

World Law of Competition

UNIT A—NORTH AMERICA

1

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NOVEMBER 1981 CUMULATIVE SUPPLEMENT

Julian O. von Kalinowski

General Editor

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Volume A1

UNITED STATES (I)

by

Julian O. von Kalinowski

Supplement Prepared by

Haig Costikyan



**MATTHEW
BENDER**

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CHAPTER 1

Scope, Jurisdiction and Enforcement of the Antitrust Laws

§ 1.07 Jurisdictional Reach of the Antitrust Laws: Interstate and Foreign Commerce; Subject Matter and Personal Jurisdiction

[3]—Personal Jurisdiction

[a]—Default; Waiver

PAGE U.S. 1-94:

[Add reference to N. 80.1 after the word “judgment” at the end of the sixth line.]

^{80.1} *In re Uranium Antitrust Litigation*, 617 F.2d 1248 (7th Cir. 1980), *aff’d* 473 F. Supp. 382 (N.D. Ill. 1979).

[b]—Minimum Contacts

[iii]—Statutory and Judicial Concepts

[A]—Venue: Relationship to Jurisdiction; Transacting Business Standard

PAGE U.S. 1-100:

^{N.111} See also *Outboard Marine Corp. v. Pezetel*, 461 F. Supp. 384 (D. Del. 1978).

[4]—Defenses to the Exercise of Extraterritorial Jurisdiction**PAGE U.S. 1-109:**

N.149 See also *Mannington Mills, Inc. v. Congoleum Corp.*, 595 F.2d 1287 (3d Cir. 1979) (issuance of patents by a foreign government does not constitute an act of state; and, by issuing patents, governments did not compel defendant to exclude plaintiff from foreign markets).

CHAPTER 2

The Sherman Act

§ 2.02 Section One of the Sherman Act: Restraints of Trade

[2]—Concerted Action; Conscious Parallelism

PAGE U.S. 2-12:

N.32.9 *Weit v. Continental Illinois Bank and Trust Co. of Chicago*, 641 F.2d 457 (7th Cir. 1981).

[4]—Trade or Commerce

[a]—Antitrust Exemptions; State Action and the Noerr-Pennington Doctrine

PAGE U.S. 2-14.1:

N.36 See also: *National Gerimedical Hospital & Gerontology Center v. Blue Cross of Kansas City*, 101 S. Ct. 2415 (1981); *Pireno v. N.Y. Chiropractic Ass'n*, 1981-1 Trade Cas. ¶ 64,047 (2d Cir. 1981).

[7]—Restraints Found to be Unreasonable

[a]—Price-Fixing

PAGE U.S. 2-26:

[Add the following material to N. 80 under the heading "Patentees":]

N.80 *Fourth Circuit: Duplan Corp. v. Deering Milliken, Inc.*, 444 F. Supp. 648 (D. S.C. 1977), *aff'd in part, rev'd in part* 594 F.2d 979 (4th Cir. 1979), *cert. denied* 444 U.S. 1015 (1980) (agreement settling patent litigation containing terms which fixed prices held illegal).

[b]—Distribution Practices*[i]—Tying Arrangements***PAGE U.S. 2-30:**

[Add the following material at the end of N. 90:]

N.90 See also:

Supreme Court: U.S. Steel Corp. v. Fortner Enterprises, Inc., 429 U.S. 610, 97 S. Ct. 861, 51 L. Ed.2d 80 (1977).

Fifth Circuit: Spartan Grain & Mill Co. v. Ayers, 581 F.2d 419 (5th Cir. 1978), *cert. denied* 444 U.S. 831 (1979).

Seventh Circuit: Ohio-Sealy Mattress Mfg. Co. v. Sealy, Inc., 585 F.2d 821 (7th Cir. 1978), *cert. denied* 440 U.S. 930 (1979).

See also § 6.02[5] *infra*.

[d]—Divisions of Markets**PAGE U.S. 2-38:**

N.109 *First Circuit:* Engine Specialties, Inc. v. Bombardier Limited, 605 F.2d 1 (1st Cir. 1979), *cert. denied* 446 U.S. 983 (1980) (a division of markets between a manufacturer of minicycles and a potential competitor with the requisite intent and ability to enter the market held illegal per se).

Second Circuit: Eiberger v. Sony Corp. of America, 459 F. Supp. 1276 (S.D.N.Y. 1978), *aff'd in part, rev'd in part* 622 F.2d 1068 (2d Cir. 1980).

Seventh Circuit: Ohio-Sealy Mattress Mfg. Co. v. Sealy, Inc., 585 F.2d 821 (7th Cir. 1978), *cert. denied* 440 U.S. 930 (1979).

**§ 2.03 Section 2 of the Sherman Act: Monopoly Offenses;
Actual Monopolization****[2]—Actual Monopolization****[a]—Generally****PAGE U.S. 2-53:**

N.36 See also Berkey Photo, Inc. v. Eastman Kodak Co., 603 F.2d 263 (2d Cir. 1979), *cert. denied* 444 U.S. 1093 (1980).

[c]—Monopoly Power Required for Actual Monopolization

[ii]—Relative Size; Percentage of Market Control

PAGE U.S. 2-65:

^{N.71} Compare *Broadway Delivery Corp. v. United Parcel Service of America, Inc.*, 1981-1 Trade Cas. ¶ 64,068 (2d Cir. 1981).

[d]—Intent

[ii]—Monopoly Power Unlawfully or Unfairly Maintained

PAGE U.S. 2-76:

^{N.103} *Second Circuit: Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263 (2d Cir. 1979), *cert. denied* 444 U.S. 1093 (1980).

§ 2.04 Section 2 of the Sherman Act: Attempts to Monopolize**[3]—Relevant Market****PAGE U.S. 2-97:**

^{N.37} *Gough v. Rossmoor*, 585 F.2d 381 (9th Cir. 1978), *cert. denied* 440 U.S. 936 (1979).

CHAPTER 3

The Clayton Act

§ 3.02 Section 3 of the Clayton Act

[1]—Jurisdictional and Statutory Requirements

[c]—Sales and Leases

PAGE U.S. 3-13:

^{N.38} *Fifth Circuit: Spartan Grain & Mill Co. v. Ayers*, 581 F.2d 419 (5th Cir. 1978), *cert. denied* 444 U.S. 831 (1979).

[2]—Tying Arrangements

PAGE U.S. 3-25:

^{N.77} See also *Spartan Grain & Mill Co. v. Ayers*, 581 F. 2d 419 (5th Cir. 1978), *cert. denied* 444 U.S. 831 (1979).

§ 3.03 Sections 7 and 7A of the Clayton Act: Mergers, Acquisitions and Joint Ventures

[3]—Anticompetitive Effects Prohibited by Section 7; Applicable Concepts

[b]—The Relevant Market

PAGE U.S. 3-52:

^{N.94} *Second Circuit: Kennecott Corp. v. Curtiss-Wright Corp.*, 584 F.2d 1195 (2d Cir. 1978); *SCM Corp. v. Xerox Corp.*, 463 F. Supp. 983 (D. Conn. 1978) (liability for retrospective money damages cannot be based on patent acquisition made prior to the existence of a relevant market).

[e]—The Time-of-Suit Concept

PAGE U.S. 3-65:

N.130 Compare *SCM Corp. v. Xerox Corp.*, 463 F. Supp. 983 (D. Conn. 1978).

§ 3.04 Sections 8 and 10 of the Clayton Act: Interlocking Directorates

[2]—Determining Whether an Interlock Between Business Corporations Violates Section 8

[b]—Indirect Interlocks

PAGE U.S. 3-127:

[Add reference to N. 22.1 at the end of Example 6.]

22.1 *Kennecott Corp. v. Curtiss-Wright Corp.*, 584 F.2d 1195 (2d Cir. 1978).

§ 3.07 Provisions of the Clayton Act Relating to Private and Government Enforcement

[2]—Section 4 of the Clayton Act: Private Treble Damage Actions

[a]—Standing to Sue Under Section 4: Injury to Business or Property Directly Resulting from an Antitrust Violation

PAGE U.S. 3-144:

N.29 See also *Reiter v. Sonotone Corp.*, 442 U.S. 330, 99 S. Ct. 2326, 60 L. Ed.2d 931 (1979) (money is property subject to injury as a result of antitrust violations).

PAGE U.S. 3-147:

[Add the following case to N. 42 after reference to Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.:]

N.42 *Seventh Circuit: Contract Utility Sales Co. v. Certain-Teed Products Corp.*, 638 F.2d 1061 (7th Cir. 1981).

PAGE U.S. 3-150:

^{N.50} AGS Elecs., Ltd. v. B.S.R. (U.S.A.), Ltd., 460 F. Supp. 707 (S.D.N.Y. 1979) (terminated distributor cannot complain of unlawful acquisition since any damages suffered are the result of termination, not violation of Section 7).

[ii]—*Standing to Seek Treble Damages for a Violation of Section 7 of the Clayton Act; The Concept of “Antitrust Injury”*

PAGE U.S. 3-155:

^{N.73} AGS Elecs., Ltd. v. B.S.R. (U.S.A.), Ltd., 460 F. Supp. 707 (S.D.N.Y. 1979) (termination of foreign distributorship and refusal to deal with foreign distributor not actionable under United States antitrust laws unless anticompetitive impact on U.S. trade is shown).

[5]—Sections 4C-4H: *Parens Patriae* Suits on Behalf of Consumers

[a]—An Overview of *Parens Patriae* Provisions

PAGE U.S. 3-172:

^{N.142} It has been held that grand jury materials are “investigative materials” within the meaning of Section 4F(b) of the Clayton Act and that a state attorney general need not demonstrate a “particularized need” in order to obtain disclosure of such materials under Rule 6(e)(3)(C)(i) of the Federal Rules of Criminal Procedure. *United States v. Colonial Chevrolet Corp.*, 629 F.2d 943 (4th Cir. 1980), *cert. denied* 101 S. Ct. 1352 (1981).

CHAPTER 4

The Robinson-Patman Act: Discrimination in Price and Terms

§ 4.02 Discrimination in Price: Jurisdictional and Statutory Elements Under Section 2(a)

[5]—Requirement That Sales Be of Commodities

PAGE U.S. 4-26:

^{N.63} See also *Ambook Enterprises v. Time Inc.*, 612 F.2d 604 (2d Cir. 1979).

§ 4.06 Competitive Injury at the Customer Level

[3]—Requirement of “Competition” Between “Favored” and “Disfavored” Customers

[a]—Generally

PAGE U.S. 4-100:

^{N.55} *Seventh Circuit*: *Lupia v. Stella D'Oro Biscuit Co.*, 586 F.2d 1163 (7th Cir. 1978), *cert. denied* 440 U.S. 982 (1979).

§ 4.08 Defenses to Section 2(a)

[2]—The “Good Faith” Meeting of Competition Defense

[b]—Good Faith

PAGE U.S. 4-129:

^{N.31} See also *Great Atl. & Pac. Tea Co. v. FTC*, 440 U.S. 69, 99 S. Ct. 925, 59 L. Ed.2d 153 (1979).

§ 4.09 Brokerage: Clayton Act, Section 2(c)

[3]—When Direct or Indirect Payments Are Brokerage Payments

PAGE U.S. 4-143:

^{N.40} *Seventh Circuit: Lupia v. Stella D'Oro Biscuit Co.*, 586 F.2d 1163 (7th Cir. 1978), *cert. denied* 440 U.S. 982 (1979).

§ 4.11 Buyer Liability: Clayton Act, Section 2(f)

PAGE U.S. 4-186:

[Add reference to N. 19.1 after the words “ ‘changing conditions’ ” in the second line of text.]

^{19.1} *Great Atl. & Pac. Tea Co. v. FTC*, 440 U.S. 69, 99 S. Ct. 925, 59 L. Ed.2d 153 (1979).

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