

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
 :
 Plaintiff, : Civil Action

v. No. 62 Civ. 2650

: Entered: March 23, 1967

AMERICAN MACHINE & FOUNDRY COMPANY, :
 INC., AMERICAN MACHINE & FOUNDRY :
 PINSPOTTERS, INC., BRUNSWICK CORPORATION, :
 and BOWLING PROPRIETORS' ASSOCIATION OF :
 AMERICA, INC.,

Defendants. :

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FINAL JUDGMENT

The plaintiff, United States of America, having filed its Complaint herein on July 30, 1962, and the defendant, Bowling Proprietors' Association of America, Inc., by its attorneys, having consented to the entry of a Final Judgment herein against it without trial or adjudication of any issue of fact or law herein, and without admission by it with respect to any such issue and this Court having determined, pursuant to Rule 54 (b) of the Federal Rules of Civil Procedure, that there is no just reason for delay in entering a Final Judgment as to all of plaintiff's claims asserted in said Complaint against that defendant;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon the consent of the United States of America and the defendant, Bowling Proprietors' Association of America, Inc., the Court hereby determines that the proceeding herein is terminated as to said defendant and directs entry of Final Judgment as to all of plaintiff's claims herein against said defendant and as to said

defendant, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter herein and of the parties hereto. The complaint states claims for relief against the defendant Bowling Proprietors' Association of America, Inc., under Sections 1 and 2 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) "BPAA" shall mean the defendant Bowling Proprietors' Association of America, Inc.;

(B) "Affiliated Associations" shall mean the city, regional and state associations of owners or operators of bowling establishments affiliated with defendant BPAA;

(C) "Person" shall mean any individual, partnership, corporation or any other business or legal entity;

(D) "Bowling establishment" shall mean any commercial establishment in which the game of bowling, in any of its commercial forms, is engaged in;

(E) "Bowling equipment" shall mean the necessary and usual accessory equipment used in furnishing a bowling establishment, including such items as automatic pinsetting machines, lanes, balls, ball returns, pins, foul detectors, bags, shoes and miscellaneous furniture;

(F) "Bowling equipment manufacturer" shall mean any person engaged in the manufacture, sale, lease or distribution of bowling equipment.

III

The provisions of this Final Judgment applicable to defendant BPAA shall apply to its officers, directors, agents and employees, when acting on behalf of BPAA, and to any committees or groups of BPAA's membership when organized and functioning as committees or groups of BPAA, to successors and assigns, and to those persons in active concert or participation with them who shall have received actual notice of this Final Judgment by personal service, or otherwise. The making and entry of this Final Judgment shall be without prejudice to the plaintiff seeking and obtaining further and different relief as to the remaining defendant.

IV

(A) Defendant BPAA is enjoined and restrained from entering into, adhering to or maintaining any agreement, understanding, plan or program, to:

(1) restrain or otherwise restrict the construction of new bowling establishments or the expansion of existing bowling establishments in the United States of America;

(2) use, disseminate or circulate any formula, survey, map, list, report, kit, plan or program designed for or having the purpose of preventing the construction of new, or the expansion of existing, bowling establishments in the United States of America;

(3) establish, formulate, or attempt to establish or formulate any standards, ratios, formulas or any criteria to be used by any bowling equipment manufacturer in determining whether such bowling equipment manufacturer should or should not sell, lease or distribute bowling equipment to, or otherwise deal with, any person;

(4) establish, formulate or attempt to establish or formulate any terms or conditions which any bowling equipment manufacturer shall use in the sale, lease or distribution of his bowling equip-

ment;

(5) establish, formulate or attempt to establish or formulate any format, language, tone, terms, standards or manner which any bowling equipment manufacturer shall employ in advertisements or other sales promotions, plans or programs for the sale, lease or distribution of its equipment;

(6) make, urge, or induce, or attempt to make, urge, or induce a decision, determination or conclusion by any bowling equipment manufacturer or any other person as to whether any geographical area or location would be desirable or suitable for the construction of new, or the expansion of existing, bowling establishments and/or lanes; or as to whether such area or location is to be considered "overbuilt", "critical", "overcrowded", or "saturated."

V

(A) Defendant BPAA is enjoined and restrained from:

(1) meeting, corresponding or otherwise directly communicating with any bowling equipment manufacturer or any other person for the purpose of urging or inducing or attempting to urge or induce, that any such manufacturer or other person refuse to sell, lease, distribute, purchase or finance the purchase or lease of bowling equipment or otherwise deal with any other person;

(2) requiring, urging, inducing or assisting, or attempting to require, urge, induce or assist any of its members or affiliated associations or any other bowling proprietors' association to engage in any activity covered by subsection (A) (1) of this Section V and by Section IV of this Final Judgment;

(3) refusing to accept any applicant for membership or affiliation on the same terms and conditions on which any other similarly situated applicant at the same time and in the same locality was accepted.

VI.

Defendant BPAA is ordered and directed to automatically terminate the affiliation, with loss of all rights and privileges attendant therewith of any affiliated association which, after one hundred twenty (120) days from date of entry of this Final Judgment engages in any, some or all of the practices enumerated in Sections IV and V of this Final Judgment, and the Anti-Trust Division of the Department of Justice has given written notice to BPAA of an affiliated association engaging in any such practice. BPAA shall promptly advise the Anti-Trust Division of the Department of Justice of information which it may receive in writing of any affiliated association engaging in any such activity.

VII.

(A) Defendant BPAA is ordered and directed to:

(i) mail a copy of this Final Judgment to each of its members and to each of its affiliated associations within sixty days after the date of the entry hereof; (ii) amend its By-Laws at the annual meeting of the BPAA next following the date of the entry hereof so as to require and provide for the automatic termination of affiliation, and loss of all rights and privileges attendant therewith, of any affiliated association which has by a court of competent jurisdiction been found to have thereafter done or otherwise participated in any of the practices described in Sections IV and V hereof and further so as to provide for the automatic termination of BPAA membership, and loss of all rights and privileges attendant therewith, of any BPAA proprietor who assists or otherwise participates in any activity of any affiliated association resulting in the automatic termination of that association's affiliation as aforesaid.

(B) Promptly after compliance with subsection (A) of this Section VII, defendant BPAA shall file with this Court and with the

Assistant Attorney General in charge of the Antitrust Division an affidavit of compliance therewith, attaching copies of the documents used to effect such compliance.

VIII

In the event the affiliation of an affiliated association or the membership of a member proprietor has been terminated as provided in Article VI or Article VII (A)(ii) of this order, neither the association nor the member shall be eligible for renewal of or reinstatement to affiliation or membership in BPAA within three years from the date of automatic termination, and thereafter, subject to such general requirements as BPAA may then have for affiliation or membership, shall be permitted by BPAA to renew or reinstate affiliation or membership only upon written application therefor which shows to BPAA's satisfaction that the activities or omissions which were the grounds for the termination have terminated and have not been and will not in the future be resumed.

IX

On written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant Bowling Proprietors' Association of America, Inc. made to its principal office, and subject to any legally recognized privilege and with the right of such defendant to have counsel present, duly authorized representatives of the Department of Justice, for the purpose of securing compliance with this Final Judgment, shall be permitted:

(A) Access, during 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;

(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 defendant Bowling Proprietors' Association of America, Inc., shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be requested.

No information obtained by the means permitted to this Section IX 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 in which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

X

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.

Dated: March 23, 1967

/s/ SYLVESTER J. RYAN
United States District Judge