

APPENDIX A:

THE *TULSA BOTTLERS ASSOCIATION* FINAL JUDGMENT

Civil Action No. 72-cv-230-aeb

Year Judgment Entered: 1972



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

TULSA BOTTLERS ASSOCIATION;
LAKE COUNTRY BEVERAGE, INC.;
BEVERAGE PRODUCTS CORPORATION;
and COCA-COLA BOTTLING COMPANY
OF TULSA, INC.,

Defendants.

CIVIL ACTION

NO. 72 C 230

Filed: Sept. 6, 1972

Entered: Oct. 11, 1972

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on June 29, 1972, the defendants having appeared herein and filed their answers to such complaint denying the substantive allegations hereof, and the parties 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 admission by any party with respect to any such issue;

NOW, THEREFORE, before any testimony has been taken herein 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

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendants 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.

II

As used in this Final Judgment:

(A) "Person" means any individual, partnership, firm, association, corporation or other business or legal entity including any governmental agency or instrumentality;

(B) "Soft drinks" means non-alcoholic beverages containing concentrated syrups, sugar or sugar substitutes, carbonated or non-carbonated water, and flavor;

(C) "Bottling" means filling bottles, cans or similar containers with soft drinks;

(D) "Bottler" means any person engaged in producing, bottling and selling soft drinks.

III

The provisions of this Final Judgment applicable to each of the defendants shall apply also to each of its subsidiaries and successors, and its assigns of substantially all of the assets of its business, and to its officers, directors, agents and employees, and to all other persons in active concert or participation with any such defendant who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

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

(A) Entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program with any other bottler to:

1. Fix, raise, determine, maintain or stabilize prices, deposits, discounts or other terms or conditions for the sale of soft drinks to any third person.

2. Advertise uniform or specific prices, deposits, or discounts or other uniform or specific terms or conditions for the sale of soft drinks to any third person.

3. Submit collusive or rigged bids or quotations or to allocate such bids or quotations for the sale of soft drinks.

4. Exchange information concerning bids, quotations, prices, deposits, discounts, or other terms or conditions for the sale of soft drinks to any third person.

(B) Advocating, urging, inducing, threatening, coercing, intimidating or compelling any person to:

1. Adopt; use or adhere to uniform or specific prices, deposits, discounts or other terms or conditions for the sale of soft drinks to any third person.

2. Refrain from selling or to refuse to permit the sale of private label soft drinks in vending machines; provided, however, an individual bottler may determine what soft drinks will be sold in vending machines owned by him.

(C) Communicating to any other bottler any information concerning past, present or future prices, deposits, discounts or other terms or conditions for the sale of soft drinks, except in connection with bona fide negotiations for the purchase or sale of soft drinks between the parties to such communications, or except in connection with bona fide negotiations for the purchase, sale or other transfer of any defendant or any part of the business of any defendant.

V

(A) Each defendant is enjoined and restrained, directly or indirectly, from joining, participating in, or belonging to, or contributing anything of value to any trade association, organization, or other group with knowledge that any of the activities thereof are inconsistent with any term of this Final Judgment.

(B) The defendant Tulsa Bottlers Association is hereby dissolved.

VI

Each of the corporate defendants is ordered and directed, not later than ninety (90) days following the date of entry of this Final Judgment, independently and individually to review and redetermine, based upon its own costs, business judgments and other lawful considerations the prices, deposits, discounts, or other terms and conditions at which it sells soft drinks.

VII

Each of the corporate defendants shall, for a period of five (5) years from the effective date of this Final Judgment

and within thirty (30) days of each publication of that defendant's price sheets which amends or adds to the prices, deposits, discounts, or terms and conditions of sale for soft drinks contained therein, execute an affidavit by one of its officers or other employees with authority to initiate such action that said changes, amendments or additions were individually and independently arrived at by that defendant and were not the result of any agreement or understanding with any other person; and further, that each corporate defendant shall retain in its files the aforesaid affidavits for five (5) years after the date of execution of such affidavits.

VIII

(A) Each of the corporate defendants shall maintain for a period of ten (10) years from the entry of this Final Judgment a record of all meetings, formal or informal, attended by any of its officers, directors or employees having managerial or supervisory authority in connection with the sale of pricing of any soft drinks, and similar representatives of any other bottler, whenever at such formal or informal meeting there is any discussion concerning bids, prices, deposits, discounts, or other terms or conditions of sale of any soft drink to any third person; said record shall include the date of and place of the meeting, the names of all persons in attendance, and a list of the topics or subjects which were discussed at each such meeting.

(B) Within ninety (90) days after the date of entry of this Final Judgment, each corporate defendant shall furnish a copy thereof to each of its officers and directors and to each of its plant managers, and

to file with this Court and serve upon the plaintiff an affidavit as to the fact and manner of its compliance with this Section VIII(B).

IX

For a period of ten (10) years from the date of entry of this Final Judgment each corporate defendant is ordered to file with the Assistant Attorney General in charge of the Antitrust Division, Washington, D. C. on each anniversary date of this Final Judgment, a report setting forth the steps it has taken during the prior year to carry out the terms thereof, and to advise the defendant's appropriate officers, directors and employees of its and their obligations under this Final Judgment.

X

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:

(A) Access during the office hours of such defendant to 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

(B) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to

interview officers or employees of such defendant, who may have counsel present, regarding any such matters.

Upon such written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, each defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be requested. No information obtained by means provided in this Section X 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 for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

XI

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 or directions as may be necessary or appropriate for the construction of 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 the punishment of violations thereof.

/s/ ALLEN E. BARROW
United States District Judge

Dated: October 11, 1972