

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. A M I Incorporated., U.S. District Court, W.D. Michigan, 1957 Trade Cases ¶68,758, (Jun. 28, 1957)

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United States v. A M I Incorporated.

1957 Trade Cases ¶68,758. U.S. District Court, W.D. Michigan, Southern Division. Civil Action No. 3238. Filed June 28, 1957. Case No. 1350 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Allocation of Markets—Refusal To Deal—Coin Operated Phonographs.—A manufacturer-distributor of coin operated phonographs was prohibited by a consent decree from (1) limiting or restricting the persons to whom or the territory within which any distributor or operator may sell such phonographs, (2) requiring any distributor to advise it of the name or address of any purchaser of phonographs or the serial number of such phonograph, or (3) limiting or restricting the right of any purchaser from any distributor to resell such phonographs after they have been paid for in full. Also, the manufacturer-distributor was prohibited from refusing to enter into or canceling any contract with a distributor because of such distributor's refusal to do any of the above acts and from maintaining any index or record of the names or addresses of any purchasers from distributors of such phonographs or the serial numbers of such phonographs.

Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions—Obtaining Names of Purchasers—Right To Select Customers.—A consent decree did not prohibit a manufacturer-distributor of coin operated phonographs from requiring any distributor to advise it of the name or address of any purchaser of such phonographs from the distributor or the serial number of such phonographs where such name, address, and serial number are necessary (1) to fill an order for repair parts, for service, or for possible attendance at service schools, or (2) to resolve a complaint of inquiry involving loss or the fulfillment or breach of a conditional sales agreement or other credit or collateral agreement. The decree also provided that the manufacturer-distributor could exercise its right to select its distributors and customers and to designate geographical areas in which distributors shall be primarily responsible for promoting the sale of its coin operated phonographs.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Notice of Judgment.—A manufacturer-distributor of coin operated phonographs was required by a consent decree to serve upon each of its distributors a conformed copy of the decree.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; Wendell A. Miles, United States Attorney, Western District of Michigan; and W. D. Kilgore, Jr., Earl A. Jinkinson, Harold E. Baily, and James E. Mann, Attorneys, Department of Justice.

For the defendant: Thomas L. Marshall of Bell, Boyd, Marshall & Lloyd, Chicago, Ill.; and Marshall M. Uhl of Uhl, Bryant, Slawson & Wheeler, Grand Rapids, Mich.

Final Judgment

S. WALLACE KENT, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on June 28, 1957, the defendant having filed its answer denying the substantive allegations thereof, and the United States of America and the defendant, AMI Incorporated, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or an admission by any party signatory hereto with respect to any such issue;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties signatory hereto, It is hereby ordered, adjudged and decreed as follows:

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter of this action and of the parties signatory hereto. The complaint states claims for relief against the defendant under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce from 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, or any other legal entity;
- (B) "Distributor" shall mean any person engaged in the purchase from defendant, for resale, of coin-operated phonographs manufactured by it;
- (C) "Operator" shall mean any person who owns coin-operated phonographs and leases said machines to location owners;
- (D) "Location owner" shall mean any person owning or operating a restaurant, tavern or other place of business in the Continental United States where coin-operated phonographs are placed for use by the public;
- (E) "Coin-operated phonographs" shall mean new and used coin-operated phonographs manufactured originally by defendant.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment shall apply to defendant and to its successors, assigns, officers, directors, servants, employees and agents, and to any corporation subsidiaries of defendant, and to all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

This Final Judgment is not to be construed as relating to commerce outside the United States.

IV

[*Practices Enjoined*]

Defendant is enjoined and restrained from directly or indirectly:

- (A) (1) Limiting or restricting, the persons to whom or the territory within which any distributor or operator may sell coin-operated phonographs;
- (2) Requiring any distributor to advise defendant of the name or address of any purchaser from such distributor of any coin-operated phonographs or the serial number or numbers of such phonographs, except where such name, address and serial number or numbers are necessary to fill an order for repair or maintenance parts, or for service, or for possible attendance at service schools, for maintenance or replacement of parts or components, or to resolve a complaint or inquiry involving loss or theft or the fulfillment or breach of a conditional sales agreement or other credit or collateral agreement;
- (3) Limiting or restricting the right of any purchaser from any distributor of coin-operated phonographs to resell such phonograph or phonographs after they have been paid for in full.

(B) Entering into, adhering to or enforcing any contract, agreement, or understanding with any distributor, directly or indirectly:

(1) Limiting or restricting the persons to whom or the territory within which any distributor or operator may sell a coin-operated phonograph or phonographs;

(2) Limiting or restricting the right of any purchaser from any distributor of coin-operated phonographs to resell such phonograph or phonographs after they have been paid for in full.

(C) Refusing to enter into or cancelling any contract with a distributor for the distribution of coin-operated phonographs because of such distributor's refusal to do any of the following acts:

(1) Limit or restrict, directly or indirectly, the persons to whom, or the territory within which he sells coin-operated phonographs;

(2) Advise defendant of the name or address of any purchaser from such distributor of any coin-operated phonographs or the serial number or numbers of such phonographs, except where such name, address and serial number or numbers are necessary to fill an order for repair or maintenance parts, or for service or for possible attendance at service schools, for maintenance or replacement of parts or components, or to resolve a complaint or inquiry involving loss or theft, or the fulfillment or breach of a conditional sales agreement or other credit or collateral agreement held by the defendant.

(3) Limit or restrict, directly or indirectly, the right of any purchaser of coin-operated phonographs to resell such phonographs after the defendant shall have been paid in full therefor.

(D) (1) Maintaining any index, catalog or record of the names or addresses of any purchasers from distributors of coin-operated phonographs or the serial numbers of such phonographs; provided, however, that any distributor may advise defendant and defendant may keep a record of the names or addresses of any such purchasers of such phonographs and the serial numbers thereof in connection with an order for repair or maintenance parts, or for service or for possible attendance at service schools, or for advertising, or in connection with a complaint or inquiry involving loss or theft or fulfillment or breach of a conditional sales agreement or other credit or collateral agreement involving such phonographs ; and provided further that defendant shall not be required to discontinue obtaining post cards upon forms prescribed from any owner of its coin-operated phonographs as a means of determining the time at which its warranty begins to operate and identification of its then warranty promisee, but these exceptions and provisions shall not be used directly or indirectly to accomplish, or to attempt to accomplish, action or results enjoined by any provision of this decree.

(2) Using any file or record of defendant for any purpose contrary to any of the provisions of this Final Judgment.

(E) Subject to the above subsections of this Section IV, defendant may exercise its right from time to time to choose and select its distributors and customers, and to designate geographical areas in which such distributors shall respectively be primarily responsible for promoting the sale and distribution of coin-operated phonographs manufactured by defendant.

V

[*Notice of Judgment*]

Defendant is directed, within sixty (60) days after the entry of this Final Judgment, to serve by mail upon each of its distributors a conformed copy thereof.

VI

[*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, on 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, subject to any legally recognized privilege:

(A) Access, during regular office hours, to those parts of the books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant which relate to any matters contained in this Final Judgment;

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

Upon 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 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 VI 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.

VII

[*Jurisdiction Retained*]

Jurisdiction is retained by this Court 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 amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

VIII

[*Effective Date*]

This Final Judgment shall become effective ninety (90) days after entry herein.