

UNIVERSITY OF WISCONSIN-EAU CLAIRE

**FROM “BEER BARONS” TO ANTITRUST OFFENDERS:
THE FEDERAL ALCOHOL ADMINISTRATION ACT AND UNITED STATES
ANTITRUST POLICY THAT IMPACTED BREWERIES IN WISCONSIN**

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Abstract –

“From ‘Beer Barons’ to Antitrust Offenders: The Federal Alcohol Administration Act and United States Antitrust Policy that impacted Breweries in Wisconsin”

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This paper examines the brewing companies in Wisconsin that violated antitrust laws numerous times throughout the twentieth century by limiting competition and trying to organize monopolies by obtaining properties. The paper explains this by its focus on Wisconsin brewing companies before the start of Prohibition and the impact of the Federal Alcohol Administration Act and, to a lesser extent, the Sherman and Clayton Antitrust Acts had on the brewing industry in the state after the repeal of Prohibition. The paper is based on work in primary sources such as Supreme Court cases, newspaper articles, and the three Acts mentioned before.

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Introduction

Upon entering a bar on Water Street, the main hangout for myself and other college-aged individuals in Eau Claire, Wisconsin, I get the choice of whatever beer I want as long as the bar carries it or as long as it does not bust my wallet. I can choose whether or not I want to have a Miller Lite or a New Glarus Spotted Cow or one of my personal favorites, Leinie's Red. Luckily for me it is happy hour and all the beers in the bar are at the same reasonably low price. So I picked the Leinie's Red, which is made by the Jacob Leinienkugel Brewing Company of nearby Chippewa Falls, Wisconsin.

The reason I am able to choose the beer that I feel like having is because of a regulation called the Federal Alcohol Administration Act, which placed regulations on how the brewing industry conducted their business and was enacted by Congress on August 29, 1935. The Act is part of the United States Code, which is a consolidation of the laws of the United States. The Code is prepared by the Office of Law Revision Counsel, which is part of the House of Representatives. Divided into fifty different Titles, similar to chapters of a book, the Code offers information about laws ranging from Bankruptcy to War policy.¹

One of the parts of the Code is Title 27: Intoxicating Liquors, which basically outlines the rules and regulations of alcohol in the U.S. Title 27 discussed regulations involving Prohibition, alcohol percentage in beer, even labels requirements on intoxicating beverages, and, of course, the Federal Alcohol Administration Act. The Act was essentially created to regulate the alcohol industry after the repeal of Prohibition because of the industry's inability to follow the

¹ U.S. Congress, House, Office of the Law Revision Counsel, *U.S. Code*, L1-L20, <http://uscode.house.gov/about/info.shtml> (Accessed April 8, 2008).

regulations set forth by the Sherman Antitrust Act of 1890 and the subsequent Clayton Antitrust Act of 1914.²

The Sherman Antitrust Act's purpose was to oppose businesses that could impair the competition in its respective industry. The Act mainly prohibited businesses in forming monopolies that interfered with the supply and demand of the market in that company's benefit.³

The Clayton Antitrust Act, a follow up to Sherman, further enhanced the strength of antitrust laws in the United States. The Act prevents noncompetitive practices by prohibiting price discrimination between companies, individuals from being presidents of multiple companies, and mergers and acquisitions that significantly lower the competition in the market.⁴

Of the companies that are most famous regarding antitrust issues, but none of them are from the brewing industry. Antitrust policy issues are still a major concern in today's world with cellular phone and automobile companies merging, and most scholars have written about past monopolistic trends of the Standard Oil Company, AT&T, and, more recently, Microsoft.⁵ From this, the general public typically identifies with these companies if monopolies are brought up in their conversations with other people or what they have learned in a class. What the public does not know is that the all of the major breweries in the United States have broken the rules in regards to antitrust policy.

² *Federal Alcohol Administration Act, U.S. Code*, vol. 27, secs. 201-202 (1935).

³ *Sherman Antitrust Act, U.S. Code*, vol. 15, secs. 1-7 (1890).

⁴ *Clayton Antitrust Act, U.S. Code*, vol. 15, secs. 14-27 (1914).

⁵ David B. Kopel and Joseph Bast, "Antitrust Greatest Hits," *Reason*, November 2001, 29.

The select few works on regarding antitrust policy, which are used throughout the paper, involving breweries are articles by Wilbur L. Fugate, A.M. McGahan, and Victor J. and Carolyn Horton Tremblay. Each of these authors enlightens the reader about market share in the brewing industry, mergers between companies, and highlight court cases throughout their works.

The top three brewers in market share order, Anheuser-Busch Brewing Company of St. Louis, Missouri; Miller Brewing Company of Milwaukee, Wisconsin, and Molson Coors of Golden, Colorado, have violated the U.S. antitrust policy in the last two decades. However, these brewing companies were not the only ones included and were not even the first ones. Wisconsin brewing companies, because of the state's many breweries, battled antitrust policy many times.

Wisconsin's biggest brewers often went to trial in Supreme Court cases, paid major fines, and lost properties when they violated the U.S. antitrust policy. After the repeal of Prohibition in 1935, Pabst Brewing Company, Joseph Schlitz Brewing Company, and Valentine Blatz Brewing Company, later with Miller, were the primary offenders of antitrust policy in Wisconsin. Many of the Supreme Court cases happened throughout the 1960s and 1970s. These brewers competed in fierce battles to gain supremacy as the number one beer maker in the country. Because of this competition, companies have purchased many different kinds of real estate in hopes of gaining an edge against their rivals.

The main purpose of this essay is to open the doors and show that brewing companies in Wisconsin violated antitrust laws numerous times throughout the twentieth century by limiting competition and trying to organize monopolies by obtaining properties. The paper will focus on Wisconsin brewing companies before the start of Prohibition and the impact of the Federal

Alcohol Administration Act and, to a lesser extent, the Sherman and Clayton Antitrust Acts had on the brewing industry in the state after the repeal of Prohibition. To help with gaining insight into this information, one needs to know some background on the early days of the brewing industry in Wisconsin.

Brewing Industry from 1840 to the Federal Alcohol Administration Act

Beer has long been a part of the lives of Wisconsinites since the first brewery opened in 1840 near Milwaukee.⁶ With German immigrants making up the majority of Wisconsin's population, they wanted to bring a piece of their homeland to their new home and the result was several breweries popping up throughout the state with the main concentration in the aforementioned Milwaukee. German immigrants made up almost 16 percent of Wisconsin's population in 1860, with the highest concentration in Milwaukee, and the percentage continued to rise through the rest of the century.⁷

The large majority of German descent in Milwaukee keyed the city in becoming a brewing center in the United States during the last half of the nineteenth century. Many of these immigrants were already experienced brewers with the skills they brought with them from Germany. Brewing beer became a family business because these immigrants would start a business with their wives and soon their kids were running the breweries when they grew up. However, what really made Milwaukee a great city to brew beer was the exceptional harbor the

⁶ "Birth of Milwaukee's Brewing Industry is Interesting Story," *Milwaukee Journal* (March 19, 1916), Wisconsin Historical Society: L1-L8, <http://www.wisconsinhistory.org/turningpoints/search.asp?id=1266> (accessed April 10, 2008).

⁷ Kate Asaphine Levi, *How Wisconsin Came by its Large German Element* (Madison: Wisconsin Historical Society, 1892).

city had along Lake Michigan. This meant that brewers could have easy access in shipping their beer to Chicago or anywhere else along the Great Lakes. Although Chicago's population, three hundred thousand compared to Milwaukee's seventy thousand in 1870, was greater and also had a significant German demographic, the brewing industry was beginning to taper off. The brewing resources, such as hops, of Chicago began to dwindle and Milwaukee's brewers gained from this by shipping vast quantities of beer to the Windy City.⁸

Some of the early breweries in Wisconsin were the Pabst Brewing Company (formerly Phillip Best Brewing Company), the Joseph Schlitz Brewing Company, the Valentine Blatz Brewing Company, and later on the Frederick Miller Brewing Company, which were all located in Milwaukee. For many years these Milwaukee brewers, known as the "Beer Barons," were the front-runners in production of beer barrels in the country. These brewers were called "Beer Barons" because they changed the landscape of brewing in Wisconsin, let alone the rest of the country. In 1851, two-hundred twenty-five barrels of beer were produced in Milwaukee and by 1892 over 2,000,000 barrels were being produced these beloved citizens of the Cream City, Milwaukee's nickname. "Age, purity, and quality" was the motto used by all the major brewers in Wisconsin.⁹

Pabst Brewing Company was coming into its own as a major player in the beer market by the 1870s. By 1871, Pabst, still known as the Phillip Best Brewing Company, had become

⁸ Jerry Apps, *Breweries of Wisconsin* (Madison: University of Wisconsin Press, 1992), 18-20.

⁹ "Milwaukee Beer Barons," *Milwaukee Sentinel* (July 31, 1892), Wisconsin Historical Society: <http://www.wisconsinhistory.org/turningpoints/search.asp?id=1192> (accessed April 12, 2008).

second in the nation in production with 73,585 barrels.¹⁰ Production increased year after year and by 1893, Pabst produced about one million barrels which bumped the company up to the number one spot as the largest brewer in the United States. The total sales increase from 1873 to 1893 was over a 1,000 percent jump. Other breweries in Wisconsin were also doing well as Schlitz Brewing Company and Blatz Brewing Company with Pabst were three of the top breweries in the nation.¹¹ (See Table 1).

 Table 1: Largest Brewers in 1895

Breweries	Production in Barrels
Pabst Brewing Co., Milwaukee, WI	900,000-1,000,000
Anheuser-Busch Brewing Assn, St. Louis, MO	700,000-800,000
Joseph Schlitz Brewing Co., Milwaukee, WI	600,000-700,000
George Ehret, New York, NY	500,000-600,000
Ballantine & Co., Newark, NJ	500,000-600,000
Bernheimer & Schmid, New York, NY	400,000-500,000
Val. Blatz Brewing Co., Milwaukee, WI	350,000-400,000
Wm. J. Lemp Brewing Co., St. Louis, MO	300,000-350,000

Source: Thomas C. Cochran, *The Pabst Brewing Company: The History of an American Business* (New York: New York University Press, 1948), 74.

¹⁰ Thomas C. Cochran, *The Pabst Brewing Company: The History of an American Business* (New York: New York University Press, 1948), 56.

¹¹ *Ibid.*, 71-74.

Advertising contributed to the take off of Wisconsin becoming one of the leading states in beer production. The Blatz Brewing Company became the first Wisconsin brewery to market their beer nationally by setting up distribution centers in major U.S. cities.¹² Pabst again became a leader with advertising in Milwaukee and other local newspapers to help expand the company onto a national scale.¹³ Another means of spreading the word was exhibiting their products at national fairs and expositions during the late nineteenth century. Wisconsin's breweries and other breweries around the nation "were well-represented at several principal expositions...[where] a competition was usually held among the various brewers in attendance."¹⁴

Advertising and exhibitions, although helpful, could not sustain a brewing company's profits alone. Breweries had to offer their beer to retailers, which included saloons and hotels, to make their profits. These outlets were where the breweries spent most of their money used for promotional purposes. To influence a saloonkeeper's mind, a brewery salesman would usually have to treat the customers to a round, have discounts on barrel prices, or have easy credit terms to get their beer in these bars.¹⁵

Selling beer to retailers eventually led brewers controlling retailers through ownership during the late nineteenth century. This meant that breweries could set their own price and solely carry their beer at the saloon. The Pabst Brewing Company again was at the forefront of

¹² Apps, *Breweries in Wisconsin*, 100.

¹³ Cochran, *Pabst Brewing Company*, 129.

¹⁴ Apps, *Breweries in Wisconsin*, 87.

¹⁵ Cochran, *Pabst Brewing Company*, 139-140.

this stage in the brewing industry. In 1880, the company “began to invest...about \$20,000 a year in properties in the Milwaukee area.”¹⁶ Eventually, Pabst started investing in properties all over the nation, and by 1893, the company’s property value was over two million dollars or 20 percent of the total value of the business.¹⁷ Property ownership, however, became very expensive and because of this “no shipping brewer could afford to own more than a small fraction of the property occupied by retailers selling [their] beer.”¹⁸

Investment in properties still continued despite the heavy burden placed on the brewing companies to pay for them. However, without the property ownership many companies would not have been able to be competitive in their industry. Many companies remained active in the real estate market well into the start of the twentieth century. By 1910, Pabst owned properties, including saloons, in 187 cities at a value of over \$6.6 million. Brewing companies would also furnish money to retailers for fixtures to update the saloons in the cities.¹⁹

Saloon ownership and other forms of real estate ownership by brewing companies continued all the way through the start of Prohibition in 1919. Many breweries sold off their properties because they could not afford to own saloons if they were not selling beer. Many turned to making near beer, essentially beer without the alcohol content, soda. A few even made wort and malt syrup, products that would be sold to customers for home brewing purposes.²⁰

¹⁶ Ibid., 143.

¹⁷ Ibid., 143-144.

¹⁸ Ibid., 146.

¹⁹ Ibid., 196-199.

²⁰ Apps, *Breweries in Wisconsin*, 69.

After Prohibition's repeal, breweries that made it through the tough times wanted to buy back the properties they had sold to stay afloat during Prohibition. The U.S. government had other plans. As stated earlier, the Federal Alcohol Administration Act was created to control the brewing and other intoxicating liquor industries in the United States after the repeal of Prohibition. This happened because these industries refused to abide by the regulations set forth by the Sherman and Clayton Antitrust Acts.

The parameters of the Act stated that members of the alcohol industry, whether it be from the retail or producing aspects, are by law to have a permit when involved in the intoxicating liquor industry.²¹

The Act also lists unfair competition and unlawful practices in regards to the alcohol industry. This section of the Act deals with the regulations placed on the industry in the form of exclusive outlets, "tied houses," and labeling, to name a few. The exclusive outlet segment states that it is unlawful for any company engaged in this industry to:

Require, by agreement or otherwise, that any retailer engaged in the sale of distilled spirits, wine, or malt beverages, purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such requirement is made in the course of interstate or foreign commerce, or if such person engages in such practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such requirement is to prevent, deter, hinder, or restrict other person from selling or offering for sale any such products to such retailer in interstate or foreign commerce.²²

Exclusive outlets were usually between a producer and a retailer and were used for the advantage of the producer. A sales contract between the two parties was ultimately signed to make sure

²¹ *Federal Alcohol Administration Act*, vol. 27, sec. 203 (1935).

²² *Ibid.*, vol. 27, sec. 205 (1935).

that the retailer would not purchase from other industry members. This resulted in less competition in the rest of the market because the retailer almost exclusively dealt with one company.

The next step a brewing company would take would be dealing with “tied houses,” or the purchasing of properties similar to saloons to gain control in the market. The “tied house” subsection of the Federal Alcohol Administration Act states that is unlawful:

To induce through the following means...if the direct effect of such inducement is to...restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce: (1) By acquiring or holding...any interest in any license with respect to the premises of the retailer; or (2) by acquiring any interest in real or personal property owned, occupied, or used by the retailer in the conduct of his business; or (3) by furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services, or other things of value...; or (4) by paying or crediting the retailer for any advertising, display, or distribution service; or (5) by guaranteeing any loan or the repayment of any financial obligation of the retailer; or (6) by extending to the retailer credit for a period in excess of the credit period usual and customary to the industry for the particular class of transactions, as ascertained by the Secretary of the Treasury and prescribed by regulations by him; or (7) by requiring the retailer to take and dispose of a certain quota of any such products.²³

The basis of this subsection is, like exclusive outlets, to state that ownership of properties or other things of value by industry members with the means of encouraging retailers to sell their product is illegal within the meaning of the Act. This subsection also includes regulations placed on industry members regarding free warehousing, advertising in sports venues, guaranteeing loans to retailers, and selling of equipment to retailers.

The Act gave rise to a change in the brewing industry that seemed to be unaffected by the regulations placed by the Sherman and Clayton Antitrust Acts before Prohibition. If the antitrust acts would have affected the brewers, then the Pabst Brewing Company’s estimated \$6.6 million

²³ Ibid.

worth of real estate throughout the country in 1910, as stated before, would have never even came about. After the repeal of Prohibition, and with the institution of the Act, the brewing industry went through a gradual phase of bumps and bruises in hopes of getting on the right track in becoming a law abiding market. It was a struggle for the U.S. government to regulate the industry because of its size.

Brewing Industry from the 1935 to the present

The period from 1935 to the present brought a time of change in regards to controlling the brewing industry. However, it would start off very slow when the brewing industry became an oligopoly or, in other words, the brewing industry was controlled by a small group of elite members of the industry after Prohibition was repealed. The growth of the brewing industry was becoming expansive where “the combined market of the top five brewers increased from about 14 to 31 percent between 1935 and 1958.”²⁴ Twenty-five years after the repeal of Prohibition the brewing industry was still not on the federal government’s agenda regarding antitrust policy.²⁵

²⁴ A.M. McGahan, “The Emergence of the National Brewing Oligopoly: Competition in the American Market, 1933-1958,” *The Business History Review* 65.2 (Summer, 1991), 229.

²⁵ *Ibid.*, 230-231.

Table 2: Brewing Industry Trends

Year	Number of Breweries Operating	Number of Barrels (Millions)
1936	739	48.8
1937	757	55.4
1938	700	53.9
1939	672	51.8
1940	611	53
1941	574	52.8
1942	530	60.9
1943	491	68.6
1944	469	77
1945	468	79.6
1946	471	81.3
1947	465	82.6
1948	466	87
1949	440	85.8
1950	407	83.5
1951	386	83.2
1952	357	84.3
1953	392	84.6
1954	310	85.7
1955	292	84.5
1956	281	85.5
1957	264	84.3
1958	252	83.9

Source: A.M. McGahan, "The Emergence of the National Brewing Oligopoly: Competition in the American Market, 1933-1958," *The Business History Review* 65.2 (Summer, 1991), 230.

Using Table 2, the brewing industry was expanding in production despite the decline in the total number of breweries from 1935 to 1958. The main reason for the decline is that larger breweries started to crush their smaller competitors, which eventually led to the consolidation of the smaller companies with the major brewers. Smaller breweries suffered because they could barely support themselves during Prohibition and afterwards they could not enjoy the major brewers' reputation.²⁶

During this period, a lack of mergers was apparent due to the enforcement of section 7 in the Clayton Antitrust Act. The U.S. Government, concerned with the rising concentration in the brewing industry, "successfully stopped large national producers from growing by merger."²⁷ However, the Government could not always hold off the beer industry's horizontal merging and decided it was time to take it the courts.

One of the first legal cases against a brewing company for violating antitrust issues was *United States v. Pabst Brewing Co.* This case was brought on by Pabst Brewing Company's acquisition of Blatz Brewing Company in 1958. The merger resulted in Pabst Brewing Company gaining control of 4.49 percent of the market, making it the fifth biggest brewer in the nation. The U.S. government charged "that the acquisition violated [section] 7 because its effect 'may be substantially to lessen competition' in the production and sale of beer in the United States, in Wisconsin, and in the three-state area comprising Wisconsin, Illinois and Michigan."²⁸

The United States claims the following reasons for the violation of the Clayton Act:

²⁶ Ibid., 258.

²⁷ Victor J. Tremblay and Carol Horton Tremblay, "The Determinants of Horizontal Acquisitions: Evidence from the US Brewing Industry," *The Journal of Industrial Economics* 37 (September 1988), 23.

²⁸ *United States v. Pabst Brewing Co.*, 384 U.S. 546 (1966).

- (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.²⁹

The judgment from the case was that Pabst Brewing Company had to divest from Blatz Brewing Company. This eventually led to the closing of the Blatz brewery until G. Heileman Brewing Company, a brewery from LaCrosse, Wisconsin, bought the plant a few years later.³⁰

Another court case involving antitrust violations occurred in 1966, this time with Joseph Schlitz Brewing Company. In *United States v. Joseph Schlitz Brewing Co.*, the U.S. Government charged Schlitz, like Pabst was, for violating the section 7 of the Clayton Act in attempting to eliminate competition in the national beer market.³¹ Schlitz purchased two highly successful branches in California that were subsidiaries of the Canadian brewer, John Labatt, Ltd.³² The Supreme Court decision ordered Schlitz to separate from the California companies.³³

From 1950 to 1983, the number of breweries in the United States that were horizontally independent, meaning the company had not merged with another company, decreased from 369 to 34. About 170 horizontal mergers occurred during this time period with amalgamations

²⁹ Ibid.

³⁰ Tremblay and Tremblay, "The Determinants of Horizontal Acquisitions," 24.

³¹ *United States v. Joseph Schlitz Brewing Co.*, 385 U.S. 37 (1966).

³² Wilbur L. Fugate, "Antitrust Aspects of Transatlantic Investment," *Law and Contemporary Problems* 34 (Winter 1969), 141.

³³ Tremblay and Tremblay, "Determinants of Horizontal Acquisitions," 24.

involving historically larger firms like Pabst Brewing Company and Joseph Schlitz Brewing Company occurring after 1978.³⁴

The large breweries refrained from merging until 1978 because before then antitrust enforcement was stricter regarding the merging of large corporations. However, in that year, the Justice Department started to change its policy toward horizontal mergers because of a Federal Trade Commission report from 1978 that was critical toward the antitrust policy of the time.³⁵ The report showed “that a merger between two large regional competitors would probably increase competition.”³⁶ The report also indicated that the divested firms from previous courts case, such as *United States v. Pabst Brewing Co.*, were not able to compete in the market.³⁷

However, the brewing industry was not free from the grasp of the Federal Alcohol Administration Act and the Sherman and Clayton Antitrust Acts because the merging of companies was not the only thing considered illegal. In 1977, Pabst Brewing Company became involved in another case, this time regarding the Federal Alcohol Administration Act. In *Santa Clara Valley Distributing Co., Inc. v. Pabst Brewing Company*, Santa Clara Valley Distributing complained that Pabst conspired with the plaintiff, Santa Clara Valley Distributing, to fix the sale to retailers or even prohibit them from selling their product to them, which is in violation of the

³⁴ Ibid., 22-23.

³⁵ Ibid., 24.

³⁶ Ibid., 24-25.

³⁷ Ibid., 25.

exclusive outlets subsection in the Federal Alcohol Administration Act and also the Sherman Antitrust Act.³⁸

The Schlitz Brewing Company was once again accused in 1978 “of violating Federal Alcohol Administration Act by making about \$1 million in payoffs and kickbacks to restaurant chains, liquor stores, taverns, sports arenas and other beer distributors between [1967] and [1976].”³⁹ To the fortune of Schlitz, the indictment never resulted in a court decision. Nevertheless, Schlitz began to struggle because of these legal troubles along with the cost saving strategies that altered the taste of the beer and the sudden death of its chairman. The market share of Schlitz fell from 14 percent in 1976 to below 8 percent in 1981. In 1982, Schlitz could no longer sustain itself and was then purchased by the Stroh Brewing Company of Detroit, Michigan.⁴⁰

G. Heileman Brewing Company fought legal battles as well in trying to acquire other companies. In 1981, before any interest from Stroh, Heileman offered to acquire the struggling Schlitz Brewing Company. However the Justice Department intervened, stating that Heileman, the fourth largest brewer in 1981, was violating the Clayton Act on the grounds of gaining too large a market share. The next year, Heileman tried to acquire Pabst Brewing Company, but was again denied for the same reason.⁴¹ Toward the end of the same year, however, Heileman

³⁸ *Santa Clara Valley Distributing Co., Inc. v Pabst Brewing Company*, 556 F.2d 942 (1977).

³⁹ *New York Times*, March 16, 1978, sec. 4, p 9, col. 1.

⁴⁰ Tremblay and Tremblay, “Determinants of Horizontal Acquisitions,” 27.

⁴¹ “U.S. to bar Heileman’s Pabst bid,” *New York Times*, June 15, 1982.

acquired Pabst by agreeing to acquire a few of its breweries and beers and sell off Pabst remaining breweries and beers to other companies.⁴²

Similar to Schlitz, Pabst Brewing Company also began to show signs of wearing down due to their involvement in legal troubles and strengthening of the bigger breweries, such as Miller and Anheuser-Busch Brewing Companies. By the end of 1982, Pabst began selling brewing companies that they had acquired over the years, many of them going to G. Heileman Brewing Company.⁴³ In the 1990s, Pabst continued to struggle and eventually had to shut down their business for good. Miller Brewing Company signed a contract that allowed them to produce Pabst's most popular beer, Pabst Blue Ribbon.

The Miller Brewing Company became the next of these "Beer Barons" to become entangled in legal battles regarding the Federal Alcohol Administration and the Sherman Antitrust Act in two separate cases in 1997. Although more recent, the same rules were broken by Miller as by other brewers from other cases. The two cases, *United States v. Everbrite, Inc.* and *United States v. Schutz International, Inc. and Richard F. Machas*, were basically very similar involving the defendants being "engaged in a combination and conspiracy to suppress and eliminate competition by fixing prices, rigging bids, and allocating contracts for the sale of point-of-purchase displays to Miller Brewing Company." Point-of-purchase displays are advertising materials that are used to promote their products, and in this case, Miller products. Miller, in both instances, was ordered to cease the unlawful practices and given a penalty fee.⁴⁴

⁴² Mark Potts, "Heileman Wins Long Battle for Pabst," *Washington Post*, December 24, 1982.

⁴³ Apps, *Breweries of Wisconsin*, 131.

⁴⁴ *United States v. Everbrite, Inc.*, 97-CR178 (1997); *United States v. Schutz International, Inc. and Richard F. Machas*, 97-CR114 (1997).

Besides the Miller cases, the brewing industry has been relatively quiet in regards to court battles involving antitrust cases. Mergers between companies since 1978 have been uncontroversial and are considered to be a norm for struggling companies looking for an outlet to keep their business going instead of ending in bankruptcy.⁴⁵

Today, Anheuser-Busch Brewing Company, Miller Brewing Company, and Molson Coors are the top three beer producers in the United States with a total of about 80 percent of the market and have also become the most active in purchasing other companies to merge into their respective companies. In 2007, Miller merged with Molson Coors Brewing Company to form MillerCoors Brewing Company and giving the company about 30 percent of the market share.⁴⁶ In retrospect of previous times in the brewing industry, the merging of brewing companies will continue on into the future because of helpful competition it brings to the market.

Also in 2007, a new issue of “tied house” regulations has been brewing in Wisconsin. The Great Dane Pub & Brewery Co. of Madison is entangled in a battle of selling their own beer at one of their three locations around the Madison area. However, due to “tied house” regulations set forth by the Federal Alcohol Administration Act, the company cannot sell beer at its third location because it is illegal to sell their products at more than two locations. The company is trying to gather other members of the Tavern League of Wisconsin to propose new legislation on regulations to help brewpub chains to keep serving their beer in more than two

⁴⁵ Tremblay and Tremblay, “Determinants of Horizontal Acquisitions,” 34.

⁴⁶ Andrew Martin, “Merger for SABMiller and Molson Coors,” *New York Times*, October 10, 2007.

locations. Although not as large as the “beer barons” that had issues with properties of their own, the Great Dane’s issues with the regulations of the Act are eerily similar.⁴⁷

Conclusion

The Federal Alcohol Administration Act with the Sherman and Clayton Antitrust Acts became the basis for what all members of the brewing industry in Wisconsin had to follow. Before the inception of the Act, brewing companies conducted their businesses at their own discretion and that usually came with some unlawful practices outlined in the two antitrust acts. However, it seemed the Government would look away from what was going on in the brewing world and focused on other business markets. Breweries would expand their profits by purchasing properties, usually saloons, throughout the country to sell their products exclusively. Breweries and their “tied house” ownership were overlooked before Prohibition and when the companies tried to buy saloons after Prohibition’s repeal, government action ensued.

The United States Government looked at the “tied house” ownership by brewers as illegal and soon began to look deeper into the actions of the brewing companies. By the time the Federal Alcohol Administration Act was enacted in 1935, the brewing industry gradually abided by the regulations set forth and started to conduct their businesses legally. From this, government action also commenced regarding the market share of companies in the industry. The government wanted the brewing industry to follow the same regulations on antitrust policy as the other industries. Subsequently, brewing companies were being investigated by the government which eventually led to several Supreme Court cases. Wisconsin breweries were

⁴⁷ Teresa Walsh, “Great Dane able to expand beer sales,” *The Badger Herald* (Madison, WI), December 4, 2007.

right in the thick of it; many fought legal battles throughout the middle of the twentieth century in regards to horizontal mergers and how the antitrust acts looked upon them as being unlawful business practices.

However, by the time of the 1980s, many breweries began merging with each other at an all-time high. The main reason for merging was primarily to keep their businesses from going bankrupt. Another reason was the Justice Department's leniency towards the companies in regards to their antitrust policy because of reports that mergers between brewing companies actually helped competition.

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