

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN BARTH, INC.;
JOHN I. HAAS, INC.;
LUPOFRESH, INC.;
S. S. STEINER, INC.; and
VON HORST COMPANY - YAKIMA,

Defendants.

C-84-505-JLQ

FINAL JUDGMENT

Filed: March 4, 1985

Entered: August 5, 1985

Plaintiff, the United States of America, having filed its Complaint herein on July 23, 1984, and plaintiff and defendants, by their respective attorneys, having each 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 against or admission by any party with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties, 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 hereto. The Complaint states a claim upon which relief may be granted against each defendant under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

As used in this Final Judgment:

(A) "Person" means any individual, corporation, partnership, firm, association, or other business or legal entity;

(B) "Hops" means the agricultural product derived from the hop plant, the end use of which is almost exclusively for flavoring and aroma in beer, ale, and similar alcoholic beverages;

(C) "Hop products" means any product including, but not limited to, pellets, extract, or powder, made from hops and used for or in the production of beer, ale, or similar alcoholic beverages;

(D) "Hop services" means the pelletization and extraction of hops and the storage of both hops and hop products;

(E) "Hop merchant," also known as hop dealer or handler, means any person who purchases hops and subsequently sells hops, hop products, or hop services to any person for utilization in the production of beer, ale, or similar alcoholic beverages; and

(F) "United States brewer" means any person located in the United States who is engaged in the production of beer, ale, or similar alcoholic beverages.

III

This Final Judgment applies to defendants, their successors and assigns, and to their respective subsidiaries, 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

Each defendant is enjoined and restrained from directly or indirectly:

(A) Entering into, carrying out, initiating, maintaining, furthering, adopting, ratifying, or continuing any agreement, arrangement, understanding, combination, conspiracy, or concert of action with any other hop merchant which has the purpose or effect of fixing, maintaining, or establishing any price, price range, or other term or condition for the sale of hops, hop products, or hop services to any United States brewer;

(B) Communicating with any other hop merchant or group of hop merchants to exchange information or opinions concerning:

- (i) current or future prices for the sale of hops, hop products, or hop services to any United States brewer, (ii) current or future price offers or counteroffers received or made, or to be made, or under consideration, for the sale of hops, hop products, or hop services to any United States brewer, (iii) strategy, timing, or conduct of negotiations for the current or future sale of hops, hop products, or hop services to any United States brewer, or (iv) the quantity of hops or hop products, or the amount or extent of hop services, being offered or sold or to be offered or sold to any United States brewer; and

(C) Attending or participating in any meeting or discussion with any other hop merchant or group of hop merchants during

which such defendant knows or has been advised that any hop merchant will discuss any subject listed in paragraph IV(A) or IV(B) hereof.

V

Except to the extent undertaken for the purpose of circumventing the prohibitions of Section IV hereof, nothing contained in this Final Judgment shall prohibit:

(A) Any necessary communication or negotiation between a hop merchant and any other person in connection with a contemplated or actual bona fide sale of hops, hop products, or hop services between such persons;

(B) Transactions or communications between a defendant and its parent or subsidiary, or any other person the ownership of whom is at least fifty (50) percent in common with the ownership of that defendant, or between the officers, directors, agents, or employees thereof;

(C) Joint activity requested by a United States brewer regarding sales to that brewer, or joint ventures for purposes of storing, processing, including pelletization and/or extraction, or shipping hops or hop products, and such transactions or communications as are necessary to the bona fide operation, management, or business thereof;

(D) Any negotiations or communications between a defendant and any other person concerning growing processes, the definition of grading and quality standards, on-site inspection, environmental matters, manufacturing processes, shipping, packaging, or any technical matters relating thereto;

(E) Communication of information concerning executed

contracts for the sale of hops, hop products, or hop services by a defendant, but a defendant may communicate such information only to the extent it has already been publicly disseminated by other than that defendant through regularly published newspapers, trade journals, trade periodicals, or government publications;

(F) Participation in any meeting called by or held under the auspices of the United States Department of Agriculture, the Hops Administrative Committee, or the Hops Advisory Board at which participants discuss information as required or made necessary by the Hops Marketing Order, or participation in any meeting called by or held under the auspices of any state, state agency or federal agency, provided that such meetings do not include discussions prohibited in paragraph IV(B) (1), (11), or (111) hereof; or

(G) Provision by a defendant, in good faith, to the government of the United States or the government of any state or to any agency of either, of any information concerning the sale of hops, hop products, or hop services, provided that such information is not divulged to any other hop merchant by that defendant.

VI

For a period of ten years from the date of entry of this Final Judgment, each defendant is ordered to file annually with plaintiff an affidavit, prepared without direct or indirect communication with any other defendant, identifying, separately, each meeting that defendant attended with any other hop merchant or group of hop merchants during which any subject listed in paragraph IV(A) or IV(B) was discussed. Such affidavit shall

contain a detailed account of all discussions at such meetings relating to the sale of hops, hop products, or hop services, the date of such meetings, and, to the extent known, the name, address, and company affiliation of each person in attendance. If the defendant attended no such meetings, the affidavit shall so state. Nothing in this Section VI shall require reports of discussions permitted by Section V hereof.

VII

Unless otherwise provided, each defendant is ordered and directed to:

(A) Within thirty (30) days after the date of entry of this Final Judgment, furnish a copy of this Final Judgment to its president or chief executive officer, and to each of its officers, directors, agents and employees then responsible, in whole or in part, for making pricing decisions for the sale of hops, hop products, or hop services to any United States brewer;

(B) Furnish a copy of this Final Judgment to each successor to those persons described in paragraph VII(A) hereof, within thirty (30) days after such successor assumes responsibility for pricing decisions for the sale of hops, hop products, or hop services; and

(C) File with this Court and serve upon the plaintiff, within sixty (60) days from the date of entry of this Final Judgment, a statement as to the fact and manner of its compliance with paragraphs VII(A), (B) and (C) hereof and the measures it has taken to assure compliance with paragraph VII(B) hereof.

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VIII

Each defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of the total assets of its business of selling hops, hop products, or hop services to U.S. brewers, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court and serve on the plaintiff its consent to be bound by this Final Judgment.

IX

(A) For the purpose of determining or securing compliance with this Final Judgment:

(1) Upon receipt of a written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, each defendant shall, within sixty (60) days after receiving the request, subject to any legally recognized privilege:

(a) Provide to the Department of Justice in Washington, D.C., copies of any books, ledgers, accounts, correspondence, memoranda, and other documents or records in the possession or under the control of such defendant relating to any subjects covered by this Final Judgment;

(b) Submit written reports, under oath if requested, with respect to its compliance with this Final Judgment as may, from time to time, be requested; and

(c) Permit any duly authorized representative of the Department of Justice, subject to the reasonable convenience of each defendant and without restraint or interference from it, to interview officers, employees, and agents of such defendant, who

may have counsel present, regarding any subject covered by this Final Judgment. This paragraph shall not require international travel by the person to be interviewed. Such request and notice may be made by delivery to the person appointed pursuant to Section XI of this Final Judgment to receive service of process on behalf of each defendant.

(B) No information or documents obtained by the means provided in this Section IX 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. The defendant from whom such documents or information was obtained shall be given twenty (20) days written notice prior to the disclosure of such documents or information in any legal proceeding (other than a Grand Jury proceeding) to which such defendant is not a party, or pursuant to a request under the Freedom of Information Act.

X

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 orders or directions as may be necessary or appropriate for the construction or implementation of this Final Judgment, for the modification of any of its provisions, for the enforcement of its terms, and for punishment for violations of its terms.

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XI

Each defendant shall appoint a person located in the United States as its agent for service of process in connection with any proceedings relating to the construction, implementation, modification, enforcement, or punishment for any violation of this Final Judgment. Each defendant shall maintain such agent for the effective period of this Final Judgment and, within ten (10) days from the date of entry of this Final Judgment, shall file with this Court and serve on plaintiff a statement identifying such agent. In the event a successor agent is appointed, defendant shall immediately file with this Court and serve on plaintiff a statement identifying the successor agent.

XII

The Final Judgment shall expire ten (10) years from its date of entry.

XIII

Entry of this Final Judgment is in the public interest.

It is So Ordered.

DATED this 5th day of August, 1985.

/s/ Judge Justin L. Quackenbush
United States District Judge