

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Cigarette Merchandisers Association, Inc.; Confectionery & Tobacco Drivers & Warehousemen's Union, Local 805, Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L.; The Rowe Corporation; Cigarette Service, Inc.; United Tobacco Corporation; Herald Vending Corporation; County Enterprises, Inc.; Matthew Forbes; Milton Holt; Arthur Gluck; Gustave Stern; Jackson Bloom; Harold Jacobs; and Louis Price., U.S. District Court, S.D. New York, 1957 Trade Cases ¶68,599, (Jan. 9, 1957)**

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

United States v. Cigarette Merchandisers Association, Inc.; Confectionery & Tobacco Drivers & Warehousemen's Union, Local 805, Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, A. F. of L.; The Rowe Corporation; Cigarette Service, Inc.; United Tobacco Corporation; Herald Vending Corporation; County Enterprises, Inc.; Matthew Forbes; Milton Holt; Arthur Gluck; Gustave Stern; Jackson Bloom; Harold Jacobs; and Louis Price.

1957 Trade Cases ¶68,599. U.S. District Court, S.D. New York. Civil Action No. 92-388. Filed January 9, 1957. Case No. 1193 in the Antitrust Division of the Department of Justice.

**Sherman Antitrust Act**

**Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Allocation of Markets—Restricting Competition—Cigarette Vending Machines.**—A trade association of cigarette vending machine operators, members of the association, a labor union, and others were prohibited by a consent decree from entering, into any understanding (1) to allocate or divide locations, (2) to leave any person free from competition in the selection of locations, the placement of vending machines in locations, or the solicitation of location owners, (3) to hinder or restrict any person from placing a vending machine in any location, (4) to hinder or restrict any person from competing for a location, or (5) to hinder or restrict any location owner from selecting or doing business with any operator of his choice, placing or operating his own vending machine, or selling cigarettes over the counter.

**Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Agreements Not to Compete.**—A trade association of cigarette vending machine operators, members of the association, and others were prohibited by a consent decree from refraining from competing for an open location because (1) another operator has evidenced an interest in placing a vending machine in that location, or (2) another operator once had a vending machine in that location. However, the decree did not prohibit any operator from entering into a legally valid covenant not to compete which is an integral part of a binding contract for the sale or purchase of the business of an operator.

**Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Coercion and Intimidation.**—A trade association of cigarette vending machine operators, members of the association, and others were prohibited by a consent decree from (1) using coercion to prevent any location owner from selecting and doing business with a vending machine operator of his own choice, (2) using coercion to prevent any person from competing for a location, or (3) inducing or attempting to induce any labor union, through any of its officers, members, or agents, to coerce or persuade a location owner not to permit a particular operator to place or operate a vending machine in his location.

**Combinations and Conspiracies—Monopolies—Consent Decree—Practices Enjoined—Duration of Contracts.**—A trade association of cigarette vending machine operators, members of the association, a labor union, and others were prohibited by a consent decree from entering into any contract with a location owner for

the placement of and sale of cigarettes through a vending machine, unless such contract shall be for a period not longer than three years and have no provision for automatic renewal at the end of the period.

**Combinations and Conspiracies—Trade Associations—Consent Decree—Practices Enjoined—Use of Trade Association Facilities.**—A trade association of cigarette vending machine operators was prohibited by a consent decree from using or permitting the use of its facilities to carry out or enforce any agreement which was prohibited by any provision of the decree.

**Combinations and Conspiracies—Labor Unions—Consent Decree—Practices Enjoined—Withholding Union Labor.**—A labor union was prohibited by a consent decree from (1) preventing any cigarette vending machine operator from securing or employing service men who are members of the union, (2) threatening to withhold or withholding union labor from any vending machine operator, or otherwise discriminating against any vending machine operator in the furnishing of union labor, for the purpose of inducing vending machine operator to join, or carry out any rules of a defendant trade association or any other association of vending machine operators, or (3) advising or compelling a location owner to refuse to do business with a particular vending machine operator because such operator is not a member of the defendant trade association or any other association of operators.

**Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions—Union Activities.**—A consent decree entered against a trade association of cigarette vending machine operators, members of the association, a labor union, and others provided that nothing in the decree should be deemed to prevent the labor union, its officers, agents, and members from (1) entering into and carrying out the terms of a collective bargaining agreement with a defendant trade association or with any other association of vending machine operators, or (2) initiating, participating in, and executing, solely in its separate capacity, policies and activities relating solely to a labor dispute concerning compensation or conditions of employment.

**Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief—Amendment of Trade Association's By-Laws—Expulsion of Members—Listings of Placements and Removals of Vending Machines—Membership.**—A trade association of cigarette vending machine operators was required by a consent decree (1) to amend its by-laws to incorporate therein certain provisions of the decree, (2) to require, as a condition of membership, that each present and future member (a) abide by the terms of such provisions of the decree, (b) file with the association a listing of each placement and removal of a vending machine, and (c) where any such placement is pursuant to a contract with a location owner, file with the association the facts of the existence and of the expiration date of such contract; and (3) to expel promptly from membership any present or future member who violates any such provision of the decree. The association was required to receive from any operator listings of that operator's placements and removals of vending machines and to report to every operator, members and non-members of the association, who shall make inquiry concerning a particular location, the name of the operator listed with the association as having a vending machine at that location and the expiration date of any contract between that operator and the location owner listed with the association. Also, the association was required to grant non-discriminatory membership to operators of cigarette vending machines.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; John D. Swartz, W. D. Kilgore, Jr., and Richard B. O'Donnell, Special Assistants to the Attorney General; and Richard Owen, Louis Perlmutter, Ralph S. Goodman, and George S. Leisure, Jr., Trial Attorneys.

For the defendants: Parker, Chapin & Flattau, by Samuel Chapin, for Arthur Gluck, The Rowe Corporation, and The Rowe Corporation, as successor to defendant, The Rowe Corporation. Goldstein & Goldstein, by Ely Levy, for Cigarette Service, Inc., and Gus-tave Stern. Mervin C. Pollak for Cigarette Merchandisers Association, Inc., Matthew Forbes, United Tobacco Corporation, Jackson Bloom, Herald Vending Corporation, Harold Jacobs, County Enterprises, Inc., and Louis Price. Katz & Wolchok, by Charles Katz, for Local 805 and Milton Holt.

**For a prior decision of the U. S. District Court, Southern District of New York, see [1955 Trade Cases ¶ 68,183](#).**

#### Final Judgment

SYLVESTER J. RYAN, District Judge [ *In full text*]: Plaintiff, United States of America, having filed its complaint herein on April 28, 1954, and the defendants having respectively appeared and filed their separate answers to such complaint denying the substantive allegations thereof, and the plaintiff and the defendants, by their respective attorneys herein, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without admission by any party hereto in respect of any such issue,

Now therefore, before any testimony has been taken herein, and without trial or adjudication of, or any admission with respect to any issue of fact or law herein, and upon the consent as aforesaid of all the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I.

[ *Sherman Act*]

This Court has jurisdiction of the subject matter herein and of all the parties hereto. The complaint states a cause of action against the defendants, and each of them, under § 1 and § 2 of the Act of Congress of July 2, 1890 entitled "An act to protect trade and commerce against unlawful restraint and monopolies," as amended, commonly known as the Sherman Act.

II.

[ *Definitions*]

As used in this Final Judgment:

- (a) "Person" means any individual, partnership, firm, association, corporation or other legal entity.
- (b) "New York metropolitan area" shall mean that part of the State of New York which includes the City of New York and the counties of Nassau, Suffolk, Westchester,. Putnam and Rockland.
- (c) "Vending machine" shall mean a coin-operated merchandising device through which packages of cigarettes are sold to the public.
- (d) "Location" shall mean any place where people congregate within the New York metropolitan area and in which a vending machine is placed or may be placed, such as a bar, restaurant, hotel, apartment, office building or store.
- (e) "Location owner" shall mean any person who has possession, ownership or control of a location whose permission or authority must be obtained to place, or who may himself place, a vending machine in the location.
- (f) "Operator" shall mean any person engaged in the business of selling cigarettes to the public through vending machines at a location.

III.

[ *Applicability of Judgment*]

The provisions of this Final Judgment applicable to any defendant shall apply to each such defendant, its subsidiaries, successors, officers, directors, employees, agents and members, and to all 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. Such provisions shall not apply to any transaction solely between a defendant and a subsidiary owned or controlled by such defendant.

IV.

[ *Amendment of By-Laws*]

Defendant Cigarette Merchandisers Association, Inc., is ordered and directed:

(A) Within sixty days after the entry of this Final Judgment, to serve by mail, upon each of its present members, a conformed copy of this Final Judgment, and to file with this Court and with the plaintiff herein proof by affidavit of such service upon each such member;

(B) Within three months from the date of entry of this Final Judgment to amend its by-laws to incorporate therein the substance of Section V, VI and VII of this Final Judgment, and to require, as a condition of membership, or retention of membership, that each present and future member abide by the terms of said Sections V, VI and VII; file with the association a listing of each placement and removal of a vending machine by that member; and where any such placement is pursuant to a contract, agreement or understanding with a location owner, to file with the association the facts of the existence and of the expiration date of such contract, agreement or understanding;

(C) To furnish to plaintiff and to each present and future member a copy of its by-laws as amended in accordance with the foregoing subdivision of this Section IV;

(D) To expel promptly from membership any present or future member who shall violate any of the provisions of Sections V, VI and VII of this Final Judgment.

## V.

### [ Allocation of Locations]

Defendants and each member of defendant Cigarette Merchandisers Association, Inc. are jointly and severally enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, or claiming any rights under, any contract, combination, agreement, understanding, plan, program or common course of action with any defendant or any operator to:

(A) allocate or divide locations;

(B) refrain from or leave any person free from competition in the selection of locations, the placement of vending machines in locations or the solicitation of location owners;

(C) hinder or restrict any person from placing a vending machine in any location;

(D) hinder or restrict any person from competing for a location;

(E) hinder or restrict any location owner from selecting or doing business with any operator of his choice, placing or operating his own vending machine, or selling cigarettes over the counter.

## VI.

### [ Use of Coercion]

Each defendant other than defendant Local 805 is enjoined and restrained from:

(A) Refraining from competing for an open location because

(1) Another operator has evidenced an interest in placing a vending machine in that location;

(2) Another operator once had a vending machine in that location;

(B) Using coercion to prevent any location owner from selecting and doing business with a vending machine operator of his own choice;

(C) Using coercion to prevent any person from competing for a location;

(D) Inducing or attempting to induce any labor union, through any of its officers, members or agents, to coerce, persuade or otherwise prevail upon a location owner not to permit a particular operator to place or operate a vending machine in his location;

(E) Becoming or remaining a member of, participating in the activities of, or contributing anything of value to any association or other organization, the purposes, policies, rules, practices or activities of which are inconsistent with any of the provisions of this Final Judgment.

## VII.

### [ *Duration of Contracts*]

Defendants and each member of defendant Cigarette Merchandisers Association, Inc., are jointly and severally restrained and enjoined from hereafter entering into any contract, agreement or understanding with a location owner for the placement of and sale of cigarettes through a vending machine unless such contract, agreement or understanding

(1) shall be for a period not longer than three years, and

(2) shall have no provision for automatic renewal at the end of the period thereof.

Provided, however, that the foregoing injunction shall not prohibit any operator from entering into such a contract, agreement or understanding of duration longer than three years, if insisted upon by a location owner or if a location owner insists upon payments from the operator which the latter cannot reasonably expect to recoup within a three year period.

## VIII.

### [ *Use of Association Facilities*]

Defendant Cigarette Merchandisers Association, Inc. is enjoined and restrained from using or permitting the use by any person of the facilities of said defendant to promulgate, adopt, carry out or enforce any contract, agreement, understanding, plan, program, policy or conduct which is enjoined by any of the provisions of this Final Judgment.

## IX.

### [ *Trade Association Membership*]

Defendant Cigarette Merchandisers Association, Inc., is ordered and directed to grant non-discriminatory membership to any operator having one or more vending machines placed in the New York metropolitan area who shall apply for such membership and who shall agree to pay dues and assessments and who shall agree to abide by the provisions of the by-laws of defendant Cigarette Merchandisers Association on the same basis as all other members of said defendant. Nothing in the provisions of this Section IX shall prevent defendant Cigarette Merchandisers Association, Inc. from imposing reasonable penalties on, or expelling any member for failure to pay regular dues and assessments or for otherwise failing to abide by the provisions of the by-laws and rules of said defendant.

## X.

### [ *Union Activities*]

Defendant Local 805 is enjoined and restrained from:

(A) Preventing any operator from securing or employing service men who are members of defendant Local 805;

(B) Threatening to withhold or withholding union labor from any operator, or otherwise discriminating against any operator in the furnishing of union labor, for the purpose of inducing such operator to join, or carry out any rules, policies or programs of defendant Cigarette Merchandisers Association, Inc. or of any other association of operators;

(C) Advising, inducing, threatening, coercing or compelling a location owner to refuse to do business with a particular operator because such operator is not a member of defendant Cigarette Merchandisers Association, Inc., or of any other association of operators.

## XI.

### *[ Permissive Provisions]*

Without determining, adjudicating or affecting the legality under the Sherman Act of the activities hereinafter referred to in this Section XI the provisions of this Final Judgment shall not be deemed to prevent defendant Local 805, its officers, agents and members, including members who may be employees of the defendants and other operators bound by the provisions of this Final Judgment, from:

- (A) Bargaining collectively, entering into and carrying out the terms of a collective bargaining agreement with defendant Cigarette Merchandisers Association, Inc., or with any other association of operators;
- (B) Initiating, participating in and executing, solely in its separate capacity, policies and activities relating solely to a labor dispute concerning compensation or terms and conditions of employment.

## XII.

Without hereby determining, adjudicating or affecting the legality under the Sherman Act of the contracts herein after referred to in this Section XII, the provisions of this Final Judgment shall not prevent any operator from entering into, continuing, abiding by or enforcing a reasonable and otherwise legally valid covenant not to compete which is an integral part of a binding contract with another operator for the sale or purchase of all or part of the business of one of such operators.

## XIII.

### *[ Listings of Placements and Removals]*

Defendant Cigarette Merchandisers Association, Inc. is ordered and directed:

- (A) To receive from any operator listings of that operator's placements and removals of vending machines and, where any such placement is pursuant to a contract agreement or understanding with a location owner, the facts of the existence and of the expiration date of such contract, agreement or understanding, and
- (B) To report to every operator, members and non-members of said association, who shall make inquiry concerning a particular location, the name of the operator, if any, listed with said association as having a vending machine at that location, and the expiration date of any contract agreement or understanding between that operator and the location owner listed with said association.

## XIV.

### *[ Inspection and Compliance]*

For the purpose of 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:

- (A) 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
- (B) 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.

Upon such written request the defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of said Final Judgment. No information obtained by the means provided in this Section XIV shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such

Department, 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.

**XV.**

*[ Jurisdiction Retained]*

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to the 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 or for the termination or modification of any of the provisions thereof, and for the purpose of the enforcement of compliance therewith and the punishment of violations thereof.