

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Memphis Retail Package Stores Association, Inc., et al., U.S. District Court, W.D. Tennessee, 1956 Trade Cases ¶68,383, (Jun. 15, 1956)

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United States v. Memphis Retail Package Stores Association, Inc., et al.

1956 Trade Cases ¶68,383. U.S. District Court, W.D. Tennessee, Western Division. Civil Action No. 2672. Filed June 15, 1956.

Sherman Antitrust Act

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing —Coercion and Intimidation—Refusal To Deal.—A retail liquor dealers' association and wholesale and retail liquor dealers were prohibited by a consent decree from entering into any understanding among themselves or with any other person to (1) control or fix prices, mark-ups, margins of profit, or conditions at which alcoholic beverages are sold, (2) control or fix discounts, (3) induce, compel, or coerce any person to adhere to prices or conditions at which alcoholic beverages will be sold, (4) communicate with any manufacturer or wholesaler for the purpose of inducing or coercing such manufacturer or wholesaler to establish, issue, or enforce minimum or suggested resale prices, mark-ups, margins of profit, or discounts, (5) communicate with any manufacturer or wholesaler for the purpose of inducing or coercing such manufacturer or wholesaler to refrain from selling, or to otherwise discriminate in the sale of, alcoholic beverages, (6) 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, or (7) induce or coerce any person to boycott or otherwise refuse to deal with any person engaged in the purchase, sale, or distribution of alcoholic beverages. Each of the defendants was prohibited, for a period of two years, from suggesting, persuading, or coercing any manufacturer or wholesaler to establish, issue, or enforce minimum or suggested resale prices for alcoholic beverages.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Rebates and Preferences.—A retail liquor dealers' association and wholesale and retail liquor dealers were prohibited by a consent decree from entering into any understanding among themselves or with any other person to “push” or give preference to alcoholic beverages on the condition or understanding that the manufacturer or wholesaler thereof establish, issue, or enforce minimum or suggested resale prices, mark-ups, margins of profit, or discounts.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—information Exchange and Price Lists.—A retail liquor dealers' association and wholesale and retail liquor dealers were each prohibited, for a period of one year, from disseminating to any person price lists or other price information containing minimum or suggested resale prices at which alcoholic beverages are to be sold.

Combinations and Conspiracies—Consent Decree—Practices Enjoined—Trade Association Membership.—A retail liquor dealers' association and wholesale and retail liquor dealers were each prohibited by a consent decree from belonging to or participating in any organization, or concerted plan or program, for policing prices at which alcoholic beverages are sold. The decree prohibited each of the defendants from organizing, becoming a member of, or participating in the activities of, any trade association or other organization, the purposes or functions of which relate to the distribution or sale of alcoholic beverages contrary to any provision of the decree.

Resale Price Fixing—Fair Trade—Consent Decree—Specific Relief—Cancellation of Fair Trade Contracts.—A retail liquor dealers' association and wholesale and retail liquor dealers were each ordered by a consent decree to cancel all fair trade contracts which fix or control the resale price of any alcoholic beverages in the Memphis trading area, and, to the extent that each defendant elects to sell alcoholic beverages in the Memphis trading area during the period of two years from the effective date of the decree, to do so at prices individually determined, without reference to established fair trade prices.

Department of Justice Enforcement and Procedure—Consent Decrees—Specific Relief —Dissolution of Association.—A retail liquor dealers' association was ordered by a consent decree to cause the dissolution

of the association, and, within sixty days after the date of entry of the decree, its officers and directors were required to file an affidavit with the court setting forth the steps taken to comply with the terms of such order.

Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions—

Proposing Legislation.—A consent decree entered against a retail liquor dealers' association and wholesale and retail liquor dealers provided that nothing contained in a specified provision of the decree should be deemed to prohibit them 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.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; Millsaps Fitzhugh, United States Attorney; Worth Rowley, W. D. Kilgore, Jr., Raymond K. Carson, Walter W. Dosh, John H. Earle, and Charles F. B. McAleer, Attorneys, Department of Justice.

For the defendants: Harry C. Pierotti, Memphis, Tenn., for Memphis Retail Package Stores Association, Inc., Memphis Wholesale Liquor Company, Inc., Bertram M. Bates, Elfo J. Grisanti, Charles A. Wilder, Mose Karnowsky, Joseph E. Kiersky, Victor L. Robilio, and Frank J. Cianciola.

Final judgment

MARION S. BOYD, District Judge [*In full text*] : The plaintiff, United States of America, having filed its complaint herein on June 30, 1955, and the consenting defendants having appeared and filed their several answers to said complaint denying the substantive allegations thereof and any violation of law; and the plaintiff and said consenting defendants, by their attorney, 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 plaintiff or any consenting defendant in respect to any such issue; and the Court having considered the matter and being duly advised:

Now, therefore, without the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent, as aforesaid, of plaintiff and the consenting defendants, it is hereby

Ordered, adjudged and decreed, as follows:

I

[*Sherman Act*]

This Court has jurisdiction of the subject matter hereof and of the plaintiff and consenting defendants. The complaint states a claim upon which relief may be granted against the consenting defendants under Section 1 of the Act of Congress of July 2, 1890 entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

II

[*Definitions*]

As used in this Final Judgment:

(A) "Person" shall mean an individual, partnership, firm, corporation, association, trustee or any other business or legal entity;

(B) "Alcoholic Beverage" shall mean any whiskey, rum, gin, brandy, cordial, wine, cider, alcohol or any other spirituous, vinous, malt or fermented liquor, liquid or compound, by whatever name called, containing one-half of one per cent or more of alcohol by volume, which is fit for beverage purposes, except beer;

(C) "Manufacturer" shall mean any person who distills, rectifies, blends, ferments or bottles any alcoholic beverage, or imports into the United States any alcoholic beverage from outside the United States, or who, as a distributor of alcoholic beverages, sells to a wholesaler for resale to a retailer;

(D) "Memphis Trading Area" shall mean Shelby County, Tennessee, and other Counties in the State of Tennessee supplied with alcoholic beverages by Memphis wholesalers.

(E) “Consenting defendants” shall mean each and all of the following defendants:

Memphis Retail Package Stores Association, Inc.

Memphis Wholesale Liquor Company, Inc.

Bertram M. Bates

Elfo J. Grisanti

Charles A. Wilder

Mose Karnowsky

Joseph E. Kiersky

Victor L. Robilio

Frank J. Cianciola

III

[*Applicability of Judgment*]

The provisions of this Final Judgment applicable to any of the consenting defendants shall apply to such defendants, their officers, agents, servants, employees and attorneys, and to those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise. For the purposes of this Final Judgment, a consenting defendant and the respective officers, agents, servants, employees and attorneys thereof shall be deemed to be one person when acting in such capacity.

IV

[*Concerted Practices Prohibited—Permissive Provision*]

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

(A) Control, fix, raise, adopt, stabilize or maintain prices, mark-ups, margins of profit, terms or conditions at which alcoholic beverages are sold or offered for sale to third persons;

(B) Control, fix, raise, adopt, stabilize, maintain or eliminate discounts at which alcoholic beverages are sold or offered for sale to third persons;

(C) Induce, compel or coerce, or attempt to induce, compel or coerce any person to adhere to, or to police or enforce adherence to, prices, terms or conditions at which alcoholic beverages will be sold to any person, or to any group or class of persons;

(D) Communicate, directly or indirectly, with any manufacturer or wholesaler for the purpose of inducing, compelling or coercing such manufacturer or wholesaler to establish, adopt, issue or enforce minimum or suggested resale prices, mark-ups, margins of profit or discounts at which alcoholic beverages are sold or offered for sale to third persons;

(E) Communicate, directly or indirectly, with any manufacturer or wholesaler for the purpose of inducing, compelling or coercing such manufacturer or wholesaler to refrain from selling, or to otherwise discriminate in the sale of, alcoholic beverages to any person or to any group or class of persons;

(F) 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;

(G) 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;

(H) "Push" or give preference to alcoholic beverages on the condition or understanding that the manufacturer or wholesaler thereof establish, adopt, issue or enforce, or agree to establish, adopt, issue or enforce minimum or suggested resale prices, mark-ups, margins of profit or discounts thereof.

Nothing in this Section IV shall be deemed to prohibit consenting 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.

V

[*Dissemination of Price Information*]

(A) Each of the consenting defendants is enjoined and restrained, for a period of one year from the effective date of this final judgment, from disseminating, or preparing for dissemination, to any person price lists or other price information containing minimum or suggested resale prices at which alcoholic beverages are to be sold or offered for sale to third persons;

(B) Each of the consenting defendants is enjoined and restrained from belonging to or participating in any organization, or concerted plan or program, for policing prices at which alcoholic beverages are sold or offered for sale by any person.

VI

[*Cancellation of Fair Trade Contracts*]

(A) Each consenting defendant is ordered and directed to cancel all fair trade contracts to which he is a party and which fix or control the resale price of any alcoholic beverages in the Memphis trading area, and, to the extent that such defendant elects to sell alcoholic beverages in the Memphis trading area during the period of two years from the effective date of this Final Judgment, to do so at prices individually determined by himself, without reference to fair trade prices established thereon.

(B) Each of the consenting defendants is enjoined and restrained for the two year period provided for in subsection (A) of this Section VI from urging, suggesting, persuading or coercing any manufacturer or wholesaler to establish, adopt, issue or enforce minimum or suggested resale prices for alcoholic beverages.

VII

[*Dissolution of Association*]

(A) Defendant Memphis Retail Package Stores Association, Inc. is ordered and directed to cause, within thirty (30) days after the date of entry of this Final Judgment, the dissolution of the Association and, within sixty (60) days after the date of entry of this Final Judgment its officers and directors shall file an affidavit with this Court, and send a copy thereof to the plaintiff herein, setting forth the steps taken to comply with the terms of subsection (A) of this Section VII;

(B) The consenting defendants are jointly and severally enjoined and restrained from organizing, becoming a member of, or participating in the activities of, directly or indirectly, any trade association or other organization, the purposes or functions of which relate to the distribution or sale of alcoholic beverages contrary to any provision of this Final Judgment.

VIII

[*Inspection and Compliance*]

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 consenting defendant, made to its principal office, be permitted:

(A) 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

(B) 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.

Upon request said 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. No information obtained by the means provided in this Section VIII 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.

IX

[*Retention of Jurisdiction*]

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 violation thereof.