

**DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

VIRGIN ISLANDS GIFT AND FASHION

SHOP ASSOCIATION, INC.;

C. & M. CARON, INC.;

A.H. RIISE GIFT SHOP, INC.;

CAVANAGH'S, INC.;

CARIBE TIME PRODUCTS, INC.;

CONTINENTAL, INC.;

THE GENERAL TRADING

CORPORATION;

CARDOW, INC.;

CASA VENEGAS, INC.;

FRENCH SHOPPE, INC.;

LITTLE SHOP, INC.;

MR. WOODIE, INC.;

CHI CHI, INC.;

ST. THOMAS JEWELRY, INC., dba PLACE

VENDOME;

H. STERN-ST. THOMAS, INC.;

THEO'S, INC.; and

A.H. LOCKHART & CO., INC.,

Defendants.

Civil Action No. 295-1969

**MOTION OF THE UNITED STATES TO
TERMINATE A LEGACY ANTITRUST JUDGMENT**

The United States moves to terminate the judgment entered in this antitrust action on September 8, 1970—more than 48 years ago. The judgment prohibits the defendants from, among other things, fixing prices for gift shop items. Although decades have passed, this perpetual judgment remains in force and will continue to do so until this Court terminates it. After examining the judgment, soliciting public comment on the proposed termination, and

receiving no comments opposing termination, the United States has concluded that termination of this judgment is appropriate. Termination will permit the Court to clear its docket, the United States to clear its records, and the businesses to clear their books, allowing each to utilize its resources more effectively.

Since 1979, the Antitrust Division of the United States Department of Justice (“Antitrust Division”) has generally followed a policy of including in each judgment a term automatically terminating the judgment after no more than ten years.¹ This policy was based on the United States’ experience enforcing the antitrust laws, an experience that has shown that markets almost always evolve over time in response to competitive and technological changes in ways that render long-lived judgments no longer protective of competition, or even anticompetitive. Antitrust judgments entered before implementation of the 1979 policy often contained no termination clause and hundreds of such judgments remain in force today. The Antitrust Division recently implemented a program, the Judgment Termination Initiative, to review and, when appropriate, seek termination of these legacy judgments, including the judgment in this action. In April 2018, the Antitrust Division issued a press release announcing the Judgment Termination Initiative.² And in May, the Antitrust Division described the Judgment Termination Initiative in a statement published in the Federal Register.³ In addition, the Antitrust Division established a

¹ U.S. DEP’T OF JUSTICE, ANTITRUST DIVISION MANUAL at III-147 (5th ed. 2008), <https://www.justice.gov/atr/division-manual>.

² Press Release, *Department of Justice Announces Initiative to Terminate “Legacy” Antitrust Judgments*, U.S. DEP’T OF JUSTICE (April 25, 2018), <https://www.justice.gov/opa/pr/departments-justice-announces-initiative-terminate-legacy-antitrust-judgments>.

³ Department of Justice’s Initiative to Seek Termination of Legacy Antitrust Judgments, 83 Fed. Reg. 19,837 (May 4, 2018), <https://www.gpo.gov/fdsys/granule/FR-2018-05-04/2018-09461>.

Judgment Termination Initiative website to keep the public apprised of its efforts to terminate perpetual judgments that no longer serve to protect competition.⁴

This Court has jurisdiction to terminate the judgment in this action. Section XI of the judgment, a copy of which is included in Exhibit A, provides that the Court retains jurisdiction. Further, the Federal Rules of Civil Procedure grant the Court authority to terminate final judgments. Rule 60(b)(5) and (b)(6) states that, “[o]n motion and just terms, the court may relieve a party . . . from a final judgment . . . (5) [when] applying it prospectively is no longer equitable; or (6) for any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(5)–(6); *accord Mayberry v. Maroney*, 529 F.2d 332, 335 (3d Cir. 1976) (“Under Fed. R. Civ. P. 60(b)(5) and (6), a Federal District Court has discretion to modify a judgment in the interest of justice as reflected in changed circumstances.”); *see also In re: Termination of Legacy Antitrust Judgments*, No. 2:18-mc-00033 (E.D. Va. Nov. 21, 2018) (terminating 5 legacy antitrust judgments); *United States v. Am. Amusement Ticket Mfrs. Ass’n*, Case 1:18-mc-00091 (D.D.C. Aug. 15, 2018) (terminating 19 legacy antitrust judgments). The judgment in this action satisfies those standards; hence, termination is appropriate.

The Antitrust Division examined the judgment covered by this motion and determined that it is suitable for termination. The judgment’s most notable provisions perpetually enjoin the defendants’ fixing or facilitating fixing the price or discounts of gift shop items. The judgment also perpetually requires that upon the United States’ reasonable request, the defendants report to the United States or open their books to the United States. Further, the judgment contains various short-term requirements, such as requiring the defendants to cancel or destroy certain price lists, discount schedules, and other materials within 30 days of entry of the judgment.

⁴ *Judgment Termination Initiative*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/atr/JudgmentTermination> (last visited Oct. 24, 2018).

In addition to the judgment's age, other reasons weigh heavily in favor of terminating this decades-old judgment, including that (1) all the judgment's time-limited requirements have elapsed, (2) the leading defendant (the Virgin Islands Gift and Fashion Shop Association) appears to no longer exist, and (3) the judgment's only ongoing prohibitions target that which the antitrust laws already prohibits (price fixing). Based on this assessment, the Antitrust Division gave the public notice of—and the opportunity to comment on—its intention to seek termination of the judgment in this case. Specifically, in June 2018, the Antitrust Division listed the judgment on its Judgment Termination Initiative website, announcing the Division's intent to move to terminate the judgment.⁵ The notice identified this case, linked to the judgment, and invited public comment within one month. The time to respond expired on July 16, 2018, and the Antitrust Division has not received any comment opposing termination.

For these reasons, the United States believes termination of the judgment in this action is appropriate and respectfully requests that the Court enter an order terminating it. A proposed order terminating the judgment is attached as Exhibit B.

Respectfully submitted,

Dated: December 3, 2018



R. Cameron Gower (NY Bar No. 5229943)
United States Department of Justice
Antitrust Division
450 Fifth Street NW, Suite 7100
Washington, DC 20530
Telephone: (202) 286-0159
Email: richard.gower@usdoj.gov

⁵ *Judgment Termination Initiative*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/JudgmentTermination> (last updated Nov. 13, 2018); *Judgment Termination Initiative: Virgin Islands, District*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/judgment-termination-initiative-virgin-islands-district> (last updated Oct. 2, 2018).

EXHIBIT A:
FINAL JUDGMENT

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Virgin Islands Gift and Fashion Shop Assn., Inc., et al., U.S. District Court, D. Virgin Islands, 1970 Trade Cases ¶73,287, (Sept. 8, 1970)

[Click to open document in a browser](#)

United States v. Virgin Islands Gift and Fashion Shop Assn., Inc., et al.

1970 Trade Cases ¶73,287. U.S. District Court, D. Virgin Islands, Division of Saint Thomas and Saint John. Civil Action No. 295-1969. Entered September 8, 1970. Case No. 2072 in the Antitrust Division of the Department of Justice.

Sherman Act

Price Fixing—Gift Shop Items—Destruction of Records—Consent Decree.—A retail trade association of Virgin Islands gift shops and its members was barred by a consent judgment from fixing prices or controlling discounts. The decree prohibits circulating price lists, discount schedules, or catalogs among retailers, and bars efforts to cut off supplies of merchandise to retailers who refuse to abide by agreed-upon prices. Price lists and discount schedules are to be cancelled, and association records violative of the decree are to be destroyed.

Resale Price Fixing—Cooperative Methods.—A retail trade association of Virgin Islands gift shops and its members was barred by a consent judgment from reporting to suppliers deviations by retailers from supplier-established retail prices or policing any retailer for the purpose of making such reports. Fair trading rights were not affected.

For the plaintiff: Richard W. McLaren, Asst. Atty. Gen., William D. Kilgore, Jr., Baddia J. Rashid, Harry N. Burgess and Elliott Moyer, Attys., Dept. of Justice.

For the defendants: William W. Bailey, of Bailey, Wood & Rosenberg, St. Thomas, V. I.; Herbert A. Bergson and Samuel H. Seymour, of Bergson, Borkland, Margolis & Adler, Washington, D. C.; Roger Campbell, of McGowan, Loud, Campbell & Dennenberg, St. Thomas, V. I.; Allen Ducker, New York, N. Y.

Final Judgment

CHRISTIAN, D. J.: Plaintiff, United States of America, having filed its Complaint herein on September 10, 1969, the defendants having filed answers denying the substantive allegations of the Complaint, and the plaintiff and the defendants Virgin Islands Gift and Fashion Shop Association, Inc.; C. & M. Caron, Inc.; A. H. Riise Gift Shop, Inc.; Cavanagh's, Inc.; Caribe Time Products, Inc.; Continental, Inc.; The General Trading Corporation; Cardow, Inc.; Casa Venegas, Inc.; French Shoppe, Inc.; Little Shop, Inc.; Mr. Woodie, Inc.; Chi Chi, Inc.; St. Thomas Jewelry, Inc., dba Place Vendome; H. Stern-St. Thomas, Inc.; Theo's, Inc.; and A. H. Lockhart & Co, Inc., by their respective attorneys, having severally consented to the making and 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 with 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 hereto as aforesaid, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and of the parties hereto. The Complaint states claims against the defendants upon which relief may be granted under Section 3 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," as amended (15 U. S. C. § 3), commonly known as the Sherman Act.

II

[*Definitions*]

As used in this Final Judgment:

(A) "Person" shall mean any individual, corporation, partnership, association, firm or other legal entity;

(B) "Defendants" shall mean the defendant Virgin Islands Gift and Fashion Shop Association, Inc. (hereinafter individually referred to as "the defendant Association"), and defendants C. & M. Caron, Inc.; A. H. Riise Gift Shop, Inc.; Cavanagh's, Inc.; Caribe Time Products, Inc.; Continental, Inc.; The General Trading Corporation; Cardow, Inc.; Casa Venegas, Inc.; French Shoppe, Inc.; Little Shop, Inc.; Mr. Woodie, Inc.; Chi Chi, Inc.; St. Thomas Jewelry, Inc., dba Place Vendome; H. Stern-St. Thomas, Inc.; Theo's, Inc.; A. H. Lockhart & Co, Inc.;

(C) "Virgin Islands" shall mean the Virgin Islands of the United States, and particularly St. Thomas, St. Croix, and St. John;

(D) "Gift shop" shall mean any person engaged in the retail sale of gift shop items in the Virgin Islands;

(E) "Gift shop item" shall mean those items of merchandise generally regarded as attractive to tourists, including but not limited to perfumes, watches, cameras, crystal, chinaware, and liquor sold by gift shops in the Virgin Islands.

III

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall apply to each such defendant and to each of its officers, directors, agents, servants, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise, but, except for the defendant Association, shall not apply to activities between a defendant, its officers, directors, or employees when acting in such capacities and its parent or subsidiary companies, or affiliated corporations in which 50% or more of the voting stock is owned by a defendant's parent or subsidiary companies or which is in fact owned or controlled by the defendant or such defendant's parent or subsidiary companies.

IV

[*Prices and Discounts*]

Each of the defendants is enjoined and restrained from entering into or adhering to any contract, agreement, or understanding with any other person, directly or indirectly, to:

(A) Fix, maintain, or stabilize prices, terms or conditions for the sale of any gift shop item to any third person;

(B) Control, fix, stabilize, maintain, or eliminate discounts at which any gift shop item is sold or offered for sale to third persons, or to any group or class of persons.

V

[*Combination Among Retailers—Price Lists, Schedules, Catalogs*]

Each of the defendants is enjoined and restrained from entering into, adhering to, maintaining, furthering, or enforcing any agreement, understanding, plan, program or concerted course of action with any defendant or gift shop, directly or indirectly, to:

(A) Fix, maintain, or stabilize prices, terms or conditions for the sale of any gift shop item to any third person;

(B) Control, fix, stabilize, maintain, or eliminate discounts at which any gift shop item is sold or offered for sale to third persons, or to any group or class of persons;

(C) Circulate or otherwise distribute to any other gift shop any price list, price schedule, catalog, schedule of discounts or other document, or documents specifying, or suggesting prices, terms, or conditions for the sale of any gift shop item;

(D) Advocate, suggest, urge, induce, or attempt to influence, any other gift shop to sell any gift shop item at fixed or suggested prices, level of prices, discounts, terms, or other conditions of sale.

VI

[Combination with Suppliers—Refusals to Deal and Reporting]

Each of the defendants is enjoined and restrained from, directly or indirectly:

(A) Promulgating, suggesting, adopting, maintaining, adhering to, enforcing or attempting to enforce, whether by the posting of any notice, advertisement, bulletin, statement of policy, medallion, sign, or otherwise, any alleged Association or other jointly established, accepted, customary or common rule, regulation, policy or practice regarding prices or the extension of discounts by gift shops;

(B) Advocating, suggesting, urging, inducing, compelling, coercing or in any other manner influencing, or attempting to influence, any manufacturer, wholesaler, distributor or other supplier of any gift shop item to refuse to deal or otherwise to delay or hinder sales, shipments or deliveries of any gift shop item to any gift shop, or gift shops, by reason of its or their refusal or failure to abide by specified or suggested prices, discounts or other terms or conditions for the sale of any gift shop item;

(C) Notifying or advising any manufacturer, wholesaler, distributor or other supplier of any gift shop item of retail sales of products by any gift shop, or gift shops, at prices less or discounts larger than those specified or suggested by such manufacturer, wholesaler, distributor or other supplier, or threatening, warning or advising any gift shop that it will do so and from policing or shopping any retailer for the purpose of so notifying or advising any such manufacturer, wholesaler, distributor, or other supplier;

(D) Knowingly organizing, joining, furthering, supporting, contributing anything of value to, or participating in any of the activities of, any trade association or other organization, the purpose, conduct or activities of which, in any manner, are inconsistent with any of the provisions of this Final Judgment.

VII

[Cancellation and Destruction of Documents]

Each defendant is ordered and directed to:

(A) Within 30 days after the date of entry of this Final Judgment, withdraw and cancel any and all of its price lists and discount schedules covering or otherwise relating or pertaining to the sale of any gift shop item which were prepared, circulated or distributed by, or otherwise emanated from, the defendant Association;

(B) Within 30 days after the date of entry of this Final Judgment, destroy all materials in its possession which were prepared, circulated or distributed by or otherwise emanated from the defendant Association, the preparation, circulation, distribution or use of which would be in violation of this Final Judgment;

(C) Within 45 days after the date of entry of this Final Judgment to file with this Court and serve upon the plaintiff an affidavit as to the fact and manner of compliance with this Section VII.

VIII

[Notification and Association Membership]

The defendant Association is:

(A) Ordered and directed, within thirty days after the date of this Final Judgment, to secure the publication of copies of this Final Judgment in two issues each of two newspapers of general circulation in the Virgin Islands, and in two issues each of two newspapers of general circulation in New York, New York, and to file an affidavit,

with copies of such publications with the clerk of this Court and with the Assistant Attorney General in charge of the Antitrust Division;

(B) Ordered and directed to furnish a copy of this Final Judgment to, or to serve same by registered or certified mail return receipt requested upon (1) each present member of defendant Association, who is not a party to this Final Judgment and (2) to each new member of defendant Association at the time of acceptance of such membership, and to obtain and keep in its files so long as any such member remains a member, a receipt for such copy signed by each such member or a registered or certified mail receipt for each such Final Judgment served by mail

(C) Enjoined and restrained from expelling from membership or refusing to admit to membership any gift shop except in writing, setting forth the precise reason therefor, and furnishing to the plaintiff a copy of such writing.

IX

[Fair Trade Rights Preserved]

Nothing contained in this Final Judgment shall be deemed to prevent any defendant from legally exercising such rights, if any, as it may have under the Act of Congress of August 17, 1937, commonly known as the Miller-Tydings Act and the Act of Congress of July 14, 1952, commonly known as the McGuire Act.

X

[Compliance and Inspection]

For the purpose of determining or securing compliance with this Final Judgment, duly-authorized representatives 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, 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 matters contained in this Final Judgment, and subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters. Said defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such written reports, under oath if so requested, with respect to any of the matters contained in this Final Judgment as from time to time may be requested. No information obtained by the means provided in this Section 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 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.

XI

[Jurisdiction Retained]

Jurisdiction of this cause 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, for the modification or termination of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.