

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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UNITED STATES OF AMERICA, :

Plaintiff, :

v. :

TOBACCO DISTRIBUTORS' ASSOCIATION OF N.J.; :

CONSOLIDATED SERVICE DISTRIBUTORS, INC.; :

EISLER & COMPANY, INC.; :

GLIKIN BROTHERS; :

J. COSTAGLIOLA, INC.; :

J. MINKIN TOBACCO & CANDY CO.; :

JERSEY CITY TOBACCO COMPANY; :

PATERSON TOBACCO & CONFECTIONERY CO.; :

PINE LESSER & SONS, INC.; and :

WILLIAM SCHOENBERG, INC., :

Defendants. :

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Civil No.
79-CIV-1003 (FEL)

Filed: April 2, 1979

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the defendants named herein and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This Complaint is filed and this action is instituted under Section 4 of the Sherman Act (15 U.S.C. § 4) in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 1 of said Act, as amended (15 U.S.C. § 1).

2. Each of the defendants transacts business, maintains an office, and is found within the District of New Jersey.

II

DEFINITIONS

3. As used herein:

(a) "Cigarette distributor" means any person licensed by the State of New Jersey to bring unstamped

cigarettes into the State of New Jersey, to affix tax stamps to each pack, and to sell the stamped cigarettes in carton quantities to wholesalers and retailers licensed by the State of New Jersey.

(b) "Person" means any individual, corporation or other business or legal entity.

III

DEFENDANTS

4. The Tobacco Distributors' Association of N.J. (TDA) is made a defendant herein. The TDA is a corporation not for pecuniary gain organized and existing under the laws of the State of New Jersey, with its principal place of business in East Orange, New Jersey. It is a trade association of cigarette distributors doing business in the State of New Jersey.

5. The corporations named below are made defendants herein. Each of the named corporations is a cigarette distributor in New Jersey and is organized and exists under the laws of the State and has its principal place of business in the city identified below:

<u>CORPORATION</u>	<u>Principal Place of Business</u>
Consolidated Service Distributors, Inc.	Hawthorne, New Jersey
Eisler & Company, Inc.	West Orange, New Jersey
Glikin Brothers	Newark, New Jersey
J. Costagliola, Inc.	Paterson, New Jersey
J. Minkin Tobacco & Candy Co.	Passaic, New Jersey
Jersey City Tobacco Company	Jersey City, New Jersey
Paterson Tobacco & Confectionery Co.	Paterson, New Jersey
Pine Lesser & Sons, Inc.	Clifton, New Jersey
William Schoenberg, Inc.	Linden, New Jersey

IV

CO-CONSPIRATORS

6. Various persons, not made defendants in this Complaint, have participated as co-conspirators with the

defendants in the violation alleged herein and have performed acts and made statements in furtherance thereof.

V

TRADE AND COMMERCE

7. The activities, as hereinafter described, of the defendants and co-conspirators, were within the flow of interstate commerce and had a substantial effect on interstate commerce.

8. Most of the cigarettes consumed in the State of New Jersey are produced by six manufacturers at plants located outside the State. During all or part of the period covered by this Complaint, each of the corporate defendants, except TDA, was engaged in business as a cigarette distributor. Each purchased its cigarettes from one or more of these manufacturers for resale to retailers and other customers located within the State of New Jersey.

9. The cigarette manufacturers regularly ship cigarettes from their plants outside the State of New Jersey to warehouse facilities within the State and from there to the cigarette distributors in a continuous and uninterrupted flow of interstate commerce. The cigarette distributors maintain standing orders with the manufacturers which they regularly supplement with fill-in orders. Cigarettes are shipped from the warehouse facilities to the cigarette distributors at frequent, regular intervals prescribed in the standing orders or within 48 hours of receipt by the cigarette manufacturer of a fill-in order. The cigarette distributors then deliver the cigarettes to their retailer and other customers within the State of New Jersey. All shipment costs for delivery of the cigarettes from the manufacturers' plants through the warehouse facilities to the cigarette distributors are borne by the manufacturers.

10. During the period covered by this Complaint, substantial quantities of cigarettes were delivered in a

continuous and uninterrupted flow of interstate commerce from the manufacturers' plants outside the State of New Jersey through the defendant cigarette distributors to their retailer and other customers in the State of New Jersey.

11. During the period from 1973 through August 1977 the defendant cigarette distributors and co-conspirators had total sales of cigarettes of approximately \$500 million.

VI

VIOLATION ALLEGED

12. Beginning at least as early as 1969 and continuing thereafter through at least August 1977, the exact dates being unknown to the plaintiff, the defendants and co-conspirators engaged in a combination and conspiracy, in unreasonable restraint of the above described interstate trade and commerce, in violation of Section 1 of the Sherman Act, as amended (15 U.S.C. § 1). This combination and conspiracy may continue or resume unless the relief hereinafter prayed for is granted.

13. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators to fix and raise the prices of cigarettes sold to retailers in the State of New Jersey.

14. In forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators did those things which, as hereinbefore alleged, they combined and conspired to do, including, among other things, the following:

- (a) held meetings, discussed, and agreed upon prices of cigarettes to be sold to retailers; and
- (b) disseminated price lists which reflected the agreed upon prices.

VII

EFFECTS

15. The combination and conspiracy alleged in this Complaint had the following effects, among others:

- (a) prices of cigarettes to retailers in the State of New Jersey were fixed at and raised to non-competitive levels;
- (b) price competition in the sale of cigarettes to retailers in the State of New Jersey was restrained; and
- (c) retailers of cigarettes in the State of New Jersey were deprived of the benefits of full, free, and open competition in the purchase of cigarettes.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the Court adjudge and decree that the defendants and co-conspirators have engaged in an unlawful combination and conspiracy in restraint of the above-described interstate trade and commerce in violation of Section 1 of the Sherman Act, as amended.

2. That the defendants, their officers, directors, agents, employees, subsidiaries, successors, assigns, and all persons acting or claiming to act on their behalf, be perpetually enjoined and restrained from continuing, maintaining, or renewing the above described combination and conspiracy and from engaging in any other practice, combination, conspiracy, agreement, understanding, or concert of action having a similar purpose or effect.

3. That defendant TDA be dissolved.

4. That the defendants other than TDA be perpetually enjoined and restrained from creating, or belonging to, or participating in the activities of defendant TDA or any similar trade association whose activities are inconsistent with any of the terms of the final judgment in this case.

5. That plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper.

6. That the plaintiff recover its taxable costs.



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