

Pro-Only Policy Challenged by Lawsuit

A New Orleans retailer seeks \$1.5 million in damages from several major equipment manufacturers and PGA

A Federal judge in New Orleans has refused dismissal of a \$1.5 million suit against 14 golf equipment and accessories manufacturers and the Professional Golfers' Assn.

Golf City, Inc., a New Orleans retail outlet for golf equipment, apparel and supplies, filed the suit at the end of last year. It claims that the defendants are in restraint of trade and that they have conspired to prevent Golf City from stocking and selling "pro-only" merchandise. Golf City also charges the defendants with fixing the market price of "pro-only" golf equipment, which is shipped in interstate commerce. "Pro-only" models—considered the prestige lines of manufacturers—normally are available only through shops manned by golf professionals.

The Golf City suit thus challenges the traditional pattern of golf equipment retailing.

The defendants—14 of the country's major golf equipment and accessories suppliers—have denied the Golf City charges, and several of them petitioned for a dismissal of the case. However, U.S. District Judge James A. Comiskey on May 5, 1970, refused their pleas and the case goes forward.

The companies cited numerous reasons for their sales policies—reasons which they feel leave them free of any violations of the restraint of trade laws, the price fixing laws or any other laws or regulations. For instance, Karsten Mfg. Corp. in a memorandum supporting its motion for dismissal, cited a decision of the U.S. Supreme Court:

"Any distributor is free to select the channels of trade through which he will distribute his product. There is no prohibition against a distributor electing to sell his

product through one marketing entity or type of marketing entity to the exclusion of another." [*United States vs. Colgate & Company*, 250 U.S. 300, 39 S. Ct. 465 (1919)]

In filing answers to the Golf City allegations of conspiracy, most of the defendants insisted that the setting of "pro-only" policies was done unilaterally by each firm; all denied knowledge of the policies of other companies.

A.G. Spalding & Bros., Inc., for example, "... Denies that the sales of Spalding's pro line merchandise and golf equipment are limited to members of the PGA and avers that the Spalding pro line of golf equipment is sold through pro shops operated by golf professionals who are affiliated with legitimate golf course operations, irrespective of their membership in the PGA... Spalding specifically avers that it does not provide any of its customers or those of its affiliated companies with cooperative advertising allowances."

The Charles A. Eaton Company maintains, "It has been the consistent policy of the company over the years to market all shoes and clothing under the Etonic label only through well known, substantial golf courses, which maintain a professional golf shop in which golf equipment is displayed and sold. The basis of this policy is the company's determination that high priced shoes and apparel can be marketed economically and efficiently... only through such outlets..." The company "has no agreement, written or oral, nor any formal or informal understanding of any kind with the PGA or with any manufacturer of golfing equipment, golfing apparel or any other items associated with the sport of

golf, with respect to the policy or practices of the company in marketing any of its products."

In filing interrogatory answers, the PGA told the court:

"The PGA has no contract with any golf equipment manufacturer or distributor authorizing the use by such manufacturer or distributor of the words 'pro only.'"

Golf City filed the suit last December. Named in the original suit were: A.G. Spalding & Bros., Inc.; Wilson Sporting Goods Company; MacGregor Sports Products, Inc.; Dunlop Tire and Rubber Company; Arnold Palmer Company; Ram Golf Corp.; Karsten Mfg. Corp.; Professional Golf Company; Acushnet Sales Company; Irving King; Walter Hagen Golf Equipment Company; Charles A. Eaton Company; Lamkin Leather Company; Uniroyal, Inc.; and the Professional Golfers' Assn.

Subsequent motions by the plaintiff dismissed the suit against Lamkin Leather and the Walter Hagen Golf Equipment Company. Hagen Company is a part of Wilson Sporting Goods Company. Brunswick Corp. was substituted for MacGregor Sports Products, Inc., because Brunswick is the parent firm. A.G. Spalding & Bros. was replaced by Spalding Sales Corp. Lamkin Leather was dismissed because it "has since the institution of this action, unqualifiedly dealt with and sold golf equipment to the plaintiff and has communicated to plaintiff its intention to continue so dealing."

Golf City claims that it lost \$50,000 last year in business because it could not fill its customers' orders. When the golf shop placed orders with the various manufacturers, the plaintiff contends, it was "... systemically and arbitrarily turned down, ignored and otherwise refused."

Suing under the Sherman Anti-Trust Act, Golf City alleges that a conspiracy in sales policy was formed for the purpose of controlling the market price of "pro-only" equipment, to suppress or eliminate competition between retail golf equipment dealers who are not PGA members and those who are, and to enable PGA members to

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LAWSUIT

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create a monopoly in the retail sales of golf equipment.

"Golf City filed the suit" according to its attorney Henry Klein, "because the owner, James Orange, is being eliminated from competition. Golf City is in the business of exclusively dealing in golf equipment, but it is unable to compete with the pro shops."

The attorney said that the PGA was included in the suit as a defendant because the law provides "anyone who benefits is liable."

In his ruling, Judge Comiskey declared in a memorandum of reasons for denying the motions:

"The court is convinced that the object of the conspiracy and its accomplishment are sufficiently alleged in the complaint so as not to be subject to any infirmity. The question which then arises is whether the plaintiff has alleged sufficient facts, details, or circumstances constituting the conspiracy itself.

"The defendants argue that these allegations are nothing more than bare legal conclusions and do not meet the requirements of pleadings set forth" in cases cited.

"It may well be that this contention has merit, but the court is of the opinion that determination of this vital issue at this time would not be the best course to take in this proceeding."

The Federal judge asserted he understood Golf City intends to file an amended complaint and suggested "the plaintiff should allege his full case now so that the motions to dismiss can be considered once and for all rather than in several phases.

"Therefore, without, in any way intending to rule on the merits of the motions to dismiss, the court directs counsel for the plaintiff to proceed with his proposed amendment to the complaint after which these motions will be set down for re-argument in the light of the amended complaint and will be ruled upon at that time."

At press time, Golf City had not filed its amended complaint. However, once this is done, the defendants would again have the opportunity to file for dismissal. □

AMERICAN WINES

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the wine average Frenchman drinks daily.

In the field of high-quality wines, or "premium wines," American wines compare favorably with nearly all the Clarets of the Bordeaux district, as well as with many of the better white Burgundies. American wines come less close to the great red Burgundies, the Sauternes (though not to the dryer Graves), and is far from equaling the superior whites of Germany; the Moselles, the Rheingaus or the wines of the Rheinpfalz.

There are few, if any, American wines comparable to the better vintages of the Loire—the Vouvrays, the Anjous, the Pouilly-Fumés—or the finer Alsations or the greats of the Rhône Valley. It may be doubtful at this stage, whether or not the American public is ready for such an array of vinous complexities, even if they were available. But many Ameri-

can wines have no import equivalents what so ever.

Wine sales in America are big business, and a growing one, too. In 1969 alone Americans spent well over one billion dollars for American wines, representing an ever-increasing trend and substantial increase over 1968. The opportunity for increasing wine sales in on-premise establishments is almost unlimited, because people are now spending about eight times as much for wines to consume at home as they do for wines to consume in the restaurant. Thus, it's more than patriotism for the club manager to know about American wines—it just makes good sense. □

Mr. Scharff is a former executive secretary of the New York State Wine Institute. He is a free-lance writer whose book, "The GOLF Magazine Encyclopedia of Golf," was recently published.

FORMULA

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or July at the rate of five pounds per thousand square feet. The 26 acres of fairways can be easily fertilized in one eight-hour day.

With a feeding program that requires minimum applications using minimum man-hours, Yoder and his two-man crew can manage the mowing, the preventive and curative fungicidal program and the other cultural practices. Few applications of herbicides are necessary because the healthy dense turf restricts the development of noxious weeds. A periodic insect and grub control program is followed as required.

The annual rainfall in Somerset averages 35 to 45 inches. Thus, Somerset does not need a regular irrigation system. This makes a program of proper liming, feeding and mowing even more important, because the turfgrass must at all times be healthy enough to survive the drought period as well as

the other normal hazards. Among these normal hazards is a golfing membership of 250 that puts 100 golfers on the course each day during weekends and holidays. This adds up to a traffic of 200 18-hole golfers on each tee, green and fairway of this course. Yoder with his easy-going, pleasant smile comments, "Over the years I've learned that I can measure the satisfaction of my golfers by the quality of my turfgrass."

Today, highly respected by professionals as well as his own club members, Yoder's course at Somerset was considered in 1969 by professional Chuck Scally of Pittsburgh and winner of the 1969 Somerset Pro-Member Tournament, to be one of the best manicured in the Tri-State area.

Part of the credit for Somerset's outstanding course, however, should go to the cooperation between Yoder and Howard Miller which enabled the program to begin. □