

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
Antitrust Division
Department of Justice
Washington, D.C. 20530
202/633-2477

Plaintiff,

v.

THE STROH BREWERY COMPANY
One Joseph Campau
Detroit, Michigan 48226

Defendant.

PRATT

CIVIL ACTION NO.

82- 1059

FILED:

APR 16 1982

COMPLAINT FOR INJUNCTIVE RELIEF (ANTITRUST)

I

DEFINITIONS

1. As used herein, "beer" refers to any fermented malt beverage containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute for malt. Beer includes lager beer, dark beer, bock beer, malt liquor and ale.

2. As used herein, "the Southeast Market" refers to the states of Florida, Georgia, Kentucky, Maryland, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the District of Columbia.

3. As used herein, "Schlitz" refers to The Jos. Schlitz Brewing Company. Schlitz is a corporation organized and existing under the laws of the state of Wisconsin, with its corporate headquarters in Milwaukee, Wisconsin.

II

JURISDICTION AND VENUE

4. This complaint is filed and this action is instituted against the defendant under Section 15 of the Act of Congress of October 15, 1914 (15 U.S.C. § 25), as amended,

commonly known as the Clayton Act, in order to prevent and restrain the violation by the defendant, as hereinafter alleged, of Section 7 of the Clayton Act (15 U.S.C. § 18), as amended.

5. The Stroh Brewery Company ("Stroh") transacts business and is found within the District of Columbia.

III

DEFENDANT

6. Stroh is made a defendant herein. Stroh is a corporation organized and existing under the laws of the State of Arizona, with its principal corporate office in Detroit, Michigan. For purposes of this complaint, Stroh includes the F & M Schaefer Brewing Company.

IV

TRADE AND COMMERCE

7. In 1980 more than 97 percent of the approximately 176.4 million barrels of beer shipped in the United States was produced domestically. In 1981 total domestic sales of beer, including imports and excluding exports, are estimated to have been 183.0 million barrels.

8. There is a growing trend toward concentration in the beer industry in the United States. In 1960 the four largest brewing companies had a combined national market share of approximately 27 percent. By 1970 the top four firms accounted for approximately 45 percent of total industry shipments. In 1980 the industry was highly concentrated. The combined national market share of the four leading brewing companies had grown to approximately 66 percent; the two largest companies alone accounted for approximately 50 percent of national sales. In 1981 industry concentration increased even further. The combined national market share of the four largest companies was approximately 67 percent, with the two largest companies alone accounting for approximately 50 percent of the nation's sales.

9. Stroh is engaged primarily in the business of producing and selling beer in the United States under a variety of brand names. Stroh owns and operates breweries situated in Detroit, Michigan and Allentown, Pennsylvania.

10. Schlitz is engaged primarily in the business of producing and selling beer in the United States under a variety of brand names. Schlitz owns and operates breweries situated in Los Angeles, California; Tampa, Florida; Winston-Salem, North Carolina; Longview, Texas; and Memphis, Tennessee.

11. Stroh competes with Schlitz in the sale of beer in the United States. In 1981 Stroh was the nation's seventh largest brewing company, with sales of approximately 9.1 million barrels (including approximately 925,000 barrels shipped to Puerto Rico) and a national market share of approximately 5 percent; Schlitz was the nation's third largest brewing company, with sales of approximately 14.3 million barrels and a national market share of approximately 7.8 percent. In 1980 Stroh was the nation's seventh largest brewing company, with sales of approximately 9.7 million barrels (including approximately one million barrels shipped to Puerto Rico) and a national market share of approximately 5.5 percent; Schlitz was the nation's fourth largest brewing company, with sales of approximately 14.9 million barrels and a national market share of approximately 8.5 percent.

12. In 1980 a total of approximately 31.4 million barrels of beer were sold in the Southeast Market.

13. The Southeast Market is highly concentrated. In 1980 the six largest brewing companies accounted for approximately 97 percent of total shipments. The two leading brewing companies had a combined market share of approximately 63 percent.

14. Stroh competes with Schlitz throughout the Southeast Market. In 1980 Stroh was the fifth largest brewing company in the Southeast Market with sales of approximately 2.2

million barrels which accounted for approximately 6.9 percent of total beer sales in that market. In 1980 Schlitz was the third largest brewing company in the Southeast Market with sales of approximately 4.2 million barrels of beer which accounted for approximately 13.4 percent of total beer sales in that market.

15. In 1980 Stroh and Schlitz, if combined into a single entity, would have been the third largest brewing company in the Southeast Market with shipments of 6.4 million barrels and a market share of 20.3 percent. Such a combination would have increased total seller concentration in the market, as measured by the Herfindahl Index, by 186 points from 2345 to 2531; the industry four-firm concentration ratio of sellers in this market would have increased by 6.9 percent from 85.2 percent to 92.1 percent.

16. Substantial quantities of beer produced by Stroh are regularly sold and shipped in interstate commerce.

17. Substantial quantities of beer produced by Schlitz are regularly sold and shipped in interstate commerce.

18. In 1980 the total dollar volume of beer sales was approximately \$9.2 billion in the United States and approximately \$1.6 billion in the Southeast Market.

V

VIOLATION ALLEGED

19. On or about March 29, 1982, Stroh announced a cash tender offer for 67 percent of the common stock of Schlitz. On or about April 15, 1982, Stroh and Schlitz announced that they had entered into an Agreement of Merger. If the merger is consummated Schlitz will become a wholly-owned subsidiary of Stroh.

20. The effect of the proposed acquisition of Schlitz by Stroh may be substantially to lessen competition in the production and sale of beer in the Southeast Market in violation of Section 7 of the Clayton Act, in the following ways, among others:

(a) Actual and potential competition between Stroh and Schlitz in the production and sale of beer will be eliminated;

(b) Concentration in the production and sale of beer will be substantially increased; and

(c) Competition generally in the production and sale of beer may be substantially lessened.

VI

PRAYER FOR RELIEF

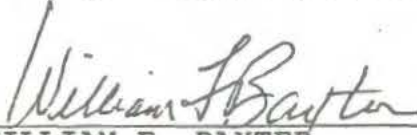
WHEREFORE, plaintiff prays that this Court:

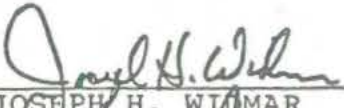
1. Adjudge and decree that the proposed acquisition of Schlitz by Stroh is in violation of Section 7 of the Clayton Act.

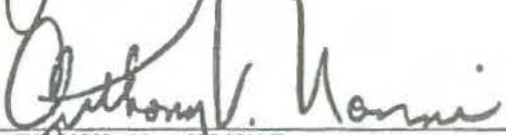
2. Issue an order requiring Stroh to divest appropriate assets, including either the Schlitz brewery located in Winston-Salem, North Carolina or the Schlitz brewery located in Memphis, Tennessee.

3. Grant such other, further and different relief as this Court may deem just and proper.

4. Award plaintiff its costs of suit.


WILLIAM F. BAXTER
Assistant Attorney General


JOSEPH H. WIDMAR


ANTHONY V. JANNI

Attorneys, Department
of Justice


L. JOHN SCHMOLL


MICHAEL H. BYOWITZ

Attorneys, Department
of Justice

Room 3244, Main Justice
Building
Washington, D.C. 20530
202/633-2477

UNITED STATES ATTORNEY