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.	)	

FINAL JUDGMENT

WHEREAS, plaintiff, United States of America, having filed its Complaint herein on July 20, 1995, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain divestiture of certain rights or assets and prompt implementation of the Hold Separate Stipulation And Order to assure that competition is not substantially lessened are the essence of this agreement;

AND WHEREAS, the parties intend to require defendants to make certain divestitures for the purpose of establishing viable competitors in the sale of White Pan Bread;

AND WHEREAS, defendants have represented to plaintiff that the divestitures required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. DEFINITIONS

As used in this Final Judgment:

A. "Interstate" means defendant Interstate Bakeries Corporation, a Delaware corporation with its headquarters in Kansas City, Missouri, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees.

B. "Continental" means defendant Continental Baking Company, a Delaware corporation with its headquarters in St. Louis, Missouri, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees.

C. "Bread Assets" means:

(1) either the Mrs. Karl's Label or the Wonder Label for all bread products except White Pan Bread in the Eastern Wisconsin Territory;

(2) either the Butternut Label or the Wonder Label for all bread products except White Pan Bread in the Chicago Territory;

(3) either the Butternut Label or the Sunbeam Label or the Wonder Label for all bread products except White Pan Bread in the Central Illinois Territory;

(4) either the Weber's Label or the Wonder Label for all bread products except White Pan Bread in the Southern California Territory;

(5) either the Interstate plant located in Chicago, Illinois or the Continental plant located in Hodgkins, Illinois;

(6) either the Interstate plant located in Glendale, California or the Continental plant located in Pomona, California;

(7) either the Interstate plant located in Decatur, Illinois or the Interstate plant located in Peoria, Illinois;

(8) all land, buildings, fixtures, machinery and equipment related to the above plants;

(9) all trucks and other vehicles, depots or warehouses, and thrift stores utilized by defendants in the distribution of bread products under the Relevant Labels in the Relevant Territories; and

(10) all route books, customer lists, and other records used in the defendants' day-to-day distribution of bread products under the Relevant Labels in the Relevant Territories.

D. "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 brand; and packaging, marketing and distribution knowhow and documentation, such as customer lists and route maps, associated with the brand.

E. "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.

F. "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.

G. "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.

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

I. "Relevant Labels" means:

(1) either the Mrs. Karl's Label or the Wonder Label for White Pan Bread in the Eastern Wisconsin Territory;

(2) either the Butternut Label or the Wonder Label for White Pan Bread in the Chicago Territory;

(3) either the Butternut Label or the Sunbeam Label or the Wonder Label for White Pan Bread in the Central Illinois Territory; and

(4) either the Weber's Label or the Wonder Label for White Pan Bread in the Southern California Territory.

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

K. "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.

III. APPLICABILITY

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of the Relevant Labels and the Bread Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

C. Nothing contained in this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

D. The provisions of Sections IV through VIII of this Final Judgment shall not be effective until the consummation of the acquisition of Continental by Interstate.

IV. DIVESTITURE

A. Defendants are hereby ordered and directed, within nine (9) months of entry of this Final Judgment, to grant to one or more purchasers a perpetual, royalty-free, assignable, transferable, exclusive license to use the Relevant Labels to produce (or have produced for it) and sell White Pan Bread in the Relevant Territories, together with such Bread Assets as are reasonably necessary in order for the acquirer of each Relevant Label to sell White Pan Bread under each respective Relevant

Label at a level substantially equivalent to the average level of White Pan Bread sales of each respective Relevant Label in each Relevant Territory over the preceding year, and otherwise to remain a viable competitor in the White Pan Bread market in each Relevant Territory. Defendants shall cease using a Relevant Label within five (5) days of when a purchaser commences its use.

B. Defendants agree to take all reasonable steps to accomplish quickly said divestiture. Plaintiff may, in its sole discretion, extend the time period for divestiture for an additional period of time not to exceed two months.

C. In accomplishing the divestiture ordered by this Final Judgment, the defendants promptly shall make known, by usual and customary means, the availability of the Relevant Labels. The defendants shall provide any person making an inquiry regarding a possible purchase with a copy of the Final Judgment. The defendants shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all reasonably necessary information regarding the Relevant Labels, except such information subject to attorney-client privilege or attorney work product privilege. Defendants shall provide such information to the plaintiff at the same time that such information is made available to any other person. Defendants shall permit prospective purchasers of the Relevant Labels to have access to personnel and to make such inspection of physical facilities and any and all financial, operational, or

other documents and information as may be relevant to the divestiture required by this Final Judgment.

D. Unless the plaintiff otherwise consents, divestiture under Section IV(A), or by the trustee appointed pursuant to Section V, shall include such Bread Assets and be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the Relevant Labels can and will be used by the purchaser or purchasers as part of viable, ongoing businesses engaged in the selling of White Pan Bread at wholesale to retail grocery stores and other customers. Divestiture shall be made to a purchaser or purchasers for whom it is demonstrated to plaintiff's satisfaction that (1) the purchase or purchases are for the purpose of competing effectively in the selling of White Pan Bread at wholesale to retail grocery stores and other customers; and (2) the purchaser or purchasers have the managerial, operational, and financial capability to compete effectively in the selling of White Pan Bread at wholesale to retail grocery stores and other customers; and (3) none of the terms of any agreement between the purchaser or purchasers and defendants give defendants the ability artificially to raise the purchaser's or purchasers' costs, lower the purchaser's or purchasers' efficiency, or otherwise interfere in the ability of the purchaser or purchasers to compete effectively.

V. APPOINTMENT OF TRUSTEE

A. If defendants have not accomplished the divestiture required by Section IV within the time specified therein,

defendants shall notify plaintiff of that fact in writing. Within ten (10) calendar days of that date, plaintiff shall provide defendants with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Defendants shall notify plaintiff within five (5) calendar days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to defendants, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither nominee is acceptable to defendants, they shall furnish to plaintiff, within ten (10) calendar days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. If either or both of such nominees are acceptable to plaintiff, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither nominee is acceptable to plaintiff, plaintiff shall furnish the Court the names and qualifications of its and defendants' proposed nominees. The Court may hear the parties as to the nominees' qualifications and shall appoint one of the nominees as the trustee.

B. If defendants have not accomplished the divestiture required by Section IV of this Final Judgment at the expiration of the time period specified therein, subject to the selection

process described in Section V(A), the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect divestiture as specified in Section IV(A). The trustee shall have the right, in its sole discretion, to include in the package of assets to be divested any or all of the Bread Assets in addition to the Relevant Labels.

C. After the trustee's appointment has become effective, only the trustee shall have the right to license the Relevant Labels and to sell the Bread Assets. The trustee shall have the power and authority to accomplish the divestiture to a purchaser acceptable to plaintiff at such price and on such terms as are then obtainable upon the best reasonable effort by the trustee, subject to the provisions of Section IV of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to the licensing of the Relevant Labels or the sale of the Bread Assets by the trustee on any grounds other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee within fifteen (15) calendar days after the trustee has notified defendants of the proposed licensing and sale in accordance with Section VI of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendants, shall receive compensation based on a fee arrangement providing an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, and shall serve on such other terms and conditions as the Court may

prescribe; provided however, that the trustee shall receive no compensation, nor incur any costs or expenses, prior to the effective date of his or her appointment. The trustee shall account for all monies derived. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to defendants and the trust shall then be terminated.

E. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Relevant Labels or the Bread Assets and shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee shall have full and complete access to the personnel, books, records, and facilities of defendants' overall businesses, and defendants shall develop such financial or other information necessary to the divestiture of the Relevant Labels and the Bread Assets.

F. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture of the Relevant Labels and the Bread Assets as contemplated under this Final Judgment; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered

into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Labels or the Bread Assets, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these operations.

G. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section IV of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include augmenting the assets to be divested, and extending the trust and the term of the trustee's appointment.

VI. NOTIFICATION

Within two (2) calendar days following execution of a contract, contingent upon compliance with the terms of this Final

Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the business that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestiture and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested within twenty (20) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested (including any additional information requested of persons other than defendants or the trustee), whichever is later, plaintiff shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice to defendants and the trustee that it does not object, then the divestiture may be consummated, subject

only to defendants' limited right to object to the sale under the provisions in Section V(C). Absent written notice that the plaintiff does not object to the proposed purchaser, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff, or by defendants under the proviso in Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. AFFIDAVITS

Within ten (10) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestiture has been completed or authority to effect divestiture passes to the trustee pursuant to Section V of this Final Judgment, defendants shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Sections IV and V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Labels or in the Bread Assets, and shall describe in detail each contact with any such person during that period. Defendants shall maintain full records of all efforts made to divest these operations.

VIII. FINANCING

With prior written consent of the plaintiff, defendants may finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment.

IX. PRESERVATION OF ASSETS

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation And Order entered by this Court. Defendants shall take no action that would jeopardize the licensing of the Relevant Labels or the sale of the Bread Assets.

X. COMPLIANCE INSPECTION

Only for the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to its principal office, shall be permitted:

1. Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to enforcement of this Final Judgment; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview officers, employees, and agents of defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendants' principal office, defendants shall submit such written reports, under oath if requested, with respect to enforcement of this Final Judgment.

C. No information or documents obtained by the means provided in this Section X shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by plaintiff to

defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment 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, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. TERMINATION

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII. PUBLIC INTEREST

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge