State of Maryland;

(B) Communicating with any manufacturer, wholesaler or other person for the purpose or with the effect of urging, compelling or coercing any manufacturer or wholesaler to refrain from selling alcoholic beverages to any person or to any group or class of persons;

(C) Promoting the sale of, or giving preference to, or urging, compelling or coercing, or attempting to urge, compel or coerce any person to promote the sale of, or give preference to, specific brands of alcoholic beverages not manufactured by such defendant upon any condition, agreement or understanding, that the manufacturer thereof establish, adopt, issue, adhere to, or police and enforce adherence to minimum or suggested resale prices, markups, margins of profit, terms or conditions of sale thereof, or boycott or otherwise refuse to deal with persons engaged in the purchase, sale or distribution of alcoholic beverages;

(D) Refusing to buy, refusing to promote the sale of, or in any manner hindering the sale of, or urging, compelling or coercing, or attempting to urge, compel or coerce any(other person to refuse to buy, refuse to promote or in any manner hinder the sale of alcoholic beverages not manufactured by such defendant; for the purpose or with the effect of urging, compelling or coercing the manufacturer thereof to establish, adopt, issue, adhere to, or police and influence adherence to minimum or suggested resale prices, markups, margins of profit, terms or conditions of sale thereof, or boycott or refuse to deal with any person engaged in the purchase, sale or distribution of alcoholic beverages.

VI

[*Permissive Provision*]

Nothing in Subsections (B)(1) and (2) of Section IV, or Subsections (B) and (D) of Section V, shall be construed to prohibit the consenting defendant, acting as a wholesaler or manufacturer, from negotiating, entering into and adhering to a contract designating said defendant or another wholesaler as a distributor, on an exclusive basis or otherwise; provided, however, that such designation shall not directly or indirectly prevent any monopoly county from acquiring alcoholic beverages direct from any source.

VII

[*Contingent Provision*]

Upon the entry of a Final Judgment in this case not subject to further appeal against one or more of the defendant manufacturers named as such in the complaint in this case requiring a suspension of fair trading in the State of Maryland for any period of time, the consenting defendant wholesaler as to alcoholic beverages included in such suspension which it sells, for and during the period of such suspension, shall:

(A) Within thirty days after the entry of such Final Judgment, cancel all fair-trade contracts to which he is a party and which fix or control the resale price of such alcoholic beverages and shall give to all Maryland licensed retailers handling, such products notice of such cancellation and termination, informing each of them that the retailer shall individually determine his resale price without reference to fair-trade prices theretofore established thereon;

(B) Be enjoined and restrained from entering into or adhering to any fair-trade contract;

(C) Be enjoined and restrained from disseminating or preparing for dissemination to any person price lists or other price information containing minimum or suggested resale prices, markups, margins of profits, terms or conditions at which such alcoholic beverages are to be resold or offered for sale, except as provided by Article 2B, Section 109 of the Annotated Code of Mainland.

(D) Be enjoined and restrained from shopping, policing, reporting, or otherwise enforcing, minimum suggested retail prices, markups, margins of profit, terms or conditions at which such alcoholic beverages are to be sold or offered for sale.

VIII

[*Enforcement and Compliance*]

(A) For the purpose of securing compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant, made to its principal office, be permitted:

1. Access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment; and

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

(B) Upon receipt of a written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of said Judgment;

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

IX

[*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 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 thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.