

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 59-C 215
)	
PABST BREWING COMPANY,)	Filed: October 1, 1959
SCHENLEY INDUSTRIES, INC.,)	
THE VAL CORPORATION,)	
)	
Defendants.)	

C O M P L A I N T

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this Civil Action to obtain equitable relief against the above-named defendants, and complains and alleges as follows:

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the defendants under Section 15 of the Act of Congress of October 15, 1914, c. 323, 38 Stat. 736, as amended, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," commonly known as the Clayton Act, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of section 7 of said Act.

2. The defendant Pabst Brewing Company transacts business and is found within the Eastern District of Wisconsin.

DEFENDANTS

3. Pabst Brewing Company (hereinafter referred to as Pabst), is named a defendant herein. Pabst is a corporation organized and existing under the laws of the State of Delaware, with its principal office in Chicago, Illinois.

4. Schenley Industries, Inc. (hereinafter referred to as Schenley), is named a defendant herein. Schenley is a corporation organized and

existing under the laws of the State of Delaware, with its principal office in New York City, New York.

5. Val Corporation (hereinafter referred to as Val) is named a defendant herein. Val is a corporation organized and existing under the laws of the State of Wisconsin, with its principal office in Madison, Wisconsin.

6. Subsequent to the acquisition, hereinafter described in paragraph 19, by Pabst of the assets and business of the Blatz Brewing Company (hereinafter referred to as Blatz), Blatz, a wholly-owned subsidiary of Schenley, amended its corporate charter to change its name to The Val Corporation. At the same time, a wholly-owned Pabst subsidiary, the Pabst Sales Corporation, amended its corporate charter, changing its name to the Blatz Brewing Company, and was thereafter, on February 27, 1959, merged into Pabst.

TRADE AND COMMERCE

7. The production of beer on a commercial scale was re-instituted in the United States on December 5, 1933, following the adoption of the twenty-first amendment to the Constitution. In the fiscal year ending June 30, 1935, there were 750 breweries operating in the United States producing 42,782,378 barrels of beer. Through merger, consolidation and natural attrition, this number has decreased so that by June 30, 1958, there were 252 breweries producing 84,790,791 barrels of beer annually. By 1957 the 25 largest companies engaged in the brewing of beer in the United States accounted for approximately 69 percent of total national sales of beer.

8. Pabst owns and operates breweries located in Milwaukee, Wisconsin, Peoria Heights, Illinois, Newark, New Jersey, and Los Angeles, California. Beer produced by Pabst in these breweries was in 1957 sold under the brand names, "Pabst Blue Ribbon Beer and Ale", "Pabst Old Tankard Ale" and "Andeker Beer" in 48 States and in the District of Columbia, and under the brand names "Eastside Beer",

"Eastside Old Tap Lager", and "Old Mission Beer" in six Western States. Pabst in the course of its business has been and is now selling beer in a continuous flow in interstate commerce.

9. Prior to the acquisition hereinafter alleged, Blatz owned and operated a brewery located in Milwaukee, Wisconsin. In 1957 beer produced by Blatz in this brewery was sold, principally under the brand name "Blatz Pilsner", in 38 States and in the District of Columbia. Blatz in the course of its business sold beer in a continuous flow in interstate commerce.

10. In general, beer is distributed to retail outlets by local wholesalers who purchase the beer from brewing companies. Prior to the acquisition hereinafter described in paragraph 9, in many areas beer brewed by Pabst and beer brewed by Blatz were distributed by different wholesalers. Some wholesalers who distributed beer brewed by Pabst and some wholesalers who distributed beer brewed by Blatz also distributed other brands of beer.

11. Pabst in 1957 sold a total of approximately 2,593,223 barrels of beer and was the 9th largest seller of beer in the United States. In 1957 Blatz sold a total of approximately 1,271,378 barrels of beer and ranked 18th in volume of sales among United States brewers. The combined 1957 sales of both Pabst and Blatz were exceeded by only four other brewers in the United States.

12. Prior to the acquisition hereinafter alleged, beer produced by Pabst under the brand names listed in paragraph 8 above was sold in competition with beer produced by Blatz under the brand name "Blatz Pilsner" in each of the sections of the country in which both Pabst and Blatz brands were sold. These brands were also sold in competition with the brands of beer produced by other brewers which were sold in these areas.

13. In 1957, 735,973 barrels of "Pabst Blue Ribbon Beer and Ale", "Pabst Old Tankard Ale" and "Andeker Beer", approximately 33% of the total sales of these brands, were sold within a three state area encompassing the States of Illinois, Michigan and Wisconsin, and 341,779 barrels, or approximately 15% of total sales of the above named brands were sold in the State of Wisconsin alone. In that year 831,527 barrels of Blatz-brewed beer, approximately 65% of that company's total sales, were sold in such three state area, and 392,722 barrels, or approximately 31% of total sales of beer brewed by Blatz were sold in the State of Wisconsin alone.

14. Total 1957 sales of beer by all brewers in the three state area encompassing Illinois, Michigan and Wisconsin amounted to 14,219,516 barrels. The sales in this area of beer produced by Pabst and Blatz, as set forth in paragraph 13 above, accounted for 5.2% and 5.8% respectively of this total. The combined sales of beer brewed by Pabst and Blatz thus amounted to 11% of said total and were exceeded only by the sales of beer brewed by the Stroh Brewery Company whose 1957 sales accounted for 11.5% of the total.

15. In the year 1957, there were 38 breweries operating within the State of Wisconsin, a greater number than in any other State. Of these breweries only five, including the Pabst and Blatz breweries, produced more than 250,000 barrels of beer, while 30 breweries produced less than 100,000 barrels each.

16. Within the State of Wisconsin, 1957 sales of beer by all brewers amounted to 3,066,690 barrels. The 1957 Wisconsin sales of beer brewed by Pabst and Blatz, as set forth in paragraph 13 above, amounted to 11.1% and 12.8% respectively of this total. The combined sales of beer brewed by Pabst and Blatz thus accounted for 23.9% of total Wisconsin beer sales, compared with 12.1% of the total accounted for by sales of beer brewed by Theo. Hamm Brewing Company, the next largest company in volume of sales within the State.

17. Malt, a primary ingredient in the brewing process, is produced by Pabst for use in its own breweries and for use in the manufacture of other products. Prior to the acquisition hereinafter alleged, Blatz purchased its requirements of malt from outside suppliers. In 1957 Blatz' malt purchases amounted to approximately \$1,957,197.

18. Subsequent to the acquisition hereinafter alleged, Pabst discontinued operation of the former Blatz brewery. Pabst now produces "Blatz Pilsner" in some or all of the breweries which it operated prior to said acquisition.

OFFENSE CHARGED

19. On or about July 30, 1958, Pabst acquired the assets and business of Blatz for \$11,000,000 in cash, \$3,500,000 in debentures, 200,000 shares of the common capital stock of Pabst, and a common stock purchase warrant for an additional 350,000 shares of Pabst's common capital stock. The effect of this acquisition may be substantially to lessen competition or to tend to create a monopoly in the production and sale of beer in the United States and in various sections thereof, including the State of Wisconsin and the three state area encompassing Wisconsin, Illinois and Michigan, in violation of Section 7 of the Clayton Act in the following ways among others:

- (a) Actual and potential competition between Pabst and Blatz in the sale of beer has been eliminated;
- (b) Actual and potential competition generally in the sale of beer may be substantially lessened;
- (c) Blatz has been eliminated as an independent competitive factor in the production and sale of beer;
- (d) The acquisition alleged herein may enhance Pabst's competitive advantage in the production and sale of beer to the detriment of actual and potential competition;
- (e) Industry-wide concentration in the sale of beer will be increased.

20. The offense alleged in this complaint is continuing and will continue unless the relief hereinafter prayed for is granted.

PRAYER

WHEREFORE, Plaintiff prays:

1. That the acquisition by Pabst described in paragraph 19 above of the assets and business of Blatz be adjudged to be in violation of section 7 of the Clayton Act.
2. That under such terms and conditions as this court may prescribe, defendant Pabst be required to divest itself of all business and assets of Blatz.
3. That under such terms and conditions as this court may prescribe, defendants Schenley and Val be required to divest themselves of all Pabst common capital stock which was received for the assets and business of Blatz and that said defendants be enjoined from exercising any rights under the common stock purchase warrant for 350,000 shares of Pabst common capital stock also received for said assets and business of Blatz.
4. That the plaintiff have such other and further relief as this court may deem just and proper in order to restore the assets and business acquired from Blatz by Pabst as an independent competitive factor in the production and sale of beer.
5. That pursuant to section 15 of the Clayton Act an order be made and entered herein requiring defendant Schenley to be brought before the court in this proceeding and directing the Marshal of the Southern District of New York to serve summons upon it.
6. That pursuant to section 15 of the Clayton Act an order be made and entered herein requiring defendant Val to be brought before the court in this proceeding and directing the Marshal of the Western District of Wisconsin to serve summons upon it.

7. That the plaintiff recover the costs of this suit.

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