

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

In the Matter of)
E. & J. Gallo Winery,)
a corporation,)
Dry Creek Corporation,) DECISION AND ORDER
a corporation, and) Docket No. C-
Constellation Brands, Inc.,)
a corporation.)

DECISION

The Federal Trade Commission initiated an investigation of the proposed acquisition by Respondent E. & J. Gallo Winery, a wholly owned subsidiary of Respondent Dry Creek Corporation, of certain assets of Respondent Constellation Brands, Inc. The Commission's Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondents and the Bureau of Competition executed an Agreement Containing Consent Order ("Consent Agreement") containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as

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required by the Commission's Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings:

1. Respondent E. & J. Gallo Winery is a corporation organized in, and doing business under, and by virtue of the laws of, the State of California with its executive offices and principal place of business located at 600 Y25 -1.oMnd tha0]J 26.f[

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- B. “Respondent CBI” means Constellation Brands, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Constellation Brands, Inc., and the respective directors, officers, general partners, employees, agents, representatives, successors, and assigns of each.
- C. “Vie-Del” means VieDel Company, a corporation organized, existing, and doing business under, and by virtue of the laws of, the State of Nevada, with its executive offices and principal place of business located at 11903 S. Chestnut Ave, Fresno, California 93725.
- D. “Precept” means Precept Brands LLC, a limited liability company organized, existing, and doing business under, and by virtue of the laws of, the State of Washington, with its executive offices and principal place of business located at 1910 Fairview Avenue East, Suite 400, Seattle, Washington, 98102.
- E. “Sazerac” means Sazerac Company Inc., a corporation organized, existing, and doing business under, and by virtue of the laws of, the State of Louisiana, with its executive offices and principal place of business located at 101 Magazine Street, Fifth Floor, New Orleans, Louisiana 70130, and Sazerac Investments, LLC, a corporation organized, existing and doing business under, and by virtue of the laws of, the State of Delaware, with its offices and principle place of business located at 101 Magazine Street, Fifth Floor, New Orleans, Louisiana 70130.

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- K. “Business Information” means books, records, data, and information, wherever located and however stored, including documents, written information, graphic materials, and data and information in electronic format. Business Information includes books, records, information, and data relating to sales, marketing, logistics, products and SKUs, pricing, promotions, advertising, personnel, accounting, business strategy, information technology systems, customers, suppliers, vendors, and all other information. For clarity, Business Information includes Respondents’ rights and control over information material provided to any other person.
- L. “Commercial Production” means the ability to produce, market, sell and deliver a Divestiture Product in quantities that meet current customer demand and at a level of quality that meets the requirements for sales during the time prior to the Div2 (th)2 0.004 Tc Tri

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1. Asset Purchase Agreement among Constellation Brands, Inc., Sazerac Investments LLC and Sazerac Company Inc., dated June 24, 2020 and the Trademark License Agreement by and between Sazerac Company Inc. (Licensor) and E. & J. Gallo Winery (Licensee), and all amendments, exhibits, attachments, agreements, and schedules thereto, attached to this Decision and Order as Non-

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Provided however, (i) if a Respondent has a legal obligation to retain original Business Information related to a Divestiture Business Respondent may provide Acquirer with a full, complete copy and provide the Acquirer with access to the original when the Acquirer needs the original for regulatory evidentiary purposes, and (ii) if a document or record contains Business Information related to a Divestiture Business that cannot be separated [(x [65.1aErar)-1(ar)-1 (o)-4mathlins5

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1. Name, job title or position, date of hire, and effective service date;
 2. Specific description of the employee's responsibilities;
 3. The base salary or current wages;
 4. Most recent bonus paid, aggregate annual compensation for Respondent's last fiscal year, and current target or guaranteed bonus, if any;
 5. Written performance reviews for the past three years, if any;
 6. Employment status (i.e., active or on leave or disability; ~~full~~ or parttime);
 7. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 8. At the Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.
- CC. "Excluded Assets" are the assets on the attached ~~Non~~ Public Appendices II (Excluded Brandy Assets), IV (Excluded Concentrate Assets) and VI (Excluded Dessert Wine Assets).
- DD. "Governmental Authorization" means a consent, license, registration, or permit issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement.
- EE. "Intellectual Property" means intellectual property of any kind including patents, patent ap

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- KK. “Sparkling Wine Business” means the development, sourcing for, production, marketing, sale, and distribution of sparkling wine under the “Cook’s” and “J Roget” brands.
- LL. “Transitional Services” means services to transfer the Divestiture Assets and Business to an Acquirer and enable the Acquirer to use the assets and operate the business in a manner at least equivalent to their use and operation by Respondent, including technical assistance, operational assistance, training and providing information about all aspects of the Divestiture Business and the Divestiture Assets, including research and development, quality control, operation, maintenance and repair of facilities and equipment, regulatory compliance, customers, sales, marketing, customer service, purchasing, logistics, supply chain management, finance and accounting, employee benefits, information technology and systems, logistics.

II. Divestiture

IT IS FURTHER ORDERED that:

- A. No later than 10 days after the Acquisition Date, Respondent CBI shall:
1. Divest, absolutely and in good faith, the Divestiture Assets related to the Brandy Business to Sazerac, and the Divestiture Assets related to the Concentrate Business to ViDel, and
 2. Grant a perpetual, non-exclusive, fully paid up, fully transferable, and royalty license to Sazerac for Licensed Intellectual Property related to the Brandy Business, and to ViDel for Licensed Intellectual Property related to the Concentrate Business.
- B. No later than 10 days after the Acquisition Date, Respondent Gallo shall:
1. Divest, absolutely and in good faith, the Divestiture Assets related to the Dessert Wine Business to Precept, and
 2. Grant a perpetual, non-exclusive, fully paid up, fully transferable, and royalty license to Precept for Licensed Intellectual Property related to the Dessert Wine Business.
- C. If a Respondent has divested all or part of the Divestiture Assets related to a Divestiture Business prior to the date this Order becomes final and at the time the Commission determines to make this Order final, the Commission notifies the Respondent that:
1. The Acquirer is not an acceptable purchaser of relevant Divestiture Assets, then the Respondent shall immediately rescind the divestiture to that Acquirer, and shall divest the relevant Divestiture Assets no later than 180 days from the date this Order is issued, absolutely and in good faith, at no minimum price, to one or more persons that receive the prior approval of the Commission; or

IV. Transition Assistance

IT IS FURTHER ORDERED that:

- A. Until Respondents have transferred Business Information included in the Divestiture Assets to the Acquirers, Respondents shall ensure that Business Information is maintained and updated in the ordinary course of business and shall provide and rele Acquirer with access to this Business Information (wherever located and however stored) and to employees who possess Business Information.
- B. At the option of the Acquirer, Respondents shall provide Transitional Services sufficient to efficiently transfer the Divestiture Business and Divestiture Assets to the Acquirer and allow the Acquirer to operate the Divestiture Business and Divestiture Assets in a manner that is in all material respects equivalent to the manner in which Respondents operated them prior to the Acquisition:
 1. As set forth in a Divestiture Agreement, or otherwise reasonably requested by the Acquirer (whether requested before or after the Divestiture Date);
 2. At the price set forth in the Divestiture Agreement, or if no price is set forth, at Direct Cost; and
 3. For a period sufficient to meet the requirements of this Paragraph.
- C. At the option of the Acquirer of the Dessert Wine Assets, Respondent Gallo shall, on terms and conditions and at the price set forth in the relevant Divestiture Agreement, produce and supply Dessert Wine Products, or components thereof, for sale by the Acquirer. Respondent Gallo shall produce and supply Dessert Wine Products, or components thereof, in quantities sufficient to meet the needs of the Acquirer and in a manner that enables the Acquirer to provide customers with Dessert Wine Products of the same quality and on the same schedule as did Respondent Gallo. Unless the Acquirer requests an earlier termination in writing, Respondent Gallo shall not cease supplying products under this Paragraph until the Acquirer begins Commercial Production of the Dessert Wine Products.
- D. At the option of the Acquirer of the Concentrate Assets, Respondent CBI shall, on terms and conditions and at the price set forth in the relevant Divestiture Agreement, produce and supply Concentrate Products, or components thereof, for sale by the Acquirer. Respondent CBI shall produce and supply Concentrate Products, or components thereof, in quantities sufficient to meet the needs of the Acquirer and in a manner that enables the Acquirer to provide customers with Concentrate Products of the same quality and on the same schedule as did Respondent CBI. Unless the Acquirer requests an earlier termination in writing, Respondent CBI shall not cease supplying products under this Paragraph until:
 1. The Acquirer begins Commercial Production of the Concentrate Products, and

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2. For a six month period after the Acquirer begins Commercial Production, the Acquirer independently produces 100% of the products it sells to customers.
- E. Until 90 days after Respondent CBI ceases to supply products under Paragraph 2. above:
1. Respondent CBI shall take no action to, directly or indirectly, induce any person to discontinue or reduce grape concentrate purchases from the Acquirer of the Concentrate Busin

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potential of the Divestiture Business, to operate the Divestiture Business in a manner consistent with applicable laws and regulations, and to prevent the destruction, removal,

Orders and the Monitor (in consultation with Commission staff) approves the action in advance.

VI. Employees

IT IS FURTHER ORDERED that:

- A. Until termination of the Employee Hiring Period for an Acquirer, Respondents shall:
1. Cooperate with and assist the Acquirer to evaluate independently and offer employment to any Divestiture Business Employee who worked in the relevant Divestiture Business;
 2. No later than 10 days after a request from the Acquirer, provide to the Acquirer a list of all relevant Divestiture Business Employees, and provide Employee Information for each;
 3. No later than 10 days after a request from the Acquirer, provide the Acquirer an opportunity to meet, outside the presence or hearing of any employee or agent of any Respondent, with any relevant Divestiture Business Employee, and to make an offer of employment to any relevant Divestiture Business Employee;
 4. Remove any impediments within the control of Respondents that may deter relevant Divestiture Business Employees from accepting employment with the Acquirer, including removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Acquirer; and Respondents shall not make any counteroffer to a relevant Divestiture Business Employee who receives an offer of employment from the Acquirer; *provided, however, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;*
 5. Continue to provide the relevant Divestiture Business Employees compensation and benefits, including regularly scheduled raises and bonuses and the vesting of benefits;
 6. Provide reasonable financial incentives for the relevant Divestiture Business Employees to continue in their positions, and as may be necessary, to facilitate the employment of relevant Divestiture Business Employees by the Acquirer; and
 7. Not interfere, directly or indirectly, with the hiring or employing by the Acquirer of any relevant Divestiture Business Employee, not offer any incentive to such employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any relevant Divestiture Business Employee by an Acquirer.

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8. Not directly or indirectly, solicit or otherwise attempt to induce a Divestiture Business Employee to reject a written offer of employment from an Acquirer, or terminate existing employment with an Acquirer

Provided, however, Respondents may:

- (i) Hire an employee whose employment has been terminated by the Acquirer;
- (ii) Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more Divestiture Business Employees; or
- (iii)

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the confidentiality of such information and not violate the disclosure requirements of this Order.

- C. Respondents shall enforce the terms of this Paragraph VII and take necessary actions to ensure that their employees and other persons comply with its terms, including implementing access and data controls, training employees, and taking other actions that Respondents would take to protect their own trade secrets and proprietary information.

VIII. Additional Obligations

IT IS FURTHER ORDERED that:

- A. Until 4 years after the entry of this Order, Respondent CBI shall not terminate the operations of the Sparkling Wine Business and shall take all actions necessary to maintain the full economic viability, marketability and competitiveness of the Sparkling Wine Business.
- B. Respondents shall not, except as required to comply with this Order or the Divestiture Agreement with the Acquirer of the Concentrate Business
 1. Use any Divestiture Assets or Excluded Assets related to the Concentrate Business for the production of grape concentrate, or
 2. Produce grape concentrate at the Mission Bell Facility.
- C. Respondent CBI shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, without the prior approval of the Commission, sell, transfer or lease to Respondent Gallo the Mission Bell Facility, any Mission Bell Assets used, or used within 6 months of the Acquisition Date, at the Mission Bell Facility,

Provided, however, this Paragraph VIII.C. shall not apply to the assets identified in the attached Non-Public Appendix VII.

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2. The title MegaNatural and
3. Two buttons of identical size, format and prominence and related statements of identical font, font size and placement that comply with the following
 - a. A button captioned "Color Concentrates" that links to www.viel.com and is located directly above the statement "click here if you are interested in MegaNatural color concentrates products, including Mega

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- B. No later than one day after the Commission issues the Order to Maintain Assets, Respondents shall
 - 1. Confer on the Monitor all rights, power, and authorities ~~now~~ to permit the

X. Divestiture Trustee

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the divestiture and other obligations required by Paragraph II of this Order with respect to some or all of the Divestiture Assets, the Commission may appoint a trustee to divest the relevant Divestiture Assets in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same person appointed as Monitor.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a

2. The Divestiture Trustee shall have 12 months from the date the Commission approves the trustee agreement described herein to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a ~~co~~appointed Divestiture Trustee, by the court; The Divestiture Trustee ~~all~~ have 12 months from the date the Commission approves the trustee agreement described herein to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a ~~co~~appointed Divestiture Trustee, by the court;
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, ~~ed~~, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestitures. Any delays in divestitures caused by Respondents shall extend the time for divestitures under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a ~~co~~appointed Divestiture Trustee, by the court;

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authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including ~~for the~~ Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The

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3. Respondents shall retain all material written communications with each party identified in its compliance report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondents' obligations under this Order and shall provide copies of these documents to Commission staff upon request.
4. Respondents shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov provided, however, the Respondents need only file electronic copies of the 30-day reports required by XI.B.1.a. In addition,

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documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and

- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

XIV. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and ensure the Acquirers can operate the Divestiture Businesses in a manner at least equivalent in all material respects to the manner in which Respondents operated the Divestiture Businesses prior to the Acquisition.

XV. Term

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission.

April J. Tabor
Acting Secretary

SEAL

ISSUED:

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Non-Public Appendix I

Brandy Divestiture Agreement

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Non-Public Appendix II

Excluded Brandy Assets

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Non-Public Appendix III

Concentrate Divestiture Agreement

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Non-Public Appendix IV

Excluded Concentrate Assets

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Non-Public Appendix V

Dessert Wine Divestiture Agreement

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Non-Public Appendix VI

Excluded Dessert Wine Assets

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Non-Public Appendix VII

Excluded Mission Bell Facility Assets