Union Calendar No. 692

96TH CONGRESS
2D SESSION

H. R. 3567

[Report No. 96–1118]

To clarify the circumstances under which territorial provisions in licenses to manufacture, distribute, and sell trademarked soft drink products are lawful under the antitrust laws.

IN THE HOUSE OF REPRESENTATIVES

APRIL 10, 1979

Mr. HALL of Texas (for himself, Mr. MOLLOHAN, Mr. SHELBY, Mr. VANDER JAGT, Mr. BROYHILL, Mr. MOORHEAD of California, Mr. ABDNOR, Mr. ADDABBO, Mr. AKAKA, Mr. ALBOSTA, Mr. ALEXANDER, Mr. AMBRO, Mr. ANDREWS of North Carolina, Mr. ANDREWS of North Dakota, Mr. ANTHONY, Mr. APPLEGATE, Mr. ARCHER, Mr. ASHBROOK, Mr. ASPIN, Mr. ATKINSON, Mr. BADHAM, Mr. BAFALIS, Mr. BAILEY, Mr. BARNARD, Mr. BEVILL, Mr. BIAGGI, Mr. BLANCHARD, Mr. BONIOR of Michigan, Mr. BONKER, Mrs. BOUQUARD, Mr. BOWEN, Mr. BREAUX, Mr. BRINKLEY, Mr. BRODHEAD, Mr. BROOKS, Mr. BROWN of California, Mr. BUCHANAN, Mr. BURGENER, Mr. BUTLER, Mr. CAMPBELL, Mr. CARNEY, Mr. CHAPPELL, Mr. CHENEY, Mrs. CHISHOLM, Mr. CLAUSEN, Mr. CLAY, Mr. CLINGER, Mr. COELHO, Mr. COLLINS of Texas, Mr. CONABLE, Mr. CORCORAN, Mr. COUGHLIN, Mr. DANIEL B. CRANE, Mr. ROBERT W. DANIEL, JR., Mr. AUCOIN, Mr. DASCHLE, Mr. DAVIS of South Carolina, Mr. DE LA GARZA, Mr. DELLUMS, Mr. DERRICK, Mr. DEVINE, Mr. DICKINSON, Mr. DICKS, Mr. DIXON, Mr. DORNAN, Mr. DOUGHERTY, Mr. DOWNEY, Mr. DUNCAN of Tennessee, Mr. EDGAR, Mr. EDWARDS of Alabama, Mr. EMERY, Mr. ENGLISH, Mr. ERTEL, Mr. EVANS of Georgia, Mr. EVANS of Delaware, Mr. FAZIO, Ms. FERRARO, Mr. FISH, Mr. FLIPPO, Mr. FLOOD, Mr. FLORIO, Mr. FOLEY, Mr. FORD of Michigan, Mr. FORSYTHE, Mr. FOUNTAIN, Mr. FOWLER, Mr. FRENZEL, Mr. FUQUA, Mr. GARCIA, Mr. GAYDOS, Mr. GEPHARDT, Mr. GIBBONS, Mr. GILMAN, Mr. GINGRICH, Mr. GINN, Mr. GLICKMAN, Mr. GOODLING, Mr. GRADISON, Mr. GRAMM, Mr. GRASSLEY, Mr. GRAY, Mr. GRISHAM, Mr. GUDGER, Mr. GUYER, Mr. HAGEDORN, Mr. HAMILTON, Mr. HANCE, Mr. HANLEY, Mr. HARKIN, Mr. HAWKINS, Mr.

HEFNER, Mr. HIGHTOWER, Mr. HILLIS, Mr. HINSON, Mr. HOLLAND, Mr. HOLLENBECK, Mrs. HOLT, Mr. HOPKINS, Mr. HORTON, Mr. HOWARD, Mr. HUBBARD, Mr. HUCKABY, Mr. HUTTO, Mr. HYDE, Mr. ICHORD, Mr. IRELAND, Mr. JEFFRIES, Mr. JENKINS, Mr. JENRETTE, Mr. JOHNSON of California, Mr. JONES of Tennessee, Mr. JONES of North Carolina, Mr. KAZEN, Mr. KELLY, Mr. KEMP, Mr. KILDEE, Mr. KINDNESS, Mr. KRAMER, Mr. LAFALCE, Mr. LATTA, Mr. LEACH of Louisiana, Mr. LEATH of Texas, Mr. LEDERER, Mr. LEE, Mr. LEHMAN, Mr. LELAND, Mr. LENT, Mr. LEVITAS, Mr. LOEFFLER, Mr. LONG of Louisiana, Mr. LOTT, Mr. LOWRY, Mr. LUJAN, Mr. LUNDINE, Mr. LUNGREN, Mr. MCCLOSKEY, Mr. MCCORMACK, Mr. MCDONALD, Mr. MCEWEN, Mr. MCHUGH, Mr. MCKAY, Mr. MCKINNEY, Mr. MADIGAN, Mr. MARKS, Mr. MARLENEE, Mr. MARRIOTT, Mr. MARTIN, Mr. MATHIS, Mr. MATTOX, Mr. MAVROULES, Mr. MAZZOLI, Mr. MILLER of Ohio, Mr. MITCHELL of New York, Mr. MOAKLEY, Mr. MONTGOMERY, Mr. MOORE, Mr. MURPHY of Pennsylvania, Mr. MURPHY of New York, Mr. MURPHY of Illinois, Mr. MURTHA, Mr. MYERS of Indiana, Mr. MYERS of Pennsylvania, Mr. NEDZI, Mr. NOLAN, Mr. NOWAK, Mr. O'BRIEN, Mr. OTTINGER, Mr. PATTEN, Mr. PAUL, Mr. PEPPER, Mr. PERKINS, Mr. PEYSER, Mr. PICKLE, Mr. PRICE, Mr. PURSELL, Mr. QUILLEN, Mr. RAHALL, Mr. RICHMOND, Mr. RINALDO, Mr. ROBERTS, Mr. ROBINSON, Mr. ROE, Mr. ROSE, Mr. RUDD, Mr. SAWYER, Mr. SEBELIUS, Mr. SENSENBRENNER, Mr. SHARP, Mr. SHUMWAY, Mr. SHUSTER, Mr. SLACK, Mr. SOLOMON, Mrs. SPELLMAN, Mr. SPENCE, Mr. STANGELAND, Mr. STEED, Mr. STENHOLM, Mr. STOCKMAN, Mr. STRATTON, Mr. STUMP, Mr. SYMMS, Mr. SYNAR, Mr. TAUKE, Mr. TAYLOR, Mr. TRAXLER, Mr. TREEN, Mr. TRIBLE, Mr. VAN DEERLIN, Mr. VENTO, Mr. VOLKMER, Mr. WALKER, Mr. WATKINS, Mr. WEAVER, Mr. WHITE, Mr. WHITEHURST, Mr. WHITLEY, Mr. WHITTAKER, Mr. WHITTEN, Mr. WILLIAMS of Ohio, Mr. BOB WILSON, Mr. CHARLES WILSON of Texas, Mr. CHARLES H. WILSON of California, Mr. WINN, Mr. WOLFF, Mr. WRIGHT, Mr. WYATT, Mr. WYLIE, Mr. YATRON, Mr. YOUNG of Alaska, Mr. YOUNG of Missouri, Mr. ZEFERETTI, Mr. PANETTA, Mr. RITTER, Mr. ROSTENKOWSKI, Mr. FASCELL, Mr. ROUSSELOT, Mr. BONER of Tennessee, Mr. SNYDER, Mr. HAMMERSCHMIDT and Mr. COLEMAN) introduced the following bill; which was referred to the Committee on the Judiciary

JUNE 20, 1980

Additional sponsors: Mr. DECKARD, Mr. PREYER, Mr. FARY, Mr. WIRTH, Mr. JEFFORDS, Mr. NICHOLS, Mr. SKELTON, Mr. SOLARZ, Mr. PATTERSON, Mr. PASHAYAN, Mr. WAMPLER, Mr. JOHNSON of Colorado, Mr. MATSUI, Mr. DAN DANIEL, Mr. HEFTEL, Mr. RUNNELS, Mrs. HECKLER, Mrs. BYRON, Mr. FROST, Mr. NEAL, Mr. ERDAHL, Mr. WILLIAMS of Montana, Mr. SWIFT, Mr. BAUMAN, Mr. BEREUTER, Mr. SABO, Mr. KOGOVSEK, Mr. LIVINGSTON, Mr. DONNELLY, Mr. EDWARDS of Oklahoma, Mr. CARTER, Mr. BEARD of Rhode Island, Mr. STUDDS, Mr. PRITCHARD, Mr. BURLISON, Mr. UDALL, Mr. CORRADA, Mr. SIMON, Mr. SATTERFIELD, Mr. OBERSTAR, Mrs. SNOWE, Mr. LUKEN, Mr. LEWIS, Mr. BROWN of Ohio, Mr. STOKES, Mr. COURTER, Mr. DAVIS of Michigan, Mr. EVANS of Indiana, Mr. LEACH of Iowa, Mr. YOUNG of Florida, Mrs. COLLINS of Illinois, Mrs. SMITH of Nebraska, Mr. THOMAS, Mr. HANSEN, Mr. MICHEL, Mr. PORTER, Mr. RAILSBACK, Mr. DODD, and Mr. MINETA

JUNE 20, 1980
Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed
[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To clarify the circumstances under which territorial provisions in licenses to manufacture, distribute, and sell trademarked soft drink products are lawful under the antitrust laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~SECTION 1. This Act may be cited as the "Soft Drink Interbrand Competition Act".~~

~~SEC. 2. Nothing contained in any antitrust law shall render unlawful the inclusion and enforcement in any trademark licensing contract or agreement, pursuant to which the licensee engages in the manufacture (including manufacture by a sublicensee, agent, or subcontractor), distribution, and sale of a trademarked soft drink product, of provisions granting the licensee the sole and exclusive right to manufacture, distribute, and sell such product in a defined geographic area or limiting the licensee, directly or indirectly, to the manufacture, distribution, and sale of such product only for ultimate resale to consumers within a defined geographic area: *Provided,* That such product is in substantial and effective competition with other products of the same general class.~~

~~SEC. 3. The existence or enforcement of territorial provisions in a trademark licensing agreement for the manufacture, distribution, and sale of a trademarked soft drink product prior to any final determination that such provisions are unlawful shall not be the basis for recovery under section 4 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914.~~

~~SEC. 4. As used in this Act, the term "antitrust law" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (the Sherman Act), approved July 2, 1890, the Federal Trade Commission Act, approved September 26, 1914, and the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act), approved October 15, 1914, and all amendments to such Acts and any other Acts in pari materia.~~

SECTION 1. This Act may be cited as the "Soft Drink Interbrand Competition Act".

SEC. 2. Nothing contained in any antitrust law shall render unlawful the inclusion and enforcement in any trademark licensing contract or agreement, pursuant to which the licensee engages in the manufacture (including manufacture by a sublicensee, agent, or subcontractor), distribution, and sale of a trademarked soft drink product of provisions grant-

ing the licensee the sole and exclusive right to manufacture, distribute, and sell such product in a defined geographic area or limiting the licensee, directly or indirectly, to the manufacture, distribution, and sale of such product only for ultimate resale to consumers within a defined geographic area: Provided, That such product and licensee are in substantial and effective competition in the relevant market or markets.

SEC. 3. Nothing in this Act shall be construed to legalize the enforcement of provisions described in section 2 of this Act in trademark licensing contracts or agreements described in that section by means of price fixing agreements, horizontal restraints of trade, or group boycotts, if such agreements, restraints, or boycotts would otherwise be unlawful.

SEC. 4. In the case of any proceeding instituted by the United States described in subsection (i) of section 5 of the Clayton Act (relating to suspension of the statute of limitations on the institution of proceedings by the United States) (15 U.S.C. 16(i)) which is pending on the date of the enactment of this Act, that subsection shall not apply with respect to any right of action referred to in that subsection based in whole or in part on any matter complained of in that proceeding consisting of the existence or enforcement of any provision described in section 2 of this Act in any trademark licensing contract or agreement described in that section.

SEC. 5. As used in this Act, the term "antitrust law" means the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et seq.), and the Federal Trade Commission Act (15 U.S.C. 41 et seq.).".

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APRIL 10, 1979

Referred to the Committee on the Judiciary

JUNE 20, 1980

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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