

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA
Antitrust Division
Department of Justice
Washington, D.C. 20530
202/633-2417,

Plaintiff,

v.

G. HEILEMAN BREWING COMPANY, INC.
100 Harborview Plaza
LaCrosse, Wisconsin 54601, and

PABST BREWING COMPANY
1000 North Market Street
Milwaukee, Wisconsin 53201,

Defendants.

CIVIL ACTION NO. 82-750

FILED: November 22, 1982

COMPLAINT FOR INJUNCTIVE RELIEF (ANTITRUST)

I

DEFINITIONS

1. "Beer" means any fermented malt 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. Beer includes lager beer, dark beer, bock beer, malt liquor and ale.

2. "HHI" means the Herfindahl-Hirschman Index, a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is

controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

II

JURISDICTION AND VENUE

3. This complaint is filed and this action is instituted against the defendants under Section 15 of the Act of Congress of October 15, 1914 (15 U.S.C. § 25), as amended, commonly known as the Clayton Act, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act (15 U.S.C. § 18), as amended.

4. G. Heileman Brewing Company, Inc. ("Heileman"), transacts business and is found within the State of Delaware.

5. Pabst Brewing Company ("Pabst") transacts business and is found within the State of Delaware.

III

DEFENDANTS

6. Heileman is made a defendant herein. Heileman is a corporation organized and existing under the laws of the State of Wisconsin. It maintains its principal corporate office at 100 Harborview Plaza, LaCrosse, Wisconsin.

7. Pabst is made a defendant herein. Pabst is a corporation organized and existing under the laws of the State of Delaware. It maintains its principal corporate office at 1000 North Market Street, Milwaukee, Wisconsin.

IV

TRADE AND COMMERCE

8. In 1980, more than 97 percent of the approximately 176.4 million barrels of beer shipped in the United States was

produced domestically. In 1981, total domestic sales of beer, including imports and excluding exports, are estimated to have been 183.0 million barrels.

9. There is a growing trend toward concentration in the beer industry in the United States. In 1960, the four largest brewing companies had a combined national market share of approximately 27 percent. By 1970, the top four firms accounted for approximately 45 percent of total industry shipments. In 1980, the industry was highly concentrated. The combined national market share of the four leading brewing companies had grown to approximately 66 percent; the two largest companies alone accounted for approximately 50 percent of national sales. By 1981, the combined national market share of the four largest companies had increased to approximately 67 percent, with the two largest companies alone accounting for approximately 52 percent of the nation's sales.

10. Since 1981, two consolidations have occurred, further increasing concentration in the brewing industry. In a two-step transaction begun in April, 1982, and completed in June, 1982, The Stroh Brewery Company of Detroit, Michigan ("Stroh"), acquired all of the common stock of Jos. Schlitz Brewing Company of Milwaukee, Wisconsin ("Schlitz"). Thereafter, on or about June 29, 1982, Pabst acquired 49 percent of the common stock of Olympia Brewing Company of Tumwater, Washington ("Olympia") in what was intended as the first step of Pabst's acquisition of the entire equity interest in Olympia. To date, Pabst has not acquired the remaining outstanding Olympia common stock.

11. Heileman is engaged primarily in the business of producing and selling beer in the United States under a variety of brand names, including Old Style, Special Export,

Ranier, Schmidt, National Premium, Tuborg, Blatz, Weidemann, Sterling, Pfeiffer, Drewrys, Grain Belt, Falls City, Drummond Brothers, Carling Black Label, Stag, Heidelberg, National Bohemian, and Altes beers; and Colt 45, Malt Duck and Mickey's malt liquors. Heileman owns and operates breweries situated in Phoenix, Arizona; Auburndale, Florida; Belleville, Illinois; Evansville, Indiana; Newport, Kentucky; Baltimore, Maryland; Frankenmuth, Michigan; St. Paul, Minnesota; Seattle, Washington; and LaCrosse, Wisconsin.

12. Pabst is engaged primarily in the business of producing and selling beer in the United States under a variety of brand names, including Pabst Blue Ribbon, Andeker, Pabst Light, Pabst Extra Light, Red White & Blue, Jacob Best, Burgermeister, Blitz-Weinhard, Henry Weinhard Private Reserve and Bohemian beers; and Olde English "800" Malt Liquor. Pabst owns and operates breweries situated in Pabst, Georgia; Newark, New Jersey; Portland, Oregon; and Milwaukee, Wisconsin.

13. Olympia is engaged primarily in the business of producing and selling beer in the United States under a variety of brand names, including Olympia, Olympia Gold (light beer), Hamm's, Hamm's Special Light, Lone Star, Lone Star Light and Buckhorn (Texas and non-Texas). Olympia owns and operates breweries situated in St. Paul, Minnesota; San Antonio, Texas; and Tumwater, Washington.

14. Heileman competes directly with Pabst and Olympia in the sale of beer in the United States. In 1981, Heileman was the nation's fifth largest brewing company, with sales of approximately 14.0 million barrels and a national market share of approximately 7.6 percent. Collectively, Pabst and Olympia were the nation's fourth largest brewing company, with 1981

sales of approximately 19.2 million barrels and a national market share of approximately 10.5 percent.

15. Using a base which accounts for the Stroh-Schlitz and Pabst-Olympia consolidations described in paragraph 10 hereof, the combination of Heileman with Pabst and Olympia would result in the nation's third largest brewing company with 1981 shipments of approximately 33.2 million barrels and a market share of approximately 18.1 percent. Such a combination would increase total seller concentration in the nation, as measured by the HHI, by 163, from 1764 to 1927.

16. On the same basis, the industry four firm concentration ratio of sellers in the nation would increase by 7.6 percent, from 75.1 percent to 82.7 percent.

17. Substantial quantities of beer produced by Heileman are regularly sold and shipped in interstate commerce.

18. Substantial quantities of beer produced by Pabst are regularly sold and shipped in interstate commerce.

19. In 1980, the total dollar volume of beer sales in the United States was \$9.2 billion.

V

VIOLATION ALLEGED

20. On or about November 5, 1982, Heileman and Pabst entered into an Agreement in Principle (the "Agreement in Principle"). As contemplated under the Agreement in Principle, on or about November 10, 1982, Heileman, through a wholly-owned subsidiary, commenced a cash tender offer (the "tender offer") for up to 5.5 million shares of Pabst stock representing approximately 67 percent of the common stock of Pabst. Under the tender offer, Heileman's obligation to purchase is contingent upon a minimum tender of 3.8 million shares representing

approximately 46 percent of the common stock of Pabst. When combined with 400,005 shares of Pabst common stock currently owned by Heileman, the Heileman tender offer, if successful, will result in Heileman owning a minimum of 4,200,005 shares representing approximately 51 percent of the common stock of Pabst. Thereafter, Heileman intends to acquire the remaining common stock of Pabst.

21. Currently, Pabst owns 1,270,000 shares of Olympia stock representing 49 percent of the common stock of Olympia. Heileman owns an additional 57,000 Olympia shares representing approximately 2 percent of the Olympia common stock. The Agreement in Principle contemplates that after completion of the tender offer, Heileman and Pabst will vote their Olympia shares to enable Heileman to acquire the remaining common stock of Olympia.

22. The effect of the acquisition of control over all the assets of Pabst and Olympia by Heileman may be substantially to lessen competition in the production and sale of beer in the United States in violation of Section 7 of the Clayton Act, in the following ways, among others:

(a) Actual and potential competition in the production and sale of beer between Heileman and Pabst-Olympia will be eliminated;

(b) Concentration in the production and sale of beer will be substantially increased; and

(c) Competition generally in the production and sale of beer may be substantially lessened.

VI

PRAYER FOR RELIEF

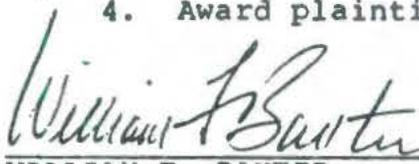
WHEREFORE, plaintiff prays that this Court:

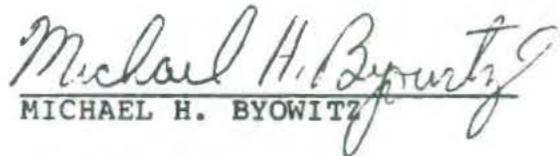
1. Adjudge and decree that the acquisition of control over all the assets of Pabst and Olympia by Heileman is in violation of Section 7 of the Clayton Act.

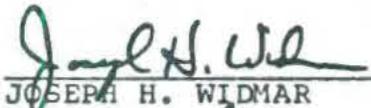
2. Enjoin Heileman from retaining any interest in any breweries or brands of beer owned by Pabst or Olympia as of November 19, 1982, other than the Pabst breweries situated in Pabst, Georgia and Portland, Oregon; the Olympia brewery situated in San Antonio, Texas; and the following brands of beer: Red White & Blue, Burgermeister, Blitz-Weinhard, Henry Weinhard Private Reserve, Bohemian, Lone Star, Lone Star Light and Buckhorn (Texas).

3. Grant such other, further and different relief as this Court may deem just and proper.

4. Award plaintiff its cost of suit.


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