

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Schenley Industries, Inc., U.S. District Court, D. Delaware, 1957 Trade Cases ¶68,664, (Apr. 3, 1957)

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United States v. Schenley Industries, Inc.

1957 Trade Cases ¶68,664. U.S. District Court, D. Delaware. Civil Action No. 1686. Dated April 3, 1957. Case No. 1214 in the Antitrust Division of the Department of Justice.

Clayton Antitrust Act

Acquisitions of Stock or Assets—Consent Decree—Practices Enjoined—Acquisition of Competitors—Producer-Distributor of Whiskey.—A producer-distributor of whiskey was prohibited by a consent decree, for a period of ten years, from acquiring, directly or indirectly, through subsidiaries or otherwise, the business of any corporation engaged in distilling and distributing whiskey in bottles in the United States by the acquisition of stock or other share capital or by the purchase of assets. However, if the producer-distributor desired to make any acquisition prior to the expiration of ten-year period, it could notify the Government of the proposed acquisition. If the Government does not object to the acquisition, the acquisition would be deemed not to be a violation of the consent judgment. If the Government objects to the acquisition, the producer-distributor could apply to the court for permission to make the acquisition, and such permission could be granted upon a showing that the acquisition would not substantially lessen competition or tend to create a monopoly in the distilling or distribution of whiskey.

For the plaintiff: Victor R. Hansen, Assistant Attorney General, and W. D. Kilgore, Jr., Ephraim Jacobs, William H. McManus, John M. O'Donnell, and Charles F. B. McAleer, attorneys.

For the defendant: Dewey, Ballantine, Bushby, Palmer & Wood by Leonard Joseph.

Final Judgment

CALEB WRIGHT, District Judge [*In full text*]: Plaintiff United States of America having filed its complaint herein; defendant Schenley Industries, Inc., (hereinafter "Schenley") having appeared and filed its answer to such complaint denying the substantive allegations thereof and denying any violation of law; and the parties herein, 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 in respect to any such issue of fact or law,

Now, therefore, without any testimony having been taken herein, and without trial or adjudication of any issue of fact or law herein and on consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I

[*Clayton Act*]

This Court has jurisdiction of the subject matter herein and of all parties hereto pursuant to Section 15 of the Act of Congress of October 15, 1914, as amended, entitled "An Act to Supplement Existing Laws Against Unlawful Restraints and Monopolies and For Other Purposes/" commonly known as the Clayton Act; and the complaint states a claim upon which relief may be granted under Section 7 of said Act.

II

[*Applicability of Judgment*]

The provisions of this Final Judgment shall be binding upon said defendant, its officers, agents, servants, employees and subsidiaries, and upon those persons in active concert or participation with said defendant who receive actual notice of this Final Judgment by personal service or otherwise.

III

[*Acquisitions Prohibited*]

Schenley is enjoined and restrained until March 1, 1967 from acquiring, directly or indirectly, through subsidiaries or otherwise, either by acquisition of stock or other share capital, or by the purchase of assets, the business of any corporation engaged in distilling and distributing whiskey in bottles in the United States. Provided, however, that if at any time Schenley desires to make any acquisitions prior to March 1, 1967 which would be otherwise prohibited by the foregoing, it may submit disclosure of the facts with respect to such proposed acquisition and the reason therefor to the plaintiff. If the plaintiff shall not object to the proposed acquisition within 30 days after receipt of such notice, such acquisition shall be deemed not to be a violation of this Final Judgment. In the event the plaintiff shall object, defendant may apply to this Court for permission to make such acquisition, which may be granted upon a showing by the defendant to the satisfaction of this Court that the acquisition would not substantially lessen competition or tend to create a monopoly in the distilling or distribution of whiskey.

Nothing contained herein shall be deemed to prohibit the purchase by the defendant of bulk whiskey or other supplies or equipment in the normal course of business.

IV

[*Inspection and Compliance*]

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 be permitted, upon written request of the Attorney General, or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant at its principal office, (1) to inspect during office hours all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant relating to any of the subject matters contained in this Final Judgment; and (2) subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview any officer or employee of the defendant, who may have counsel present, regarding any such matters; (3) and to require the defendant to submit such reports in writing with respect to 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 provided in this Section IV shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

V

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling any party 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, and for the enforcement of compliance therewith and punishment of violations thereof.