

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Erie County Malt Beverage Distributors Association; Erie County I. D. Malt Beverage Association, also known as Erie County Importing Malt Beverage Distributors Association; Erie Beer Company; Kahkwa Beer Company; Carney & Sperry Beer Distributors; East Side Beer Company; George B. Barber; Raymond J. Felbinger; Louis Sawicki; Ralph A. Deck; Edward S. Schaaf; George J. Leach; Russell O. Suleski; and Robert E. Carney., U.S. District Court, W.D. Pennsylvania, 1958 Trade Cases ¶69,055, (May 28, 1958)

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United States v. Erie County Malt Beverage Distributors Association; Erie County I. D. Malt Beverage Association, also known as Erie County Importing Malt Beverage Distributors Association; Erie Beer Company; Kahkwa Beer Company; Carney & Sperry Beer Distributors; East Side Beer Company; George B. Barber; Raymond J. Felbinger; Louis Sawicki; Ralph A. Deck; Edward S. Schaaf; George J. Leach; Russell O. Suleski; and Robert E. Carney.

1958 Trade Cases ¶69,055. U.S. District Court, W.D. Pennsylvania. Civil Action No. 436 Erie. Filed May 28, 1958. Case No. 1295 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing— Beer.—Beer distributors, trade associations, and individuals were prohibited by a consent decree from entering into any agreement to control or fix prices, discounts, mark-ups, margins of profit, or any other condition at which beer may be sold.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing— Coercion and Intimidation.—Beer distributors, trade associations, and individuals were prohibited by a consent decree from entering into an agreement to induce, compel, or coerce (1) any person to adhere to prices, discounts, mark-ups, margins of profit, delivery charges, or other conditions for the sale of beer, (2) any person to adhere to hours or holidays which are observed in the sale of beer, or (3) any brewer or importing distributor to establish or enforce minimum or suggested resale prices, discounts, mark-ups, or margins of profit at which beer may be sold to third persons.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Discrimination.—Beer distributors, trade associations, and individuals were prohibited by a consent decree from entering into any agreement to give preference to certain brewers or importing distributors of beer on the condition that the brewer or importing distributor establish and enforce minimum or suggested retail prices, discounts, mark-ups, or margins of profit.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Coercion and Intimidation— Boycott Discrimination.—Beer distributors, trade associations, and individuals were prohibited by a consent decree from entering into an agreement to boycott, discriminate against, or coerce or induce any brewer or importing distributor to boycott or discriminate against any person or group or class of persons who produce, sell, or distribute beer. They were also prohibited from refusing to sell beer at nondiscriminatory prices.

Resale Price Fixing—Consent Decree—Practices Enjoined—Distribution of Resale Price Lists.—Beer distributors, trade associations, and individuals were prohibited by a consent decree from distributing or disseminating any price list to any person engaged in the sale or distribution of beer which purports to indicate any prevailing, standard, or established resale price of beer.

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

Membership.—Beer distributors, trade associations, and individuals were prohibited by a consent decree from belonging to, organizing, becoming a member of, or participating in the activities of any trade association, the purpose or functions of which relate to the distribution or sale of beer contrary to any provision of the decree.

Department of Justice Enforcement and Procedure—Enforcement of Consent Decrees —Trade Associations—Consent of Member to Decree as Condition of Membership— Decree as Part of

Association By-Laws.—A consent decree entered against beer distributors and trade associations required each association to adopt by-laws embodying the prohibitions of the decree, to require all members to be bound by the by-laws incorporating the provisions of the decree, and to expel from membership any member who shall violate such by-laws.

Department of Justice Enforcement and Procedure—Consent Decree—Permissive Provisions— Proposing Legislation.—A consent decree entered against beer distributors and their trade associations

provided that nothing in the decree should be deemed to prohibit the defendants from proposing or supporting legislation relating to the purchase, sale, or distribution of beer or from individually taking action as might be required by local, state, or federal legislation or regulation.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; and W. D. Kilgore Jr., Worth Rowley, William L. Maher, Donald G. Balthis, John E. Sarbaugh, and James P. Tofani, Attorneys, Department of Justice.

For the defendants: Frank B. Quinn, Joseph Barber, and Thomas Barber.

Final Judgment

HERBERT P. SORC, District Judge [*In full text*] : Plaintiff, United States of America, having filed its complaint herein on June 29, 1956; each of the defendants having appeared and filed their answers to said complaint denying the substantive allegations thereof and any violations of law; and the plaintiff and the 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 of law herein, and without admission by any party in respect to any such issue; and the Court having considered the matter and being duly advised;

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

Ordered, adjudged, and decreed as follows:

I

[*Sherman Act*]

The Court has jurisdiction of the subject matter hereof and all the 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" means an individual, partnership, firm, corporation, association, trust or any other business or legal entity;

(B) "Malt beverage" means any beer, lager beer, ale, porter, or similar fermented malt beverage containing one-half of one per centum or more of alcohol by volume, by whatever name such beverage may be called;

(C) "Brewer" means any person who is engaged in the business of brewing and selling malt beverages;

(D) "Importing distributor" means any person engaged in the business of purchasing malt beverages from brewers and other sources located outside the Commonwealth of Pennsylvania as well as from brewers and other importing distributors located within the Commonwealth of Pennsylvania and of reselling such beverages in case lots to other importing distributors, distributors, retail outlets and home consumers; and

(E) "Distributor" means any person engaged in the business of purchasing malt beverages from importing distributors and brewers located within the Commonwealth of Pennsylvania and of reselling such beverages in case lots to retail outlets and home consumers in Erie County, Pennsylvania.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any defendant shall apply to each such defendant and to his or its officers, agents, servants, employees, subsidiaries, successors and assigns, and to all persons in active concert or participation with any defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV,

[*Concerted Practices Prohibited*]

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, adopt, stabilize or maintain prices, discounts, markups, margins of profits, delivery charges, or other terms or conditions at which malt beverages are sold or offered for sale to third persons;

(B) Induce, compel or coerce, or attempt to induce, compel or coerce any person to adhere to, police or enforce adherence to prices, discounts, markups, margins of profit, delivery charges, or other terms or conditions at which malt beverages will be sold to any person, or to any group or class of persons;

(C) Induce, compel or coerce, or attempt to induce, compel or coerce, any person or group or class of persons to adhere to, police or enforce adherence to hours or holidays which are observed or to be observed in the sale or distribution of malt beverages;

(D) Induce, compel or coerce, or attempt to induce, compel or coerce any brewer or importing distributor to establish, adopt, issue or enforce minimum or suggested re sale prices, discounts, markups or margins of profit at which malt beverages are sold or offered for sale to third persons;

(E) "Push" or give preference to malt beverages on the condition or understanding that the brewer or importing distributor thereof establish, adopt, issue or enforce, or agree to establish, adopt, issue or enforce minimum or suggested retail prices, discounts, markups or margins of profit thereon; and

(F) (1) Boycott or otherwise refuse, or threaten to boycott or otherwise refuse, to deal with;

(2) induce, compel or coerce, or at tempt to induce, compel or coerce, any brewer or importing distributor to boycott or otherwise refuse to deal with;

(3) discriminate against or threaten to discriminate against; or

(4) induce, compel or coerce, or attempt to induce, compel or coerce, any brewer or importing distributor to discriminate against any person or group or class of persons in connection with the production, sale or distribution of malt beverages.

V

[*Individual Practices Prohibited*]

Each defendant is enjoined and restrained from directly or indirectly:

- (A) Refusing to sell malt beverages on nondiscriminatory prices, terms and conditions to any distributor or importing distributor provided such sale is not prohibited by local, State or Federal law;
- (B) Distributing or disseminating in any manner any price list or price bulletin to any person engaged in the sale or distribution of malt beverages which purports to indicate any prevailing, standard or established resale price of malt beverages;
- (C) Inducing, compelling or coercing, or attempting to induce, compel or coerce any brewer, importing distributor or distributor to refrain from purchasing, selling or other wise discriminating in the purchase or sale of malt beverages from or to any person or to any group or class of persons; and
- (D) Belonging to, organizing, becoming a member of, or participating in the activities of any trade association or other organization, the purpose or functions of which relate to the distribution or sale of malt beverages contrary to any provision of this Final Judgment.

VI

[*Specific Relief*]

Each defendant association is ordered and directed:

- (A) Within thirty (30) days after the entry hereof, to serve by mail upon each of its present and former members a con formed copy of this Final Judgment;
- (B) To institute forthwith and to complete within three months from the date of entry of this Final Judgment such proceedings as may be appropriate and necessary to adopt by-laws incorporating therein Sections IV, V and VII of this Judgment and require as a condition of membership or retention of membership that all present and future members be bound thereby in the same way that the defendants herein are now bound;
- (C) To furnish to each of its present and future members a copy of its by-laws adopted in accordance with subsection (B) of this Section VI;
- (D) To expel promptly from membership any present or future member who shall violate any of the provisions of its by-laws incorporating Sections IV, V and VII of this Final Judgment when the said associa tion shall have knowledge of such violation; and
- (E) Within four months after the date of the entry of this Final Judgment to file an affidavit with this Court and send a copy thereof to the plaintiff herein, setting forth the steps taken to comply with this Section VI.

VII

[*Permissive Provision*]

Nothing in this Final Judgment 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 malt beverages or from individually taking action required by local, State or Federal legislation or regulation.

VIII

[*Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, 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 any defendant, 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 of the 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 and employees of such defendant who may have counsel present, regarding such matters.

Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, said defendant shall submit such reports in writing to the Department of Justice 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 VIII shall be divulged by 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 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 by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to the 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.