

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Rudolph Wurlitzer Company., U.S. District Court, W.D. New York, 1958 Trade Cases ¶69,011, (Apr. 15, 1958)

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United States v. The Rudolph Wurlitzer Company.

1958 Trade Cases ¶69,011. U.S. District Court, W.D. New York. Civil Action No. 7337. Filed April 15, 1958. Case No. 1321 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decrees—Practices Prohibited—Allocation of Markets and Customers—Refusal to Sell—Coin-Operated Phonographs.—A manufacturer 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 choose to sell such phonographs, (2) requiring any distributor to advise it of the name and address of any purchaser or the serial numbers of such phonographs, 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 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, catalog, or record of the names or addresses of any purchasers from distributors or the serial numbers of such phonographs. Subject to the prohibitions of the decree, the manufacturer was permitted to exercise the right to select its customers.

Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions—Right to Choose Customers.—A consent decree entered against a manufacturer of coin-operated phonographs provided that, subject to the prohibitions of the decree, the manufacturer may exercise its right to choose and select its distributors and customers, to designate geographical areas within which a distributor may agree to devote his best efforts to the sale of coin-operated phonographs, and to terminate the contract of any distributor who does not adequately represent the manufacturer and promote the sale of all coin-operated phonographs manufactured by the manufacturer in the area so designated.

For the plaintiff: Victor R. Hansen, Assistant Attorney General, and William D. Kilgore, Jr., Earl A. Jinkinson, Harold E. Baily, and James E. Mann, Attorneys, Department of Justice.

For the defendants: Kenefick, Letchworth, Baldy, Phillips & Emblidge; Mayer, Friedlich, Spiess, Tierney, Brown & Platt; Robert M. Hitchcock; and Miles G. Seeley.

Final Judgment

JUSTIN C. MORGAN, District Judge [*In full text:*] The plaintiff, United States of America, having filed its complaint herein on February 28, 1957, the defendant, The Wurlitzer Company (formerly known and sued herein as "The Rudolph Wurlitzer Company" and hereinafter called "Wurlitzer") having filed its answer denying the substantive allegations thereof and the United States of America and Wurlitzer, 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 Wurlitzer 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 Wurlitzer, 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 Wurlitzer.

III

[*Applicability of Decree*]

The provisions of this Final Judgment shall apply to Wurlitzer and to its successors, assigns, officers, directors, servants, employees and agents, and to any corporate subsidiaries of Wurlitzer, 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 Prohibited*]

Wurlitzer 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 Wurlitzer 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 (a) 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 and (b) except where such names and addresses are obtained by Wurlitzer for the purpose of evaluating the performance of any distributor or evaluating its sales coverage in any area, provided, however, that names and addresses so obtained from any distributor shall be limited to those of purchasers located in a geographical area designated for such distributor in conformity with Section IV (E) of this Final Judgment and provided, further, that names and addresses of purchasers so obtained shall not be divulged by Wurlitzer to any other distributor or other person;
- (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 canceling 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 Wurlitzer 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 (a) 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 Wurlitzer and except (b) where such names and addresses are obtained by Wurlitzer for the purpose of evaluating the performance of any distributor or evaluating its sales coverage in any area, provided, however, that names and addresses so obtained from any distributor shall be limited to those of purchasers located in a geographical area designated for such distributor in conformity with Section IV (E) of this Final Judgment and provided, further, that names and addresses of purchasers so obtained shall not be divulged by Wurlitzer to any other distributor or other person;

(3) Limit or restrict, directly or indirectly, the right of any purchaser of coin-operated phonographs to resell such phonographs after Wurlitzer 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 Wurlitzer and Wurlitzer may keep an alphabetical 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 services, 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 Wurlitzer may keep a record of the names and addresses of such purchasers for the purpose of evaluating the performance of any distributor or evaluating its sales coverage in any area;

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

(E) Subject to the above subsections of this section IV, Wurlitzer may exercise its right from time to time to choose and select its distributors and customers and to designate geographical areas within which a distributor may agree to devote his best efforts to the sale of coin-operated phonographs and may terminate the contract of any distributor who may fail to devote his best efforts to the sale in the area so designated of coin-operated phonographs manufactured by Wurlitzer or to represent Wurlitzer adequately in said area, and the designation of geographical areas for such specified purposes only shall not be considered a violation of this section IV.

V

[*Notice of Judgment*]

Wurlitzer is directed, within sixty (60) days after the entry of this Final Judgment, to serve a copy thereof by registered mail upon each of its distributors located within the Continental limits of the United States.

VI

[*Inspection and Compliance*]

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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 Wurlitzer, 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 Wurlitzer which relate to any matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of Wurlitzer 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, Wurlitzer 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.