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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;**	**Docket No. C-4730**
DRY CREEK CORPORATION, **a corporation;**	
and	
CONSTELLATION BRANDS, INC., **a corporation.**	

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that Respondent E. & J. Gallo Winery ("Gallo"), a wholly owned subsidiary of Respondent Dry Creek Corporation ("Dry Creek"), corporations subject to the jurisdiction of the Commission, agreed to acquire certain assets from Constellation Brands, Inc. ("Constellation"), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Gallo 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 Blvd., Modesto, California 95354.

2. Respondent Dry Creek 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 Blvd., Modesto, California 95354.

3. Respondent Constellation 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.

II. JURISDICTION

4. Each Respondent is, and at all times relevant herein has been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and engages in business that is in or affects commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

III. THE ACQUISITION

5. Pursuant to an Asset Purchase Agreement dated April 3, 2019, Gallo proposes to acquire certain assets from Constellation in a transaction originally valued at approximately $1.7 billion ("the Acquisition").

IV. THE RELEVANT MARKETS

6. The relevant lines of commerce in which to analyze the effects of the Acquisition are:

a. Entry-level sparkling wine sold primarily to on-premise retailers, such as restaurants, hotels, and casinos ("entry-level on-premise sparkling wine");

b. Low-priced sparkling wine sold primarily to off-premise retailers, such as grocery stores, liquor stores, and convenience stores ("low-priced sparkling wine");

c. Low-priced brandy;

d. Low-priced port and sherry fortified wines; and

e. High color concentrates, a grape-based additive used to enhance color and flavor.

7. The United States is the relevant geographic area in which to assess the competitive effects of the Acquisition in each of the relevant lines of commerce.

V. THE STRUCTURE OF THE MARKETS

A.
Entry-Level On-Premise Sparkling Wine

8. On-premise retailers such as restaurants, hotels, and casinos often have a need for a low-priced sparkling wine option to use for brunch mimosas, complimentary (or "floor") pours, banquets, and catering purposes. Gallo and Constellation are the two largest suppliers, by volume, of entry-level on-premise sparkling wine in the United States. By combining Gallo's Wycliff brand and Constellation's J. Roget brand, the Acquisition will give Gallo a significant majority of the entry-level on-premise sparkling wine sales in the United States and result in a highly concentrated market.

B.
Low-Priced Sparkling Wine

9. Gallo and Constellation are the two largest suppliers, by volume, of low-priced sparkling wines (industry participants use the term "popular" sparkling wines) sold primarily to customers through off-premise retailers such as grocery stores and mass merchants in the United States. By combining Gallo's André brand and Constellation's brand Cook's, the Acquisition will give Gallo a significant majority of low-priced sparkling wine sales in the United States and result in a highly concentrated market.

C.
Low-Priced Brandy

10. Gallo and Constellation are the two largest suppliers, by volume, of low-priced brandy in the United States. By combining Gallo's E&J Brandy brand and Constellation's Paul Masson brand, the Acquisition will reduce the number of major providers of low-priced brandy from three to two, give Gallo a significant majority of low-priced brandy sales in the United States, and result in a highly concentrated market.

D.
Low-Priced Port and Sherry

11. Gallo and Constellation are the two largest suppliers, by volume, of low-priced port and sherry fortified wines in the United States. By combining Gallo's Fairbanks and Sheffield Cellars brands and Constellation's Taylor brand, the Acquisition will result in Gallo owning three of the top four port and sherry brands, give Gallo a significant majority of low-priced port and sherry sales in the United States, and result in a highly concentrated market.

E.
High Color Concentrates

12. High color concentrates ("HCCs") are a grape-based concentrate product used in the wine and food/non-alcoholic beverage industries to achieve effects such as enhancing color,

sweetness, or texture. Gallo and Constellation are the two largest producers, by volume, of HCCs in the United States. The Acquisition will reduce the number of suppliers of HCCs from three to two, give Gallo a significant majority of HCC sales in the United States, and result in a highly concentrated market.

VI. ENTRY CONDITIONS

A. Entry-Level On-Premise Sparkling Wine

13. Entry or expansion into the entry-level on-premise sparkling wine market is unlikely to occur in a timely and sufficient manner to deter or counteract the anticompetitive effects of the Acquisition. Suppliers must have the specialized equipment necessary to produce sparkling wine, and production costs low enough to offer a product at a competitive price point. Securing an extensive distribution network is a further hurdle.

B. Popular Sparkling Wine

14. Entry or expansion into the popular sparkling wine market is unlikely to occur in a timely and sufficient manner to deter or counteract the anticompetitive effects of the Acquisition. Producing sparkling wine requires specialized equipment that is costly to install. In addition, an entrant would require a U.S. distribution network, sales force, and retail relationships sufficient to compete with established brands for retail shelf space.

C. Low-Priced Brandy

15. Entry or expansion into the low-priced brandy market is unlikely to occur in a timely and sufficient manner to deter or counteract the anticompetitive effects of the Acquisition. Large-scale brandy production requires significant capital investment and a large distribution network. Further, the need for certain state and local environmental permits makes entry or expansion difficult.

D. Low-Priced Port and Sherry

16. Entry or expansion into the low-priced port and sherry markets is unlikely to occur in a timely and sufficient manner to deter or counteract the anticompetitive effects of the Acquisition. The markets for low-priced port and sherry generate little interest from retailers, distributors, or third-party producers. Overseas port and sherry producers are unlikely to be able to match Gallo's and Constellation's cost structures.

E.
High Color Concentrates

17. Entry or expansion in HCCs is unlikely to occur in a timely and sufficient manner to deter or counteract the anticompetitive effects of the Acquisition. In addition to significant capital investments in production equipment, the production of HCCs requires technical expertise and potential regulatory permits. Attempts at HCC production can only be made annually during a narrow harvest window, so the development process is lengthy.

VII. EFFECTS OF THE ACQUISITION

18. The Acquisition, if consummated, is likely to substantially lessen competition in the relevant lines of commerce in the following ways, among others:

a. by eliminating direct and substantial competition between brands owned by Respondents Gallo and Constellation; and

b. by increasing the likelihood that Respondent Gallo will unilaterally exercise market power.

19. The Acquisition would increase the likelihood that prices of entry-level on-premise sparkling wine, popular sparkling wines, low-priced brandy, low-priced port and sherry, and high color concentrates will increase, and that the quality of these products will decrease, in the relevant geographic market.

VIII. VIOLATIONS CHARGED

20. The agreement described in Paragraph 5 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on the twenty-third day of December, 2020, issues its Complaint against said Respondents.

By the Commission.

April J. Tabor
Acting Secretary

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