

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ED. PHILLIPS & SONS CO.,)
)
 Defendant.)

CIVIL ACTION
NO. 73-0-144
Filed: July 20, 1973
Entered: Aug. 24, 1973

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on February 22, 1973, and the plaintiff and said defendant, 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 the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent as aforesaid of all the parties hereto,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter hereof and of all parties hereto. The complaint states claims upon which relief may be granted against said defendant under Section 1 of the Act of Congress of July 2, 1890, as amended, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies," (15 U.S.C. § 1), commonly known as the Sherman Act.

II

As used in this Final Judgment:

- (A) "Person" shall mean any individual, partnership, firm, corporation, association or other business or legal entity.
- (B) "Defendant's distilled spirits and wines" means distilled spirits and wines distributed or sold by defendant.

III

The provisions of this Final Judgment shall apply to the defendant, its successors, assignees, and transferees, and its directors, officers, employees, and to all other persons in active concert or participation with the defendant who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Defendant is enjoined and restrained from directly or indirectly entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding, plan or program with any person to:

- (A) Fix, establish, maintain or adhere to prices, markups or other terms or conditions for the sale of defendant's distilled spirits or wines to any third person;
- (B) Prohibit such person from in any manner advertising or offering to sell defendant's distilled spirits or wines at prices, markups or other terms or conditions as such person may desire.

V

Defendant is enjoined and restrained from directly or indirectly:

- (A) Hindering, restricting, limiting or prohibiting, or attempting to hinder, restrict, limit or prohibit, any person from in any manner advertising or

offering to sell defendant's distilled spirits or wines at prices, markups or other terms or conditions as such person may desire;

(B) Refusing to sell or threatening to refuse to sell distilled spirits or wines to any person because of the prices, markups or other terms or conditions at which such person has in any manner advertised, displayed, or offered to sell, or intends to advertise, display, or offer for sale defendant's distilled spirits or wines;

(C) Policing or otherwise investigating prices, markups or other terms or conditions at which any of defendant's distilled spirits or wines are in any manner offered for sale by any of defendant's customers.

VI

Within thirty (30) days after the date of entry of this Final Judgment, defendant shall mail a copy of this Final Judgment to each former customer who advertised defendant's distilled spirits or wines at prices below the suggested retail prices, and to each such former customer's successor, assignee or transferee, together with a written notice that defendant will sell distilled spirits or wines to such customer at the same prices, markups, terms or conditions as defendant sells to its other customers; and within sixty (60) days after the date of entry of this Final Judgment shall file with this Court and serve upon the plaintiff, a report of compliance with this section VI, which report shall include the name and address of each such person to whom this Final Judgment and written notice were sent.

VII

Within sixty (60) days after the date of entry of this Final Judgment, defendant shall mail to each of its customers a letter in the form attached to this Final Judgment; and shall file with this Court and serve upon the plaintiff, within one hundred and twenty (120) days after the date of entry of this Final Judgment, a report of compliance with this section.

VIII

The defendant is ordered to file with the plaintiff annually for a period of ten (10) years on the anniversary of the entry of this Final Judgment, a report setting forth the steps taken by it to advise its officers, directors, and employees of its and their obligations under this Final Judgment.

IX

For the purpose of determining and securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendant made to defendant's principal office, be permitted, subject to any legally recognized privilege:

- (A) Access during the office hours of defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendant relating to any matters contained in this Final Judgment; and
- (B) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers, directors, agents, servants or employees of defendant, who may have counsel present, regarding such matters.

Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division defendant shall submit such written reports with respect to any matters contained in this Final Judgment as from time to time may be requested.

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

X

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 or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions thereof, and for the enforcement of compliance therewith and the punishment of violations thereof.

ENTER this 24th day of August , 1973.

/s/ ROBERT V. DENNEY
United States District Judge

ATTACHMENT TO FINAL JUDGMENT

Ed. Phillips & Sons Co.
10100 J Street
Omaha, Nebraska 68127

_____, 1973

Re: United States v. Ed. Phillips & Sons Co.,
Civil Action No. 73-0-144 (D. Nebraska)

Gentlemen:

A judgment has been entered in the captioned case. We are writing to inform you of Sections IV and V which provide as follows.

IV

Defendant is enjoined and restrained from directly or indirectly entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding, plan or program with any person to:

- (A) Fix, establish, maintain or adhere to prices, markups or other terms or conditions for the sale of defendant's distilled spirits or wines to any third person;
- (B) Prohibit such person from in any manner advertising or offering to sell defendant's distilled spirits or wines at prices, markups or other terms or conditions as such person may desire.

V

Defendant is enjoined and restrained from directly or indirectly:

- (A) Hindering, restricting, limiting or prohibiting, or attempting to hinder, restrict, limit or prohibit, any person from in any manner advertising or offering to sell defendant's distilled spirits or wines at prices, markups or other terms or conditions as such person may desire;
- (B) Refusing to sell or threatening to refuse to sell distilled spirits or wines to any person because of the prices, markups or other terms or conditions at which such person has in any manner advertised, displayed, or offered to sell, or intends to advertise, display, or offer for sale defendant's distilled spirits or wines;

- (C) Policing or otherwise investigating prices, markups or other terms or conditions at which any of defendant's distilled spirits or wines are in any manner offered for sale by any of defendant's customers.

The plaintiff and defendant, by their respective attorneys, consented to entry of the judgment without trial or adjudication of any issue of fact or law, and without the judgment constituting evidence or admission by any party with respect to any such issue.

Very truly yours,

Maurice Gilmore
Vice President and
General Manager