

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

United States of America,)	
)	
Plaintiff,)	Civil Action No. 1:04CV01494
)	
v.)	Filed: August 31, 2004
)	
Connors Bros. Income Fund and)	Judge: John D. Bates
Bumble Bee Seafoods, LLC,)	
)	
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 Hold Separate Stipulation and Order:

A. “Acquirer” or “Acquirers” means the entity or entities to whom defendants or the trustee divest the Divestiture Assets.

B. “Bumble Bee” means defendant Bumble Bee Seafoods, LLC, a Delaware limited liability corporation with its headquarters in San Diego, California, its successors and assigns, and its subsidiaries, divisions, groups, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Connors Bros.” means defendant Connors Bros. Income Fund, a Canadian

income trust with its headquarters in Blacks Harbour, New Brunswick, Canada, its successors and assigns, and its subsidiaries, divisions, groups, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. “Label” means all legal rights associated with a brand’s trademarks, trade names, service names, service marks, copyrights, designs, and trade dress associated with the goods and services sold under a brand.

E. “Bumble Bee Products” means sardines sold under the Bumble Bee brand.

F. “Bumble Bee Label” means all legal rights, as set forth in I.D above, associated with Bumble Bee Products.

G. “Bumble Bee License” mean an exclusive right, pursuant to a license agreement, to use the Bumble Bee Label for a minimum period of three years and up to five years, at the Acquirer’s discretion, solely in connection with the advertising, marketing, use, production, and distribution of Bumble Bee Products in the United States, and pursuant to which defendants shall agree not to sell canned sardines under the Bumble Bee brand in the United States or Canada during the license period.

H. “King Oscar Products” means sardines, kippered herring snacks, and any other canned seafood products sold under the King Oscar brand.

I. “King Oscar” means the brand of King Oscar products and packaging currently distributed by defendant Bumble Bee pursuant to the Amended Distributorship Agreement defined below.

J. “Amended Distributorship Agreement” means the distributorship agreement entered into on December 20, 2001, by and between Division Norway Foods Rieber & Son ASA

(“Norway Foods”) and defendant Bumble Bee, as amended.

K. “Supply Agreement” means the supply agreement entered into on July 31, 2000, by and between King Oscar, Inc., a wholly owned subsidiary of Norway Foods, and defendant Bumble Bee, as amended.

L. “Port Clyde Products” means sardines, kippered herring snacks and any other canned seafood products currently on the market in the United States sold under the Port Clyde brand.

M. “Port Clyde Label” means all legal rights, as set forth in I.D above, associated with Port Clyde Products.

N. “Port Clyde Business” means Connors Bros.’ sardine, kippered herring snacks and other canned seafood products businesses in the United States and Canada marketed under the Port Clyde Label.

O. “Port Clyde Processing Assets” means one or the other of:

1. The Bath plant located at 101 Bowery Street, Bath, Maine 04530; including all rights, titles and interests in any tangible assets (*e.g.*, land, buildings, docking and unloading facilities, warehouses, other real property and improvements, fixtures, machinery, tooling, fixed assets, personal property, inventory of Port Clyde Products, office furniture, material of Port Clyde Products, supplies of Port Clyde Products, and equipment) relating principally to the Port Clyde Label, including all fee and leasehold and renewal rights in such assets or any options to purchase any adjoining property; or
2. The Grand Manan plant located in New Brunswick, Canada at Seal Cove, Grand Manan, New Brunswick EOG 3BO; including all rights, titles and interests in any tangible assets (*e.g.*, land, buildings, docking and unloading facilities, warehouses, other real property and improvements, fixtures, machinery, tooling, fixed assets, personal property, inventory of Port Clyde Products, office furniture, material of Port Clyde Products, supplies of Port Clyde Products and equipment) relating principally to the Port Clyde Label, including all fee and leasehold and renewal rights in

such assets or any options to purchase any adjoining property.

P. “Port Clyde Divestiture Assets” mean assets that are sufficient and necessary to create a competitive and viable going concern as a seller in the United States of Port Clyde Products, including:

1. The Port Clyde Label;
2. At the option of the Acquirer, one or none of the Port Clyde Processing Assets, as the Acquirer may select;
3. All existing inventory of Port Clyde Products;
4. At the discretion of the Acquirer, all additional tangible assets that are used in the Port Clyde Business, including assets used in manufacturing, distributing, marketing, and selling the Port Clyde brand, including research and development activities and equipment; all licenses, permits and authorizations issued by any governmental organization relating to the Port Clyde Divestiture Assets; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings relating to the Port Clyde Divestiture Assets; marketing studies, promotion plans, advertising materials; packaging, marketing and distribution know-how and documentation, such as route maps, associated with the Port Clyde brand; inventory, delivery and storage vehicles, storage and warehouse facilities and agreements; customer lists, contracts, accounts, credit records, and agreements; supplier lists and agreements; repair and performance records, and all other records relating to the Port Clyde Divestiture Assets; and
5. At the discretion of the Acquirer, all additional intangible assets that are used in the Port Clyde Business, including those used in the development, production, servicing, and sale of the Port Clyde Divestiture Assets, including, but not limited to all patents, licenses, and sublicenses, intellectual property, copyrights; brand technical information and production know-how, including but not limited to, recipes and formulas used to produce Port Clyde Products, and any improvements to, or line extensions thereof; and computer software and related documentation; know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices; safety procedures for the handling of materials and substances; all research data concerning historic and current research and development; quality assurance and control procedures; design tools and simulation capability;

all manuals and technical information defendants provide to their own employees, customers, suppliers, agents or licensees; and all research data concerning historic and current research and development efforts relating to the Port Clyde Divestiture Assets, including, but not limited to designs of experiments, and the results of successful and unsuccessful designs and experiments.

Q. “Bumble Bee Divestiture Assets” means:

1. The Bumble Bee License; and
2. Other intangible assets as they relate to Bumble Bee Products, including recipes and formulas currently used, and any improvements; know-how, trade secrets, specifications for materials, safety procedures for the handling of materials and substances, all research data concerning current research and development; quality assurance and control procedures; all manuals and technical information Bumble Bee provides its own employees or suppliers.

R. The “Divestiture Assets” means:

1. The Port Clyde Divestiture Assets; and
2. The Bumble Bee Divestiture Assets.

S. “Non-Executive Management” means managers at the Vice President level or below, responsible for the pricing and promotion of any Connors Bros. sardine or kippered herring snack products, including Port Clyde Products, Bumble Bee Products, or King Oscar Products.

II. Objectives

The Final Judgment filed in this case is meant to ensure defendants Connors Bros.’ and Bumble Bee’s prompt divestiture of the Divestiture Assets for the purposes of creating a viable competitor or competitors in the development, production (unless otherwise acquired), and sale of canned sardines and/or kippered herring snacks and to remedy the competitive effects that the United States alleges would otherwise result from Connors Bros.’ proposed combination with

Bumble Bee. This Hold Separate Stipulation and Order ensures the timely and complete transfer of these assets and maintains the separation of the Port Clyde, Bumble Bee, and King Oscar sardine and/or kippered herring snack businesses as independent, viable competitors until the required divestiture is complete.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

D. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

E. Defendants represent that the divestitures and terminations of the Amended Distributorship Agreement and Supply Agreement set out in of the Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

V. Hold Separate Provisions

A. After giving effect to the combination of Connors Bros. with Bumble Bee, the combined entity will preserve, maintain, and operate the Bumble Bee business in a manner substantially consistent with its current operations and as conducted immediately prior to such combination. As an integral part of that operation, the Bumble Bee sardine and King Oscar sardine and kippered herring snack businesses shall be maintained as viable and active competitors in the canned sardine and/or kippered herring snack markets in the United States, and the commercial value of such brands shall be maintained. The Bumble Bee sardine and the King Oscar sardine and kippered herring snack businesses shall be maintained in substantially

the identical manner in which they were maintained prior to the consummation of the combination.

B. After giving effect to the combination, the Port Clyde brand shall be maintained as a viable and active competitor for the sale of sardines, kippered herring snacks, and any other canned seafood products currently on the market in the United States, and the commercial value of the Port Clyde brand of these products shall be maintained. Additionally, critical expertise in the area of pricing, promotion, sales, distribution, and manufacturing of the Port Clyde business shall be retained separate and apart from the Bumble Bee business. To the extent not inconsistent with the above, the combined entity may integrate the pre-transaction Connors Bros. administrative, finance, and sales support services into the combined business and may undertake procedures to improve the efficiency of its sardine processing and distribution operations.

C. Connors Bros. shall preserve, maintain, and operate the Bumble Bee Products and King Oscar Products as independent competitive businesses, with Non-Executive Management, research, development, production, trade promotions relating to pricing, and operations of such assets held entirely separate, distinct and apart from those of the Port Clyde Business. Connors Bros. shall not coordinate its production or trade promotions relating to pricing of any Port Clyde Products with that of any of the Bumble Bee and King Oscar Products, except to the extent required in the ordinary course of business. Within fifteen (15) days of the entering of this Order, Connors Bros. will inform the United States of the steps taken to comply with this provision.

D. Connors Bros. shall use all reasonable efforts to maintain the Port Clyde, Bumble

Bee, and King Oscar Products as viable and active competitors for the sale of canned sardines and/or kippered herring snacks or other canned seafood products in the United States, and the commercial value of the “Bumble Bee” and “King Oscar” brands of canned sardines and/or kippered herring snacks in the United States. Connors Bros. shall take all steps necessary to ensure that the Non-Executive Management responsible for the pricing and promotion of the Bumble Bee and King Oscar Products will not be influenced by Non-Executive Management responsible for the pricing and promotion of Port Clyde Products and other sardine or kippered herring snack products sold or distributed by Connors Bros., and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with the Bumble Bee and King Oscar Products (except as required by applicable law or as a result of public disclosures), including the performance and decision-making functions regarding internal research and development, marketing, strategies, sales and promotional pricing, will be kept separate and apart from the Non-Executive Management responsible for the pricing and promotion for the Port Clyde Products or other sardine and kippered herring snack products sold or distributed by Connors Bros.

E. The provisions of paragraph V.D. include but are not limited to: preserving, in the ordinary course of business and consistent with past practices, all facilities and equipment, and all administrative and support facilities, used for the production and sale of Bumble Bee Products, and the distribution of the “King Oscar” Products. These provisions do not preclude the sale in the ordinary course of business of these products or the sale or other disposal, as consistent with past practices, of obsolete products and assets.

F. Connors Bros.’ influence over the Bumble Bee and Port Clyde Divestiture Assets

shall be limited to that necessary to carry out Connors Bros.' obligations imposed by law and or applicable regulation or under this Order and the Final Judgment.

G. Connors Bros. shall provide and maintain sufficient working capital to maintain the Bumble Bee Divestiture Assets and Port Clyde Divestiture Assets as viable, ongoing businesses, consistent with current business plans.

H. Connors Bros. shall provide and maintain sufficient lines and sources of credit to maintain the Bumble Bee Divestiture Assets and Port Clyde Divestiture Assets as viable, ongoing businesses.

I. Connors Bros. shall maintain on behalf of the Bumble Bee Divestiture Assets and Port Clyde Divestiture Assets, in accordance with sound accounting practices, separate, true and complete financial ledgers, books and records reporting the profit and loss, and assets and liabilities of each of the businesses on a monthly and quarterly basis.

J. Connors Bros. shall use all reasonable efforts to maintain the sales of each of the Bumble Bee Divestiture Assets and Port Clyde Divestiture Assets, such as maintaining at 2003 or previously approved levels for 2004, whichever are higher, internal research and development funding, sales, marketing, and support for those assets.

K. Connors Bros. shall use all reasonable efforts to maintain the commercial value of the Port Clyde Products. The provisions of this paragraph include but are not limited to: preserving, in the ordinary course of business and consistent with past practices, all facilities and equipment, and all administrative and support facilities, necessary for the production and sale of the Port Clyde Products. These provisions do not preclude the sale in the ordinary course of business of these products or the sale or other disposal, as consistent with past practices, of

obsolete products and assets.

L. Defendants shall not, without the consent of the United States, in its sole discretion, 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, except for loans and credit facilities that are currently outstanding or replacements or their substitutes, and such loans and credit facilities that are needed to close on the purchase and additional extensions of credit thereunder, if such sale, lease, assignment, transfer, or other disposition would jeopardize or threaten the ability of defendants to preserve, hold, continue, maintain, or divest the Port Clyde Products, the Bumble Bee Products, or King Oscar Products, as viable competitors, except that: 1) any such asset that is replaced in the ordinary course of business with a newly purchased asset may be sold or otherwise disposed of, provided the newly purchased asset is so identified as replacement for an asset to be divested; and 2) inventory may be sold and replenished in the ordinary course of business.

M. Defendants shall preserve the Divestiture Assets in a state of repair equal to their state of repair as of the date of this Order, ordinary wear and tear excepted.

N. Defendants shall not solicit to hire any individual who, on the date of entry of this Order, was an employee of any of those businesses, if such solicitation in any way jeopardizes or threatens the ability of Connors Bros. to preserve, hold, continue, maintain or divest the Port Clyde Products, the Bumble Bee Products, or King Oscar Products, without prior approval of the United States. Except in the ordinary course of business or as is otherwise consistent with this Order, defendants shall not transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any employee who, on the date of entry of this

Order, works for any of the Port Clyde, Bumble Bee, or King Oscar canned sardine or kippered herring snack businesses, if such termination in any way jeopardizes or threatens the ability of Connors Bros. to preserve, hold, continue, maintain or divest the Port Clyde Products, the Bumble Bee Products, or King Oscar Products, without the prior approval of the United States.

O. Within ten (10) days of the filing of this Hold Separate Stipulation and Order, defendants shall appoint two or more persons who shall have complete managerial responsibility for the Bumble Bee canned sardine business and the Port Clyde Divestiture Assets, subject to compliance with the normal obligations of a publicly traded company and subject to the provisions of this Order and the Final Judgment, until such time as this Order is terminated. In the event that any such manager(s) is unable to perform his or her duties, Connors Bros. shall appoint from the current management of the Bumble Bee canned sardine business and the Port Clyde Divestiture Assets, subject to the United States' approval, a replacement within ten (10) working days. Should Connors Bros. fail to initially appoint a manager acceptable to the United States, or fail to appoint any replacement required within ten (10) working days, the United States shall appoint the manager.

P. Connors Bros. 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.

Q. This Hold Separate Stipulation and Order shall remain in effect as to the Port Clyde Label until the divestiture of the Port Clyde Divestiture Assets required by the Final Judgment is complete, or until further Order of the Court. This order shall remain in effect as to the Bumble Bee Label until the divestiture of the Bumble Bee Divestiture Assets required by the

Final Judgment is complete, or until further Order of the Court. This order shall remain in effect as to the King Oscar canned sardine and kippered herring snack businesses until the termination of the Amended Distributorship Agreement required by the Final Judgment is complete, or until further order of the Court.

_____/s/_____

FOR PLAINTIFF
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Date: April 29, 2004

ORDER

IT IS SO ORDERED ON THIS ____ DAY OF _____, 2004.

United States District Judge