

# Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Lubbock County Beverage Assn., Cecil's, Inc., Crossed Keys Package Store, Inc., Pinkie's, Inc., and The All Star Co., U.S. District Court, N.D. Texas, 1978-1 Trade Cases ¶62,036, (Apr. 3, 1978)

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United States v. Lubbock County Beverage Assn., Cecil's, Inc., Crossed Keys Package Store, Inc., Pinkie's, Inc., and The All Star Co.

1978-1 Trade Cases ¶62,036. U.S. District Court, N.D. Texas, Lubbock Division, Civil No. CA 5-76-126, Entered April 3, 1978, (Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 3180).

Case No. 2544, Antitrust Division, Department of Justice.

## Sherman Act

**Price Fixing: Exchange of Information: Alcoholic Beverage Retailers: Consent Decree.**— Four alcoholic beverage retailers were enjoined by a consent decree from entering into any agreement to fix prices and from exchanging any information with competitors as to the sale of alcoholic beverages. Their trade association was enjoined from convening meetings or conducting business with the effect of fixing prices; and each defendant retailer was barred from participating in any activities of the association that were inconsistent with the prohibitions contained in the decree.

**For plaintiff:** Hugh P. Morrison, Jr., Actg. Asst. Atty. Gen., Barry F. McNeil, Mary Coleen T. Sewell, Attys., Dept. of Justice, Dallas, Tex., Kenneth J. Mighell, U. S. Atty., Robert B. Wilson, Asst. U. S. Atty., Dept. of Justice, Lubbock, Tex. **For defendants:** Rob Becker, for Lubbock County Beverage Assn.; Aubrey J. Fouts, of Key, Carr, Evans & Fouts, Lubbock, Tex., for Cecil's, Inc.; Mark Smith, of Mark Smith & Associates, Lubbock, Tex., for Crossed Keys Package Store, Inc.; Donald Scott Thomas, of Clark, Thomas, Winters & Shapiro, Austin, Tex., for Pinkie's, Inc.; Clifford W. Brown, of Brown & Harding, Lubbock, Tex., for All Star Co.; James C. Lewis, of Jones, Trout, Flygare & Moody, Lubbock, Tex., for Kenneth Odom.

## Final Judgment

WOODWARD, D. J.: Plaintiff, United States of America, having filed its Complaint herein on October 26, 1976, and plaintiff and defendants by their respective attorneys, having each 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 admission by plaintiff or defendants, or any of them, in respect to any such issue;

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 as aforesaid, it is hereby

Ordered, Adjudged, and Decreed as follows:

### I

#### [ Jurisdiction]

This Court has jurisdiction of the subject matter herein and of the parties hereto. The Complaint states claims upon which relief may be granted against the defendants under [Section 1 of the Sherman Act](#), 15 U. S. C. §1.

### II

#### [ Definition]

As used in this Final Judgment:

- (A) "Person" shall mean any individual, corporation, partnership, firm, association or other business or legal entity.
- (B) "Alcoholic beverages" shall refer to beer, wine and distilled spirits.
- (C) "Defendant corporation" shall refer to defendants Cecil's, Inc.; Crossed Keys Package Store, Inc.; Pinkie's, Inc.; and The All Star Company.
- (D) "Defendant association" shall refer to all directors, officers, members, and employees of Lubbock County Beverage Association.

### III

#### **[ Applicability]**

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

### IV

#### **[ Price Fixing]**

Each defendant corporation is enjoined and restrained from directly or indirectly:

- (A) Entering into maintaining or furthering any contract, agreement, understanding, plan, program, combination or conspiracy with any other retailer of alcoholic beverages to raise, fix, stabilize or maintain prices for the sale of alcoholic beverages to any third person; and
- (B) Soliciting, inducing or coercing any other retailer of alcoholic beverages to adopt or adhere to uniform or specific prices for the sale of alcoholic beverages to any third person.

### V

#### **[ Exchange of Price Information]**

Each defendant corporation is enjoined and restrained from communicating to or exchanging with any other retailer of alcoholic beverages any actual or proposed prices, price changes, or other terms or conditions of sale at or upon which any alcoholic beverage is to be or has been sold to any third person prior to communication of such information to the public or trade generally.

### VI

#### **[ Trade Association Activities]**

Each defendant corporation is enjoined and restrained from attending, organizing, joining, furthering, supporting, or participating in any activities of the defendant association or of any other association with knowledge that the purpose, conduct or activities of the same are inconsistent with the prohibitions contained in Sections IV and V of this Final Judgment.

### VII

#### **[ Notice]**

Each defendant corporation is ordered and directed to:

- (A) Furnish within thirty (30) days after the date of the entry of this Final Judgment a copy thereof to each of its officers and directors, and to each of its agents and employees who have any responsibility for the pricing of alcoholic beverages.

(B) Furnish a copy of this Final Judgment to each successor to those officers, directors, agents and employees described in Subsection (A) of this Section VII, within thirty (30) days after each such successor is employed by or becomes associated with such defendant.

(C) File with this Court and serve upon the plaintiff within sixty (60) days from the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with Subsection (A) of this Section VII.

## VIII

### [ Association Meetings]

(A) The defendant association is enjoined and restrained from directly or indirectly convening meetings or conducting business where the purpose or effect of such is to raise, fix, stabilize or maintain the prices of alcoholic beverages.

(B) The defendant association is ordered and directed to:

(1) Furnish within thirty (30) days after the date of the entry of this Final Judgment a copy thereof to each of its officers, directors, members, and employees, and any other retailer of alcoholic beverages in Lubbock County.

(2) File with this Court and serve upon the plaintiff within sixty (60) days from the date of entry of this Final Judgment an affidavit as to the fact and manner of its compliance with Subsection (1) of this Section VIII(B).

## IX

### [ Inspections]

(A) For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, any duly authorized representative 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, be permitted, subject to any legally recognized privilege:

(1) access during the office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant relating to any matters contained in this Final Judgment; and

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

(B) A defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing, under oath if requested, with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

No information or documents obtained by the means provided in this Section IX 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 the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

## X

### [ Retention of Jurisdiction]

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 order or directions as may be necessary or appropriate for the construction or the 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.

**XI**

Entry of this Final Judgment is in the public interest.