

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,
Plaintiff,

v.

G. HEILEMAN BREWING COMPANY, INC.
and PABST BREWING COMPANY,
Defendants.

Civil Action No.

FINAL JUDGMENT

Filed: November 22, 1982

Entered: May 16, 1983

WHEREAS, plaintiff, United States of America, has filed its Complaint herein on November 22, 1982, and defendants, G. Heileman Brewing Company, Inc. ("Heileman") and Pabst Brewing Company ("Pabst"), have appeared, and plaintiff and defendants, by their respective attorneys, have 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;

WHEREAS, the following facts and circumstances underlie the parties' agreement to the entry of this Final Judgment:

Pursuant to the Agreement in Principle, as hereinafter identified and described, Heileman on November 10, 1982 commenced a tender offer for Pabst (the "tender offer") through HBC Acquisition Corporation ("HBC"), a wholly-owned subsidiary of Heileman. The tender offer is intended as the initial step of a series of transactions whereby certain assets (the "Retained Assets" as hereinafter identified and described) owned as of November 19, 1982 by Pabst and Olympia Brewing Company ("Olympia") are to be transferred to Heileman and the balance of Pabst's and Olympia's

assets (the "Non-Retained Assets" as hereinafter identified and described) are to be transferred to a new entity in which Heileman will have no interest. Under the Agreement in Principle, upon consummation of the tender offer, Heileman will attempt to effect two mergers whereby HBC will acquire all of the remaining stock of Pabst and Olympia in exchange for HBC securities (the "subsequent mergers"). The Agreement in Principle contemplates that upon consummation of the subsequent mergers, Heileman will give up all of its interest in HBC in exchange for the Retained Assets (the "exchange transaction"). By the tender offer, the subsequent mergers and the exchange transaction, Heileman intends to acquire the Retained Assets, and does not intend to acquire control, directly or indirectly, of any portion of the Non-Retained Assets.

Heileman has agreed that it will not purchase any of the shares tendered pursuant to the tender offer until Pabst and Olympia have agreed that if the subsequent mergers and the exchange transaction have not been completed by February 28, 1983, Pabst and Olympia will transfer to Heileman before March 31, 1983 the Retained Assets and Olympia will transfer to Pabst before March 31, 1983 those Non-Retained Assets owned by Olympia.

Pabst has agreed that, if the subsequent mergers and the exchange transaction have not been consummated by February 28, 1983, it shall effect the purchase of the remaining outstanding shares of Olympia for cash by March 31, 1983.

The Agreement in Principle contemplates an escrow arrangement whereby the remaining Olympia shareholders are assured that

the shares they will receive in the subsequent mergers will have a value of not less than twenty-six dollars (\$26) per share, or a total of thirty-five million dollars (\$35,000,000) for all of the shares collectively, and provides for the making of cash payments to the Olympia shareholders in the event that the shares are determined to have a lower market value.

The defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court.

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 defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II.

As used in this Final Judgment:

A. "Heileman" means defendant G. Heileman Brewing Company, Inc., including each division, subsidiary or affiliate thereof, its parent organization, if any, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

B. "Pabst" means defendant Pabst Brewing Company, including each division, subsidiary or affiliate thereof, its parent organization, if any, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

C. "Olympia" means Olympia Brewing Company, including each division, subsidiary or affiliate thereof, its parent organization, if any, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

D. "Defendants" mean Heileman and Pabst.

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

F. "Brewery" means the manufacturing plant, real property, capital equipment, and any other interests, tangible assets or improvements, associated with a facility for brewing and packaging beer.

G. "Agreement in Principle" means the Agreement in Principle between Heileman and Pabst dated November 5, 1982 (a copy of which is attached hereto as Exhibit I) as amended by letter agreement dated November 9, 1982 (a copy of which is attached hereto as Exhibit II).

H. "Retained Assets" means the assets of Pabst and Olympia to be acquired by Heileman pursuant to the Agreement in Principle. The Retained Assets include, but are not limited to, the breweries owned by Pabst (as of November 19, 1982) located in Pabst, Georgia, and Portland, Oregon; the brewery owned by Olympia (as of November 19, 1982) located in San Antonio, Texas; and the following brands of beer: Red, White & Blue, Burgermeister, Blitz-Weinhard, Henry Weinhard Private Reserve and Bohemian, all owned by Pabst (as of November 19, 1982), and Lone Star, Lone Star Light and Buckhorn (Texas), all owned by Olympia (as of November 19, 1982).

I. "Non-Retained Assets" means all assets of Pabst and Olympia other than the Retained Assets. The Non-Retained Assets include, but are not limited to, the breweries owned by Pabst (as of November 19, 1982) located in Newark, New Jersey, Peoria Heights, Illinois, and Milwaukee, Wisconsin; the breweries owned by Olympia (as of November 19, 1982) located in St. Paul, Minnesota, and Tumwater, Washington; and the following brands of beer: Pabst Blue Ribbon, Andeker, Pabst Extra Light, Pabst Light, Jacob Best and Olde English 800, all owned by Pabst (as of November 19, 1982), and Olympia, Olympia Gold (light beer), Hamm's, Hamm's Special Light, and Buckhorn (non-Texas), all owned by Olympia (as of November 19, 1982).

III.

The provisions of this Final Judgment shall apply to the defendants, to each of their 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. Until the appointment of a trustee under this Final Judgment, Heileman shall be free to vote in any manner the stock of Pabst, subject to plaintiff's prior approval. Heileman shall not otherwise manage or control Pabst or Olympia in any manner directly or indirectly. Furthermore, Heileman shall not have

access to any confidential business information, data or records of Pabst or Olympia concerning the Non-Retained Assets. Heileman shall have access to confidential business information, data and records of Pabst and Olympia concerning the Retained Assets; provided, however, that such access shall only take the form of the submission of written material to Heileman by Pabst and Olympia (unless plaintiff specifically agrees otherwise) and provided further that plaintiff shall be furnished with copies of all materials furnished to Heileman at the same time as such materials are furnished to Heileman.

B. Defendants shall report to plaintiff promptly, upon plaintiff's request, in whatever manner requested by plaintiff, including sworn affidavit, on all steps taken and all actions contemplated by defendants to accomplish the subsequent mergers and the exchange transaction.

C. Heileman shall increase its obligation under the Heileman demand note referred to in paragraph 2 of the Agreement in Principle from fifteen million dollars (\$15,000,000) to twenty-five million dollars (\$25,000,000), without an increase in the collateral to be provided by Pabst, so that Pabst's obligation under the Olympia escrow agreement referred to in the Agreement in Principle shall be limited to ten million dollars (\$10,000,000).

D. If the subsequent mergers and the exchange transaction have not been consummated by February 15, 1983, plaintiff may petition the Court for the appointment of a trustee, which appointment shall become effective no later than March 31, 1983. Upon the filing of such a petition, plaintiff and Heileman each shall

promptly notify the other in writing of the names and descriptions of not more than two persons it wishes to nominate as a trustee. Should plaintiff and Heileman agree upon one of such nominees to serve as trustee, that nominee's name will be submitted to the Court. Should plaintiff and Heileman fail to agree on a common nominee, then plaintiff shall submit the names of each party's nominees to the Court. The Court shall appoint a trustee from the candidates so named.

E. The trustee shall have all powers necessary to accomplish the purposes of the trust. The purposes of the trust shall be as follows:

(1) To accomplish the transfer of the Retained Assets to Heileman;

(2) To accomplish the transfer of the Non-Retained Assets, as a viable, on-going business in the brewing industry, (a) to the then shareholders of Pabst and Olympia other than Heileman or persons controlled by Heileman (the "required divestiture"), or (b) to a purchaser approved by plaintiff (the "alternative divestiture") with the proceeds of such sale going to the then shareholders of Pabst and Olympia other than Heileman in exchange for their Pabst or Olympia shares; and

(3) to carry out the parties' intention that Heileman not acquire control, directly

or indirectly, over any of the Non-Retained Assets.

F. Upon its appointment, the trustee shall have full power and authority to vote the Pabst stock acquired by Heileman and to exercise control or management of Pabst and Olympia in order to carry out the purposes of the trust.

G. Within three (3) months of the trustee's date of appointment, the trustee shall submit a plan to accomplish the required divestiture or the alternative divestiture to the Court for approval. The trustee shall simultaneously provide copies of said plan to the parties. Said plan shall contain any and all terms that the trustee deems appropriate to accomplish as expeditiously as is possible the purposes of the trust. If the trustee deems it appropriate, said plan may provide for divestiture by way of the required divestiture in the following manner. The trustee shall cause Heileman, or Pabst and Olympia, to place all the Non-Retained Assets in a subsidiary of Heileman ("Newco"), and transfer all of Newco's stock to the trustee. Once such transfer is made, the trustee shall exchange Newco's stock on a pro rata basis for the Pabst and Olympia shares then held by all Pabst and Olympia shareholders other than Heileman or persons controlled by Heileman. The exchange rate will be determined by the trustee who will be empowered to employ, at Heileman's expense, financial, investment and legal advisors to accomplish the exchange. Thereafter, the trust shall cease, and Newco shall exist as a wholly independent entity.

H. Prior to granting any approval of a divestiture plan proposed by the trustee, the Court shall provide the parties an opportunity for a full hearing on said plan, taking into consideration all factors urged by the parties consistent with the purposes of the trust. If the Court approves the trustee's divestiture plan, it shall enter all appropriate orders necessary to put such plan into effect. If the Court is not satisfied that the trustee's divestiture plan is fair and equitable to the then shareholders of Pabst, the trustee thereupon shall be invested with full power and authority, with full jurisdiction over the parties, to take any and all affirmative steps necessary to accomplish the trustee's proposed divestiture in a manner approved by the Court and without impairment to the financial condition or viability of the Non-Retained Assets as an on-going business in the brewing industry. In this event, Heileman shall provide such additional financial contribution in such form and amount as the Court may reasonably determine to be necessary to proceed with the divestiture on terms that are fair and equitable to the Pabst shareholders.

I. Except as otherwise provided in Section IV (J) with respect to the trustee's fees and expenses incurred in connection with the accomplishment of the alternative divestiture, Heileman shall pay all of the reasonable fees and expenses of the trustee on such reasonable terms and conditions as the Court may prescribe. The compensation of such trustee shall be based in significant part on a fee arrangement providing the trustee with an incentive to accomplish the proposed divestiture as soon as possible and, with respect to the alternative divestiture, to obtain the best possible price.

J. In the event that the alternative divestiture is accomplished, the trustee shall account for all monies derived from said divestiture, if any, and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies, if any, shall be paid to the then shareholders of Pabst and Olympia and the trust shall then be terminated.

K. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture or the alternative divestiture.

L. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture as contemplated under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall thereupon promptly file with the Court and the parties a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture was not accomplished, and (3) the trustee's recommendations. 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 purposes

of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purposes of the trust, which shall, if necessary, include extending the trust and the term of a trustee's appointment.

V.

Until divestiture as contemplated under this Final Judgment has been accomplished, Pabst shall and shall cause Olympia prudently to carry on the brewery business involving the Retained Assets in the ordinary course and shall not sell, dispose of or otherwise encumber the Retained Assets without approval by Heileman or, failing such approval, by the Court. Until said divestiture is accomplished, Pabst shall maintain the breweries located in Pabst, Georgia, and Portland, Oregon, in good working condition and repair and Pabst shall cause Olympia to maintain the brewery located in San Antonio, Texas, in good working condition and repair; and neither Pabst nor Olympia shall remove any assets used in connection with or otherwise relating to the maintenance or operation of said breweries except as required in the ordinary course of business without approval by Heileman or, failing such approval, by the Court. Until said divestiture is accomplished, Pabst shall and shall cause Olympia to continue to provide for each brand of beer among the Retained Assets the level of marketing and advertising support each was providing as of November 19, 1982, to maintain the level of personnel who conduct the business of the Retained Assets and

to preserve the goodwill and distributor relationships of the brands included in the Retained Assets.

VI.

For the purposes 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 any defendant made to its principal office, be permitted:

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

2. Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees and agents of such 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 any defendant's principal office, such 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 VI 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 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 any defendant to plaintiff, such 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 such 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 ten days' notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VII.

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.

VIII.

This Final Judgment will expire upon order of the Court after the trust has terminated.

IX.

Entry of this Final Judgment is in the public interest.

Dated: May 16, 1983

/s/ Judge James L. Latchum
UNITED STATES DISTRICT JUDGE

November 5, 1982

G. Heileman Brewing Company, Inc.
100 Harborview Plaza
P. O. Box 459
LaCrosse, Wisconsin 54601

The following represents our agreement in principle to a proposed acquisition by G. Heileman Brewing Company, Inc. ("Heileman") of both the Pabst Brewing Company ("Pabst") and the Olympia Brewing Company ("Olympia"). It is contemplated that after acquiring Pabst and Olympia in the merger transactions described below, Heileman will retain certain assets (the "Retained Assets" described below) and spin off interests (also described below), in the other brewing assets and brewery business of Pabst and Olympia, to the Pabst and Olympia shareholders at the time of the respective merger transactions. The acquisition transaction shall be effected by means of a definitive acquisition agreement among Heileman, Pabst and Olympia and is contemplated to take place in the following manner.

1. Heileman, through a wholly-owned Delaware subsidiary called for convenience herein "Brewing Co.", shall commence and complete a cash tender offer for up to 6,000,000 shares of Pabst common stock for \$25 per share. The offer shall be subject to Brewing Co. acquiring at least 3,700,000 of the outstanding Pabst shares and to all other conditions customary and appropriate for such a tender offer.

2. Brewing Co. shall seek Olympia shareholder approval for and shall effect a merger of one of Pabst's wholly-owned subsidiaries into Olympia, pursuant to which merger Olympia shareholders on the effective date of the merger will receive an aggregate of 10,000,000 shares of the 30,000,000 shares of Brewing Co. outstanding and a right to receive cash on June 1, 1983 to the extent that the aggregate market value of the common stock does not represent an average market value, during a defined period after the merger to be agreed upon, of at least \$35,000,000. Pabst shall agree to vote its Olympia shares in favor of the merger transaction. To facilitate the acquisition of Olympia, Heileman, at the time Brewing Co. purchases Pabst shares pursuant to the tender offer, shall

lend Pabst \$20,000,000 (of which \$5 million shall be in cash and \$15 million shall be in the form of a demand note) secured by certain non-brewery assets of Pabst to be agreed upon. An escrow arrangement shall be set up with a letter of credit for \$20,000,000 and the \$15,000,000 secured demand note from Heileman to assure the payment of the cash, if necessary, to Olympia shareholders. In the event that the Heileman note is called, Pabst shall transfer to Heileman the assets securing such note.

3. Concurrently with the acquisition of Olympia described in paragraph 2 above, Brewing Co. shall effect a merger of a wholly-owned subsidiary with Pabst pursuant to which Pabst shareholders on the effective date of the merger (other than Brewing Co. and Heileman) will receive convertible subordinated debentures of Brewing Co. The debentures shall have a principal amount to be agreed upon, be entitled to be prepaid in the event of a substantial sale of assets of Brewing Co., be subordinated in right of payment to all indebtedness of Brewing Co. for money borrowed, and shall have such other economic terms as shall be agreed upon by the parties. Heileman, subject to the terms and conditions of the acquisition agreement, shall vote the Pabst shares acquired in the tender offer in favor of the merger. The acquisition of Pabst shall be conditioned on the acquisition of Olympia being effective at approximately the same time.

4. Immediately after effectiveness of the merger transactions, Brewing Co. shall, in exchange for (i) Brewing Co. stock held by Heileman and (ii) such cash (if any), in the event Brewing Co. holds less than the maximum number of shares sought in the tender offer, that would have been required to obtain the maximum number of shares sought in the tender offer), transfer the following assets and enter into the following agreements with Heileman (or cause its subsidiaries to effect such transfers and enter into such agreements), which assets together with all related liabilities, are herein referred to as the "Retained Assets":

a. The Pabst brewing facilities at Pabst, Georgia and Portland, Oregon.

b. The Olympia brewing facility at San Antonio, Texas.

c. The following brands, related Light brands and premium brands: Blitz, Blitz economy brands, Henry Weinhard, Lone Star, Buckhorn (Texas), Red White and Blue and Burgermeister.

d. \$10,000,000 in unspecified surplus assets of Pabst, 100,000 kegs and the Pabst office building and related parking areas in Milwaukee, Wisconsin.

e. Pabst will enter into a five-year contract to brew with Heileman, requiring Heileman to brew for Pabst 3,150,000 barrels annually at the Pabst, Georgia facility. The foregoing required amount shall decline annually as follows:

Year two:	2,970,000
Year three:	2,670,000
Year four:	2,370,000
Year five:	2,070,000

Of the foregoing amounts, Pabst shall be entitled to request that the following barrels be brewed in San Antonio:

Year one:	400,000
Year two:	370,000
Years three through five:	270,000

In the event that the acquisition transactions are not effected by February 28, 1983, then Pabst and Olympia shall transfer the Retained Assets to Heileman in exchange for 6,000,000 shares of Pabst stock held by Brewing Co. (or such number of shares purchased in the tender offer plus the cash that would have been required to obtain the maximum number of shares sought); and Heileman and Pabst shall cause the release of the escrow to Olympia against release of Pabst's obligations to Olympia under the agreement dated June 11, 1982 between Pabst and Olympia. If the retained assets, for any reason, can not be transferred to Heileman by March 15, 1983, Heileman shall be free to terminate the Acquisition Agreement and all the arrangements thereunder.

All out-of-pocket costs and expenses for the acquisition transactions shall be allocated and paid for in a fair and equitable manner to be determined by Heileman and Pabst in good faith.

Brewing Co. shall purchase, immediately before the effective time of the Pabst merger Pabst stock held by Heileman at the time of initiation of the tender offer for an amount in cash equal to the cost to Heileman of such stock less \$5 million.

The Acquisition Agreement shall have customary terms and conditions to be agreed upon by the parties.

The parties shall use their best efforts to obtain approval of the transactions contemplated by this letter with the United States Department of Justice.

This letter does not constitute a contract. The matters covered by this letter are subject to the execution of a definitive Acquisition Agreement, the approvals of the Boards of Directors of Heileman, Pabst and Olympia, receipt of fairness opinions of Lehman Brothers Kuhn Loeb Incorporated, satisfactory to the Board of Pabst, approval by the Department of Justice and such other matters as the parties may agree.

PABST BREWING COMPANY

By /s/ William F. Smith, Jr.
William F. Smith, Jr.
President

Accepted and Agreed
G. Heileman Brewing Company, Inc.

By /s/ Russell G. Cleary
Russell G. Cleary
President

November 9, 1982

G. Heileman Brewing Company, Inc.
100 Harborview Plaza
P. O. Box 459
La Crosse, Wisconsin 54601

This letter amends and supplements our agreement in principle of November 5, 1982.

Paragraph number 1 is amended to read as follows:

1. Heileman, through a wholly-owned Delaware subsidiary called for convenience herein "Brewing Co.", shall commence and complete a cash tender offer for up to 5,500,000 shares of Pabst common stock for \$27.50 per share. The offer shall be subject to Brewing Co. acquiring at least 3,800,000 of the outstanding Pabst shares and to all other conditions customary and appropriate for such a tender offer.

Paragraph 3 is amended to read as follows:

3. Concurrently with the acquisition of Olympia described in paragraph 2 above, Brewing Co. shall effect a merger of a wholly-owned subsidiary with Pabst pursuant to which Pabst shareholders on the effective date of the merger (other than Brewing Co. and Heileman) will receive subordinated notes of Brewing Co. The notes shall have a principal amount of \$20 for each share exchanged, be entitled to be prepaid in the event of a substantial sale of assets of Brewing Co. and be subordinated in right of payment to all indebtedness of Brewing Co. for money borrowed. The notes shall mature ten years from the date of issue, bear

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interest at the rate of 15% per annum and benefit from a sinking beginning in the sixth year, designed to retire the notes in equal annual installments by maturity. Heileman, subject to the terms and conditions of the acquisition agreement, shall vote the Pabst shares acquired in the tender offer in favor of the merger. The acquisition of Pabst shall be conditioned on the acquisition of Olympia being effective at approximately the same time.

In addition, the first paragraph on page 4 of the November 5, 1982 agreement in principle is amended to read as follows:

Brewing Co. shall purchase, immediately before the effective time of the Pabst merger Pabst stock held by Heileman at the time of initiation of the tender offer for an amount in cash equal to the cost to Heileman of such stock less \$3,750,000.

Pabst Brewing Company

By /s/ William F. Smith, Jr.
President and
Chief Executive Officer

Accepted and Agreed

G. Heileman Brewing Co.

By /s/ Russell G. Cleary
President