

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
) Civil Action No.:
)
 Plaintiff,) Filed:
)
 v.)
)
 INTERSTATE BAKERIES)
 CORPORATION, and)
 CONTINENTAL BAKING COMPANY,)
)
 Defendants.)

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Stipulation and Order:

A. "Associated Assets" means:

- (1) all labels used on White Pan Bread in the Relevant Territories;
- (2) all land, buildings, fixtures, machinery and equipment related to the plant;
- (3) all trucks and other vehicles, depots or warehouses, and thrift stores utilized by defendants in the distribution of White Pan Bread in the Relevant Territories; and
- (4) all route books, customer lists, and other records used in the defendants' day-to-day distribution of White Pan Bread in the Relevant Territories.

B. "Label" means all legal rights associated with a brand's trademarks, trade names, copyrights, designs, and trade dress; the brand's trade secrets; the brand's production knowhow, including, but not limited to, recipes and formulas used to produce bread sold under the label; and packaging, marketing and distribution knowhow and documentation, such as customer lists and route maps, associated with the brand.

C. "Continental" means Continental Baking Company, each division or subsidiary thereof, and each officer, director, employee, attorney, agent, successor or assignee, or other person acting for or on behalf of any of them.

D. "Interstate" means Interstate Bakeries Corporation, each division or subsidiary thereof, and each officer, director, employee, attorney, agent, successor or assignee, or other person acting for or on behalf of any of them.

E. "Interstate's Chicago Plant" means the Interstate bread production facility located in Chicago, Illinois and its Associated Assets.

F. "Interstate's Southern California Plant" means the Interstate bread production facility located in Glendale, California and its Associated Assets.

G. "Interstate's Central Illinois Plants" means the Interstate bread production facility located in Decatur, Illinois and the Interstate bread production facility located in Peoria, Illinois and their Associated Assets.

H. "Continental's Chicago Plant" means the Continental bread production facility located in Hodgkins, Illinois and its Associated Assets.

I. "Continental's Southern California Plant" means the Continental bread production facility located in Pomona, California and its Associated Assets.

J. "Eastern Wisconsin Territory" means Adams, Brown, Calumet, Columbia, Dane, Dodge, Door, Fond du Lac, Forest, Florence, Green, Green Lake, Jefferson, Kenosha, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Menominee, Milwaukee, Oconto, Outagamie, Ozaukee, Portage, Racine, Rock, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago counties in the state of Wisconsin.

K. "Chicago Territory" means Boone, Cook, DeKalb, Du Page, Grundy, JoDaviess, Kane, Kankakee, Kendall, Lake, Lee, McHenry, Ogle, Stephenson, Will, and Winnebago counties in the state of Illinois, and Lake and Porter counties in the state of Indiana.

L. "Central Illinois Territory" means Adams, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Fulton, Greene, Hancock, Henderson, Henry, Iroquois, Jasper, Jersey, Knox, La Salle, Lawrence, Livingston, Logan, Macon, Macoupin, Madison, Marion, Marshall, Mason, McDonough, McLean, Menard, Mercer, Montgomery, Morgan, Moultrie, Peoria, Piatt, Pike, Putnam, Richland, Rock Island, Sangamon, Schuyler, Scott, Shelby, Stark,

Tazewell, Vermilion, Wabash, Warren, Wayne, Whiteside, and Woodford counties in the state of Illinois.

M. "Southern California Territory" means Imperial, Los Angeles, Orange, Riverside, San Bernadino, and San Diego counties in the state of California.

N. "Relevant Territories" means the Chicago, Eastern Wisconsin, Southern California, and Central Illinois Territories.

O. "White Pan Bread" means white bread baked in a pan but shall not include hamburger and hot dog buns, or variety breads such as French bread and Italian bread.

II. OBJECTIVES

The Final Judgment filed in this case is meant to ensure defendants' prompt divestitures for the purpose of establishing viable competitors in the sale of White Pan Bread to remedy the anticompetitive effects that the United States alleges would otherwise result from the acquisition of Continental by Interstate. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that certain Interstate and Continental labels, plants and marketing and sales operations that compete in the Relevant Territories are maintained as independent, economically viable, ongoing business concerns, and that competition is maintained during the pendency of the divestitures.

III. HOLD SEPARATE PROVISIONS

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate Continental's Chicago and Southern California Plants as independent competitors with management and operations held entirely separate, distinct and apart from those of Interstate. Defendants shall not coordinate the production, marketing or terms of sale of Continental's bread products with Interstate's bread products in the Relevant Territories. Within thirty (30) days of the entering of this Order, defendants shall inform plaintiff of steps taken to comply with this provision.

B. Defendants shall take all steps necessary to ensure that Interstate's Chicago, Southern California and Central Illinois Plants and Continental's Chicago and Southern California Plants will be maintained as economically viable, ongoing business concerns. Defendants shall use all reasonable efforts to maintain and increase the sales of Interstate's and Continental's White Pan Bread and other bread products in the Relevant Territories and otherwise maintain these businesses as active competitors in the Relevant Territories.

C. Defendants shall provide capital and provide and maintain sufficient working capital to maintain Interstate's Chicago, Southern California, and Central Illinois Plants and Continental's Chicago and Southern California Plants as economically viable, ongoing businesses, consistent with the requirements of Sections III(A) and (B).

D. Defendants shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans, assets

that may be required to be divested pursuant to the Final Judgment.

E. Defendants shall preserve the assets that may be required to be divested pursuant to the Final Judgment in a state of repair equal to their state of repair as of the date of this Hold Separate Stipulation and Order, ordinary wear and tear excepted.

F. Defendant shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as every four weeks or every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of Interstate's Chicago, Southern California and Central Illinois Plants and Continental's Chicago and Southern California Plants.

G. The production, pricing and promotional plans specific to Interstate's Chicago, Southern California, or Central Illinois Plants will not be transferred or otherwise made available to persons having direct sales or marketing responsibility for Continental's marketing and sales of White Pan Bread in any Relevant Territory; and the production, pricing and promotional plans specific to Continental's Chicago or Southern California Plants, or to Continental's marketing and sales of White Pan Bread in any Relevant Territory, will not be transferred or otherwise made available to persons having direct sales or marketing responsibility for Interstate's marketing and sales of

White Pan Bread in any Relevant Territory, unless needed to comply with other provisions of this Order.

H. Except in the ordinary course of business, or as is otherwise consistent with the requirements of Sections III(A) and (B), defendants shall not transfer or terminate, or alter any current employment or salary agreements for, any executive-level management, sales, marketing, or engineering personnel of Interstate's Chicago, Southern California, or Central Illinois Plants or Continental's Chicago or Southern California Plants.

I. Defendants shall not in anyway inhibit the ability of any licensee or purchaser under the Final Judgment from hiring any person currently an employee of defendants' at any plant that may be divested pursuant to the Final Judgment.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a suitable purchaser or purchasers.

K. This Hold Separate Stipulation and Order shall remain in effect as to each Relevant Territory pending consummation of

the divestitures contemplated by the proposed Final Judgment as to that Relevant Territory, or until further Order of the Court.

Dated:

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

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FOR DEFENDANT INTERSTATE BAKERIES CORPORATION

By: _____

FOR DEFENDANT CONTINENTAL BAKING COMPANY

By: _____

It is SO ORDERED this _____ day of _____, 1995.

United States District Court Judge