

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Pittsburgh Brewing Co. and Milton G. Hulme., U.S. District Court, W.D. Pennsylvania, 1966 Trade Cases ¶71,751, (May 31, 1966)

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United States v. Pittsburgh Brewing Co. and Milton G. Hulme.

1966 Trade Cases ¶71,751. U.S. District Court, W.D. Pennsylvania. Civil No. 65-1406. Entered May 31, 1966. Case No. 1881 in the Antitrust Division of the Department of Justice.

Clayton and Sherman Acts

Acquiring Competitors—Acquisitions Prohibited—Beer Industry—Consent Judgment.—A brewing company was prohibited by a consent judgment, reciting that the company and its board chairman had sold stock they held in a brewer, from acquiring any stock or assets in that brewer and, for a period of five years, from acquiring any stock or assets of any other company engaged in brewing beer in various counties in Maryland, New York, Ohio, Pennsylvania, or West Virginia, unless the brewer gave 60-days' prior written notice to the government. The board chairman, so long as he was an officer, director, or employee of the brewing company, was prohibited from acquiring any stock or assets of that brewer, except for investment purposes. The exception would not apply unless he gave the government specified information within 30 days after such an acquisition.

For the plaintiff: Donald F. Turner, Assistant Attorney General; William D. Kilgore, Jr., and Gordon B. Spivack, Donald G. Balthis, John J. Hughes, Carl J. Melone, and Richard M. Walker, Attorneys, Department of Justice, and Gustave Diamond, U. S. Attorney.

For the defendants: T. W. Pomeroy, Jr. and W. Walter Braham, Jr.

Final Judgment

WILLSON, District Judge: And Now, this 31st day of May, 1966, this case coming before the Court pursuant to a stipulation between the parties dated April 25, 1966, and filed herein on April 27, 1966, and it appearing to the Court from the record herein and the representations of counsel for defendants, as follows, to wit:

1. that the plaintiff, United States of America, filed its Complaint herein on December 28, 1965, together with its Motion for a Temporary Restraining Order; that after argument before this Court on said date a Stipulation of Counsel was entered into and approved, and the motion for a temporary restraining order was withdrawn by the plaintiff; and that thereafter, on February 9, 1966, the defendants filed their Answer denying the substantive allegations of the Complaint and averring in addition that the said allegations were moot;
2. that the offer referred to in paragraph 14 of the Complaint, whereunder defendant Pittsburgh Brewing Company ("Pittsburgh Brewing") would purchase shares of stock of Duquesne Brewing Company of Pittsburg ("Duquesne") on certain terms and conditions, terminated on December 29, 1965 and was not extended, and that shares of stock of Duquesne tendered in response to said offer were declined and the stock certificates returned to their owners on or about December 31, 1965;
3. that the defendants on or about February 2, 1966 did sell all shares of stock of Duquesne owned by either of them either directly or indirectly and that neither retains any ownership interest whatever in Duquesne;
4. that the plaintiff has not withdrawn its consent to the Stipulation dated April 25, 1966, which remains in force and effect; and
5. that the parties have consented to the entry of this Final Judgment pursuant to the Stipulation of April 25, 1966, without trial or adjudication of any issue of fact or law herein.

Now Therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or admission of any party with respect to any such issue, and upon the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

[*Clayton and Sherman Acts*]

This Court has jurisdiction of the subject matter hereof and of all parties hereto. The Complaint states claims for relief against each defendant under [Section 2 of the Sherman Act](#) (15 U. S. C. §2) and under [Section 7 of the Clayton Act](#) (15 U. S. C. § 18).

II

[*Applicability*]

The provisions of this Final Judgment applicable to defendant, Pittsburgh Brewing, shall apply to such defendant, its officers, directors, agents, servants, employees, nominees, and any subsidiaries, successors and assignees in interest of defendant, Pittsburgh Brewing, and to those persons who may hereafter be in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment applicable to defendant, Hulme, shall apply to such defendant, his agents, servants, employees, successors and assignees in interest, and to those persons who may hereafter be in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise.

III

[*Acquisitions*]

Defendant, Pittsburgh Brewing, is hereby enjoined and restrained from:

- A. Merging or consolidating with, or acquiring, directly or indirectly, the whole or any part of the stock or other share capital of, or the whole or any part of the assets or the physical property or properties of, or bonds, notes, or other legal evidence of indebtedness of Duquesne;
- B. Exercising or attempting to exercise any control over the conduct, policies, or operations of Duquesne; and
- C. For a period of five (5) years after the date of entry of this Final Judgment, merging or consolidating with, or acquiring, directly or indirectly, the whole or any part of the stock or other share capital of, or the whole or any part of the assets or the physical property or properties of any company which is engaged in the brewing of beer in any part of the geographical area encompassed by the counties listed in Appendix A attached hereto, unless Pittsburgh Brewing gives sixty (60) days' prior written notice of all relevant facts regarding any such transaction to the plaintiff.

IV

[*Individual's Activities*]

Defendant, Hulme, for so long as he is an officer, director or employee of Pittsburgh Brewing is hereby enjoined and restrained from acquiring, directly or indirectly, the whole or any part of the stock or other share capital of, or the whole or any part of the assets or the physical property or properties of, or bonds, notes, or other legal evidence of indebtedness of Duquesne, except where such acquisition is made solely for investment purposes; provided, however, that such exception shall be deemed not to apply unless defendant, Hulme, within thirty (30) days after any such acquisition, notifies plaintiff of such acquisition, including specifically in such notification where such acquisition is of stock or other share capital, the number of shares acquired and the total number of shares Hulme then owns, the date of such acquisition, the name and address of the purchasers having legal or

equitable title, the amount paid for such shares, the market value of such shares if quoted and the purpose of such acquisition.

V

[*Inspection and Compliance*]

For the purpose of determining and securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or Assistant Attorney General in Charge of the Antitrust Division and upon reasonable notice to Pittsburgh Brewing be permitted:

A. Access, during the normal office hours of Pittsburgh Brewing to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Pittsburgh Brewing relating to any matters contained in this Final Judgment; and

B. Subject to the reasonable convenience of Pittsburgh Brewing and without restraint or interference from it to interview the officers and employees of Pittsburgh Brewing, who may have counsel present, regarding any such matters.

Upon written request of the Attorney General or the Assistant Attorney General in Charge of the Antitrust Division, each defendant shall submit such reports in writing, under oath if requested, with respect to 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 V 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 proceeding to which the United States is a party, for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

VI

[*Jurisdiction Retained*]

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 or directions as may be necessary or appropriate for the construction of or carrying out of this Final Judgment or for the amendment or modification of any of the provisions thereof, and for enforcement of compliance therewith and punishment of violations thereof.

Appendix A

1. *Counties in the Commonwealth of Pennsylvania*

| | | |
|--------------|------------|----------|
| Allegheny | Blair | Clarion |
| Armstrong | Cambria | Forest |
| Westmoreland | Indiana | Venango |
| Washington | Lawrence | Mercer |
| Beaver | Butler | McKean |
| Greene | Clearfield | Warren |
| Fayette | Cameron | Crawford |
| Somerset | Elk | Erie |
| Bedford | Jefferson | |

2. *Counties in the State of Ohio*

| | | |
|-----------|------------|------------|
| Jefferson | Guernsey | Carroll |
| Belmont | Harrison | Columbiana |
| Monroe | Washington | Stark |
| Noble | Tuscarawas | Mahoning |
| Summit | Ashtabula | Lake |
| Portage | Geauga | Cuyahoga |
| Trumbull | | |

3. *Counties in the State of West Virginia*

| | | |
|----------|------------|-----------|
| Hancock | Monongalia | Doddridge |
| Brooke | Preston | Tyler |
| Ohio | Marion | Ritchie |
| Marshall | Taylor | Pleasants |
| Wetzel | Harrison | Wood |

4. *Counties in the State of Maryland*

| | |
|----------|---------|
| Allegany | Garrett |
|----------|---------|

5. *Counties in the State of New York*

| | | |
|---------|-------------|----------|
| Erie | Chautauqua | Allegany |
| Wyoming | Cattaraugus | |