

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

PABST BREWING COMPANY; SCHENLEY
INDUSTRIES, INC. and THE VAL
CORPORATION,

Defendants.

CIVIL ACTION

NO. 59 C 215

U. S. Dist. Court East Dist. of Wis.

FILED

FEB 11 1971

FINAL JUDGMENT

at _____ o'clock
RUTH W. LA FAYE, Clerk

Plaintiff, United States of America, having filed its complaint herein on October 1, 1959; all defendants having appeared by their attorneys and filed their answers to such complaint denying the substantive allegations thereof; the Supreme Court of the United States, by its opinion dated June 13, 1966, having reversed this Court's dismissal of the complaint at the close of the plaintiff's case by judgment of October 13, 1964, and remanded the case for further trial; testimony having been taken at trial hereof; the Court having announced its decision and filed its findings of fact and conclusions of law herein on February 28, 1969, adjudging that the acquisition of the business and assets of Blatz Brewing Company by Pabst in 1958 was in violation of Section 7 of the Clayton Act and setting the matter for a conference on divestiture; the Court having received and considered motions submitted by Pabst and related offers from others to purchase the Blatz brands from Pabst; conferences with respect thereto having been held and extended hearings on such matter having

U. S. District Court
Eastern District of Wisconsin
I hereby certify that this is a true and correct copy of the original now on file in my office on 2-11-71

RUTH W. LA FAYE, Clerk

DATED:

7 22 71 By _____ Deputy

been attended by all parties and potential purchasers of the Blatz brands and their counsel; the Court having fully considered the matter and having rendered its Final Judgment and Opinion on August 6, 1969, ordering the sale of the Blatz brands to G. Heileman Brewing Company, Inc.; Pabst and Heileman having negotiated, executed and proceeded to carry out a finalized Agreement dated August 25, 1969, in conformance with the Final Judgment of August 6, 1969, which Agreement has been presented to the Court in camera; further conferences having been held on the question of the sale of the former Blatz brewery; the Court having fully considered the matter and the consenting parties hereto having severally agreed to the entry of this Final Judgment without further hearings, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I.

(A) This Court has jurisdiction of the subject matter hereof and of the parties pursuant to Section 15 of the Act of Congress of October 15, 1914, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, and the complaint states a claim upon which relief may be granted under Section 7 of said Act.

(B) The acquisition by the defendant Pabst Brewing Company of the business and assets of the Blatz Brewing Company, as charged in the complaint herein, constitutes a violation of Section 7 of the Clayton Act (15 U.S.C. §18).

(C) Divestiture of the said business and assets of the Blatz Brewing Company, having previously been ordered in specific

part, will hereby be completed.

II.

As used in this Final Judgment:

A. "Pabst" shall mean defendant Pabst Brewing Company, a corporation organized and existing under the laws of the State of Delaware.

B. "Schenley" shall mean defendant Schenley Industries, Inc., a corporation organized and existing under the laws of the State of Delaware.

C. "Val" shall mean defendant The Val Corporation, a corporation dissolved under the laws of the State of Wisconsin on or about September 2, 1958.

D. "Heileman" shall mean G. Heileman Brewing Company, Inc., a corporation organized and existing under the laws of the State of Wisconsin.

E. "Eligible purchaser" shall mean any person, firm or corporation approved by plaintiff or by the Court after notice to plaintiff.

F. "Person" shall mean any individual, partnership, firm, corporation, association or other legal or business entity.

G. "Blatz brewery" shall mean the former Blatz brewing plant, including only the buildings, land and improvements thereon located in the City of Milwaukee, Wisconsin, formerly used for the brewing and handling of beer, which were acquired by Pabst Brewing Company from Schenley Industries, Inc. and presently are held by Pabst Brewing Company in contemplation of an agreed order

entered by this Court in this case on June 7, 1960, and which are shown as hatched areas on Exhibit A which is attached hereto and made a part hereof.

III.

The provisions of this Final Judgment applicable to any defendant shall apply to that defendant, its subsidiaries, successors and assigns, its officers, and to each of its directors, agents, servants, employees and to those persons in active concert or participation with any defendant who shall receive actual notice of this Final Judgment by personal service or otherwise. None of the provisions of this Final Judgment shall apply to any eligible purchaser who shall acquire from Pabst any of the properties pursuant to the terms hereof nor apply to or relate to activities or operations outside of the United States.

IV.

A. The Agreement dated the 25th of August, 1969, by and between Heileman and Pabst, providing for the purchase and sale of the Blatz brands in accordance with this Court's Order of August 6, 1969, a copy of which has been received by the Court and filed herewith pursuant to procedures requiring confidential treatment thereof, is hereby approved by this Court.

B. Pabst and Heileman are hereby ordered and directed to continue to carry out the provisions of the aforesaid Agreement dated the 25th of August, 1969, and all actions heretofore taken by Pabst and Heileman in accordance therewith be and they are hereby ratified and approved by this Court.

V.

A. Pabst is ordered and directed to make a bona fide effort to divest itself of the Blatz brewery as a brewery by sale to an eligible purchaser and to that end to publicize its availability for sale in appropriate trade and financial publications and to promote the expeditious sale thereof. The Blatz brewery shall be sold for brewery purposes only, and the sale shall be upon terms and conditions which are acceptable to this Court. Pabst shall furnish to prospective purchasers of the Blatz brewery such information as they may reasonably request concerning the brewery and permit them to have such access to, and make such inspections of the brewery as are reasonably necessary. At regular three month intervals, Pabst shall file with the Court, with a copy to the plaintiff, a report of its efforts to sell and all offers it has received to purchase the brewery. Plaintiff or Pabst may apply to this Court for approval of any offer by any person to purchase the Blatz brewery. Any such offer to purchase the Blatz brewery shall be approved by this Court after hearing plaintiff and Pabst in regard thereto, unless, if objected to by plaintiff, it appears that such purchase would have prohibitive anticompetitive effects, or unless, if objected to by Pabst, Pabst establishes that such purchase would have prohibitive anticompetitive effects or would be otherwise unreasonable.

Within thirty days after the Court's approval of any such offer, Pabst will submit to the offerer a contract for the purchase and sale of the Blatz brewery. Such contract shall provide, among other things, for the immediate possession by the purchaser of the

brewery premises and buildings (more particularly described as all of Block 59 on Exhibit A hereof) and for possession of such portions of Building 126 when and as the same shall become essential to the purchaser's installation of bottling, canning and packaging equipment or machinery and for possession of such other portions of Building 126 when and as the same shall become essential to the purchaser's loading and delivering of beer brewed and bottled or canned in the Blatz brewery. All parcels of the real estate which are shown as hatched areas on the attached Exhibit A shall be made available to the purchaser as soon as practicable but in no event later than two years after the date of the purchaser's execution of said contract.

B. If Pabst has not divested itself of the Blatz brewery by sale as a brewery within three years after the date of entry of this Final Judgment, then or at any time thereafter, upon application to this Court by Pabst, and a showing by Pabst to the satisfaction of this Court of its bona fide efforts to sell the Blatz brewery, and that there is no reasonable expectation that the Blatz brewery can be sold as a brewery within a reasonable additional period of time, the order to sell the Blatz brewery and all other provisions of Section V.A of this Final Judgment shall be cancelled and Pabst shall not be subject to any further order in this action to divest itself of the Blatz brewery.

C. The divestiture required by this Section V shall be made by Pabst in good faith and shall be absolutely unqualified and unconditional and no part or interest in the Blatz brewery shall be directly or indirectly sold, assigned, transferred or

otherwise disposed of to any officer, director, employee, agent or any other person then acting for or under the control of Pabst, or to any person who, within five years after such divestiture, shall be an officer, director, agent or employee of Pabst; provided, however, that Pabst may accept and enforce any bona fide lien, mortgage, deed of trust or other form of security on all or any portion of the Blatz brewery given for the purpose of securing to Pabst payment of any unpaid portion of the purchase price therefor or performance of the sale transaction and may also enforce any other of the terms and conditions of the sale transaction as therein provided or as provided by law including without limitation the repossession of said Blatz brewery or any portion thereof.

D. For a period of five years from and after the date of entry of this Final Judgment, Pabst is hereby enjoined from brewing, aging, bottling or otherwise producing beer or ale (but not from storing, transferring, handling, delivering or shipping finished beer or ale or bottles, cans or other containers or packaging materials) at the Blatz brewery and is further enjoined from otherwise using such premises to produce any malt, corn grits or other additives used in the production of beer or ale at any of its other breweries (but not from storing, transferring, handling, delivering or shipping such materials) except with the prior written consent of the plaintiff herein and provided that if such consent is refused, Pabst may at any time after three years from the date of entry of this Final Judgment apply to this Court for cancellation of this provision which shall be cancelled upon approval of this Court after an affirmative showing by Pabst that the

effect of the elimination of this provision may not be to substantially lessen competition or tend to create a monopoly in the production or sale of beer in any section of the country.

VI.

(A) Pabst is enjoined for a period of five (5) years following the date of entry of this Final Judgment from directly or indirectly acquiring, holding, or exercising any control over any shares of stock or assets of, or any other financial interest in, any brewery, plant or brands of any person, engaged in the brewing of beer except with the prior written consent of the plaintiff herein, or if such consent is refused, then upon approval by this Court after an affirmative showing by Pabst that the effect of such acquisition, holding, or exercise of control may not be to substantially lessen competition or tend to create a monopoly in the production or sale of beer in any section of the country. However, nothing in this section shall prevent Pabst from purchasing used equipment including containers from another brewery.

(B) Nothing contained in this Final Judgment shall require any officer, director or employee of Pabst to sell any shares of stock which he owns in any other corporation engaged in the brewing of beer nor prevent any such officer, director or employee from purchasing or otherwise acquiring such shares of stock after the date of this Final Judgment unless the total amount of stock held or controlled by such officer or director exceeds one per cent (1%) of the total outstanding shares.

VII.

For the purpose of securing compliance with this Final Judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to Pabst, at its Milwaukee, Wisconsin office, be permitted:

A. Access during the office hours of Pabst, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession of or under the control of Pabst relating to any of the matters contained in this Final Judgment; and

B. Subject to the reasonable convenience of Pabst and without restraint of interference from it, to interview its officers and employees, who may have counsel present, regarding any such matters.

Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its Milwaukee, Wisconsin office, Pabst shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment.

No information obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of plaintiff except in the course of legal proceedings to which the United States is a party

for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VIII.

Within thirty (30) days after the date of entry of this Final Judgment, Pabst shall cause a copy hereof to be published in a trade journal of general circulation in the beer industry.

IX.

This action is dismissed with prejudice and without costs as to the defendants Schenley and Val.

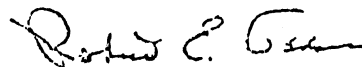
X.

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment, except the defendants Schenley and Val, to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment and the Agreement between Pabst and Heileman referred to in Section IV hereof or for the modification or termination of any of the provisions thereof, and for the enforcement or compliance therewith and punishment of violations thereof.

XI.

Costs shall be assessed as may be determined by the Court, except as against Schenley and Val.

ENTER this 11th day of February, 1971.



ROBERT E. TEAHAN
Chief Judge, United States
District Court.