

IN THE MATTER OF
DISTILLERS CORPORATION-SEAGRAMS, LTD., ET AL.

CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT

Docket 6047. Complaint, Sept. 24, 1952—Decision, Mar. 2, 1954

Where 13 corporations which were engaged in the production, sale, and distribution of alcoholic beverages; were direct or indirect subsidiaries of a Canadian corporation which had created or acquired and owned directly or indirectly a large number of subsidiary corporations thus engaged; were included, as such subsidiaries, among the members of such subsidiary organization, utilized, among other purposes, to facilitate the sale and distribution of alcoholic beverages under various trade-marks, brands, and trade names so that at least some of said respondents should sell or distribute to persons other than those owned or controlled by any of them, i. e., those outside the group, such beverages for public consumption under trade-marks, brands, and trade names which were in competition, except insofar as restricted as below set forth, with similar alcoholic beverages likewise sold or distributed as such to persons under different trade-marks, brands, and trade names, by other similar subsidiary respondents; were engaged in the interstate sale of such beverages to wholesalers or others located throughout the country; constituted collectively, along with their affiliated and subsidiary corporations, one of the largest producers and sellers of alcoholic beverages in the United States, the gross sales of which as such were in excess of \$200,000,000 in 1951; and, in the case of each, were in competition with one or more of the other respondents in such sales, except as hindered, lessened, or suppressed as below set forth—

With intent and effect of restricting and hindering their aforesaid competition in commerce in the sale and distribution of such beverages to persons other than those owned or controlled by any of them, through combination, conspiracy, cooperation, and planned common courses of action, and as part thereof, for more than five years past—

- (a) Raised, fixed, stabilized, or maintained prices;
 - (b) Discussed, conferred, and exchanged information by correspondence and otherwise between and among themselves or with other concerns affiliated with or wholly or partly owned or controlled by them, for the purpose or with the effect of establishing or maintaining prices, terms, or conditions of sale or of securing adherence to prices, terms, or conditions of sale;
 - (c) Met with one another or with retail liquor dealers or with representatives of retail liquor dealer associations for the purpose or with the effect of reaching agreement as to the employment of resale price maintenance contracts or arrangements; of adjusting or increasing resale prices after tax rate changes; and of reaching agreements as to the use of resale price maintenance contracts or arrangements as a means of fixing, raising, stabilizing, or maintaining prices;
- Used common directors or officers as a means of raising, fixing, stabilizing, or maintaining prices;

- (e) Policed or enforced, or attempted to police or enforce, illegal resale price maintenance contracts or arrangements; and
- (f) Effected or maintained conditions, agreements, contracts, understandings, or arrangements, both express and implied, requiring that distributors or other purchasers give notice in advance of dealing in any alcoholic beverage product produced or sold by any competitor or competitors of respondents, the tendency of which was to preclude distributors of alcoholic beverages from selling or handling products sold by competitors of respondents:

Held, That such acts and practices constituted unfair acts and practices in commerce and unfair methods of competition therein.

Before *Mr. Frank Hier*, hearing examiner.

Mr. Lynn C. Paulson and *Mr. Joseph J. Gercke* for the Commission.

White & Case, of New York City, for respondents.

CONSENT SETTLEMENT ¹

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on September 24, 1952, issued and subsequently served its complaint on the respondents named in the complaint, charging them with the use of unfair methods of competition and/or unfair acts and practices in violation of the provisions of said Act.

The respondents, desiring that this proceeding be disposed of by the consent settlement procedure provided in Rule V of the Commission's Rules of Practice, solely for the purpose of this proceeding, any review thereof, and the enforcement of the order consented to, and conditioned upon the Commission's acceptance of the consent settlement hereinafter set forth, and in lieu of the answers to said complaint heretofore filed and which, upon acceptance by the Commission of this settlement, are to be withdrawn from the record, hereby (and prior to the commencement of the taking of any testimony herein):

(1) Admit all the jurisdictional allegations set forth in the complaint as to them.

(2) Consent that the Commission may enter the matters hereinafter set forth as its findings as to the facts, conclusion and order to cease and desist. It is understood that the respondents, in consenting to the Commission's entry of said findings as to the facts, conclusion

¹ The Commission's "Notice" announcing and promulgating the consent settlement as published herewith, follows:

Counsel supporting the complaint having stated that evidence is not available to support the allegations of the complaint other than those covered by the consent settlement tendered by the parties in this proceeding, a copy of which is served herewith, the said consent settlement was accepted by the Commission on March 2, 1954 and ordered entered of record as the Commission's findings as to the facts, conclusions, and order in disposition of this proceeding.

The time for filing report of compliance pursuant to the aforesaid order runs from the date of service hereof.

Findings

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and order to cease and desist, specifically refrain from admitting or denying that they have engaged in any of the acts or practices stated therein to be in violation of law.

(3) Agree that this consent settlement may be set aside in whole or in part under the conditions and in the manner provided in paragraph (f) of Rule V of the Commission's Rules of Practice.

The admitted jurisdictional facts, the statement of the acts and practices which the Commission had reason to believe were unlawful, the conclusion based thereon, and the order to cease and desist, all of which the respondents consent may be entered herein in final disposition of this proceeding, are as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Joseph E. Seagram & Sons, Inc., is a wholly owned subsidiary of Distillers Corporation-Seagrams, Ltd., and is a corporation organized and existing under and by virtue of the laws of the State of Indiana and has its main office and principal place of business at 405 Lexington Avenue, New York 17, New York.

Respondent Seagram-Distillers Corporation is a wholly owned subsidiary of respondent Joseph E. Seagram & Sons, Inc., and is a corporation organized and existing under and by virtue of the laws of the State of Delaware and has its main office and principal place of business at 405 Lexington Avenue, New York 17, New York.

Respondent Distillers Products Sales Corporation is a jointly owned subsidiary of respondents Seagram Distillers Corporation and Calvert Distillers Corporation and is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts and has its main office and principal place of business at 648 Beacon Street, Boston, Massachusetts.

Respondent Frankfort Distilleries, Incorporated, is a wholly owned subsidiary of Chivas Brothers Import Corporation, a subsidiary of respondent Joseph E. Seagram & Sons, Inc., and is a corporation organized and existing under and by virtue of the laws of the State of Delaware and has its main office and principal place of business at 405 Lexington Avenue, New York 17, New York.

Frankfort Distillers Corporation is a wholly owned subsidiary of respondent Frankfort Distilleries, Incorporated, and is a corporation organized and existing under and by virtue of the laws of the State of Delaware, and has its main office and principal place of business at 50 Rockefeller Plaza, New York 17, New York.

Respondent Paul Jones and Company, Inc., is a wholly owned subsidiary of respondent Joseph E. Seagram & Sons, Inc., and is a corporation organized and existing under and by virtue of the laws of

the State of Maryland and has its main office and principal place of business at Box 357, Baltimore, Maryland.

Respondent Hunter-Wilson Distilling Co., Inc., is a jointly owned subsidiary of respondents Joseph E. Seagram & Sons, Inc., and Gallagher & Burton, Inc., and is a corporation organized and existing under and by virtue of the laws of the State of Maryland and has its main office and principal place of business at Dundalk, Baltimore, Maryland.

Respondent Gallagher & Burton, Inc., is a wholly owned subsidiary of respondent Joseph E. Seagram & Sons, Inc., and is a corporation organized and existing under and by virtue of the laws of the State of Kentucky and has its main office and principal place of business at Baltimore (Relay), Maryland.

Respondent Carstairs Bros. Distilling Co., Inc., is a wholly owned subsidiary of respondent Joseph E. Seagram & Sons, Inc., and is a corporation organized and existing under and by virtue of the laws of the State of Maryland, and has its main office and principal place of business at Baltimore (Relay), Maryland.

Respondent The Calvert Distilling Co. is a wholly owned subsidiary of respondent Joseph E. Seagram & Sons, Inc., and is a corporation organized and existing under and by virtue of the laws of the State of Maryland and has its main office and principal place of business at Baltimore (Relay), Maryland.

Respondent Calvert Distillers Corporation is a wholly owned subsidiary of respondent The Calvert Distilling Co., and is a corporation organized and existing under and by virtue of the laws of the State of Maryland, and has its main office and principal place of business at 405 Lexington Avenue, New York 17, New York.

Respondent Julius Kessler Distilling Co., Inc., is a wholly owned subsidiary of respondent The Calvert Distilling Co., and is a corporation organized and existing under and by virtue of the laws of the State of Indiana, and has its main office and principal place of business at Lawrenceburg, Indiana.

Respondent Distillers Distributing Corporation is a wholly owned subsidiary of respondent Joseph E. Seagram & Sons, Inc., and is a corporation organized and existing under and by virtue of the laws of the State of Delaware and has its main office and principal place of business at 405 Lexington Avenue, New York 17, New York.

PAR. 2. Distillers Corporation-Seagrams, Ltd., a Canadian corporation, has caused to be created or acquired, and owns, directly or through subsidiary corporations, a large number of subsidiary corporations engaged in the production, sale and distribution of alcoholic beverages. Among said subsidiaries are the respondents named herein, vi

seph E. Seagram & Sons, Inc., Seagram-Distillers Corporation, Distillers Products Sales Corporation, Frankfort Distilleries, Incorporated, Frankfort Distillers Corporation, Paul Jones and Company, Inc., Hunter-Wilson Distilling Co., Inc., Gallagher & Burton, Inc., Carstairs Bros. Distilling Co., Inc., The Calvert Distilling Co., Calvert Distillers Corporation, Julius Kessler Distilling Co., Inc., Distillers Distributing Corporation. This corporate subsidiary organization is utilized, among other purposes, to facilitate the sale and distribution of alcoholic beverages under various trade-marks, brands and trade names so that at least some of said respondents sell or distribute to persons other than those owned or controlled by any of the respondents, alcoholic beverages intended for ultimate consumption by the public under trade-marks, brands and trade names which are in competition, except insofar as competition has been restricted and lessened by the acts and practices herein set forth, with similar alcoholic beverages sold or distributed to persons other than those owned or controlled by any of the respondents under different trade-marks, brands and trade names by other respondents herein, all of whom are subsidiaries of Distillers Corporation-Seagrams, Ltd.

PAR. 3. Respondents sell or cause to be sold alcoholic beverages to wholesalers or others located throughout the several States of the United States and in the District of Columbia, and said alcoholic beverages, when sold as aforesaid, are transported to said wholesalers or others in states other than the state or place of production or sale of said alcoholic beverages, so that these respondents are now and have been for more than five years last past engaged in trade and commerce in said products between and among the various States of the United States and in the District of Columbia.

The respondents named herein, and their affiliated and subsidiary corporations, are collectively one of the largest producers and sellers of alcoholic beverages in the United States. The gross sales of all members of the Seagram group were in excess of \$200,000,000 in 1951.

PAR. 4. Each respondent has been and now is in competition with or more of the other respondents named herein, and with others making, or seeking to make, sales of alcoholic beverages in commerce between and among the various States of the United States, except insofar as said competition has been hindered, lessened, restricted or suppressed by the combination and practices which they engaged in and are herein set forth.

more than five years last past, and continuing to the present the respondents hereinbefore named and described have acted for the purpose and with the effect of restricting and hindering competition in the sale and distribution of alcoholic beverages to

persons other than those owned or controlled by any of the respondents in that they have, through combination, conspiracy, cooperation and planned common courses of action, and as part and parcel thereof, done and performed things, acts and practices as follows:

(a) Raised, fixed, stabilized or maintained prices.

(b) Discussed, conferred and exchanged information by correspondence and otherwise between and among themselves or with other concerns affiliated with or wholly or partly owned or controlled by them for the purpose or with the effect of establishing or maintaining prices, terms or conditions of sale or of securing adherence to prices, terms or conditions of sale.

(c) Met with one another or with retail liquor dealers or with representatives of retail liquor dealer associations for the purpose or with the effect of reaching agreement as to the employment of resale price maintenance contracts or arrangements; of adjusting or increasing resale prices after tax rate changes; of reaching agreements as to the use of resale price maintenance contracts or arrangements as a means of fixing, raising, stabilizing or maintaining prices.

(d) Used common directors or officers as a means of raising, fixing, stabilizing or maintaining prices.

(e) Policed or enforced, or attempted to police or enforce, illegal resale price maintenance contracts or arrangements.

(f) Effected or maintained conditions, agreements, contracts, understanding or arrangements, both express and implied, requiring that distributors or other purchasers give notice in advance of dealing in any alcoholic beverage product produced or sold by any competitor or competitors of respondents, the tendency of which was to preclude distributors of alcoholic beverages from selling or handling products sold by competitors of respondents.

CONCLUSION

The aforesaid acts and practices constitute unfair acts and practices and unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

ORDER TO CEASE AND DESIST

It is ordered, That the respondents, Joseph E. Seagram & Sons., Inc., a corporation, Seagram Distillers Corporation, a corporation, Distillers Products Sales Corporation, a corporation, Frankfort Distilleries, Incorporated, a corporation, Frankfort Distillers Corporation, a corporation, Paul Jones and Company, Inc., a corporation, Hunter-

Order

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Wilson Distilling Co., Inc., a corporation, Gallagher & Burton, Inc., a corporation, Carstairs Bros. Distilling Co., Inc., a corporation, The Calvert Distilling Co., a corporation, Calvert Distillers Corporation, a corporation, Julius Kessler Distilling Co., Inc., a corporation, and Distillers Distributing Corporation, a corporation, directly or indirectly, through their officers, agents, representatives or employees, in or in connection with the offering for sale, sale or distribution in commerce between and among the several States of the United States and in the District of Columbia, of alcoholic beverages, do forthwith cease and desist from entering into, cooperating in, carrying out or continuing any combination, conspiracy, cooperation or planned common course of action between any two or more of said respondents engaged in competition in the sale of alcoholic beverages to persons other than those owned or controlled by any of the respondents, or between any one or more of said respondents and any wholly or partly owned subsidiary or affiliated concern not a party hereto, engaged in competition in the sale of alcoholic beverages to persons other than those owned or controlled by any of the respondents, to do or perform any of the following acts or things:

- (1) Raise, fix, stabilize or maintain prices;
- (2) Discuss, confer or exchange information for the purpose or with the effect of establishing or maintaining prices, terms or conditions of sale, or of securing adherence to prices, terms or conditions of sale;
- (3) Exchange information with or meet with any retail liquor dealer or with any representative of any retail liquor dealer association, or others for the purpose or with the effect of reaching agreement as to the employment of any resale price maintenance contract or arrangement, of adjusting or increasing resale prices after tax rate changes, or of reaching agreement as to the use of any resale price maintenance contract or arrangement as a means of raising, fixing, stabilizing or maintaining prices;
- (4) Use common directors or officers as a means of raising, fixing, stabilizing or maintaining prices;
- (5) Enter into any resale price maintenance contract or arrangement, or police, enforce, or attempt to police or enforce any such contract or arrangement.

It is further ordered, That each of the respondents, directly or indirectly, through its officers, agents, representatives or employees, do forthwith cease and desist from effecting or maintaining any condition, agreement, contract, understanding or arrangement, express or implied, providing that any distributor or any other purchaser shall be required to give notice in advance of dealing in any alcoholic

beverage product produced or sold by any competitor or competitors of respondents.

Provided, That nothing herein contained shall be construed to limit or otherwise affect any right with respect to resale price maintenance contracts or arrangements which any of the respondents may have under Section 5 of the Federal Trade Commission Act as amended by the McGuire Act (Public Law 542, 82d Cong., Chap. 745, Second Session, Approved July 14, 1952).

Provided further, That if, as a result of any valid statute or regulation of any state, territory, or possession or subdivision thereof, adopted pursuant to the Twenty-first Amendment to the Constitution of the United States, relating to the offering for sale, sale or distribution of alcoholic beverages, respondents, or any of them, or one or more of their wholly or partly owned subsidiaries or affiliated concerns, as a condition of doing business in said state, territory, possession or subdivision thereof, engage in acts or practices which, upon a prima facie showing on the record herein (not overcome by answer) may be construed by the Federal Trade Commission as violating any provision of the foregoing order, the Commission agrees that it will reopen this order solely for the purpose of determining whether to alter, modify or set aside such provision and that it will suspend such provision of this order, pending disposition of the issue as to whether such provision should be altered, modified or set aside. This proviso shall be without prejudice to, and nothing herein contained shall be construed to limit or otherwise affect, any defense which may otherwise be available to any respondent, in any proceeding to enforce the foregoing order or based on an alleged violation thereof.

It is further ordered, That Distillers Corporation-Seagrams, Ltd., a corporation, Seagram, Inc., a corporation, Distillers Warehouses, Inc., a corporation, William Jameson & Company, Inc., a corporation, Carstairs Distillers Corporation, a corporation, and The Pharma-Craft Corporation, a corporation, are hereby dismissed from this proceeding; such dismissals are without prejudice.

It is further ordered, That Seagram Sales Corporation, a corporation, Sea-Cal-Frank corporation, a corporation, and Browne-Vintners Co., Inc., a corporation, are hereby dismissed from this proceeding. Provided, however, that the dismissal of these three corporations is without prejudice and is not to be construed in any sense as exempting said corporations from the application of any of the provisions of the order to cease and desist as are applicable to any concern wholly or partly owned or controlled by or affiliated with any one or more of the respondents herein.

It is further ordered, That the respondents shall, within twelve months after the service upon them of this order, file with the Con

mission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Joseph E. Seagram & Sons, Inc.

By (Sgd) Frank R. Schwengel,

President.

Seagram Distillers Corporation

By (Sgd) Herbert W. Evenson,

Executive Vice President.

Distillers Products Sales Corporation

By (Sgd) Frank R. Schwengel,

President.

Frankfort Distilleries, Incorporated

By (Sgd) Arthur Hiller,

Vice President.

Frankfort Distillers Corporation

By (Sgd) Ellis D. Slater,

President.

Paul Jones and Company, Inc.

By (Sgd) Alex F. Bracker,

President.

Hunter-Wilson Distilling Co., Inc.

By (Sgd) Frank E. Desmond,

President.

Gallagher & Burton, Inc.

By (Sgd) James E. Friel,

Vice President.

Carstairs Bros. Distilling Co., Inc.

By (Sgd) James E. Friel,

Vice President.

The Calvert Distilling Co.

By (Sgd) James E. Friel,

Vice President.

Calvert Distillers Corporation

By (Sgd) Tubie Resnik,

Executive Vice President.

Julius Kessler Distilling Co., Inc.

By (Sgd) Frank R. Schwengel,

President.

Distillers Distributing Corporation

By (Sgd) James E. Friel,

Vice President.

Date: November 19, 1953.

The foregoing consent settlement is hereby accepted by the Federal Trade Commission and ordered entered of record on this 2nd day of March, 1954.

Syllabus

IN THE MATTER OF
SCHENLEY INDUSTRIES, INC. ET AL.CONSENT SETTLEMENT IN REGARD TO THE ALLEGED VIOLATION OF THE
FEDERAL TRADE COMMISSION ACT*Docket 6048. Complaint, Sept. 24, 1952—Decision, Mar. 2, 1954*

Where a corporation which had caused to be created or acquired, and owned directly through subsidiaries, a large number of subsidiary corporations engaged in the production, sale, and distribution of alcoholic beverages; and four subsidiary members of said corporate subsidiary organization, which was utilized, among other purposes, to facilitate the sale and distribution of alcoholic beverages under various trade-marks, brands, and trade names so that at least some of said respondents should sell or distribute to persons other than those owned or controlled by any of them, i. e., those outside the group, such beverages for public consumption under trade-marks, brands, and trade names which were in competition, except insofar as restricted as below set forth, with similar alcoholic beverages likewise sold or distributed such to persons, under different trade-marks, brands, and trade names, by other similar subsidiary respondents; were engaged in the interstate sale of such beverages to wholesalers or others located throughout the country; constituted collectively, along with their affiliated and subsidiary corporations, one of the largest producers and sellers of alcoholic beverages in the United States, the gross sales of which as such were in excess of \$200,000,000 in 1951; and, in the case of each, were in competition with one or more of the other respondents in such sales, except as hindered, lessened, or suppressed as below set forth—

With intent and effect of restricting and hindering their aforesaid competition in commerce in the sale and distribution of such beverages to persons other than those owned or controlled by any of them, through combination, conspiracy, cooperation, and planned common courses of action, and as part thereof, for more than five years past—

- (a) Raised, fixed, stabilized, or maintained prices;
- (b) Discussed, conferred, and exchanged information by correspondence and otherwise between and among themselves or with other concerns affiliated with or wholly or partly owned or controlled by them, for the purpose or with the effect of establishing or maintaining prices, terms, or conditions of sale or of securing adherence to prices, terms, or conditions of sale;
- (c) Met with one another or with retail liquor dealers or with representatives of retail liquor dealer associations for the purpose or with the effect of reaching agreement as to the employment of resale price maintenance contracts or arrangements; of adjusting or increasing resale prices after tax rate changes; and of reaching agreements as to the use of resale price maintenance contracts or arrangement as a means of fixing, raising, stabilizing, or maintaining prices;
- (d) Used common directors or officers as a means of raising, fixing, stabilizing, or maintaining prices; and
- (e) Policed or enforced, or attempted to police or enforce, illegal resale price maintenance contracts or arrangements: