

## Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. The Lucky Lager Brewing Company of San Francisco., U.S. District Court, D. Utah, 1958 Trade Cases ¶69,160, (Oct. 6, 1958)

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United States v. The Lucky Lager Brewing Company of San Francisco.

1958 Trade Cases ¶69,160. U.S. District Court, D. Utah, Central Division. No. C-15-58, Dated October 6, 1958. Case No. 1370 in the Antitrust Division of the Department of Justice.

### Clayton Antitrust Act

**Acquisitions of Stock or Assets—Acquisitions Under Clayton Act, Section 7—Consent Decree—Enforcement—Specific Relief—Divestiture of Stock and Assets—Contingent Provision Limiting Sales in Lieu of Divestiture.**—A brewing company which acquired all of the capital stock of a competing brewing company was directed by a consent decree to sell all of its interest in the other company within nine months from the entry of the decree. The decree provided, among other things, for the appointment by the court of a sales agent to aid in the sale, for the court to make the final determination as to the acceptance of any offer, and for the court to determine the acceptability of a purchaser after considering whether the effect of the acquisition by such purchaser may be substantially to lessen competition or tend to create a monopoly in any line of commerce in any section of the country. The decree also provided that the order to sell would be cancelled upon the petition of either party if the sale had not been effected within nine months, except that an extension of time might be allowed if it was found that a reasonable probability existed of a sale within the extended period. If, however, the order of sale was cancelled as provided, the decree enjoined the brewing company from selling for consumption within the State of Utah, in any calendar year, more than 39 per cent of the total beer consumed in that State, the share of the market held by the other company prior to its acquisition by the defendant.

**Acquisitions of Stock or Assets—Acquisitions Under Clayton Act, Section 7—Consent Decree—Enforcement—Specific Relief—Acquisitions Prohibited.**—A California brewing company was prohibited by a consent decree from acquiring any shares of stock or other interest in any facilities or plant of any person engaged in the brewing of beer in the State of Utah. The company was also prohibited from acquiring, for a period of five years from the entry of the decree, any shares of stock or other interest in any facilities or plant of any person engaged in the brewing of beer, anywhere, except upon application to the court and a showing that the effect of such acquisition may not be substantially to lessen competition or tend to create a monopoly in any line of commerce in any section of the country.

**Department of Justice Enforcement and Procedure—Consent Decree—Specific Relief —Divestiture—Contingent Provision—Sales Limitation in Lieu of Divestiture.**—A brewing company which acquired all of the capital stock of a competing brewing company was ordered by a consent decree to sell all of its interest in the other company within nine months from the entry of the decree. The decree provided, however, that if the sale was not effected within nine months, the order to sell would be cancelled on the petition of either party. In the event that the order to sell was cancelled for failure to sell within nine months, the decree prohibited the company from selling for consumption within the State of Utah, during any calendar year, more than 39 per cent of the total beer consumed in that State, the share of the market held by the other company prior to its acquisition by the defendant.

For the plaintiff: Victor R. Hansen, Assistant Attorney General; W. D. Kilgore, Jr., and George H. Schueller, Attorneys, Department of Justice; A. Pratt Kesler, United States Attorney; and Lyle L. Jones, Marquis L. Smith, John H. Burgess, and Franklin C. Knock, Attorneys, Department of Justice.

For the defendant: McCutchen, Doyle, Brown & Enersen, by Gerald H. Trautman; and Ray, Quinney & Nebeker, by Grant C. Aadnesen.

### Final Judgment

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[ *Consent Decree*]

A. SHERMAN CHRISTENSON, District Judge [ *In full text*]: Plaintiff, United States of America, having filed its complaint herein on the 18th day of February 1958, and defendant Lucky Lager Brewing Company, sued herein as The Lucky Lager Brewing Company of San Francisco, having appeared by its attorney and filed its answer to such complaint, denying the substantive allegations thereof, and plaintiff and defendant having severally consented to this Final Judgment without trial or adjudication of any issue of fact or law herein and without any admission by plaintiff or defendant in respect to any issue:

Now, Therefore, before any testimony has been taken 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 of the subject matter hereof and of the parties hereto pursuant to section 15 of the Act of Congress of October 15, 1914, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, and the complaint states a claim upon which relief may be granted under section 7 of said Act.

II

[ *Definitions*]

As used in this Final Judgment:

A., "Lucky Lager" shall mean defendant Lucky Lager Brewing Company, a corporation organized and existing under the laws of the State of California, with its principal office at San Francisco, California.

B., "Fisher" shall mean the Fisher Brewing Company, a corporation organized and existing under the laws of the State of Nevada, with its principal office at Salt Lake City, Utah, all of the capital stock of which is owned by Lucky Lager.

III

[ *Applicability*]

The provisions of this Final Judgment applicable to defendant Lucky Lager shall apply to Lucky Lager, its officers, agents, servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with Lucky Lager who receive actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall not apply or relate to activities or operations outside of the United States.

None of the provisions of this Final Judgment shall apply to any purchaser of the stock or assets of Fisher, whether the purchase is pursuant to this Judgment or otherwise, if the sale is to a purchaser approved by the Court after hearing, taking into consideration whether the effect of the acquisition of Fisher by such purchaser may be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the country.

IV

[ *Stock Acquisition Prohibited*]

Defendant Lucky Lager is enjoined and restrained:

A. From acquiring, directly or indirectly, any shares of stock or other interest in any facilities or plant of any person, partnership or corporation engaged in the brewing of beer in the State of Utah.

B. For a period of five years after the date of entry of this Final Judgment, from acquiring, directly or indirectly, any shares of stock or other interest in any facilities or plant of any person, partnership, or corporation engaged in the brewing of beer, except upon application to this Court and after an affirmative showing to the Court that the effect of such acquisition may not be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the country.

[ *Divestiture Ordered* ]

A. Within nine months from the date of appointment of a sales agent, as provided in paragraph B of this section V defendant Lucky Lager shall, subject to the terms and conditions of this Final Judgment, sell all of its interest in Fisher. Said interest in Fisher to be sold by defendant Lucky Lager shall, except as otherwise provided in paragraph D hereof, be the assets of Fisher and shall include but not be limited to Fisher's plant, goodwill, corporate name, trade names, properties, and all its beneficial contractual rights.

B. The Court shall appoint a person or firm to act as sales agent for the purpose of aiding in the sale of Fisher. Such appointment shall be made forthwith upon the entry of this Final Judgment upon the nomination of plaintiff after hearing both parties as to the qualification of any such proposed sales agent. The term of such appointment shall be for three months and shall continue as long thereafter as the parties and the Court are satisfied with the sales efforts of said sales agent. Said sales agent shall be responsible to the Court. His compensation shall be fixed by the Court and paid by defendant Lucky Lager. Said sales agent shall render monthly reports to the Court, with copies to the parties, concerning his sales efforts and his progress toward disposal of Fisher. Said sales agent shall cooperate with defendant in his or its sales activities and nothing herein shall prevent defendant from undertaking sales efforts subject to the supervision and approval of the Court.

C. Sale of Fisher shall be at a price and upon reasonable business terms to be determined by the Court, having due regard, among other things, for the following:

- (1) Price paid by Lucky Lager for the Fisher plant, goodwill, and other assets, properties and premises relating to or inuring to the benefit of the Fisher business as set forth in the contract of June 4, 1957, between Lucky Lager and Fisher Brewing Company, a Utah corporation, and the exhibits attached thereto;
- (2) The disposition of any of said assets since the acquisition of Fisher by Lucky Lager;
- (3) Any capital expenditures made on said Fisher plant since its acquisition by Lucky Lager;
- (4) Depreciation on or amortization of any of the assets listed in (1) and (3) above since the acquisition of Fisher by Lucky Lager;
- (5) The income tax consequences of any such sale;
- (6) The necessity of making a reasonable deviation from the above in order to effectuate prompt sale.

In the event any offer is received, plaintiff and defendant may be heard as to the propriety, reasonableness and acceptability of such offer, and the Court shall make final determination as to the acceptance of such offer.

D. Notwithstanding the foregoing provisions of this section, the Court may order the sale by Lucky Lager of its interest in the capital stock of Fisher if an offer is made for said stock equal to Lucky Lager's investment therein at the time said offer is received.

E. Sale of Fisher shall be to a purchaser acceptable to the Court, taking into consideration whether the effect of the acquisition of Fisher by such purchaser may be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the country.

F. Defendant Lucky Lager shall take such steps as are necessary to maintain Fisher and its physical plant until the time of sale thereof at the standard of operating performance applicable to said brewing plant at the time of entry of this Final Judgment. Pending such sale, defendant Lucky Lager shall not permit said plant to be diminished in capacity or turned to uses other than the production of beer. Defendant Lucky Lager shall at all times furnish to the sales agent and prospective purchasers of Fisher all information regarding Fisher, and permit them to have such access to, and to make such inspection of, Fisher's plant and records as are

reasonably necessary. Defendant Lucky Lager shall take all action which the Court may direct or approve in order to disseminate and publicize the availability for sale and to promote and effectuate the expeditious sale of Fisher.

G. Defendant Lucky Lager shall operate the Fisher business under the continued use of the same name, Fisher Brewing Company, and shall place the same names and labels used or owned by Fisher on the containers for the beer produced in the Fisher plant, with no design or statement on said containers or in the advertisement of either company which indicate the ownership of Fisher by Lucky Lager.

[ *Contingent Provision*]

H. If Fisher has not been sold within nine months after the appointment of said sales agent, the order to sell Fisher and all other provisions contained in this section V of this Final Judgment shall be cancelled upon petition of either of the parties; provided, however, that the Court may allow an extension in the period of time during which Fisher may be sold upon petition of either of the parties, after hearing and after a finding that there is reasonable probability that Fisher will be sold during such extended period.

**VI**

[ *Sales Limitation*]

In the event that the provisions of section V are cancelled as aforesaid, Lucky Lager shall not be subject to any further order in this action to divest itself of the Fisher plant, goodwill, corporate name, trade names, or other assets, properties or promises relating to or inuring to the benefit of the Fisher business, but in such event Lucky Lager is perpetually enjoined and restrained, beginning twelve months from the date of said cancellation, from selling for consumption in the State of Utah under any labels owned or controlled by Lucky Lager, Fisher or subsidiaries or affiliates of either of them in any calendar year more than 39 per cent of the quantity of "Total Beer Consumed" in the State of Utah, as reported by the Auditing Division of the Utah State Tax Commission for the previous calendar year.

In the event that, after this section VI has become operative, defendant should sell its stock in Fisher or its interest in Fisher (as defined in paragraph A of section V of this Final Judgment) defendant may, three years after such date, apply to the Court to be relieved of the injunctive provisions of this section VI, and the Court may grant such relief upon a showing that substantial competition exists in Utah between the purchaser and defendant Lucky Lager.

**VII**

[ *Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, and for no other purpose, and subject to any legally recognized privilege, duly authorized representatives of the Department of Justice shall, upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, upon reasonable notice to the defendant made to its principal office, be permitted:

(a) access, during the office hours of said defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of said defendant relating to any of the matters contained in this Final Judgment; and

(b) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview the officers and employees of defendant, who may have counsel present, regarding any such matters.

For the purpose of securing compliance with this Final Judgment, the defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal office, shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the enforcement of this Final Judgment.

No information obtained by the means provided in this section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of such Department except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

#### VIII

[ *Jurisdiction Retained*]

Jurisdiction is retained 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 or for the modification or termination of any of the provisions thereof, and for the enforcement of compliance therewith and punishment of violations thereof.

#### IX

[ *Costs*]

Plaintiff shall recover its costs against the defendant to be taxed in this proceeding.