

## Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Maryland State Licensed Beverage Association, Inc., et al., U.S. District Court, D. Maryland, 1958 Trade Cases ¶69,142, (Sept. 16, 1958)

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United States v. Maryland State Licensed Beverage Association, Inc., et al.

1958 Trade Cases ¶69,142. U.S. District Court, D. Maryland. Civil Action No. 9122. Filed September 16, 1958. Case No. 1302 in the Antitrust Division of the Department of Justice.

### Sherman Antitrust Act

**Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing —Fixed Prices by Agreement.**—Various wholesale liquor dealers and a trade association were prohibited by a consent decree from entering into any agreement among themselves or with any wholesalers or retailers to fix or maintain prices, markups, margins of profit, terms or conditions at which alcoholic beverages not manufactured by such defendants were sold or offered for sale to third persons. The defendants were also enjoined from entering into any agreement among themselves or with any other person to suggest or otherwise influence the prices at which sales of alcoholic beverages should be made to any Monopoly County (County Liquor Control Board or Department of Liquor Control selling alcoholic beverages under a county dispensary system in the State of Maryland).

**Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing —Refusal to Deal.**—Various wholesale liquor dealers and a trade association were prohibited by a consent decree from entering into any agreement among themselves or with any other person to (1) boycott or otherwise refuse to deal with any person engaged in the purchase, sale or distribution of alcoholic beverages or (2) induce, compel or coerce any person to boycott or otherwise refuse to deal with any person engaged in the purchase, sale or distribution of alcoholic beverages in the State of Maryland. The trade association was individually prohibited from inducing, compelling or coercing any person to boycott or otherwise refuse to deal with any person engaged in the purchase, sale or distribution of alcoholic beverages.

**Combinations and Conspiracies—Resale Price Fixing—Consent Decree—Practices Enjoined—Coercion and Intimidation.**—Various wholesale liquor dealers and a trade association were prohibited by a consent decree from entering into any agreement to (1) induce or coerce any person to adopt prices at which alcoholic beverages should be sold to third persons, or (2) induce or coerce any manufacturer to refuse to make sales directly to any Monopoly County, require that sales to Monopoly Counties be made through wholesalers, or make sales to any Monopoly County upon the condition that it resell at a suggested price. The defendants were individually prohibited from (1) urging or coercing any manufacturer to establish resale prices, (2) communicating with any person for the purpose or with the effect of urging or coercing any manufacturer or wholesaler to refrain from selling to any person, (3) promoting the sale of specific brands upon the condition that the manufacturer establish resale prices or boycott certain persons, and (4) refusing to buy or promote the sale of, or hindering the sale of, alcoholic beverages for the purpose or with the effect of urging or coercing the manufacturer to establish resale prices or boycott certain persons.

**Combinations and Conspiracies—Consent Decree—Practices Enjoined—Trade Association Activities —Coercion and Enforcement Provisions.**—A trade association composed of wholesale liquor dealers was prohibited by a consent decree from (1) discussing evolving, or acting upon any matter or thing enjoined by any provision of the decree in any meeting of its members, officers, directors or any committee meeting of the association, (2) accepting financial contributions from any manufacturer, non-member wholesaler or another non-member association, (3) having as a member any person not engaged in the business of wholesaling alcoholic beverages, (4) organizing, being a member of, or participating in any organization the purposes of which were contrary to any provision of the decree, (5) maintaining any plan or program the purpose or effect of which was to police or enforce prices of alcoholic beverages, and (6) inducing or coercing any person to adopt or enforce, adherence to prices, terms or conditions at which alcoholic beverages would be sold.

**Department of Justice Enforcement and Procedure—Consent Decree—Permissive Provisions—Proposing Legislation — Exclusive Distributorship.**—A consent decree entered against various wholesale liquor dealers and a trade association provided that nothing in the decree should be deemed to prohibit the defendants from proposing or supporting legislation or the adoption of local, state, or federal regulations relating to the purchase, sale or distribution of alcoholic beverages or from individually taking action required by local, state, or federal legislation or regulation. It was further provided that nothing contained in certain specific sections of the decree should be construed to prohibit any defendant, acting as a wholesaler or manufacturer, from entering into a contract designating it or another wholesaler as a distributor on an exclusive basis or otherwise. However, it was provided that such designation should not directly or indirectly prevent any Monopoly County from acquiring alcoholic beverages direct from any source.

**Department of Justice Enforcement and Procedure—Consent Decree—Contingent Provisions—Cancellation of Fair Trade Contracts—Dissemination of Price Information.**— A consent decree entered against various wholesale liquor dealers and a trade association provided that upon the entry of a final judgment against one or more liquor manufacturers (named as defendants in the complaint but not parties to instant decree) requiring a suspension of fair trading in the State of Maryland for any period of time, each consenting wholesaler who sold alcoholic beverages included in such suspension, shall (1) within 30 days after entry of such final judgment, cancel all fair trade contracts which fix the resale price of such alcoholic beverages and give to all Maryland licensed retailers notice of such cancellation, informing each retailer that it should individually determine the resale price without reference to fair trade prices, (2) be enjoined from entering into or adhering to any fair trade contract, (3) be enjoined from disseminating to any person price lists or other price information containing suggested resale prices, except as provided by Article 2B, § 109, Annotated Code of Maryland, 1957, which directs the Comptroller to require the filing of schedules of prices and proposed price changes, and (4) be enjoined from policing or otherwise enforcing suggested retail prices or conditions at which such alcoholic beverages are to be sold or offered for sale.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; William D. Kilgore, Jr., Attorney, Department of Justice; Leon H. A. Pierson, United States Attorney; and Charles F. B. McAleer, Wilford L. Whitley, Jr., John H. Earle, and John C. Fricano, Attorneys, Department of Justice.

For the defendants: John Henry Lewin, Baltimore, Md., for Maryland Institute of Wine and Spirit Distributors, Inc.; John Henry Lewin and Read McCaffrey, Baltimore, Md., for McCarthy-Hicks, Inc.; John Henry Lewin and Zanvyl Krieger, Baltimore, Md., for Churchill, Ltd.; John Henry Lewin and Stanley H. Wilen, Baltimore, Md., for Embros Wine Co., Inc.; Eugene M. Feinblatt, Baltimore, Md., for The Madera Bonded Wine & Liquor Co.; John Henry Lewin and Louis Hoffman, Baltimore, Md., for Reliable Liquors, Inc.; and A. Adgate Duer, Baltimore, Md., for Gillette-Wright, Inc.

### Final Judgment

[ *Consent Decree*]

ROSZEL C. THOMSEN, District Judge [ *In full text*]: The plaintiff, United States of America, having filed its complaint herein on September 11, 1956, and the plaintiff and the defendants, by their respective attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without admission by any party with respect to any such issue; and the Court having considered the matter and being duly advised;

Now, Therefore, upon consent of all the parties hereto, it is hereby

Ordered, Adjudged and Decreed, as follows:

I

[ *Jurisdiction*]

This Court has jurisdiction of the subject matter hereof and of all parties signatory hereto. The complaint states claims upon which relief may be granted against the defendants signatory hereto under Sections 1 and 2 of the

Act of Congress of July 2, 1890, entitled “An act to protect trade and commerce against unlawful restraint and monopolies,” commonly known as the Sherman Act, as amended.

## II

### [ *Definitions*]

As used in this Final Judgment:

- (A) “Person” means an individual, partnership, firm, corporation, association, trustee or any other business or legal entity, including County Liquor Control Boards and Departments of Liquor Control;
- (B) “Alcoholic Beverage” means any whiskey, rum, gin, brandy, cordial, wine, cider, alcohol or any other spiritous, vinous, malt or fermented liquor, liquid or compound, by whatever name called, containing one-half of one per centum or more of alcohol by volume, which is fit for beverage purposes, except any brewed alcoholic beverage including beer, ale, porter, and stout;
- (C) “Manufacturer” means a person who operates a plant within the United States for distilling, rectifying, blending, fermenting or bottling any alcoholic beverage, or imports into the United States any alcoholic beverage from outside the United States, or is a distributor selling to a wholesaler for resale to a retailer;
- (D) “Wholesaler” means any person engaged in the business of purchasing or acquiring alcoholic beverages from manufacturers for resale or distribution to retailers or other purchasers for resale;
- (E) “Retailer” means any person engaged in the business of selling alcoholic beverages to consumers;
- (F) “Consenting defendants” means the defendants signatory hereto and each of them;
- (G) “Monopoly County” means any County Liquor Control Board or Department of Liquor Control selling alcoholic beverages under a county dispensary system in the State of Maryland.

## III

### [ *Applicability*]

The provisions of this Final Judgment applicable to any consenting defendant shall apply to such defendant, its officers, agents, servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with such defendant who receive actual notice of this Final Judgment by personal service or otherwise. For the purpose of this Final Judgment, a defendant and its respective officers, agents, servants and employees shall be deemed to be one person.

## IV

### [ *Price Fixing— Boycotting*]

(A) The consenting defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining, furthering, or reviving, directly or indirectly, any contract, agreement, understanding, plan or program among themselves, or with any wholesaler or group of wholesalers or with any retailer or group of retailers, to:

- (1) Control, fix, adopt, stabilize or maintain prices, markups, margins of profit, terms or conditions at which alcoholic beverages not manufactured by such defendant are sold or offered for sale to third persons in the State of Maryland;
- (2) Induce, compel or coerce, or attempt to induce, compel, or coerce, any person to establish, adopt, issue, adhere to, or to police or enforce adherence to prices, mark ups, margins of profit, terms or conditions at which alcoholic beverages not manufactured by such defendant shall be sold or offered for sale to third persons in the State of Maryland.

(B) The consenting defendants are jointly and severally enjoined and restrained from entering into, adhering to, maintaining, furthering, or reviving, directly or indirectly, any contract, agreement, or understanding, plan or program among themselves, or with any other person, to

(1) Boycott or otherwise refuse to deal with, or threaten to boycott or otherwise refuse to deal with, any person engaged in the purchase, sale or distribution of alcoholic beverages in the State of Maryland;

(2) Induce, compel or coerce, or attempt to induce, compel or coerce, any person to boycott or otherwise refuse to deal with any person engaged in the purchase, sale or distribution of alcoholic beverages in the State of Maryland;

(3) Induce, compel or coerce, or attempt to induce, compel or coerce, any manufacturer to refuse to make sales of alcoholic beverages directly to any Monopoly County or to require sales to said Monopoly Counties to be made through wholesalers;

(4) Suggest, designate, prescribe or otherwise influence, or attempt to influence, the price or prices at which sales of alcoholic beverages shall be made by manufacturers or wholesalers to any Monopoly County;

(5) Induce, compel or coerce, or attempt to induce, compel or coerce, any manufacturer or wholesaler to make sales to any Monopoly County upon the condition or understanding that said Monopoly County resell alcoholic beverages at a suggested, prescribed or designated price or prices, or otherwise require said Monopoly County to resell at a suggested, prescribed or designated price or prices.

[ *Permissive Provision*]

Nothing in this Final Judgment shall be deemed to prohibit the said defendants from proposing or supporting legislation or the adoption of local, state, or federal regulations, relating to the purchase, sale or distribution of alcoholic beverages or from individually taking action required by local, state or federal legislation or regulation.

[ *Resale Price Fixing*]

Each of the consenting defendants is enjoined and restrained from, directly or indirectly:

(A) Urging, compelling or coercing any manufacturer to establish, adopt, issue, adhere to, or police or enforce adherence to minimum or suggested resale prices, mark ups, margins of profit, terms or conditions of sale at which alcoholic beverages are sold or offered for sale in the State of Maryland;

(B) Communicating with any manufacturer, wholesaler or other person for the purpose or with the effect of urging, compelling or coercing any manufacturer or wholesaler to refrain from selling alcoholic beverages to any person or to any group or class of persons;

(C) Promoting the sale of, or giving preference to, or urging, compelling or coercing, or attempting to urge, compel or coerce any person to promote the sale of, or give preference to, specific brands of alcoholic beverages not manufactured by such defendant upon any condition, agreement or understanding, that the manufacturer thereof establish, adopt, issue, adhere to, or police and enforce adherence to minimum or suggested resale prices, markups, margins of profit, terms or conditions of sale thereof, or boycott or otherwise refuse to deal with persons engaged in the purchase, sale or distribution of alcoholic beverages;

(D) Refusing to buy, refusing to promote the sale of, or in any manner hindering the sale of, or urging, compelling or coercing, or attempting to urge, compel or coerce any other person to refuse to buy, refuse to promote or in any manner hinder the sale of alcoholic beverages not manufactured by such defendant for the purpose or with the effect of urging, compelling or coercing the manufacturer thereof to establish, adopt, issue, adhere to, or police and influence adherence to minimum or suggested resale prices, markups, margins of profit, terms or conditions of sale thereof, or boycott or refuse to deal with any person engaged in the purchase, sale or distribution of alcoholic beverages.

VI

[ *Permissive Provision*]

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, acting as a wholesaler or manufacturer, from negotiating, entering into and adhering to a contract designating said defendant or another 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.

## VII

### [ *Fair Trade — Price Lists*]

Upon the entry of a Final Judgment in this case not subject to further appeal against one or more of the defendant manufacturers named as such in the complaint in this case requiring a suspension of fair trading in the State of Maryland for any period of time, each consenting defendant wholesaler as to alcoholic beverages included in such suspension which it sells, for and during the period of such suspension, shall:

- (A) Within thirty days after the entry of such Final Judgment, cancel all fair-trade contracts to which he is a party and which fix or control the resale price of such alcoholic beverages and shall give to all Maryland licensed retailers handling such products notice of such cancellation and termination, informing each of them that the retailer shall individually determine his resale price without reference to fair-trade prices theretofore established thereon;
- (B) Be enjoined and restrained from entering into or adhering to any fair-trade contract;
- (C) Be enjoined and restrained from disseminating or preparing for dissemination to any person price lists or other price information containing minimum or suggested resale prices, markups, margins of profits, terms or conditions at which such alcoholic beverages are to be resold or offered for sale, except as provided by Article 2B, Section 109 of the Annotated Code of Maryland.
- (D) Be enjoined and restrained from shopping, policing, reporting, or otherwise enforcing, minimum or suggested retail prices, markups, margins of profit, terms or conditions at which such alcoholic beverages are to be sold or offered for sale.

## VIII

### [ *Trade Association Activities*]

The defendant Maryland Institute of Wine and Spirit Distributors, Inc. is enjoined and restrained from:

- (A) Discussing, evolving or acting upon any matter or thing enjoined and restrained by any provision of this Final Judgment in any meeting of its members, officers, directors or any committee meeting of the Association;
- (B) Accepting financial contributions from any manufacturer, non-member wholesaler or another non-member association;
- (C) Having as a member any person not engaged in the business of wholesale sales of alcoholic beverages;
- (D) Organizing, being a member of, or participating in any trade association or other organization, the purposes or functions of which are contrary to any provision of this Final Judgment;
- (E) Maintaining any plan, program, shopping service or other means the purpose or effect of which is to determine, report to any person, police, supervise or enforce prices of alcoholic beverages in the State of Maryland;
- (F) Inducing, compelling or coercing, or attempting to induce, compel or coerce, any person to establish, adopt, issue, adhere to, or to police or enforce adherence to prices, markups, margins of profits, terms or conditions at which alcoholic beverages will be sold or offered for sale;
- (G) Inducing, compelling or coercing, or attempting to induce, compel or coerce, any person to boycott or otherwise refuse to deal with any person engaged in the purchase, sale or distribution of alcoholic beverages.

## IX

[ *Enforcement and Compliance*]

(A) For the purpose of 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 the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant, made to its principal office, be permitted:

1. Access during the office hours of said defendant to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of said defendant relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding any such matters;

(B) Upon receipt of a written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the defendant shall submit such reports in writing to the Department of Justice with respect to matters contained in this Final Judgment as may from time to time be necessary to the enforcement of said Judgment;

(C) No information obtained by the means provided 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 such Department, except in the course of legal proceedings to 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 Retained*]

Jurisdiction is retained 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 modification of any of the provisions thereof, for the enforcement of compliance therewith and for the punishment of violations thereof.