

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
THE STROH BREWERY COMPANY,
Defendant.

82- 1059

Civil Action No.

FINAL JUDGMENT

Entered: November 10, 1982

Filed: **APR 16 1982**

Plaintiff, United States of America, having filed its Complaint herein on April 16, 1982, and defendant, The Stroh Brewery Company, having appeared, and plaintiff and defendant, 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 evidence, or an admission by any party, with respect to any issue of fact or law herein;

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:

I.

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

II.

As used in this Final Judgment:

A. "Defendant" means The Stroh Brewery Company, including each division, subsidiary or affiliate thereof, its parent

organization, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

B. "Person" means any natural person, corporation, association, firm, partnership or other business or legal entity.

C. "Beer" means any fermented beverage containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute for malt.

D. "Winston-Salem plant" means the manufacturing plant, real property, capital equipment and any other interests, tangible assets or improvements, associated with the facility for brewing beer owned as of April 16, 1982 by the Jos. Schlitz Brewing Company and located in Winston-Salem, North Carolina. The "Winston-Salem plant" does not include the Schlitz container manufacturing plant located in Winston-Salem, North Carolina, except as provided in Section IV-D hereinbelow.

E. "Memphis plant" means the manufacturing plant, real property, capital equipment, and any other interests, tangible assets or improvements, associated with the facility for brewing beer owned as of April 16, 1982 by the Jos. Schlitz Brewing Company and located in Memphis, Tennessee.

F. "Eligible purchaser" means any person not owned or controlled by the defendant, directly or indirectly, which desires to acquire the Winston-Salem plant or the Memphis plant pursuant to this Final Judgment for the purpose of producing and selling beer, and which is approved by plaintiff or, failing such approval, by the Court; provided, however, that under no circumstances shall Anheuser-Busch Companies, Inc., or Miller Brewing Co., or any division, subsidiary, affiliate or parent organization thereof, directly or indirectly, qualify as an eligible purchaser under this Final Judgment.

III.

The provisions of this Final Judgment shall apply to the defendant, to its subsidiaries, successors and assigns, to each of their officers, directors, agents, and employees and to 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.

IV.

A. Defendant shall divest its entire interest in either the Winston-Salem plant or the Memphis plant to an eligible purchaser within twelve (12) months of the date of entry of this Final Judgment. The required divestiture shall be absolute and unconditional and upon terms and conditions approved by the plaintiff or, failing such approval, by the Court. Defendant shall use its best efforts to accomplish the required divestiture during the aforesaid period.

B. Defendant shall promptly report the details of any proposed sale of the Winston-Salem plant or the Memphis plant and produce all relevant documentation thereof to plaintiff. Plaintiff shall have thirty (30) days in which to object to the proposed sale or to request additional information. If plaintiff requests additional information, plaintiff shall have fifteen (15) days from the date such information is received by plaintiff in which to object to the proposed sale. If plaintiff does not object, the sale may be consummated; if plaintiff objects, the sale shall not be consummated unless and until defendant thereafter obtains the Court's approval or plaintiff withdraws its objection. The period set forth in Section IV-A shall be tolled during any period or periods utilized by plaintiff pursuant to this Section IV-B and during the pendency of any proceedings in this Court under this Final Judgment relating to approval of a proposed sale.

C. If defendant has not accomplished the required divestiture within twelve (12) months from the date of entry of this Final Judgment, the Court shall, upon application of the plaintiff, appoint a trustee who shall have full power and authority to sell either the Winston-Salem plant or the Memphis plant to an eligible purchaser subject to the Court's prior approval of the terms and conditions of the proposed sale. Plaintiff may petition the Court for the appointment of a trustee after ten (10) months from the date of entry of this Final Judgment. Upon the filing of such a petition, plaintiff and defendant shall promptly begin negotiations to identify a mutually acceptable candidate for trustee. Should the parties agree on such a candidate, the candidate's name will be submitted to the Court; should the parties fail to agree on a candidate within fifteen (15) business days, then each party shall identify not more than two (2) candidates for trustee no later than two (2) weeks after such fifteen (15) business days and submit the names of such candidates to the Court. The Court shall appoint a trustee from the candidates so named.

D. If the trustee deems it necessary to accomplish divestiture pursuant to this Final Judgment, he may offer prospective purchasers (1) the option of purchasing the Schlitz container manufacturing plant located in Winston-Salem, North Carolina, in conjunction with the purchase of the Winston-Salem plant, and/or (2) as to either the Memphis plant or the Winston-Salem plant and with the prior approval of plaintiff, an arrangement on reasonable terms and conditions under which, for a specified phase-out period, the purchaser will produce for defendant a specified volume of beer under a brand or brands now or subsequently owned by defendant.

E. Prior to granting any approval of a sale by a trustee, the Court shall provide the parties an opportunity for a hearing on the proposed sale, taking into consideration all factors urged by the parties. The trustee shall serve at the cost and expense of defendant, on such reasonable terms and conditions as the Court may prescribe, and shall account for all monies derived from said divestiture and all costs and expenses so incurred. The compensation of such trustee shall be based in significant part on a commission arrangement which shall be contingent upon its causing the sale of the assets and which shall provide an incentive for the trustee to sell the plant as soon as possible and to obtain the best possible price for the plant being sold. Defendant shall use its best efforts to assist the trustee in accomplishing a sale. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to defendant and the trust shall then be terminated.

F. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to sell the Winston-Salem plant and the Memphis plant. If the trustee has not sold the Winston-Salem plant or the Memphis plant within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court and the parties a report setting forth the reasons, in the trustee's judgment, why an eligible purchaser has not been found. At the plaintiff's option, the trustee shall be given full power and authority to sell either the Winston-Salem plant or the Memphis plant (in the manner specified in Sections IV-C and IV-D above) for an additional period of up to six (6) months in duration from the date of plaintiff's receipt of the trustee's six (6) month report. If after a total of one (1) year from the effective date of its appointment the trustee has not succeeded in selling

the Winston-Salem plant or the Memphis plant to an eligible purchaser approved by the Court, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to sell the plant, and (2) the trustee's recommendations. The trustee shall at the same time furnish a copy of such report to both parties, who shall each have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as it shall deem appropriate, which may include terminating the trust and relieving defendant of any further divestiture obligation.

V.

A. Defendant shall maintain records of its efforts to accomplish the required divestiture, including but not limited to, identification of each person to whom the Winston-Salem plant or the Memphis plant has been offered or who has expressed an interest in acquiring said plant or plants, the terms and conditions of each offer to purchase or sell, and all correspondence between defendant and prospective purchasers.

B. Each three (3) months after entry of this Final Judgment until the divestiture has been completed, defendant shall file with plaintiff an affidavit together with all relevant documentation (including the name and address of each person who has been contacted) as to the fact and manner of compliance with Sections IV and V of this Final Judgment.

C. No information or documents obtained by plaintiff under Sections IV or V of this Final Judgment 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, or for purposes

or securing compliance with this final judgment, or as otherwise required by law.

VI.

Until the divestiture required by this Final Judgment has been accomplished, defendant shall maintain the Winston-Salem plant and the Memphis plant in good working condition and shall not remove any assets used in connection with or otherwise relating to the maintenance or operation of said plants except as required in the ordinary course of business or with plaintiff's approval.

VII.

Defendant is ordered and directed to notify plaintiff at least forty-five (45) days prior to its entry into any final agreement to sell any brewery or container manufacturing plant which is owned by defendant or by the Jos. Schlitz Brewing Company on the date of entry of this Final Judgment and for which no filing under the Hart-Scott-Rodino Antitrust Improvements Act is required; provided, however, that defendant shall not sell the Schlitz container manufacturing plant located in Winston-Salem, North Carolina prior to accomplishing the divestiture required by Section IV of this Final Judgment without first obtaining the approval of plaintiff.

VIII.

Defendant is ordered and directed to notify plaintiff at least forty-five (45) days prior to its entry into any final agreement to acquire, directly or indirectly, any brewery brewing or selling beer in the United States and for which no filing under the Hart-Scott-Rodino Antitrust Improvements Act is required.

IX.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

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

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

(2) Subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers, employees and agents of defendant, 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 defendant's principal office, defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information or documents obtained by the means provided in this Section IX 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 the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies 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 defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

X.

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.

XI.

This Final Judgment will expire on the fifth anniversary of the date of entry, or with respect to any particular provision, on any earlier date specified.

XII.

Entry of this Final Judgment is in the public interest.

Dated: November 10, 1982

/s/ Judge John H. Pratt
United States District Judge