

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Anheuser-Busch, Inc.; American Brewing Company; City Products Corporation; and Wagner Brewing Company., U.S. District Court, S.D. Florida, 1960 Trade Cases ¶69,599, (Jan. 11, 1960)

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United States of America v. Anheuser-Busch, Inc.; American Brewing Company; City Products Corporation; and Wagner Brewing Company.

1960 Trade Cases ¶69,599. U.S. District Court, S.D. Florida. Civil Action No. 8906-M. Dated January 11, 1960. Case No. 1421 in the Antitrust Division of the Department of Justice.

Clayton Antitrust Act

Acquisitions of Stock or Assets—Consent Decree—Practices Enjoined—Acquisitions of Breweries.—A brewer was prohibited by a consent decree from acquiring any interest in any Florida brewing facility and, for a period of five years from the judgment, from acquiring any interest in any brewing facility unless approved by the Court.

Acquisitions of Stock or Assets—Consent Decree—Practices Enjoined—Selling of Breweries.—Three brewers were prohibited by a consent decree from selling any interest in any brewing facility owned by them except after notifying the Department of Justice. This prohibition also excepted sales of stock of one of the companies and the merger of the other two into it.

Acquisitions of Stock or Assets—Consent Decree—Divestiture.—A brewer was ordered by a consent decree to divest itself of an acquired brewery. The decree required that the brewer report monthly to the Court on its efforts to accomplish the divestiture, that the Court approve any proposed sale, and that the brewer maintain and operate the brewery until sale is accomplished. Not until six months after divestiture will the brewer be permitted to market a brand of its beer within the decree's enforcement area. If, within one year from the date of the decree, divestiture has not been accomplished and there is no reasonable expectation that it can be, the Court will consider modifying the decree.

For the plaintiff: Robert A. Bicks, Acting Assistant Attorney General, E. Coleman Madsen, United States Attorney, and William D. Kilgore, Jr., George D. Reycraft, Robert A. Hammond, and Alan S. Ward, Attorneys, Department of Justice.

For the defendants: Dwight D. Ingamells; Thomas F. Carroll; White and Case; and Smathers, Thompson & Dyer; for Anheuser-Busch, Aaron, Aaron, Schimberg & Hess; and Dixon, Dejarnette, Bradford, McKay & Kimbrell, for City Products, American Brewing, and Wagner Brewing.

Final Judgment

LIEB, District Judge [*In full text*]: Plaintiff, United States of America, having filed its complaint herein on October 30, 1958, and the Court having denied the Motion to Dismiss made by defendants American Brewing Company, City Products Corporation, and Wagner Brewing Company on January 22, 1959, and all defendants having appeared by their attorneys and filed their answers to such complaint, denying the substantive allegations thereof, and

Plaintiff and defendants having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without any admission by plaintiff or defendants in respect to any such 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:

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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) "Anheuser" shall mean defendant Anheuser-Busch, Inc., a corporation organized and existing under the laws of the State of Missouri;
- (B) "American" shall mean defendant American Brewing Company, a corporation organized and existing under the laws of the State of Louisiana;
- (C) "City Products" shall mean defendant City Products Corporation, a corporation organized and existing under the laws of the State of Ohio;
- (D) "Wagner" shall mean defendant Wagner Brewing Company, a corporation organized and existing under the laws of the State of Florida;
- (E) "Miami Brewery of American" shall mean the assets, including trade marks, real property and inventory, used in the brewing business in the State of Florida which were acquired by Anheuser from City Products, American and Wagner pursuant to the contract of sale dated February 6, 1958 and supplemental letter agreement dated February 8, 1958;
- (F) "Person" shall mean any individual, partnership, corporation, association or other legal entity.

III

[*Applicability*]

The provisions of this Final Judgment applicable to any defendant shall apply to that defendant and to its officers, directors, agents, servants, employees, subsidiaries, successors and assigns, and to those persons in active concert or participation with any defendant who receive actual notice of this Final Judgment by personal service or otherwise.

None of the provisions of this Final Judgment shall apply to any person, other than a defendant, who acquires the Miami Brewery of American whether the acquisition is pursuant to this Final Judgment or otherwise, if the acquisition is by a person approved by the Court after hearing.

IV

[*Acquisitions*]

- (A) Defendant Anheuser is enjoined and restrained from acquiring, directly or indirectly, any shares of stock of any corporation engaged in the brewing of beer in the State of Florida, or any interest in any brewing facility or plant of any person engaged in the brewing of beer in the State of Florida.
- (B) Defendant Anheuser is enjoined and restrained, for a period of five years after the date of entry of this Final Judgment, from acquiring, directly or indirectly, any shares of stock of any corporation engaged in the brewing of beer, or any interest in any brewing facility or plant of any person 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 will not be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the country.

(C) Defendants American, City Products, and Wagner are each enjoined and restrained from selling any brewing facility or plant, or shares of stock or other interest in any person which owns or operates any brewing facility or plant, owned by any of them at the time of entry of this Final Judgment except after notice in writing to the Assistant Attorney General in charge of the Antitrust Division sixty (60) days in advance of such sale; provided, however, that the provisions of this subsection (C) shall not apply to (1) the sale of any shares of stock or other securities of City Products, or (2) any merger or consolidation of American or Wagner into or with the other or into or with City Products, or (3) the sale or transfer of any of the shares of stock or property of American or Wagner to the other or to City Products.

V

[*Divestiture*]

(A) Defendant Anheuser shall, subject to the terms of this Final Judgment, divest itself of all of the Miami Brewery of American, and of all additional assets or improvements which have been added to said brewery since its acquisition by Anheuser, in its possession.

(B) Any proposal by plaintiff or defendant Anheuser for divestiture by Anheuser of the Miami Brewery of American shall be subject to the approval of this Court, after hearing both plaintiff and defendant Anheuser in regard thereto. Such a proposal of divestiture shall have the effect of re-establishing the Miami Brewery of American as an operating factor in competition. Defendant Anheuser shall render monthly reports to this Court, with copies to the Assistant Attorney General in charge of the Antitrust Division, concerning its efforts to divest itself of the Miami Brewery of American.

(C) Anheuser is ordered and directed to make a bona fide effort to divest itself of the Miami Brewery of American by sale, to publicize the availability for sale and to promote the expeditious sale of said Miami Brewery of American. The sale shall be at a price and upon terms which are acceptable to this Court, having due regard, among other things, for the reasonable market value of the Miami Brewery of American and the necessity of effectuating a prompt sale.

Plaintiff or defendant Anheuser may apply to this Court for approval of any offer by any person to purchase the Miami Brewery of American. Any such offer to purchase the Miami Brewery of American shall be approved by this Court, after hearing plaintiff and defendant Anheuser in regard thereto, unless it appears that such offer may have anti-competitive effects, or unless defendant Anheuser establishes that its acceptance would be unreasonable.

(D) Defendant Anheuser shall take such steps as are necessary to maintain the Miami Brewery of American until the time of divestiture thereof at the standard of operating performance applicable to said brewery at the time of entry of this Final Judgment. Pending such divestiture, defendant Anheuser shall not permit said physical plant to be diminished in capacity or turned to uses other than the production of beer and ale. Defendant Anheuser shall furnish to prospective purchasers of the Miami Brewery of American information regarding the Miami Brewery of American, and permit them to have such access to, and to make such inspection of, the Miami Brewery of American's plant and records as are reasonably necessary.

(E) Defendant Anheuser is ordered and directed to continue to operate the Miami Brewery of American until the time of divestiture thereof in substantially the same manner in which it is being operated at the time of entry of this Final Judgment and to continue the production and sale of Regal beer in substantially the same manner that such production and sale is being carried on at the time of entry of this Final Judgment. Expenditures for advertising and promotion of Regal beer shall in no instance be less than the amount spent per barrel for such purposes during the year previous to the date of entry of this Final Judgment, or the total expenditures for such purposes during such previous year, whichever is less. Anheuser is ordered to continue to offer to sell Regal beer to the distributors who at the time of entry of this Final Judgment distribute Regal beer within the State of Florida.

(F) Defendant Anheuser shall not sell Busch-Bavarian beer to distributors who sell beer within the Miami Media Coverage area (as that area is designated on the map attached hereto) and shall not advertise or promote

Busch-Bavarian beer for sale in the Miami Media Coverage area until six months after Anheuser has, according to the provisions of this Final Judgment, divested itself of the Miami Brewery of American; provided that, after divestiture by Anheuser of the Miami Brewery of American, and upon application to this Court by defendant Anheuser or plaintiff and a showing of a substantial change in the competitive situation in said Miami Media Coverage area from that which exists on the date of entry of this Final Judgment, or that other modification may be appropriate to re-establish the Miami Brewery of American as an independent competitive factor, this subsection (F), after hearing Plaintiff and Defendant Anheuser in regard thereto, may be appropriately modified by this Court.

(G) If Anheuser has not divested itself of the Miami Brewery of American by sale within one year after the date of entry of this Final Judgment, then or at any time thereafter, upon application to this Court by Defendant Anheuser, and a showing by Anheuser to the satisfaction of this Court of its bona fide efforts to sell the Miami Brewery of American, and that there is no reasonable expectation that the Miami Brewery of American can be sold within a reasonable additional period of time, or upon application by plaintiff requesting further relief, the Court shall determine whether other appropriate provisions for the divestiture of the Miami Brewery of American shall be ordered, and whether the order that Anheuser shall sell the Miami Brewery of American and any other provisions contained in the foregoing subsections of this Section V of this Final Judgment shall be modified.

(H) None of the provisions of this Section V nor any proposal, modification or order for further relief made in any proceeding pursuant to this Section V shall apply to defendants American, City Products or Wagner.

VI

[*Enforcement 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 any defendant, at its principal office, be permitted:

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

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

Any 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 applicable to such defendant 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 VI 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 plaintiff 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.

VII

[*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 of any of the provisions thereof, except as hereinabove provided in V(H), and for the enforcement of compliance therewith and punishment of violations thereof.

VIII

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