

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil No. CA 3-81-0157-H
)	
v.)	Filed: February 6, 1981
)	Entered: June 2, 1981
REVCO D.S., INC., and)	
ZALE CORPORATION,)	
)	
Defendants.)	

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on February 2, 1981, and the plaintiff and the defendants, Revco D.S., Inc., and Zale Corporation, by their respective attorneys, having consented to the making and entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or admission by any party with 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:

I.

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act (15 U.S.C. § 18).

II.

As used in this Final Judgment:

(A) Revco D.S., Inc. (Revco) is a corporation organized and existing under the laws of the State of Michigan with its principal place of business in Twinsburg, Ohio.

(B) Zale Corporation (Zale) is a corporation organized and existing under the laws of the State of Texas with its principal place of business in Dallas, Texas.

(C) "Assets" means those certain drug stores acquired by Revco from Zale and those certain drug stores operated by Revco which are to be divested as identified and in the manner prescribed in Appendix A to this Final Judgment. More specifically, "Assets" means the leasehold estates created by and all rights conveyed under or by virtue of the leases, the fixed assets and the inventories of the drug stores.

(D) "Eligible purchaser" means any entity or entities approved by the plaintiff or, failing such approval, by the Court to acquire any or all of the Assets as defined in Section II(C) herein.

III.

Zale is hereby dismissed as a named defendant in this Final Judgment.

IV.

The provisions of this Final Judgment applicable to Revco shall also apply to each of its officers, directors, agents, employees, affiliates, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise. The provisions of this Final Judgment shall not apply to any eligible purchaser which in fact purchases Assets.

V.

(A) Revco is ordered and directed within nine months from the effective date of this Final Judgment or by January 31, 1982, whichever occurs later, to divest itself of the Assets.

(B) The divestiture required by this Section V shall be absolute and unconditional to an eligible purchaser or purchasers upon terms and conditions approved by the plaintiff or, failing such approval by the plaintiff, by the Court.

(C) Within 15 days after Revco presents to the plaintiff at the offices of the Antitrust Division in Dallas, Texas, a letter of intent by a prospective purchaser to acquire any of the Assets, and such other information which Revco supplies for evaluating the competitive effects of the transaction, the plaintiff shall indicate its approval or disapproval in writing to Revco at its principal office in Twinsburg, Ohio and to its attorney at his office in Cleveland, Ohio. If plaintiff requires supplementary information concerning the proposed sale, it shall request such information within seven days after receipt of the said letter of intent and must indicate its approval or disapproval in writing within 15 days after receipt of the supplementary information. Failure to respond within the required time under either circumstance shall be deemed to be approval by the plaintiff. **If plaintiff objects to the proposed divestiture**, then such divestiture shall not be consummated unless approved by the Court or unless plaintiff notifies Revco in writing that its objection has been withdrawn.

(D) The period set forth in Section V(A) shall be tolled during any period or periods utilized by the plaintiff pursuant to Section V(C) and during the pendency of any proceedings in this Court under this Final Judgment relating to approval of a proposed divestiture.

VI.

(A) If Revco is unable to complete the divestiture required by this Final Judgment within the period set forth

in Section V hereof, the Court shall, upon application of the plaintiff, appoint a trustee who shall have authority to divest those Assets that Revco has been unable to divest.

(B) The trustee shall have full power and authority to dispose of the Assets, subject to the prior approval of this Court. The Court shall provide the parties with an opportunity for a hearing prior to granting its approval. The trustee shall serve at the cost and expense of Revco, on such terms and conditions as this Court may set, and shall account for all monies derived from the disposal of the Assets and all expenses so incurred. After approval by this Court of the trustee's account, including fees for his services, all remaining monies shall be paid to Revco, and the trust shall be terminated. Each sale by the trustee shall be in accordance with the provisions of this Final Judgment.

VII.

Except as hereinafter provided, Revco is prohibited from reacquiring any of the Assets that are sold pursuant to this Final Judgment, including negotiating for a lease after the expiration of the current lease. Revco may reacquire Assets only to reassume its obligations on leaseholds should any buyer default on its lease obligations, or to enforce any bona fide security interest on any or all of the Assets to be divested to secure payment of any unpaid portion of the purchase price or performance of any term of any contract or contracts required by Section V(A) herein. If Revco should reacquire any Assets pursuant to this Section VII within two years, it shall notify the plaintiff within 10 days and thereafter, in consultation with the plaintiff, use its best efforts to resell the Assets as drug stores. Failing such resale, Revco agrees it shall not operate such Assets as drug stores and shall be relieved of any requirement to further divest such Assets.

VIII.

Revco is ordered and directed to file with the plaintiff at the offices of the Antitrust Division in Dallas, Texas within one month after the effective date of this Final Judgment, and every month thereafter, a written report setting forth the steps taken by it to accomplish the divestiture required by this Final Judgment. Such report shall include, but not be limited to, an identification of any person or persons to whom the Assets have been offered, the terms and conditions of each offer to sell, the identification of any person or persons expressing interest in acquiring the Assets, and the terms and conditions of each offer to purchase. Such reports shall be treated as confidential by the plaintiff.

IX.

Until the divestiture of the Assets, Revco is ordered and directed to maintain the Assets listed in Appendix A as going businesses. Revco shall provide such financial, business, promotion and management assistance as necessary to maintain the Assets as going businesses.

X.

(A) For the purpose of determining or securing compliance with this Final Judgment duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and upon reasonable notice to Revco made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access, during office hours of Revco 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

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

(B) Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, made to its principal office, Revco shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as from time to time may be requested.

(C) No information or documents obtained by the means provided in this Section X 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 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.

XI.

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 thereof, for enforcement or compliance therewith and for punishment of violations thereof.

XII.

Entry of this Final Judgment is in the public interest.

Judge Barefoot Sanders

United States District Judge

Dated: June 2, 1981

APPENDIX A

1. In the Dallas-Fort Worth area the Assets to be divested shall consist of the following:

(a) Each drug store listed below:

Skillern's Store 6003
2703 South Lancaster
Dallas, Texas 75216

Skillern's Store 6007
4900 Ross Avenue
Dallas, Texas 75206

Skillern's Store 6029
326 East Main
Grand Prairie, Texas 75050

Skillern's Store 6056
1343 Camp Wisdom
Dallas, Texas 75237

Skillern's Store 6072
3065 Josey Lane
Carrollton, Texas 75006

Skillern's Store 6084
7602 Campbell Road
Dallas, Texas 75248

Revco Store 267
3401 Mansfield Highway
Fort Worth, Texas 76119

Revco Store 295
8433 Lake June Road
Dallas, Texas 75217

(b) One drug store from each of the following groups of drug stores:

(1) Skillern's Store 6020
975 Irving Boulevard
Irving, Texas 75060

Skillern's Store 6140
3624 N. Belt Line
Irving, Texas 75062

Revco Store 296
1019 W. Rochelle
(Pandy Town Shopping Center)
Irving, Texas 75062

(2) Skillern's Store 6039
1511 New York Avenue
Arlington, Texas 76010

Revco Store 271
1600 E. Abrams Street
Arlington, Texas 76010

- (3) Skillern's Store 6139
2424 South Collins
Arlington, Texas 76014
- Revco Store 273
2212 New York Avenue
Arlington, Texas 76010
- (4) Skillern's Store 6089
724 East Pipeline Road
Hurst, Texas 76053
- Skillern's Store 6129
510 I Harwood Village
Bedford, Texas 76021
- Revco Store 270
1307 Brown Trail
Bedford, Texas 76021
- (5) Skillern's Store 6049
2737 West Park Row
Arlington, Texas 76010
- Revco Store 265
1530 Bowen Road
Pantego, Texas 76013
- (6) Skillern's Store 6034
4701 East Lancaster
Fort Worth, Texas 76103
- Revco Store 280
1111 Oakland Boulevard
Fort Worth, Texas 76103
- (7) Skillern's Store 6006
3177 Denton Highway
Haltom City, Texas 76117
- Revco Store 263
4100 Denton Highway
Haltom City, Texas 76117
- (8) Skillern's Store 6027
4401 River Oaks Boulevard
Fort Worth, Texas 76114
- Revco Store 298
2254 Jacksboro Highway
Fort Worth, Texas 76114
- (9) Skillern's Store 6009
504 West Rosedale
Fort Worth, Texas 76104
- Revco Store 268
1729 Eighth Avenue
Fort Worth, Texas 76110
- (10) Skillern's Store 6078
2720 West Seminary Drive
Fort Worth, Texas 76133
- Revco Store 264
5205 McCart
Fort Worth, Texas 76115

- (11) Skillern's Store 6060
3001 Walton
Fort Worth, Texas 76133
- Revco Store 285
3838 Alta Mesa Boulevard
Fort Worth, Texas 76133
- (12) Skillern's Store 6008
4808 Camp Bowie Boulevard
Fort Worth, Texas 76107
- Revco Store 269
4601 Camp Bowie Boulevard
Fort Worth, Texas 76107
- (13) Skillern's Store 6066
8133 Highway 80 West
Fort Worth, Texas 76116
- Revco Store 2816
Las Vegas Trail
Fort Worth, Texas 76116
- (14) Skillern's Store 6127
319 South Cedar Ridge
Duncanville, Texas 75116
- Revco Store 282
267 West Camp Wisdom Road
Redbird Village Shopping Center
Duncanville, Texas 75116
- (15) Skillern's Store 6050
1806 Avenue K
Plano, Texas 75074
- Skillern's Store 6097
2109 Parker Road #100
Plano, Texas 75074
- Skillern's Store 6109
3045 West 15th
Plano, Texas 75074
- Revco Store 4102
907 W. Parker Road
Plano, Texas 75023
- (16) Revco Store 242
5006 N. Jupiter Road
Garland, Texas 75042
- Revco Store 2815
1332 S. Plano Road
Richardson, Texas 75081
- (17) Skillern's Store 6024
Saturn/Northwest Highway
Garland, Texas 75041
- Skillern's Store 6030
408 Casa Linda Plaza
Dallas, Texas 75218
- Skillern's Store 6092
3106 N. Buchner
Dallas, Texas 75228
- Revco Store 291
4402 Gus Thomass Road
Oates Park Shopping Center
Mesquite, Texas 75150

2. In the El Paso area, the Assets to be divested shall consist of one of the following:

(a) One drug store from each of the following groups of drug stores to a drug store chain (four or more stores) competitor presently in the El Paso area, other than the leading competitor in that area:

(1) Skillern's Store 6474
3333-B North Yarborough
El Paso, Texas 79925

Revco Store 690
10780 North Pebble Hills Blvd.
El Paso, Texas 79935

(2) Skillern's Store 6456
5579 Alameda (Fox Plaza)
El Paso, Texas 79905

Revco Store 671
5516 Alameda
El Paso, Texas 79905

(b) One from each of the above groups of drug stores and two other drug stores located in the El Paso area to a new entrant into that area.

3. In the Tyler area, the Assets to be divested shall consist of one of the following:

(a) One drug store from the following group of drug stores to a drug store competitor presently in the Tyler area other than the two leading competitors in that area:

Skillern's Store 6098
813 North Broadway
Tyler, Texas 75701

Revco Store 289
1103 East Gentry
Tyler, Texas 75702

(b) One drug store from the above group and one other drug store located in the Tyler area to a new entrant into that area.