

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 97-B-10

UNITED STATES OF AMERICA and THE STATE OF COLORADO,

Plaintiffs,

v.

**VAIL RESORTS, INC., RALSTON RESORTS, INC. and RALSTON FOODS,
INC.,**

Defendants.

Filed: January 3, 1997

FINAL JUDGMENT

WHEREAS plaintiffs United States of America (hereinafter "United States") and the State of Colorado, having filed their Complaint herein on January 3, 1997, and plaintiffs 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 the essence of this Final Judgment is prompt and certain divestiture of assets to assure that competition is not substantially lessened;

AND WHEREAS plaintiffs require defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS defendants have represented to plaintiffs that the divestiture ordered herein 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 defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. DEFINITIONS

As used in this Final Judgment:

A. "Ralston" means defendants Ralston Resorts, Inc., a Colorado corporation headquartered in Keystone, Colorado; and Ralston Foods, Inc., a Nevada corporation headquartered in St. Louis, Missouri, and includes their successors and assigns, and their parents, subsidiaries, directors, officers,

managers, agents, and employees acting for or on behalf of any of them.

B. "Vail" means defendant Vail Resorts, Inc., a Delaware corporation headquartered in Avon, Colorado, and includes its successors and assigns, and its parents, subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

C. "Divestiture Assets" means all rights, titles and interests, including all fee and all leasehold, permit and renewal rights, in Ralston's Arapahoe Basin resort in Summit County, Colorado, including, but not limited to, all real property (including but not limited to property owned in fee or used through a lease or special use permit from the United States Forest Service), deeded development rights to real property, capital equipment (including but not limited to lifts, grooming and snowmaking equipment), buildings, fixtures, inventories, contracts (including but not limited to customer contracts), customer lists, marketing or consumer surveys relating to Arapahoe Basin, permits (including but not limited to environmental permits and all permits from the United States Forest Service), all work in progress on permits or studies undertaken in order to obtain permits, plans for design or redesign of ski trails, trucks, snowcats and other vehicles, water rights sufficient to implement the snowmaking already approved by the U.S. Forest Service for Arapahoe Basin and the snowmaking outlined in Arapahoe Basin's pending submission to the U.S. Forest Service, and all other interests, assets or

improvements related to the provision of skiing services to customers at the Arapahoe Basin resort (collectively "Arapahoe Basin").

D. "Skiing services" means all services related to providing access to downhill skiing and snowboarding, including, but not limited to, providing lifts, skiing lessons, ski patrol, snowmaking, design, building, and grooming of trails, and ancillary services such as food service, entertainment, and lodging.

III. APPLICABILITY

A. The provisions of this Final Judgment apply to defendants, their successors and assigns, parents, 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 assets of their ski operations in Colorado, that the purchaser of such assets agree to be bound by the provisions of this Final Judgment; provided, however, that the defendants need not obtain such an agreement from the acquirer of the Divestiture Assets in the divestiture contemplated herein.

IV. DIVESTITURE

A. Defendants are hereby ordered and directed, in accordance with the

terms of this Final Judgment, within one hundred and fifty (150) calendar days after the filing of the Stipulation settling this action, or within five (5) business days after notice of entry of this Final Judgment, whichever is later, to divest the Divestiture Assets to a purchaser acceptable to the United States, in its sole discretion, after consulting with Colorado.

B. Divestiture of defendants' leasehold interests, if any, in the Divestiture Assets shall be by transfer of the entire leasehold interest, which shall be for the entire remaining term of such leasehold, including all renewal or option rights.

C. Defendants agree to use their best efforts to accomplish the divestiture as expeditiously as possible. The United States, after consulting with Colorado, in its sole discretion, may extend the time period for any divestiture for two additional periods of time not to exceed ninety (90) calendar days in toto.

D. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall make known to any person making an inquiry regarding a possible purchase of the Divestiture Assets that the assets described in Section II (C) are being offered for sale. Defendants shall also offer to furnish to all bona fide

prospective purchasers, subject to customary confidentiality assurances, all information regarding the Divestiture Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to plaintiffs at the same time that such information is made available to any other person.

E. Defendants shall not interfere with any negotiations by any purchaser to employ any employee of the defendants who works at Arapahoe Basin, or whose employment substantially relates to the provision of skiing services at Arapahoe Basin, or whose responsibilities include the management of or marketing for Arapahoe Basin.

F. Defendants shall permit prospective purchasers of the Divestiture Assets to have access to personnel and to make such inspection of the Divestiture Assets, and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

G. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV (A), or by the trustee appointed pursuant to Section V of this Final Judgment, shall include all of the Divestiture Assets and be accomplished by selling or otherwise conveying the Divestiture Assets to a purchaser in such a way as to satisfy the United States, in its sole discretion, after consulting with Colorado,

that the Divestiture Assets can and will be used by the purchaser as part of a viable, ongoing business engaged in the provision of skiing services at Arapahoe Basin. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser for whom it is demonstrated to the United States' sole satisfaction, after consulting with Colorado, that: (1) the purchaser has the capability and intent of competing effectively in the provision of skiing services at Arapahoe Basin; (2) the purchaser has or soon will have the managerial, operational, and financial capability to compete effectively in the provision of skiing services at Arapahoe Basin; and (3) none of the terms of any agreement between the purchaser and defendants give defendants the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively in the provision of skiing services at Arapahoe Basin.

V. APPOINTMENT OF TRUSTEE

A. In the event that defendants have not divested the Divestiture Assets within the time specified in Sections IV (A) or (C) of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power

and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections V and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V (C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States, after consulting with Colorado, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all

remaining money shall be paid to Vail and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of defendants, and defendants shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly 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, that

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 report 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 enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the plaintiffs.

VI. NOTIFICATION

Within two (2) business days following execution of a definitive agreement, 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 plaintiffs 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 a desire to, acquire any ownership interest in the assets that are the subject of the binding contract, together with full details of same. Within fifteen

(15) calendar days of receipt by plaintiffs of such notice, plaintiffs may request from defendants, the proposed purchaser, any other third party, or the trustee if applicable additional information concerning the proposed divestiture and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested within fifteen (15) 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 plaintiffs have been provided the additional information requested from defendants, the proposed purchaser, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States 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 Section V (B) of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV shall not be consummated. Upon objection by the United States, or by defendants under the proviso in Section V (B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, Vail shall deliver to plaintiffs an affidavit as to the fact and manner of defendants' compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, inter alia, 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 Divestiture Assets, and shall describe in detail each contact with any such person during that period.

B. Within twenty (20) calendar days of the filing of this Final Judgment, Vail shall deliver to plaintiffs an affidavit which describes in detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve the Divestiture Assets pursuant to Section IX of this Final Judgment and describes the functions, duties and actions taken by or undertaken at the supervision of the individual(s) described at Section IX (F) of this Final Judgment with respect to defendants' efforts to preserve the Divestiture Assets. The affidavit also shall describe, but not be limited to, defendants' efforts to

maintain and operate Arapahoe Basin as an active competitor, maintain the management, sales, marketing and pricing of Arapahoe Basin apart from that of defendants' other businesses that provide skiing services, maintain and increase sales of skiing services at Arapahoe Basin, and maintain the Divestiture Assets in operable condition, continuing normal maintenance. Vail shall deliver to plaintiffs an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall preserve all records of all efforts made to preserve and divest the Divestiture Assets.

VIII. FINANCING

Defendants shall not finance all or any part of any divestiture made pursuant to Sections IV or V of this Final Judgment without the prior written consent of the United States, after consulting with Colorado.

IX. PRESERVATION OF ASSETS

Until the divestiture required by the Final Judgment has been accomplished:

A. Defendants shall take all steps necessary to ensure that the Divestiture Assets will be maintained and operated as an ongoing, economically viable and active competitor in the provision of skiing services; and that, except as necessary to comply with Sections IX (B) to IX (H) of this Final Judgment, the

management of Arapahoe Basin shall be kept separate and apart from the management of defendants' other ski resorts and will not be influenced by defendants, and the books, records, and competitively sensitive sales, marketing and pricing information associated with Arapahoe Basin will be kept separate and apart from that of defendants' other businesses that provide skiing services.

B. Defendants shall use all reasonable efforts to maintain and increase sales of skiing services at Arapahoe Basin, and defendants shall maintain at 1996 or previously approved levels, whichever are higher, promotional, advertising, sales, marketing, skier transportation, reservation and merchandising support for skiing services sold at Arapahoe Basin. Defendants' sales and marketing employees responsible for sales of skiing services at Arapahoe Basin shall not be transferred or reassigned to other ski resorts owned by defendant.

C. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition and shall maintain and adhere to normal maintenance schedules for the Divestiture Assets.

D. Defendants shall provide and maintain sufficient lines of sources of credit to maintain the Divestiture Assets as viable, ongoing businesses.

E. Defendants shall provide and maintain sufficient working capital to maintain the Divestiture Assets as viable ongoing businesses.

F. Defendants shall not, except as part of a divestiture approved by the

United States, after consulting with Colorado, remove, sell, or transfer any of the Divestiture Assets, other than sales in the ordinary course of business.

G. Unless they have obtained the prior approval of the United States, after consulting with Colorado, defendants shall not terminate or reduce the current employment, salary, housing, or benefit arrangements for any personnel employed by defendants who work at, or have managerial responsibility for, Arapahoe Basin, except in the ordinary course of business.

H. Defendants shall continue all efforts in progress to obtain permits for Arapahoe Basin, including, but not limited to, efforts to obtain permits relating to water rights or access or snowmaking.

I. Defendants shall take no action that would jeopardize their ability to divest the Divestiture Assets as viable, ongoing businesses.

J. Defendants shall appoint a person or persons to oversee the Divestiture Assets, and who will be responsible for defendant's compliance with Section IX of this Final Judgment.

K. (a) Within five (5) days after the closing pursuant to the Stock Purchase Agreement amongst defendants, defendants shall hire, subject to the prior approval of the United States after consulting with Colorado, a person with the requisite experience and ability to serve as chief executive officer of Arapahoe Basin (the "A-Basin CEO"). The A-Basin CEO shall have complete authority to

manage and operate Arapahoe Basin in the ordinary course of business as a separate and independent business entity, including mountain operations, guest services, food and beverage operations, marketing, sales, lift ticket operations and pricing; provided, however, that the A-Basin CEO may continue A-Basin's participation in Ralcorp's previously announced marketing (e.g., Ski-3), skier transportation and reservations programs; and provided, further that, consistent with their obligations under Sections IX (B) to IX (H) of this Final Judgment, defendants shall provide the A-Basin CEO with whatever resources the A-Basin CEO requests. The A-Basin CEO may help facilitate the timely sale of the Divestiture Assets (e.g., by assisting in the due diligence process). In no circumstances shall defendants provide to, or receive from, the A-Basin CEO competitively sensitive marketing, sales and pricing information relating to their respective ski operations, and, further, except as is necessary for defendants to comply with Sections IX (B) to IX (H) of this Final Judgment or to effect the divestiture contemplated by Section IV (A), defendants shall not communicate with, or attempt to influence the business decisions of, the A-Basin CEO. The A-Basin CEO shall report directly in writing to the plaintiffs on the operation of A-Basin every thirty (30) days from the date he or she is hired until the divestiture required by this Final Judgment is completed.

(b) The appointment of the A-Basin CEO by defendants is for the purpose of

facilitating defendants' compliance with Section IX (A) of this Final Judgment, and does not relieve defendants of whatever additional measures they may be required to take to comply fully with Section IX (A) of this Final Judgment. Furthermore, the appointment of the A-Basin CEO shall not be construed to relieve defendants of their obligations under Sections IX (B) to IX (J), VII and X of this Final Judgment.

(c) The A-Basin CEO's compensation shall not depend on A-Basin's revenues, profits, or profit margins, but may depend on a measure of output (e.g., skier days).

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 plaintiffs, including consultants and other persons retained by the United States or the State of Colorado, upon written request of the Assistant Attorney General in charge of the Antitrust Division, or the Attorney General of Colorado, and on reasonable notice to defendants made to their principal offices, 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 their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General of Colorado made to defendants' principal offices, 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 Section X of this Final Judgment shall be divulged by a representative of the plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States or of the State of Colorado, except in the course of legal proceedings to which the plaintiffs are 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 plaintiffs, 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