

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Culbro Corp., Havatampa Corp., Havatampa Holding Co., and HAV Corp., U.S. District Court, S.D. New York, 1978-2 Trade Cases ¶62,274, (Jul. 7, 1978)**

[Click to open document in a browser](#)

United States v. Culbro Corp., Havatampa Corp., Havatampa Holding Co., and HAV Corp.

1978-2 Trade Cases ¶62,274. U.S. District Court, S.D. New York, Civil Action No. 77 Civ. 3149 (EW), Entered July 7, 1978, (Competitive impact statement and other matters filed with settlement: 43 *Federal Register* 14157, 28568).

Case No. 2595, Antitrust Division, Department of Justice.

### **Clayton Act**

**Acquisitions and Mergers: Relief: Cigar Manufacturers and Wholesalers: Divestiture: Purchase Guarantee: Purchase Restriction: Further Acquisition Restriction: Consent Decree.**— Two cigar manufacturers and wholesalers involved in charges of violating Sec. 7 through a loan by one to the other and a grant of a 25% stock option agreed to a consent order requiring one of them to divest its manufacturing business, guarantee purchases from the new business, and restrict purchases from the other firm. Further stock or assets acquisition by one from the other was restricted for five years.

**For plaintiff:** John H. Shenefield, Asst. Atty. Gen., William E. Swope, Charles F. B. McAleer, Gerald A. Connell, Alan L. Marx, Steven C. Douse, Henry J. Van Wageningen, Attys., Dept. of Justice. **For defendants:** John J. Kirby, Jr., for Culbro Corp.; Richard T. Colman, for Havatampa Corp., Havatampa Holding Co., and HAV Corp.

### **Final Judgment**

Weinfeld, D. J.: Plaintiff, United States of America, having filed its complaint herein on June 28, 1977, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment, and without this Final Judgment constituting any evidence against or admission by any party with respect to any issue of fact or law herein,

It Is Hereby Ordered, Adjudged and Decreed as follows:

#### **I**

##### **[ Jurisdiction]**

This Court has jurisdiction of the subject matter of this action and the parties 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**

##### **[ Definitions]**

As used in this Final Judgment:

- (A) "Havatampa" means Havatampa Holding Company, Havatampa Corporation, formerly known as HAV Corporation, and their successors;
- (B) "Culbro" means Culbro Corporation;
- (C) "Cigar" means a roll of tobacco wrapped in tobacco weighing more than three pounds per thousand;

(D) "Culbro cigars" means those brands of cigars manufactured by or for Culbro;

(E) "Havatampa cigars" means those brands of cigars manufactured by or for Havatampa Corporation.

### III

#### [ *Applicability* ]

The provisions of this Final Judgment applicable to defendants shall apply to each of their directors, officers, employees, agents, subsidiaries, affiliates, 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.

### IV

#### [ *Divestiture* ]

Havatampa is ordered and directed to divest within eighteen months of the date of entry of this Final Judgment all of its interest in the cigar manufacturing business of Havatampa.

(A) Havatampa shall sell as a going business all of the assets that were devoted to the manufacture of cigars on or after July 30, 1977, to a buyer who intends to operate the divested assets as a going business; provided, however, that Havatampa may sell less than all such assets with the consent of the plaintiff, which shall not be unreasonably withheld, if the buyer so specifies, after having been given the opportunity to purchase all of the assets involved.

(B) Havatampa shall sell or grant to the buyer a license to use all brand names and trademarks that have been utilized by Havatampa in its cigar manufacturing business on or after July 30, 1977.

(C) Havatampa shall guarantee to the buyer that it will continue to purchase cigars bearing the brand names and trademarks referred to in subsection (B) above from the buyer for a period of two years from the date of completion of the divestiture at a level equivalent to the total dollar amount of the purchases of Havatampa cigars during the fiscal year 1977 by the distribution houses owned by Havatampa, if such cigars are made available to it at prices no less favorable than those offered to the trade generally.

(D) Divestiture shall not be made to a buyer whose acquisition of the assets being sold would violate [Section 7 of the Clayton Act](#), 15 U. S. C. §18.

### V

#### [ *Ban on Manufacturing* ]

In the event that the cigar manufacturing business of Havatampa is divested pursuant to Section IV and Culbro continues to hold a debt or equity interest in Havatampa, Havatampa shall be enjoined from manufacturing cigars until twenty years after the date of entry of this Final Judgment.

### VI

#### [ *Efforts to Sell* ]

(A) Havatampa is ordered and directed to compile a record of its efforts to dispose of its manufacturing business, including identification of any person or persons to whom the property is or has been offered, the terms and conditions of each offer to sell, the identification of any person or persons expressing interest in acquiring the business, and the terms and conditions of each offer to purchase.

(B) Havatampa shall promptly report the complete details of any proposed plan of divestiture to the plaintiff and shall simultaneously provide plaintiff with a copy of the record provided for in subsection (A).

(C) Following the receipt of any plan of divestiture, plaintiff shall have 30 days in which to object to the proposed divestiture by written notice to Havatampa, unless within 10 days plaintiff requests additional information

regarding the proposed divestiture, in which case plaintiff shall have 30 days following the receipt of the information requested to object. If plaintiff does not object to the proposed divestiture, it may be consummated. If plaintiff does object, the proposed divestiture shall not be consummated until Havatampa obtains the Court's approval of the proposed plan of divestiture or until plaintiff withdraws its objection.

(D) If plaintiff objects to the proposed divestiture, the running of the time period set forth in Section IV for the divestiture of the cigar manufacturing business of Havatampa shall be suspended from the date of the objection until the plaintiff withdraws its objection or the Court approves or rejects the proposed plan of divestiture.

## **VII**

### **[ Sale of Interest]**

If at the end of eighteen months from the date of entry of this Final Judgment the divestiture required by Section IV has not been accomplished, Culbro shall sell its debt and equity interest in Havatampa within 120 days.

## **VIII**

### **[ Hold Separate Order]**

The Hold Separate Order entered in this case on July 28, 1977, shall remain in effect until divestiture has been completed or, if divestiture is not completed within the eighteen months specified in Section IV, until Culbro sells its interest in Havatampa as required in Section VII; provided, however, that Culbro may assist Havatampa in effecting the divestiture by furnishing advice with respect to Havatampa's tobacco inventories, machinery, equipment and manufacturing technologies.

## **IX**

### **[ Restrictions on Purchases]**

(A) For a period of twenty years from the date of entry of this Final Judgment Havatampa shall not purchase Culbro cigars except as provided below:

(1) In any calendar year Havatampa may purchase Culbro cigars having a dollar value not to exceed 12.9 percent of the dollar amount of Havatampa's total purchases of cigars from all sources in the preceding calendar year, or \$2,790,327, whichever is greater.

(2) Culbro shall not sell to Havatampa, or to retailers through the efforts of Havatampa, Culbro cigars in excess of the dollar amount that Havatampa is permitted to purchase under the terms of subsection (1):

(3) Culbro cigars sold through the efforts of Havatampa shall be counted against the annual maximum dollar amount of permissible purchases of Culbro cigars by Havatampa as specified in subsection (1) to the same extent as if the sales had been made to Havatampa.

(4) For purposes of this Section, acquisitions of cigars by Havatampa from any source, whether for cash or in exchange for cigars or other products, shall be deemed to be purchases, and the cigars obtained by exchange shall be deemed to be purchased for a dollar amount equal to the dollar cost to Havatampa for the cigars or other products given up by Havatampa in such an exchange.

(B) The provisions of this Section shall no longer apply if Culbro sells its debt and equity interest in Havatampa.

## **X**

### **[ Record of Purchases]**

(A) Havatampa is ordered and directed within thirty days of the date of entry of this Final Judgment, and thereafter between February 1 and February 28 of each year for a period of twenty years from the date of entry of this final judgment, to compile a table showing the total dollar amount of Havatampa's purchases of cigars, identified by manufacturer, during the preceding year. The table shall also show the total dollar amount of Culbro

cigars sold through Havatampa's efforts, other than Culbro cigars purchased by Havatampa. A copy of the table shall be furnished to plaintiff by March 15 of each year.

(B) The provisions of this Section shall no longer apply if Culbro sells its debt and equity interest in Havatampa.

## XI

### **[ Restrictions on Ownership]**

For a period of five years from the date of entry of this Final Judgment Havatampa shall not transfer to Culbro, and Culbro shall not acquire, any stock interest in Havatampa beyond the twenty-five percent stock interest in Havatampa Holding Company provided for in the option previously granted to Culbro or any assets of Havatampa other than assets acquired in the ordinary course of business.

## XII

### **[ Inspections]**

(A) For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, 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 at its principal office, be permitted:

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

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

(B) A defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

(C) No information obtained by the means provided in this Section 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 government, 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. If at the time information or documents are furnished by a defendant to plaintiff, the 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 said 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 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which that defendant is not a party.

## XIII

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, implementation or modification of any of the provisions thereof, for the enforcement of compliance therewith, and the punishment of violations thereof.

## XIV

Entry of this Final Judgment is in the public interest.