

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,
Plaintiff,

v.

MARYLAND STATE LICENSED
BEVERAGE ASSOCIATION, INC.,
et al.,

Defendants.

Civil Action No. 9122

SUPPLEMENTAL APPLICATION BY HIRAM WALKER
COMPANIES FOR MODIFICATION OF FINAL JUDGMENT

The defendants, Hiram Walker Incorporated, Hiram Walker & Sons, Inc., Gooderham & Worts Limited and Jas. Barclay & Co. Limited, on January 14, 1959, filed an application for modification of the final judgment entered against them herein on October 6, 1958. By this supplemental application, which supersedes the aforesaid application in its entirety, these defendants hereby move that this Court modify the aforesaid final judgment as follows:

(1) The second paragraph of Section V(D) to be amended so as to read as follows (material added is underscored, and material stricken is in brackets):

Nothing in Subsections (B)(1) and (2) of Section IV, or Subsections (B) and (D) of Section V, shall be construed to prohibit any consenting defendant from negotiating, entering into and adhering to a contract designating a wholesaler as a distributor, on an exclusive basis or otherwise; [provided, however, that such designation shall not directly or indirectly prevent any Monopoly County from acquiring alcoholic beverages direct from any source.] provided, however, that such designation shall leave the defendant contractually free to sell directly to any Monopoly County to which it desires to sell.

(2) Section VI(C) to be amended so as to read as follows (material added is underscored, and material stricken is in brackets):

(C) Be enjoined and restrained for the shortest period of any such suspension, or two years, whichever is less, from disseminating or preparing for dissemination to any person in the State of Maryland price lists or other price information containing minimum or suggested resale prices, markups, margins of profit, terms or conditions at which such alcoholic beverages are to be resold or offered for sale, except as provided by Article 2 B, Section 109 of the Annotated Code of Maryland [;] or by any other applicable provision of Maryland state law (including administrative regulations) which is now or hereafter may be in effect;

(3) Section VII(B) to be amended so as to read as follows (material added is underscored, and material stricken is in brackets):

(B) Each consenting defendant shall offer to sell and shall sell upon request to the Department of Liquor Control for Montgomery County those brands listed on Appendix A, and those brands which are hereafter offered for sale to any monopoly state, at prices which are not higher than those then currently charged to the wholesalers in Maryland, and without discrimination as to availability or other terms or conditions of sale: [Provided, however, that if any such brand is withdrawn by the consenting defendant from all markets of the United States, such defendant will not thereafter be obligated to sell or offer to sell such brand to the Department of Liquor Control for Montgomery County for such time as it is so withdrawn.] Provided, however, if such sales are made by a wholesaler to Montgomery County at the cost to the wholesaler plus a handling charge not to exceed one (1) dollar per case, such sale shall be considered equivalent to a sale by a manufacturer direct to Montgomery County at the prescribed price, and provided, further, that if any such brand is withdrawn by any defendant from the State of Maryland, such defendant will not thereafter be obligated to sell or offer to sell such brand to the Department of Liquor Control for Montgomery County for such time as it is so withdrawn.

(4) The following new paragraph to be added to Section VII of the decree:

(C) Any of the defendants may move to modify this final judgment with respect to individual action as to Montgomery County, because of a change in Maryland law or upon a showing of hardship.

The purpose of the above modification is to make the final judgment entered against the Hiram Walker Companies conform to the second paragraph of Paragraph (D) of Section V, Paragraph (C) of Section VI, and the second paragraph of Paragraph (B) and Paragraph (C) of Section VII of the final judgment entered in this case against Schenley Industries, Inc., Affiliated Distillers Brands Corp., Joseph E. Seagram & Sons, Inc., and House of Seagram, Inc., (Distillers Distributing Corp.) on the 4th day of March, 1959.

/s/ J. Sarsfield Sweeny (JCM)
J. Sarsfield Sweeny
First National Bank Building
Baltimore, Maryland

/s/ James C. McKay
James C. McKay
701 Union Trust Building
Washington, D. C.

Attorneys for Hiram Walker
Incorporated, Hiram Walker
& Sons, Inc., Gooderham &
Worts Limited and Jas. Barclay
& Co. Limited

ORDER

Upon the foregoing motion and the consent of the United States of America to the passage of this order, it is this 23rd day of March, 1959, by the United States District Court for the District of Maryland, ORDERED, ADJUDGED AND DECREED that the final judgment entered in this case

against Hiram Walker, Incorporated, Hiram Walker & Sons, Inc., Gooderham & Worts Limited and Jas. Barclay & Co. Limited on October 6, 1958, be and it is hereby amended as prayed in said motion.

/s/ Roszel C. Thomsen
Chief Judge, U. S. District Court

We hereby consent to the entry of the foregoing order:

For Plaintiff, United States of America:

/s/ Victor R. Hansen
Victor R. Hansen
Assistant Attorney General

/s/ Wilford L. Whitley, Jr.
Wilford L. Whitley, Jr.

/s/ W. D. Kilgore, Jr.
William D. Kilgore, Jr.
Attorney, Department of Justice

/s/ John H. Earle
John H. Earle

/s/ Leon H. A. Pierson
Leon H. A. Pierson
United States Attorney

/s/ John C. Fricano
John C. Fricano
Attorneys, Department of Justice

/s/ Charles F. B. McAleer
Charles F. B. McAleer
Attorney, Department of Justice

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, :
Plaintiff :
vs. : Civil Action No. 9122
MARYLAND STATE LICENSED :
BEVERAGE ASSOCIATION, INC., :
et al., :
Defendants :
:

MOTION TO AMEND FINAL JUDGMENT

National Distillers and Chemical Corporation (formerly known as National Distillers Products Corporation), pursuant to leave granted in Section IX of the final judgment entered against it in this case on October 6, 1958, moves this court to modify said final judgment in the following particulars:

(1) The second paragraph of Section V(D) to be amended so as to read as follows (material added is underscored, and material stricken is in brackets):

Nothing in Subsections (B)(1) and (2) of Section IV, or Subsections (B) and (D) of Section V, shall be construed to prohibit any consenting defendant from negotiating, entering into and adhering to a contract designating a wholesaler as a distributor, on an exclusive basis or otherwise; [provided, however, that such designation shall not directly or indirectly prevent any Monopoly County from acquiring alcoholic beverages direct from any source.] provided, however, that such designation shall leave the defendant contractually free to sell directly to any Monopoly County to which it desires to sell.

(2) Section VI(C) to be amended so as to read as follows (material added is underscored, and material stricken is in brackets):

(C) Be enjoined and restrained for the shortest period of any such suspension, or two years, whichever is less, from disseminating or

preparing for dissemination to any person in the State of Maryland price lists or other price information containing minimum or suggested resale prices, markups, margins of profit, terms or conditions at which such alcoholic beverages are to be resold or offered for sale, except as provided by Article 2 B, Section 109 of the Annotated Code of Maryland [] or by any other applicable provision of Maryland state law (including administrative regulations) which is now or hereafter may be in effect;

(3) Section VII(B) to be amended so as to read as follows (material added is underscored, and material stricken is in brackets):

(B) Each consenting defendant shall offer to sell and shall sell upon request to the Department of Liquor Control for Montgomery County those brands listed on Appendix A, and those brands which are hereafter offered for sale to any monopoly state, at prices which are not higher than those then currently charged to the wholesalers in Maryland, and without discrimination as to availability or other terms or conditions of sale: [Provided, however, that if any such brand is withdrawn by the consenting defendant from all markets of the United States, such defendant will not thereafter be obligated to sell or offer to sell such brand to the Department of Liquor Control for Montgomery County for such time as it is so withdrawn.] Provided, however, if such sales are made by a wholesaler to Montgomery County at the cost to the wholesaler plus a handling charge not to exceed one (1) dollar per case, such sale shall be considered equivalent to a sale by a manufacturer direct to Montgomery County at the prescribed price, and provided, further, that if any such brand is withdrawn by any defendant from the State of Maryland, such defendant will not thereafter be obligated to sell or offer to sell such brand to the Department of Liquor Control for Montgomery County for such time as it is so withdrawn.

(4) The following new paragraph to be added to Section VII of the decree:

(C) Any of the defendants may move to modify this final judgment with respect to individual action as to Montgomery County, because of a change in Maryland law or upon a showing of hardship.

The purpose of the above modification is to make the final judgment entered against National conform to the second paragraph of Paragraph (D) of Section V, Paragraph (C) of Section VI, and the second paragraph of Paragraph (B) and Paragraph (C) of Section VII of the final judgment

entered in this case against Schenley Industries, Inc., Affiliated Distillers Brands Corp., Joseph E. Seagram & Sons, Inc., and House of Seagram, Inc. (Distillers Distributing Corp.) on the 4th day of March, 1959.

William L. Farbary

John Martin Jones, Jr.

Attorneys for
National Distillers and Chemical
Corporation (formerly known as
National Distillers Products
Corporation)

O R D E R

Upon the foregoing motion and the consent of the United States of America to the passage of this order, it is this 23rd day of March, 1959, by the United States District Court for the District of Maryland, ORDERED, ADJUDGED AND DECREED that the final judgment entered in this case against National Distillers and Chemical Corporation (formerly known as National Distillers Products Corporation) on October 6, 1958, be and it is hereby annulls as prayed in said motion.

J. Royal C. Loman

Chief Judge, U. S. District Court

We hereby consent to the entry of the foregoing order:

For Plaintiff, United States of America:

Victor R. Hansen
Assistant Attorney General

Wilford L. Whitley, Jr.

William D. Kilgore, Jr.
Attorney, Department of Justice

John H. Earle

Leon H. A. Fierson
United States Attorney

John C. Fricano

Attorneys, Department of Justice

Charles F. B. McAleer
Attorney, Department of Justice