

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 9122
)	
MARYLAND STATE LICENSED)	
BEVERAGE ASSOCIATION, INC.,)	
ET AL.,)	
)	
Defendants.)	

FINAL JUDGMENT

The plaintiff, United States of America, having filed its complaint herein on September 11, 1956; the defendants, Schenley Industries, Inc., Affiliated Distillers Brands Corp., Joseph E. Seagram & Sons, Inc. and House of Seagram, Inc. (Distillers Distributing Corp.), having appeared and filed their answers to said complaint; the issues having been tried with testimony taken, the Court having adopted as its Findings of Fact and Conclusions of Law its opinion dated November 26, 1958; and it appearing to the Court that there is no just reason for delay in entering a Final Judgment;

Now, Therefore, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I

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 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) "Defendants" means the defendants Schenley Industries, Inc., Affiliated Distillers Brands Corp., Joseph E. Seagram & Sons, Inc., and House of Seagram, Inc. (Distillers Distributing Corp.) 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.

II

The provisions of this Final Judgment applicable to any 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, any 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 defendant shall mean any company wholly owned or substantially wholly owned by such defendant, any parent company that directly or indirectly wholly owns or substantially wholly owns such defendant and any company wholly owned or substantially wholly owned by such parent.

III

The defendants have violated Sections 1 and 2 of the Act of Congress of July 2, 1890, 15 U.S.C., entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended. Said violations have consisted of the defendants' having unlawfully combined and conspired to restrain and to monopolize, and having unlawfully attempted to monopolize, interstate trade and commerce in the sale and distribution of alcoholic beverages within the State of Maryland to the extent and in the manner set forth in the Opinion of this Court dated November 26, 1958.

IV

(A) The 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 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 any other manufacturer or wholesaler 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

Each of the 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.

Nothing in Subsections (B)(1) and (2) of Section IV, or Subsections (B) and (D) of Section V, shall be construed to prohibit any 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 leave the defendant contractually free to sell directly to any Monopoly County to which it desires to sell.

Nothing in this Final Judgment shall be deemed to prohibit the 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

(A) Defendants are ordered (1) to cancel all fair trade contracts for the State of Maryland to which they are a party and which fix or control the resale price of alcoholic beverages, and (2) to give to all their Maryland customers and Maryland licensed retailers handling their products notice of such cancellation and termination, informing them that each retailer shall individually determine his resale price for such products without reference to fair trade prices theretofore established thereon;

(B) Defendants are restrained for a period of two years from entering into or adhering to any fair trade contract in the State of Maryland;

(C) Defendants are restrained for a period of two (2) years from disseminating or preparing for dissemination to any person in the State of Maryland price lists or other price information containing 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

or by any other applicable provision of Maryland state law (including administrative regulations) which is now or hereafter may be in effect;

(D) Defendants are restrained for a period of two (2) years 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 in the State of Maryland;

The operation of the foregoing provisions of Section VI hereof is hereby suspended. However, Plaintiff may move at any time more than six (6) months and less than three (3) years after the date of this Final Judgment for an order removing the suspension of the operation of these provisions and making them binding on all the defendants in this case for a period of two (2) years after the date of the order granting such motion. This motion will not be granted unless and until it is made clear to this Court that the other provisions of this Final Judgment are insufficient to prevent the continuance or recurrence of this conspiracy.

VII

(A) 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 defendant shall offer to sell and shall sell upon request to the Department of Liquor Control for Montgomery County those applicable brands listed in Appendix A 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, if such sales are made by a wholesaler to Montgomery County at the cost to the wholesaler plus a handling charge not to exceed one (1) dollar per case, such sale shall be considered equivalent to a sale by a manufacturer direct to Montgomery County at the prescribed price, and provided, further, that if any such brand is withdrawn by any defendant from the State of Maryland, 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;

(C) Any of the defendants may move to modify this Final Judgment with respect to individual action as to Montgomery County, because of a change in Maryland law or upon a showing of hardship.

VIII

(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 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, all of whom 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 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 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.

X

Judgment is entered against the defendants for all costs to be taxed in this proceeding.

Dated: March 4, 1959

B. Thompson
United States District Judge

APPENDIX A

List of applicable brands which Schenley Industries, Inc. and affiliated Distillers Brands Corp. are obligated to sell to Montgomery County pursuant to Section VII (B)

Old Quaker Straight Bourbon Whiskey
Old Stagg Straight Kentucky Bourbon Whiskey
Ancient Age Straight Kentucky Bourbon Whiskey
Cascade Straight Kentucky Bourbon Whiskey
Echo Springs Straight Kentucky Bourbon Whiskey
Old Charter Straight Kentucky Bourbon Whiskey
Cream of Kentucky Blended Whiskey
I. W. Harper Kentucky Bourbon Whiskey (bottled in bond)
Melrose Rare Blended Whiskey
James E. Pepper Kentucky Bourbon Whiskey (bottled in bond)
Gibson Diamond-8 Blended Whiskey
Golden Wedding Blended Whiskey
Three Feathers Blended Whiskey
Coronet Brandy
Dewar's White Label Scotch
Melrose Gin
Dubonnet Aperitif
Roma Wines

List of applicable brands which Joseph E. Seagram & Sons, Inc. and House of Seagram, Inc. (Distillers Distributing Corp.) are obligated to sell to Montgomery County pursuant to Section VII (B)

Lord Calvert Whiskey
Calvert Reserve Whiskey
Carstairs White Seal Whiskey
London Distilled Gin
Four Roses Whiskey
Hunter Whiskey
Paul Jones Whiskey
Four Roses Gin
Gallagher & Burton Black Label Whiskey