

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Retail Liquor Dealers Association of Chattanooga, Chattanooga Wholesale Liquor Dealers Association, United Liquors Corporation, Chattanooga Wholesale Company, Monarch Distributors, Inc., Union Wholesale Liquor Co., Inc., Isadore S. Deitch, Charles W. Hines, Ray H. Daley, James W. Rogers, Coke Bowman, Daniel Perlberg, William L. Springer, Harry D. Fielder, and Dan Daniels., U.S. District Court, E.D. Tennessee, 1957 Trade Cases ¶68,751, (Jun. 20, 1957)

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United States v. Retail Liquor Dealers Association of Chattanooga, Chattanooga Wholesale Liquor Dealers Association, United Liquors Corporation, Chattanooga Wholesale Company, Monarch Distributors, Inc., Union Wholesale Liquor Co., Inc., Isadore S. Deitch, Charles W. Hines, Ray H. Daley, James W. Rogers, Coke Bowman, Daniel Perlberg, William L. Springer, Harry D. Fielder, and Dan Daniels.

1957 Trade Cases ¶68,751. U.S. District Court, E.D. Tennessee, Southern Division. Civil Action No. 2554. Filed June 20, 1957. Case No. 1248 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing—Resale Prices—Alcoholic Beverages.—Wholesalers and retailers of alcoholic beverages and two trade associations were prohibited by a consent decree from entering into any understanding (1) to control prices, discounts, mark-ups, margins of profit, or terms at which alcoholic beverages are sold, (2) to induce or coerce any person to (a) adhere to prices, terms, or conditions at which such beverages are sold or (b) issue, print, or disseminate any price lists or other price information containing minimum or suggested resale prices, or (3) to communicate with any manufacturer or wholesaler for the purpose of inducing or coercing such manufacturer or wholesaler to establish minimum or suggested resale prices. The retailers were further prohibited from posting or adhering to any price lists containing minimum or suggested resale prices, mark-ups, or margins of profit. Also, the defendants were ordered to cancel all fair trade contracts.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Exchange of Price Information—Trade Association Membership.—Wholesalers and retailers of alcoholic beverages and two trade associations were prohibited by a consent decree from (1) circulating or exchanging price lists or other price information containing minimum or suggested resale prices, mark-ups, or margins of profit for alcoholic beverages, (2) belonging to or participating in any organization or program for (a) policing or reviewing prices or (b) restricting or preventing the distribution or sale of any brand of alcoholic beverage, or (3) organizing, becoming a member of, or participating in the activities of any trade association or other organization, the purpose of which relates to the distribution or sale of alcoholic beverages contrary to the provisions of the consent decree.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Cancellation of Fair Trade Contracts.—Alcoholic beverage retailers and wholesalers were directed to cancel their fair trade contracts which fix the resale price of any alcoholic beverage in the Chattanooga trading area. Also, the wholesalers were required to withdraw all outstanding price lists for alcoholic beverages.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Dissolution of Trade Association.—Where a consent decree prohibited wholesalers and retailers of alcoholic beverages from engaging in price fixing practices, the decree also ordered the dissolution of a wholesale liquor dealers' trade association.

Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions—Legislative Activities.—A consent decree entered against retailers and wholesalers of alcoholic beverages

provided that nothing contained in the decree shall prohibit them 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 legislation or regulation.

For the plaintiff: Raymond K. Carson and Walter W. Dosh.

For the defendants: D. L. Lansden, Nashville, Tenn., for Monarch Distributors, Inc., and Harry D. Fielder; John J. Hooker, Nashville, Tenn., for Chattanooga Wholesale Company and Dan Daniels; Vaughn Miller (Miller, Martin, Hitching & Tipton), Chattanooga, Tenn., for Coke Bowman and Chattanooga Wholesale Liquor Dealers Association; Harry Weill, Chattanooga, Tenn., for Retail Liquor Dealers Association of Chattanooga, Isadore S. Deitch, Charles W. Hines, Ray H. Daley, and James W. Rogers; and Charles A. Noone (Noone & Noone), Chattanooga, Tenn., for United Liquors Corporation, Union Wholesale Liquor Company, Inc., Daniel Perlberg, and William L. Springer.

Final Judgment

LESLIE R. DARR, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on June 30, 1955, and the defendants having appeared and filed their several answers to said complaint denying the substantive allegations thereof and any violation of law; and the said 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 in respect to any such issue; and the plaintiff, by its attorneys, not objecting to the form of this Final Judgment; 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, it is hereby

Ordered, adjudged and decreed, as follows:

I

[Sherman Act]

This Court has jurisdiction of the subject matter hereof and of all 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) "Alcoholic beverage" shall mean 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 cent or more of alcohol by volume, which is fit for beverage purposes, except beer;
- (C) "Manufacturer" shall mean any person who distills, rectifies, blends, ferments or bottles any alcoholic beverage, or imports into the United States any alcoholic beverage from outside the United States, or who, as a distributor of alcoholic beverages, sells to a wholesaler for resale to a retailer;
- (D) "Chattanooga Trading Area" shall mean Hamilton County, Tennessee, and other counties in the State of Tennessee supplied with alcoholic beverages by Chattanooga wholesalers.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any of the defendants shall apply to such defendants, their officers, agents, servants and employees, and to those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Price Fixing Practices*]

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

- (A) Control, fix, raise, adopt, stabilize or maintain prices, mark-ups, margins of profit, terms or conditions at which alcoholic beverages are sold or offered for sale to third persons;
- (B) Control, fix, raise, adopt, stabilize, maintain or eliminate discounts at which alcoholic beverages are sold or offered for sale to third persons;
- (C) Induce, compel or coerce, or attempt to induce, compel or coerce any person to adhere to, or to police or enforce adherence to, prices, terms or conditions at which alcoholic beverages are sold or offered for sale to third persons, or to any group or class of persons;
- (D) Induce, compel or coerce, or attempt to induce, compel or coerce any person to issue, print, write or disseminate any price lists or other price information containing minimum or suggested resale prices at which alcoholic beverages are to be sold or offered for sale to third persons, or to any group or class of persons;
- (E) Communicate, directly or indirectly, with any manufacturer or wholesaler for the purpose of inducing, compelling or coercing such manufacturer or wholesaler to establish, adopt, issue or enforce minimum or suggested resale prices, mark-ups, margins of profit or discounts at which alcoholic beverages are sold or offered for sale to third persons.

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 alcoholic beverages or from individually taking action required by local, state or federal legislation or regulation.

V

[*Minimum Retail Prices*]

Each of the defendant retailers is enjoined and restrained from maintaining, posting, or adhering to any price lists or other price information prepared, issued or circulated by any other person, containing minimum or suggested retail prices, mark-ups or margins of profit for alcoholic beverages.

VI

[*Price Lists—Concerted Activities*]

- (A) Each of the defendants is enjoined and restrained, for a period of five years from the effective date of this Final Judgment, from disseminating, circulating or exchanging, or preparing for dissemination, circulation or exchange, to or with any other person, price lists or other price information containing minimum or suggested resale prices, mark-ups or margins of profit for alcoholic beverages sold or offered for sale to third persons;
- (B) Each of the defendants is enjoined and restrained from belonging to or participating in any organization, plan or program for policing or reviewing prices at which alcoholic beverages are sold or offered for sale by any person;

(C) Each of the defendants is enjoined and restrained from belonging to or participating in any organization, plan or program for restricting, hindering or preventing the introduction of, or decreasing or eliminating the distribution or sale of, any brand of alcoholic beverage in the Chattanooga trading area, under threat of boycott or otherwise.

VII

[*Withdrawal of Price Lists*]

Each of the defendant wholesalers is ordered and directed to:

(A) Withdraw from the possession or custody of retailers and other wholesalers, by written request personally delivered to each customer and other wholesaler, not later than fifteen (15) days from the effective date of this Final Judgment, all outstanding price lists and other documents or data previously issued or circulated by each such wholesaler which list, or contain any reference to, any minimum or suggested retail prices, mark-ups or margins of profit for alcoholic beverages;

(B) Not later than thirty (30) days from the effective date of this Final Judgment, furnish to each retailer in the Chattanooga trading area a written notification that, pursuant to the terms of this judgment, (1) any and all minimum or suggested retail prices, mark-ups and margins of profit for alcoholic beverages, previously issued or furnished by such wholesaler, have been withdrawn and cancelled, and (2) for a minimum period of five years from the effective date of this Final Judgment, such wholesaler will not issue, circulate or furnish to retailers any minimum or suggested retail prices, mark-ups or margins of profit for alcoholic beverages;

(C) Within sixty (60) days after the effective date of this Final Judgment, file an affidavit with this Court, and send a copy thereof to the plaintiff herein, setting forth the steps taken to comply with the terms of this Section VII.

VIII

[*Fair Trade Contracts—Cancellation*]

(A) Each defendant is ordered and directed (1) to cancel all fair trade contracts to which he is a party and which fix or control the resale price of any alcoholic beverage in the Chattanooga trading area, and (2) to the extent that such defendant elects to sell alcoholic beverages in the Chattanooga trading area, during the period of five years from the effective date of this Final Judgment, to do so at prices individually determined by himself, without reference to fair trade prices established thereon.

(B) Each of the defendants is enjoined and restrained for the five year period provided for in sub-section (A) of this Section VIII, from urging, suggesting, persuading or coercing any manufacturer or wholesaler to establish, adopt, issue or enforce minimum or suggested resale prices for alcoholic beverages.

IX

[*Trade Association—Dissolution*]

(A) Defendant Chattanooga Wholesale Liquor Dealers Association is ordered and directed to cause, within thirty (30) days after the date of entry of this Final Judgment, the dissolution of the Association and, within sixty (60) days after the date of entry of this Final Judgment its secretary or members shall file an affidavit with this Court, and send a copy thereof to the plaintiff herein, setting forth the steps taken to comply with the terms of sub-section (A) of this Section IX;

(B) Defendant Retail Liquor Dealers Association of Chattanooga having dissolved as a corporation *pendente lite*, all of the defendants are jointly and severally enjoined and restrained from organizing, becoming a member of, or participating, directly or indirectly, in the activities of any trade association or other organization, the purpose or functions of which relate to the distribution or sale of alcoholic beverages contrary to any provision of this Final Judgment.

X

[*Inspection and Compliance*]

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 defendant, made to its principal office or place of business, be permitted:

(A) 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

(B) 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 matter.

No information obtained by the means provided in this Section X 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.

XI

[*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.