

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Bowling Proprietors' Assn. of America, Inc., U.S. District Court, S.D. New York, 1967 Trade Cases ¶72,105, (May 19, 1967)

United States v. Bowling Proprietors' Assn. of America, Inc.

1967 Trade Cases ¶72,105. U.S. District Court, S.D. New York. No. 64. Civ. 1922. Entered May 19, 1967. Case No. 1806 in the Antitrust Division of the Department of Justice.

Sherman Act

Refusal to Deal**Bowling Establishments Tournament Eligibility Rules—Consent Judgment.**—A national association of bowling proprietors was required by a consent decree to revoke its league and tournament eligibility rules barring participation by bowlers if they have dealt with non-member proprietors.

Price Fixing—Bowling Proprietors' Association—Consent Judgment.—A national association of bowling proprietors was required by a consent decree to revoke by-laws which tend to fix or establish members' charges or to prevent members from competing with each other.

For the plaintiff: Donald F. Turner, Assistant Attorney General, and Gordon B. Spivack, William D. Kilgore, Jr., Robert J. Ludwig, Norman H. Seidler, J. Paul McQueen, and Barry Ravech, Attorneys, Department of Justice.

For the defendant: R. H. Wels of Moss, Wels & Marcus, New York, N. Y.; and Samuel W. Block of Raymond, Mayer, Jenner & Block, Chicago, Ill.

Final Judgment

RYAN, D. J.: The plaintiff, United States of America, having filed its complaint herein on June 23, 1964, and the parties hereto, by their respective attorneys, having consented to the entering of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without admission by any party hereto 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 the consent of 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 the parties hereto. The complaint states claims for relief against the defendant, under Sections 1 and 2 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 any individual, partnership, corporation or any other business or legal entity;

(B) "BPAA" shall mean the name defendant Bowling Proprietors' Association of America, Inc.;

(C) "Defendant" shall mean the defendant BPAA;

(D) "Affiliated Associations" shall mean state, city and district bowling proprietors' associations affiliated with BPAA;

(E) "Bowling Establishment" shall mean any commercial establishment in which the game of bowling, in any of its commercial forms, is done;

(F) "Proprietor" shall mean any person owning or operating a bowling establishment in the United States;

(G) "BPAA Proprietor" shall mean any proprietor who is a member of BPAA;

(H) "League" shall mean a unit consisting of four or more bowling teams which, in turn, are composed of up to five individuals each, which bowl under contractual agreements with proprietors to have bowling lanes reserved for its exclusive use for a definite period during any one year;

(I) "Tournament" or "Tournament Bowling" shall mean a bowling contest engaged in by individuals or teams for cash, trophy or other prizes and shall include elimination and qualification rounds prerequisite to such contest.

III

[*Applicability*]

The provisions of this Final Judgment applicable to *defendant shall apply* to its officers, directors, agents, and employees, when acting on behalf of BPAA, and to any committees or groups of BPAA's membership when organized and functioning as committees or groups of BPAA, to successors and assigns, and to those persons in active concert or participation with them who shall have received actual notice of this Final Judgment by personal service, or otherwise.

IV

[*Tournament Eligibility Rules*]

BPAA is ordered and directed to:

(A) Revoke any of its tournament eligibility rules which deny eligibility to participate in or receive prizes from any tournament bowling, sponsored or conducted by it or in its behalf to persons who do any league, tournament, advertised exhibition or other type of bowling in a non-BPAA bowling establishment or to persons who are employed by, hold stock in, or own, or otherwise do business with, any non-BPAA bowling establishments;

(B) Revoke any provisions of its constitutions, by-laws, codes of ethics or other rules or regulations, agreements, under-standings, plans or programs adopted by it;

(1) which deny any person the right to participate in league, tournament or other holding any in a BPAA proprietor establishment because such person has done some league, tournament or other bowling in, or has otherwise dealt with, a non-BPAA bowling establishment;

(2) which require a BPAA proprietor to refrain from conducting, sponsoring or bowling tournament, a portion of which is, or may be, conducted by, sponsored by, or held in, a non-BPAA bowling establishment;

(3) which, in any way, fix, suggest, establish, determine or maintain or attempt to fix, suggest, establish, determine or maintain, the prices, terms or conditions charged or imposed by any BPAA proprietor for the use of his bowling establishment or facilities;

(4) which in any way hinder, restrict or prevent any BPAA proprietor from soliciting the patronage of customers of another BPAA proprietor or otherwise hinder, restrict or prevent any BPAA proprietor from determining the manner, method or form in which he may compete with another BPAA proprietor; or

(5) which require any affiliated association to do any of the things which BPAA is prohibited from doing hereby.

V

[*Future Eligibility Rules*]

The defendant is hereby enjoined and restricted from continuing, adopting, participating in, entering into, enforcing, adhering to, or maintaining any by-law, code, rule, regulation, agreement, understanding, plan or program, unilaterally or in concert with any other person, having the purpose of:

(A) Requiring, directly or indirectly, as a condition of eligibility to participate in or to receive a prize in any bowling tournament, bowling contest, bowling program or bowling activity sponsored, conducted or held by it or in its behalf that a bowler must bowl all or any part of his or her league bowling or any other bowling activity in a BPAA proprietor establishment, denying such participation to patrons of non-BPAA proprietor establishments, or to owners or employees of non-BPAA proprietor establishments unless such participation is denied to all owners or employees of all bowling establishments, or in any other way acting to create or effect a boycott of non-BPAA proprietor establishments;

(B) Directly or indirectly or in any manner discriminating against or penalizing any bowler in any bowling tournament, bowling contest, bowling program or bowling activity sponsored, conducted or held by or in its behalf because the bowler bowls part of his or her league play or other bowling activity in a non-BPAA proprietor establishment or because the bowler is or is not a member of any bowling proprietor association;

(C) Fixing, suggesting, establishing, determining or maintaining or attempting to fix, suggest, establish, determine or maintain prices, terms or conditions to be charged or imposed by any BPAA proprietor for the use of his bowling establishment or facilities;

(D) Hindering, restricting or preventing or attempting to hinder, restrict or prevent, in any manner, any BPAA proprietor from soliciting the patronage of customers of other proprietors, or in his determination of the manner, method or form in which he will compete with any other BPAA proprietor;

(E) Requiring any affiliated association to do any of the things BPAA is prohibited from doing hereby.

VI

[*Affiliations and Notice*]

(A) Defendant BPAA is ordered and directed to mail a copy of the Final Judgment to each of its members and to each of its affiliated associations within sixty days after the date of the entry hereof;

(B) Defendant BPAA is ordered and directed within sixty days after the entry of this Final Judgment to place an advertisement or notice, setting forth Section IV of this Final Judgment, in three successive issues of three major publications of general circulation to the bowling public;

(C) Defendant BPAA is ordered and directed, commencing within sixty days after the entry of this Final Judgment and continuing for the period of one year:

(1) to set forth the statement attached hereto as Exhibit A on:

(a) all entry blanks for tournaments sponsored or conducted by it, and

(b) all posters, notices or advertisements advertising such tournaments;

(2) to request each BPAA proprietor to post the statement attached hereto as Exhibit A on the bulletin boards of each of his member bowling establishments and to suspend the BPAA membership of any BPAA proprietor who or which fails so to post the statement until such time as such proprietor has so posted the statement;

(D) Effective July 1, 1967, the BPAA Constitution and By-Laws shall be deemed to be amended so as to require and provide for:

(1) the automatic termination of affiliation, and loss of all rights and privileges attendant therewith, of any affiliated association which has by a court of competent jurisdiction been found to have thereafter done or otherwise participated in any of the practices described in paragraph V hereof and further so as to provide for the automatic termination of BPA membership, and loss of all rights and privileges attendant therewith of any BPAA proprietor who assists or otherwise participates in any activity of any affiliated association resulting in the automatic termination of that association's affiliation as aforesaid;

(2) the automatic termination of affiliation, with loss of all rights and privileges attendant therewith, of any affiliated association which does not amend or otherwise add to its by-laws, at its annual meeting next following the date of entry hereof or within one year following the date of entry hereof, whichever first occurs, so as to require and provide that participation in any tournament sponsored or conducted by or in behalf of the association is open, upon the same terms and conditions, to all bowlers who do, or have done, any league, tournament, advertised exhibition or any other type of bowling (1) in a BPAA-member establishment or (2) in a non-BPAA member establishment, or (3) whether such bowler is or is not a member of any bowling proprietor association;

(3) the automatic termination of affiliation, with loss of all rights and privileges attendant therewith, of any affiliated association which, after having adopted by-laws as required by subparagraph (2) above, fails to maintain and abide by such by-laws and the Anti-Trust Division of the Department of Justice has given written notice to BPAA of such failure. BPAA shall promptly advise the Department of Justice of information which it may receive in writing of any such failure.

(E) Promptly after compliance with subparagraphs (A) and (B) of this Section VI defendant BPAA shall file with this Court and with the Assistant Attorney General in charge of the Anti-Trust Division an affidavit of compliance therewith attaching copies of the documents used to effect such compliance. BPAA shall determine whether compliance with subparagraphs (C) and (D) of this Section VI has been made and shall file promptly thereafter an affidavit with the above that such compliance has been made together with a copy of the Constitution and By-Laws amended in accordance with subparagraph (D).

VII

[*Application for Re-affiliation*]

In the event the affiliation of an affiliated association or the membership of a member proprietor has been terminated as provided in Article VI (D) of this order, neither the association nor the member shall be eligible for renewal of or reinstatement to affiliation or membership in BPAA within three years from the date of automatic termination, and thereafter, subject to such general requirements as BPAA may then have for affiliation or membership, shall be permitted by BPAA to renew or reinstate affiliation or membership only upon written application therefor which shows to BPAA's satisfaction that the activities or omissions which were the grounds for the termination have terminated and have not been and will not in the future be resumed.

VIII

[*Inspection and Compliance*]

On written request of the Attorney General or the Assistant Attorney General in charge of the Anti-Trust Division, and on reasonable notice to the defendant made to its principal office, and subject to any legally recognized privileges and with the right of the defendant to have counsel present, duly authorized representatives of the Department of Justice, for the purpose of securing compliance with this Final Judgment, shall be permitted:

(A) access, during office hours of the defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant relating to any matters contained in this Final Judgment;

(B) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters.

Upon such written request defendant shall submit such reports in writing with respect to the matters contained in this Final Judgment as may from time to time be requested.

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

IX

[*Jurisdiction Retained*]

Jurisdiction is retained by this Court 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 amendment or modification of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

Exhibit A

Participation in any tournament sponsored, conducted or held by or in behalf of BPAA is open, upon the same terms and conditions, to all bowlers who do, or have done, any league, tournament, advertised exhibition or any other type of bowling (1) in a BPAA-member establishment, (2) in a non-BPAA member establishment, or (3) whether such bowler is or is not a member of any bowling proprietor association.