

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. J. P. Seeburg Corporation, et al., U.S. District Court, N.D. Illinois, 1957 Trade Cases ¶68,613, (Jan. 31, 1957)

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United States v. J. P. Seeburg Corporation, et al.

1957 Trade Cases ¶68,613. U.S. District Court, N.D. Illinois. Civil Action No. 56 C 419. Dated January 31, 1957. Case No. 1271 in the Antitrust Division of the Department of Justice.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Allocation of Markets—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 or address of any purchaser 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 or record of the names or addresses of any purchasers from distributors or the serial numbers of such phonographs. Distributors of such phonographs were prohibited from engaging in similar practices. Subject to the prohibitions of the decree, the manufacturer and distributors were permitted to exercise the right to select their customers.

Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions—Right To Choose Customers.—A consent decree entered against a manufacturer and distributors of coin operated phonographs provided that, subject to the prohibitions of the decree, (1) the manufacturer may exercise its right to choose and select its distributors and customers, to designate geographical areas in which such distributors shall respectively be primarily responsible for distributing its phonographs, and to terminate the franchises of such distributors who do not adequately represent the manufacturer and promote the sale of all coin operated phonographs manufactured by the manufacturer in areas so designated as their primary responsibility, and (2) each of the distributors may, individually, exercise its right to choose and select its customers and to fix the terms and conditions upon which it will make sales of coin operated phonographs.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Notice of Judgment.—A manufacturer of coin operated phonographs was required by a consent decree to serve upon each of its distributors a conformed copy of the decree. Also, each of the phonograph distributors which signed the decree was required to furnish a conformed copy of the decree to each of its customers regularly called upon or circularized by mail and required to advise such customers that it (1) is required not to impose any restrictions on the right of purchasers to resell such phonographs, (2) is free to sell such phonographs to any person, and (3) is required not to discriminate against a prospective customer because he may reside or do business outside of a particular territory.

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: Thomas M. Thomas and E. Houston Harsha for J. P. Seeburg Corp. Miller, Gorham, Wescott & Adams, by Edward R. Adams, for Ajax Michigan Corporation; American Steel Export Company, Inc.; Atlantic Connecticut Corporation; Atlantic New Jersey Corporation; Atlantic New York Corporation; S. L. London Music Co., Inc.; S. H. Lynch & Co., Inc.; Minthorne Music Company, Inc.; The Musical Sales Co.; Music Systems, Inc., an Ohio corporation; Music Systems, Inc. "Michigan," an Ohio corporation; Sparks Specialty Company; S. L. Stiebel Co.; W. B. Distributors, Inc.; W. B. Music Company, Inc.; and John H. Lynch and Adrian H. Zander, co-partners d.b.a. Lynch & Zander Co. Daniel D. Carmell for Shafer Music Co.; Dickson Distributing Company; Atlas Music Corporation, an Illinois corporation; Atlas Music Corporation, an Iowa corporation; Atlas

Music Corporation, a corporation of the Commonwealth of Pennsylvania; Davis Distributing Corporation; Wolfe Distributing Company, Inc., an Alabama corporation; Simon Wolfe and Gordon F. Williams, co-partners, d.b.a. Wolfe Distributing Company; Sammons-Pennington Co.; Trimount Automatic Sales Corp.; Atlantic Pennsylvania Corp.; R. F. Jones Co., a Utah corporation; R. F. Jones Co., a California corporation; R. F. Jones Co., a Delaware corporation; and Music Distributors, Inc.

Final Judgment

JULIUS J. HOFFMAN, District Judge [*In full text*]: The plaintiff, United States of America, having filed its complaint herein on March 2, 1956, the defendants having filed their several answers denying the substantive allegations thereof, and the United States of America, the defendant J. P. Seeburg Corporation, and the distributor defendants signatory hereof, 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 the defendant J. P. Seeburg Corporation and the defendant distributors signatory hereto under Section I 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) "Seeburg" shall mean the defendant J. P. Seeburg Corporation, with its principal place of business in Chicago, Illinois;
- (B) "Person" shall mean an individual, partnership, firm, corporation, or any other legal entity;
- (C) "Distributor" shall mean any person (other than Seeburg and its subsidiaries) engaged in the purchase from Seeburg, for resale, of coin operated phonographs manufactured by it;
- (D) "Operator" shall mean any person who owns coin operated phonographs and leases said machines to location owners;
- (E) "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;
- (F) "Coin operated phonographs" shall mean new and used coin operated phonographs manufactured originally by Seeburg.

III

[*Applicability of Judgment*]

The provisions of this Final Judgment shall apply to Seeburg and to the distributor defendants signatory hereto and to each of their subsidiaries, successors, assigns, officers, directors, servants, employees and agents, 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

[*Prohibited Practices—Manufacturer*]

Defendant Seeburg is enjoined and restrained from:

- (A)(1) Limiting or restricting, directly or indirectly, the persons to whom or the territory within which any distributor or operator may choose to sell coin operated phonographs;
 - (2) Requiring any distributor to advise Seeburg 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 where such name, address and serial number or numbers are necessary to fill an order for repair or maintenance parts, or for services, 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;
 - (3) Limiting or restricting, directly or indirectly, 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:
- (1) Limiting or restricting, directly or indirectly, the persons to whom or the territory within which any distributor or operator may choose to sell a coin operated phonograph or phonographs;
 - (2) Limiting or restricting, directly or indirectly, 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 Seeburg 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 where such name, address and serial number or numbers are necessary to fill an order for repair or maintenance parts, or for services, 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;
 - (3) Limit or restrict, directly or indirectly, the right of any purchaser of coin operated phonographs to resell such phonographs after they have been paid for in full.
- (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 Seeburg and Seeburg 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;
- (2) Using any Seeburg file or record for any purpose contrary to any of the provisions of this Final Judgment.
- (E) Subject to subsections (A), (B), (C) and (D) of this Section IV, Seeburg may exercise its right to choose and select its distributors and customers, to designate geographical areas in which such distributors shall respectively be primarily responsible for distributing coin operated phonographs, to terminate the franchises of such distributors who do not adequately represent Seeburg and promote the sale of all coin operated phonographs manufactured by Seeburg in areas so designated as their primary responsibility, and such

designation of suggested geographical areas, standing alone, shall not be considered a violation of this Section IV.

V

[*Prohibit ed Pra dices—Distributors*]

Defendant distributors signatory hereto are enjoined, individually and collectively, from:

(A)(1) Limiting or restricting, directly or indirectly, the person or persons to whom or the territory within which any operator or other purchaser may choose to resell coin operated phonographs after they have been paid for in full;

(2) Limiting or restricting, directly or indirectly, the right of any purchaser or any distributor of coin operated phonographs to resell such phonographs after they have been paid for in full;

(3) Refusing to sell to a person because such person may have resold a coin operated phonograph, after it had been paid for in full, to a person outside a particular territory or to a location owner.

(B) Entering into, adhering to or enforcing any contract, agreement or understanding with Seeburg, any distributor or distributors, or any operator or operators:

(1) Limiting or restricting, directly or indirectly, the persons to whom or the territory within which any distributor or operator may choose to sell coin operated phonographs;

(2) Limiting or restricting, directly or indirectly, the right of any purchaser from any distributor of coin operated phonographs to resell such phonographs after they have been paid for in full.

(C) Refusing to enter into or canceling any contract of sale of coin operated phonographs because of the purchaser's refusal to agree or adhere to any contract, agreement or understanding contrary to the provisions of subsection (B) of this Section V.

(D) Subject to subsections (A), (B) and (C) of this Section V, the distributor defendants signatory hereto may each, individually, exercise its right to choose and select its customers and to fix the terms and conditions upon which it will make sales of coin operated phonographs.

VI

[*Notice of Decree*]

Defendant Seeburg is directed, within sixty (60) days after the entry of this Final Judgment, to serve by mail upon each Seeburg distributor a conformed copy thereof.

Defendant distributors signatory hereto, other than American Steel Export Company, Inc., are directed, within sixty (60) days after the entry of this Final Judgment, to furnish a conformed copy of this Final Judgment to each of the customers regularly called upon or circularized by mail by such distributor, and to advise such customers that such distributor:

(1) Is required not to impose any restrictions on the right of purchasers from such distributor to resell coin operated phonographs after they have been paid for in full;

(2) Is free to sell coin operated phonographs to any person;

(3) Is required not to discriminate against a prospective customer because he may reside or do business outside of a particular territory, subject, however, to the right of any distributor to discriminate between purchasers on the basis of their location as to terms and conditions with respect to service, maintenance, guarantees, warranties, credit, payment and delivery reasonably related to the territory or location in which a customer proposes to use or operate coin operated phonographs if acquired by such customer.

VII

[*Inspection and Compliance*]

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 the signatories hereto, made to the principal office of such signatories, 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 such signatories which relate to any matters contained in this Final Judgment;

(B) Subject to the reasonable convenience of the signatories hereto, and without restraint or interference from them, to interview their 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, the signatories hereto 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 VII 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.

VIII

[*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.

IX

[*Effective Date*]

This Final Judgment shall become effective ninety (90) days after entry herein.