

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :  
 :  
 Plaintiff, :  
 :  
 v. :  
 :  
 CHARMER INDUSTRIES, INC., :  
 STAR INDUSTRIES, INC., :  
 PEERLESS IMPORTERS, INC., :  
 CAPITOL DISTRIBUTORS CORP., :  
 KNICKERBOCKER LIQUORS :  
 CORPORATION, and :  
 STANDARD WINE & LIQUOR CO., INC., :  
 :  
 Defendants. :  
----- X

Civil Action  
No. 81-0049  
  
Filed: August 23, 1982  
  
PROPOSED CONSENT JUDGMENT:  
COMPETITIVE IMPACT STATEMENT

The United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)), hereby files this Competitive Impact Statement in connection with the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE OF THE PROCEEDING

On January 6, 1981, the United States filed a civil antitrust complaint under Section 4 of the Sherman Act (15 U.S.C. § 4) alleging that the above-named defendants and unnamed co-conspirators had from sometime in late 1978 until at least July 1979 combined and conspired to raise and fix prices of liquors and to reduce discounts on liquors and wines in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). The complaint alleged further that, as a result of the combination and conspiracy, liquor and wine prices were fixed at noncompetitive levels, customers of defendants were deprived of competitively determined prices and price competition among defendants was restrained.

The complaint sought an adjudication that the alleged combination and conspiracy was illegal and an injunction prohibiting the defendants from continuing, maintaining or renewing the combination and conspiracy, or from engaging in any other combination and conspiracy having a similar purpose or effect.

On the same day that the United States filed its complaint in this proceeding, a federal grand jury in Brooklyn, New York returned an indictment charging the above-named defendants with a criminal violation of the Sherman Act arising out of the same conspiracy alleged in the complaint. All of the defendants in the criminal action entered pleas of nolo contendere on August 12, 1981. Judge Charles P. Sifton sentenced the defendants to pay fines totalling \$1,025,000 on November 11, 1981.

The Court's entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for the next ten years for possible further proceedings to construe or carry out the judgment, to modify any of its provisions, to enforce compliance with the judgment, or to punish violations of any of its provisions.

## II

### DESCRIPTION OF THE PRACTICES GIVING RISE TO THE ALLEGED VIOLATION

The defendants are the six major wholesale distributors of liquors and wines in the New York Metropolitan Area, which consists of the counties of New York, Bronx, Kings, Queens, Richmond, Nassau, Suffolk and Westchester. They purchase liquors and wines from suppliers for resale to retail liquor and wine stores, taverns, restaurants, hotels, clubs and caterers. According to the complaint, the defendants' combined annual dollar sales of liquors and wines in 1979 were over \$700 million.

At trial, the United States would have been prepared to prove that high corporate officers of each of the defendants met together on several occasions in late 1978 and early 1979 to discuss and, ultimately, to agree uniformly to raise liquor prices and to reduce discounts on liquors and wines. More specifically, the defendants agreed to eliminate voluntary post-offs (temporary price reductions) for January and February 1979, to reduce quantity discount terms commencing in January 1979, and to increase liquor prices 2% across-the-board commencing in April 1979. The defendants implemented the agreed upon increase of liquor prices and reductions of discounts on liquors and wines.

### III

#### EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendants have stipulated that the Court may enter the proposed Final Judgment at any time after compliance with the Antitrust Procedures and Penalties Act. The judgment provides that there has been no admission by any party with respect to any issue of fact or law.

The proposed Final Judgment enjoins each defendant from directly or indirectly entering into, participating in or maintaining any contract, agreement, understanding, plan, program, combination or conspiracy with any other defendant or any other wholesaler to fix, establish, raise, lower or maintain prices, discounts, or other terms or conditions for the sale of liquors or wines at wholesale.

The proposed Final Judgment also enjoins each defendant from communicating to, requesting from or exchanging with any other defendant or any other wholesaler any information concerning actual or proposed prices, discounts, terms or conditions of sale, or actual or proposed pricing policies, or any consideration or contemplation of changes therein, for the sale of liquors or wines at wholesale.

The proposed Final Judgment requires each defendant to advise each of its officers who has management responsibility for the sale of liquors or wines and each of its employees who has responsibility for or authority over the establishment of prices for liquors or wines of his obligations and of such defendant's obligations under the judgment. Each defendant must furnish each such officer or employee, within 30 days after the judgment is entered, a copy of the judgment together with an attached statement advising each such person of his obligation and of such defendant's obligations under the judgment, and of the penalties which may be imposed for violation of the judgment. Each defendant is also ordered and directed to hold, within 60 days after the judgment is entered, a meeting of the appropriate officers and employees to instruct them concerning their obligations and such defendant's obligations under the judgment. Similar meetings shall be held at least once a year for a period of five years from the date of entry of the judgment.

The proposed Final Judgment provides that each defendant require, as a condition of the sale or other disposition of all, or substantially all, of the assets used by it in its liquor and wine business in the New York Metropolitan Area, that the acquiring party agree to be bound by the provisions of the judgment. The acquiring party shall file with the Court and serve on the United States its consent to be bound by the judgment.

The proposed Final Judgment is to be in effect for ten years from its date of entry.

The proposed Final Judgment states that entry of the judgment is in the public interest. Under the provisions of the Antitrust Procedures and Penalties Act, entry of the proposed Final Judgment is conditional upon a determination by the Court that the proposed judgment is in the public interest.

The United States believes that the proposed Final Judgment is fully adequate to prevent the continuation or recurrence of the violation of Section 1 of the Sherman Act alleged in the complaint, and that disposition of this proceeding without further litigation is appropriate and in the public interest.

#### IV

##### REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

After entry of the proposed Final Judgment, any potential private plaintiff that may have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal or equitable relief that it may have had if the Final Judgment had not been entered. The Final Judgment may not be used, however, as prima facie evidence in private litigation, pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. 16(a).

#### V

##### PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments within the 60-day period provided by the Act to Ralph T. Giordano, Chief, New York Office, Antitrust Division, United States Department of Justice, Room 3630, 26 Federal Plaza, New York, New York 10278 (Telephone: 212-264-0390). These comments and the Department's responses to them will be filed with the Court and published in the Federal Register.

All comments will be given due consideration by the Department of Justice. The Department remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry if it should determine that some modification is necessary. Additionally, the proposed Final Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court at

any time during the life of the Final Judgment for interpretation, modification, or enforcement of its provisions.

VI

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment considered by the United States was a full trial on the merits. The United States considers the proposed judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides appropriate relief against the violations alleged in the complaint.

VII

DETERMINATIVE MATERIALS AND DOCUMENTS

No materials or documents were considered determinative by the United States in formulating the proposed Final Judgment. Consequently, none is being filed pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b).

Dated: New York, New York  
1982

/s/ Melvin Lublinski  
MELVIN LUBLINSKI

/s/ Daniel J. Pearlman  
DANIEL J. PEARLMAN

/s/ Lowell L. Jacobs  
LOWELL L. JACOBS

Attorneys, Department of  
Justice  
Antitrust Division, Room 3630  
26 Federal Plaza  
New York, New York 10278  
Tel. (212) 264-0655