

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. F. & M. Schaefer Brewing Co., U.S. District Court, E.D. New York, 1969 Trade Cases ¶72,902, (Aug. 19, 1969)

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United States v. F. & M. Schaefer Brewing Co.

1969 Trade Cases ¶72,902. U.S. District Court, E.D. New York. Civil Action No. 62 C 1421 Calendar No. NJ-1210. Entered August 19, 1969. Case No. 1727 in the Antitrust Division of the Department of Justice.

Sherman Act

Common Buying or Selling Agent—Beer—Consent Decree.—A brewing company was barred by a consent decree from entering into a marketing agreement with a designated brewery respecting either firm's beer anywhere in the United States and, for ten years, from entering into unapproved marketing agreements with any other brewery, respecting either firm's beer, anywhere that the consenting defendant marketed at the time of the decree.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen., Baddia J. Rashid, William D. Kilgore, Jr., Norman H. Seidler, John Sirignano, Jr., Ralph T. Giordano, and Joan Sidor, Attys., Dept. of Justice.

For the defendant: Royall, Koegel & Wells, by William R. Glendon.

Final Judgment

ROSLING, D. J.: Plaintiff, United States of America, having filed its Complaint herein on December 20, 1962, and the defendant having appeared by its attorneys and filed its answer to such Complaint, denying the substantive allegations thereof, and

Plaintiff and defendant The F. & M. Schaefer Brewing Co. ("Schaefer") having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without any admission by plaintiff or Schaefer, in respect to any such issue, and this Court having directed the entry of such a Final Judgment,

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

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction, of the subject matter hereof and of the parties consenting hereto and the Complaint states a claim upon which relief may be granted against the defendant 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 (15 U. S. C. Sect. 1).

II

[*Definitions*]

For purposes of this Final Judgment:

(A) "Schaefer" means defendant The F. & M. Schaefer Brewing Co., a corporation organized and existing under the laws of the State of New York, and shall include any subsidiary or affiliate thereof.

(B) “Anheuser” means Anheuser-Busch, Incorporated, a corporation organized and existing under the laws of the State of Missouri, and shall include any subsidiary or affiliate thereof.

(C) “Brewer” means any person engaged in the United States in the manufacture of beer as that term is hereinafter defined.

(D) “Distributor” means any person engaged in the business of selling, marketing or otherwise wholesaling beer to retailers.

(E) “Beer” means beer, ale, porter, stout and other similar fermented beverages (including sake or similar products) of any name or description, as denned in 68A Stat. 612; 26 U. S. C. [I. R. C] 5052.

(F) “Person” means any individual, partnership, firm, corporation or any other business or legal entity.

(G) “Schaefer beer” means any brand of beer produced and sold by Schaefer under any trademark or trade name owned or controlled by Schaefer.

(H) “Anheuser beer” means any brand of beer produced and sold by Anheuser under any trademark or trade name owned or controlled by Anheuser.

(I) The phrase “sell, merchandise or otherwise market” shall relate only to the functions of advertising, promotion and sale of beer and without limitation of the foregoing shall exclude the warehousing and delivery of beer.

III

[Applicability]

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

IV

[Marketing—Anheuser Beer]

Schaefer is permanently enjoined and restrained from entering into any contract, conspiracy, agreement, arrangement or understanding under the terms of which:

(a) it would sell, merchandise or otherwise market any beer brewed by Anheuser, or Anheuser would sell, merchandise or otherwise market any beer brewed by Schaefer;

(b) Schaefer and Anheuser would agree that any third person would serve as a distributor in the United States for both Schaefer beer and Anheuser beer provided, however, subject to the other subsections of this paragraph IV, this subsection (b) shall not prevent (i) Schaefer from continuing or appointing any distributor for Schaefer beer who is also a distributor for Anheuser beer, or (ii) a distributor for Schaefer beer from continuing the distribution of or entering into any agreement to distribute Anheuser beer;

(c) Schaefer would sell, merchandise or otherwise market its beer through any distributor located in the United States in which Anheuser (i) has a stock interest, or (ii) has a common director, officer, or managing agent with such distributor;

(d) Anheuser would sell, merchandise or otherwise market its beer through any distributor located in the United States in which Schaefer (i) has a stock interest, or (ii) has a common director, officer, or managing agent with such distributor.

V

[Marketing—Other Beer]

Schaefer is enjoined and restrained for a period of ten (10) years from the date hereof, except with the prior written approval of the plaintiff, from entering into any contract, agreement, arrangement or understanding under the terms of which:

- (a) any brewer other than Anheuser would sell, merchandise or otherwise market Schaefer beer;
- (b) Schaefer would sell, merchandise or otherwise market the beer of any brewer other than Anheuser;
- (c) Schaefer and any brewer other than Anheuser would agree that any third person would serve as a distributor for both Schaefer beer and the beer of such other brewer, provided, however, subject to the other subsections of this Section V, this subsection (c) shall not prevent (i) Schaefer from continuing or appointing any distributor for Schaefer beer who is also a distributor for another brewer, or (ii) a distributor for Schaefer beer from continuing the distribution of, or entering into any agreement to distribute, the beer of another brewer in addition to Schaefer beer;
- (d) Schaefer would sell, merchandise or otherwise market its beer through any distributor, in which any brewer other than Anheuser (i) has a stock interest or (ii) has a common director, officer or managing agent with such distributor; or
- (e) Any other brewer other than Anheuser would sell, merchandise or otherwise market its beer through any distributor in which Schaefer (i) has a stock interest or (ii) has a common director, officer or managing agent with such distributor.

In the event the aforesaid approval of the plaintiff is not received by Schaefer within twenty-one (21) days after receipt by plaintiff of Schaefer's written request therefor, Schaefer may seek an order from this Court approving such contract, agreement, arrangement or understanding upon the Court's finding that such contract, agreement, arrangement or understanding would not unreasonably restrain trade or commerce in the sale, merchandising or marketing of beer.

The provisions of this paragraph V shall apply only in the territory where Schaefer beer is now sold, as defined in the attached Exhibit 1.

VI

[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, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to Schaefer, at its principal office, be permitted:

- (A) access, during the office hours of the defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of Schaefer relating to any of the matters contained in this Final Judgment applicable to Schaefer; and
- (B) subject to the reasonable convenience of Schaefer and without restraint or interference from it, to interview the officers and employees of Schaefer, who may have counsel present, regarding any such matters.

Schaefer upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment applicable to Schaefer as from time to time may be requested.

No information obtained by the means provided 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 Executive Branch of plaintiff 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.

VII

[*Jurisdiction Retained*]

In addition to the jurisdiction vested in the Court pursuant to the provisions of paragraph V, 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 or for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.