

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
) Civil Action No. 3523
 v.)
) Filed: July 13, 1965
 FALSTAFF BREWING CORPORATION and)
 NARRAGANSETT BREWING COMPANY,)
)
 Defendants.)

COMPLAINT

The United States of America, 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 defendants, and complains and alleges as follows:

I

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, as amended, (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain the violation, as hereinafter alleged, of Section 7 of said Act, (15 U.S.C. § 18).

2. Narragansett Brewing Company has an office, transacts business and is found within the District of Rhode Island.

II

DEFENDANTS

3. Falstaff Brewing Corporation (hereinafter referred to as Falstaff) is named a defendant herein. Falstaff is a corporation organized and existing under the laws of the State of Delaware, with

its principal office located in St. Louis, Missouri.

4. Narragansett Brewing Company (hereinafter referred to as Narragansett) is named a defendant herein. Narragansett is a corporation organized and existing under the laws of the State of Rhode Island, with its principal office located in Cranston, Rhode Island.

III

TRADE AND COMMERCE

5. The production of beer on a commercial scale was reinstated 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, the number of breweries has decreased so that by June 30, 1964 there were 204 breweries producing 103,017,915 barrels of beer annually. The share of beer sold by the top ten brewing firms in the United States has increased from 39.2 per cent of the market in 1951 to 56.8 per cent in 1963, while the share of the top twenty-five firms has increased from 57.5 per cent to 82.2 per cent.

6. Defendant Falstaff is the fourth largest brewing company in the nation in the terms of barrels sold. In 1964 Falstaff produced and sold 5,819,659 barrels of beer which accounted for approximately 5.90 per cent of all beer sales in the United States. In 1964 Falstaff had sales of \$139,464,822 and net earnings of \$7,035,631. Its 1964 assets were \$31,077,708. Falstaff currently produces but one brand of beer and that is sold under the trade name "Falstaff". It produces its beer in eight breweries which are located at Omaha, Nebraska; New Orleans, Louisiana; St. Louis, Missouri (2 breweries); San Jose,

California; Fort Wayne, Indiana; Galveston, Texas; and El Paso, Texas. In the course of its business Falstaff produces beer in said breweries and sells substantial quantities of beer in interstate commerce.

7. Falstaff beer is presently distributed in 32 states and the District of Columbia. Falstaff beer is not currently distributed and sold in the northeast area of the United States.

8. Defendant Falstaff has steadily expanded its production, sales and marketing area through acquisitions of local and regional breweries. Since December 1952 it has acquired the following breweries on the dates indicated:

- (a) Pacific Brewing & Malting Co.
San Jose, California - December 1952
- (b) Berghoff Brewing Co.
Fort Wayne, Indiana - Leased in 1954
and purchased in 1964
- (c) Galveston-Houston Breweries, Inc.
Galveston, Texas - March 1956
- (d) Mitchell Brewing Co.
El Paso, Texas - April 1956
- (e) Griesedieck Bros. Brewing Co.
St. Louis, Missouri - December 1957

In addition, in June 1961 Falstaff acquired malting facilities from Albert Schwill & Company of Chicago, Illinois, and in May 1964 Falstaff acquired malting facilities from Columbia Malting Co. of Chicago, Illinois.

9. Sales figures in the New England market reflect the national concentration in the production of beer. In Massachusetts, for example, five companies account for over 60% of beer sales.

10. Defendant Narragansett is the largest seller of beer in the New England States with sales of 1,264,756 barrels accounting for about 21% of all New England beer sales. It is the twenty-first largest producer and seller of beer in the United States and accounts for approximately 1.29 per cent of all beer sold. The total dollar sales

of defendant Narragansett in 1964 was \$37,431,428 and its net income was \$713,083. Its current assets are valued at \$17,950,365. Narragansett owns and operates a brewery located in Cranston, Rhode Island. Narragansett markets its beer under the trade names "Narragansett", "Croft", "Hanley", "Krueger", "Ambassador" and "Haffenreffer". Defendant Narragansett in the course of its business produces beer in Rhode Island and sells substantial quantities of beer in interstate commerce, principally in the New England States.

11. Falstaff is a likely entrant and a potential competitor in the New England market. Furthermore, Falstaff is the most substantial and probable of the potential entrants into the concentrated New England market.

IV

OFFENSE CHARGED

12. On May 26, 1965, Narragansett and Falstaff executed a contract entitled, "Agreement Pursuant to Plan of Complete Liquidation" under which Falstaff will acquire the assets of Narragansett and Narragansett will be liquidated on, or about July 15, 1965. The agreement provides that Falstaff will pay Narragansett \$17,500,000 cash and \$2,000,000 in Falstaff common stock and will assume the debts and liabilities of Narragansett.

13. By this acquisition a substantial and likely entrant into a concentrated market acquires the leading company in that market. 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 within certain sections thereof, in violation of Section 7 of the Clayton Act, in the following ways, among others:

- (a) Potential competition in the production and sale of beer between Falstaff and Narragansett will be eliminated;
- (b) Potential competition in the production and sale of beer generally may be further substantially lessened;

- (c) Industrywide concentration in the production and sale of beer in the United States will be further increased.

The offense alleged in this complaint will occur unless the relief hereinafter prayed for is granted.

PRAYER

WHEREFORE, plaintiff prays:

1. That the proposed acquisition described in paragraph 12 of this complaint be adjudged a violation of Section 7 of the Clayton Act.
2. That a temporary restraining order and a preliminary injunction issue enjoining the defendants, their officers, directors, agents, employees and all other persons acting on their behalf from taking any further action to consummate the acquisition agreement, or any similar agreement, understanding or plan, and from making any changes directly or indirectly with respect to the common stock or in respect to the corporate structure or properties of defendant Narragansett, pending adjudication of the merits of this complaint.
3. That defendant Falstaff be perpetually enjoined and restrained from acquiring, either directly or indirectly, any stock, assets or other interest in defendant Narragansett.
4. That defendant Narragansett be perpetually enjoined and restrained from transferring any stock, assets or other interest in Narragansett to defendant Falstaff.
5. That pursuant to Section 15 of the Clayton Act an order be made and entered herein requiring defendant Falstaff to be brought before this Court in this proceeding, and directing the Marshal of the Eastern District of Missouri to serve summons upon it.
6. That plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper.

7. That plaintiff recover the costs of this action.

Dated:



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