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, a corporation, and	)	DECISION AND ORDER 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 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, existing, 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 Yosemite Boulevard, Modesto, California 95354.

2. Respondent Dry Creek Corporation is a corporation organized, existing, and doing business under, and by virtue of the laws of, the State of Delaware with its executive offices and principal place of business located at 600 Yosemite Boulevard, Modesto, California 95354.

3. Respondent Constellation Brands, Inc. is a corporation organized, existing, and doing business under, and by virtue of the laws of, the State of Delaware with its executive offices and principal place of business located at 207 High Point Drive, Building 100, Victor, New York 14564.

4. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER

I. Definitions

IT IS HEREBY ORDERED that**,** as used in this Order, the following definitions apply**:**

A. "Respondent Gallo" means Dry Creek Corporation, its wholly-owned subsidiary E. & J. Gallo Winery, their directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Dry Creek Corporation and E. & J. Gallo Winery, and the respective directors, officers, general partners, employees, agents, representatives, successors, and assigns of each.

1.

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 or evidentiary purposes, and (ii) if a document or record contains Business Information related to a Divestiture Business that cannot be separated from Business Information not related to the Divestiture Business without impairing the meaning or usefulness of the Business Information, Respondents may retain the document or record and provide the Acquirer with a full, complete copy of the document or record; and

6. All intangible rights and property, including Intellectual Property owned or licensed (as licensor or licensee) by Respondents that is not Licensed Intellectual Property, going concern value, goodwill, and telephone and telecopy listings.

W. "Divestiture Business" means the Brandy Business, the Dessert Wine Business or the Concentrate Business.

X. "Divestiture Business Employee" means any full-time or part-time employee or independent contractor of a Respondent who, on or after April 3, 2019, worked, in whole or in part, in the Brandy Business, the Concentrate Business, or the Dessert Wine Business.

Y. "Divestiture Date" means the date on which a Respondent or a Divestiture Trustee consummates the divestiture of the Brandy Business, the Dessert Wine Business or the Concentrate Business as required by Paragraph II of this Order.

Z. "Divestiture Trustee" means the person appointed by the Commission pursuant to Paragraph X of this Order.

AA. "Employee Hiring Period" means:

1. For Sazerac or another Acquirer of the Brandy Business, until one year after the Divestiture Date for the Brandy Business for the Acquirer of the Brandy Business,

2. For Vie-Del or another Acquirer of the Concentrate Business, until one year after Respondent CBI fulfills its obligation to supply product under Paragraph IV.D of this Order, and

3. For Precept or another Acquirer of the Dessert Wine Business, until one year after Respondent Gallo fulfills its obligation to supply product under Paragraph IV.C of this Order.

BB. "Employee Information" means for each Divestiture Business Employee, to the extent permitted by law, the following information summarizing the employment history of each employee that includes:

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, payroll, 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 Vie-Del, and

2. Grant a perpetual, non-exclusive, fully paid up, fully transferable, and royalty-free license to Sazerac for Licensed Intellectual Property related to the Brandy Business, and to Vie-Del 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-free 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

2. The manner in which a Respondent has divested the relevant Divestiture Assets is not acceptable, the Commission may direct the Respondent, or appoint a Divestiture Trustee and direct the Divestiture Trustee, to modify the manner of divestiture as the Commission determines is necessary to satisfy the requirements of this Order. The Respondent, or the Divestiture Trustee, shall promptly modify the divestiture in the manner the Commission directs.

D. If within one year after issuing this Order or, for the Concentrate Business before the termination of supply r

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, convey or lease to Respondent Gallo the Mission Bell Facility, or 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.

D. Respondent Gallo shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, without the prior approval of the Commission, acquire or lease the Mission Bell Facility, or any Mission Bell Assets used, or used within 6 months of the Acquisition Date, at the Mission Bell Facility,

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

E. No later than 2 91 (ha)4 (l4 Tw 5.11 0 Td [(t)-6 (h)-4 (D)2 (. s)-1 (ha)4 (l)-2 b2 (e-04 Tw 26.41 0 [TJ

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.viedel.com and is located directly above the statement, "click here if you are interested in MegaNatural color concentrates products, including Mega Red or Mega Sd ( )Tj -1.j 0 Tc 0 TwTJ 0 -1.1925 Td (4 (t)3w 6.33 0 Td1 ([(a1(e)4

(ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his/her duties pursuant to the Orders.

E. Respondents shall indemnify and hold the Monitor harmless against losses, claims, damages, liabilities, or expenses (including attorney's fees and out of pocket costs) that arise out of, or in connection with, any claim concerning the Monitor's performance of the Monitor's duties under the Orders, whether or not such claim results in liability, except, to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct. For purposes of this Paragraph, the term "Monitor" shall include all persons retained by the Monitor in the performance of his or her duties under the Orders.

F. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement; provided, however, that such agreement does not restrict the Monitor from providing any information to the Commission.

G. Respondents shall not require nor compel the Monitor to disclose to Respondents the substance of communications with the Commission, including the Monitor's written reports submitted to the Commission, or with aor iwithh(l)-2 (l)3ovided, a2 Tw 16.37 0 Td [(w)4 (it4 (l)-
r M rb(l)-2 (((h a)ds)-1 (ni)- (s)-1 (3 (w)4d)]TJ Tr4 (n) (4(

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 Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

D. Within 10 days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestitures o

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 court-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 DivestitTrustee 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 court-appointed Divestiture Trustee, by the court; un(r)3

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 fees 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 compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;

3. Respondents shall retain all material written communications with each party identified in its compliance report and all non-privileged internal memoranda,

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.

sha

In re Gallo, et al.

Non-Public Appendix I

Brandy Divestiture Agreement

In re Gallo, et al.

Non-Public Appendix II

Excluded Brandy Asstse

In re Gallo, et al.

Non-Public

In re Gallo, et al.

Non-Public Appendix V

Dessert Wine Divestiture Agreement

In re Gallo, et al.

Non-Public Appendix VI

Excluded Dessert Wine Assets

In re Gallo, et al.

Non-Public Appendix VII

Excluded Mission Bell Facility Assets