

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

IN THE MATTER OF DETERMINING) Order Number S-04-078-04-TO01
Whether there has been a violation of the)
Securities Act of Washington by:) SUMMARY ORDER TO CEASE AND
) DESIST, AND NOTICE OF INTENT TO
Yakima Brewing and Malting Co., Inc.;) IMPOSE FINES AND ORDER
Paul C. Brown, Jr.; J. Gregory Trantum;) AFFIRMATIVE RELIEF
their employees and agents,)
)
Respondents.)

THE STATE OF WASHINGTON TO: Yakima Brewing and Malting Co., Inc.
Paul C. Brown, Jr.
J. Gregory Trantum

STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the State of Washington has reason to believe that the Respondents, Yakima Brewing and Malting Co., Inc.; Paul C. Brown, Jr.; and J. Gregory Trantum have each violated the Securities Act of Washington and that their violations justify the entry of an order of the Securities Administrator under RCW 21.20.390 to cease and desist from such violations and under RCW 21.20.395 to impose fines. The Securities Administrator finds that delay in ordering the Respondents to cease and desist from such violations would be hazardous to the investors and to the public and that a Summary Order to Cease and Desist should be entered immediately. The Securities Administrator finds as follows:

SUMMARY ORDER TO CEASE AND DESIST, AND
NOTICE OF INTENT TO IMPOSE FINES AND ORDER
AFFIRMATIVE RELIEF

1 **TENTATIVE FINDINGS OF FACT**

2 **RESPONDENTS**

3 1. Yakima Brewing and Malting Co., Inc. ("Yakima Brewing") is a Washington
4 corporation with a business address of 1803 Presson Place, Yakima, WA 98903. Yakima
5 Brewing manufactures beer under the "Grant's" label and operates Grant's Brewery Pub in
6 Yakima, Washington. In 2002, Yakima Brewing was acquired by the Black Bear Brewing
7 Company and its principals, Respondents Brown and Trantum.
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9 2. Paul C. Brown, Jr. ("Brown") is the Vice President and Treasurer of Yakima Brewing.
10 Brown resides in Yakima, Washington. From 1988 to 1989, Brown was registered in Florida
11 and other states as a securities principal and representative with Kober Financial Corp., a
12 securities broker-dealer.

13 3. J. Gregory Trantum ("Trantum") is the President of Yakima Brewing. He resides in
14 Olympia, Washington.

15 **OTHER RELEVANT ENTITY**

16 4. Black Bear Brewing Company ("Black Bear") is a Florida corporation with a mailing
17 address identical to Yakima Brewing. Brown is the President and Trantum is the Vice
18 President of Black Bear. According to materials provided to investors that are dated June 30,
19 2003, Black Bear owned 990,991 of Yakima Brewing's 996,291 common shares. Since
20 approximately January 2002, Black Bear's primary business has been operating Yakima
21 Brewing.
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1 **NATURE OF THE OFFERING**

2 5. Between approximately June 2003 and May 2004, the Respondents offered Yakima
3 Brewing preferred stock for \$1 per share to residents of Washington and other states. Under
4 the terms of the offering, investors who purchased preferred stock were to receive an annual
5 dividend of 7.75% of their total investment, which would be paid semi-annually.

6 6. Trantum and Brown first devised the offering in approximately May 2003. Brown
7 telephoned Trantum and suggested that Yakima Brewing offer preferred stock that paid a dividend
8 to investors. Trantum agreed, and Brown initially promoted the offering by drafting
9 advertisements and having them published in Washington business newspapers. Brown also
10 drafted a Private Offering Memorandum ("Offering Memorandum") and had several hundred
11 copies produced. These advertising efforts, however, were unsuccessful and did not raise any
12 significant capital for the company.

13 7. As months passed, Yakima Brewing continually lost money and faced substantial cash
14 flow problems. As Trantum later described, Yakima Brewing's payables were growing faster
15 than its receivables, and the company was in a "terrible cash flow situation." Yakima Brewing
16 fell behind on payments to its key suppliers, who in turn, began to demand cash-on-delivery,
17 further exacerbating the company's financial woes. During the month of November 2003, the
18 company's bank charged it with over two dozen overdraft and returned checks charges.

19 8. In late November 2003, Brown gave an interview for a news article that was later
20 published in the *Yakima Herald-Republic*. Other versions of the story were later published in
21 newspapers across Washington, including *The Seattle Times*. During the interview, Brown
22 discussed the offering of Yakima Brewing preferred stock and stated that his partners hoped to
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1 take Black Bear public in the "not too distant future." The Offering Memorandum stated that each
2 share of Yakima Brewing preferred stock could later be converted into two shares of Black Bear
3 common stock.

4 9. As a result of the article, hundreds of Washington residents contacted Yakima Brewing by
5 telephone and in person. Brown spoke to several prospective investors and had copies of the
6 Offering Memorandum distributed to them. The Offering Memorandum only included financial
7 statements for 2002. It described 2002 as a "record year" for Grant's Brewery Pub and stated
8 that Yakima Brewing was "poised for dramatic growth as it enters the second half of 2003." It
9 also stated that the company was poised to "drastically increase sales" and was on track to
10 increase production and revenues to "record levels."
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12 10. After an article discussing the offering appeared in *The Olympian* newspaper, Tranum
13 met with prospective investors in western Washington and distributed copies of the Offering
14 Memorandum to them.

15 11. Between November 2003 and May 2004, nearly 500 persons from a dozen states
16 purchased Yakima Brewing preferred stock and transferred approximately \$500,000 to the
17 company, using cash, checks, and credit cards to pay for their shares.

18 12. In early March 2004, Brown wrote to numerous Yakima Brewing shareholders and stated
19 that Yakima Brewing had "nearly sold out our entire private stock offering within just a few weeks
20 of making it available." Brown added that "only about 50,000 shares are remaining" and that
21 Yakima Brewing was providing "one last opportunity to purchase stock at \$1.00 per share."
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23 13. In late March 2004, the Securities Division notified the Respondents that the offering of
24 Yakima Brewing preferred stock was not registered with the State of Washington and that they
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1 must immediately cease offering securities to Washington residents. In spite of this directive, the
2 offering of Yakima Brewing securities to Washington residents continued through May 2004.

3 14. Since April 2004, several Yakima Brewing shareholders have been offered the opportunity
4 to reinvest their dividends and purchase additional shares of preferred stock for \$1.00 per share.

5 **MISREPRESENTATIONS AND OMISSIONS**

6 15. In the offer and sale of Yakima Brewing preferred stock, the Respondents failed to
7 disclose material information to investors, which made the information that was disclosed
8 misleading to investors.

9 16. The Offering Memorandum distributed by the Respondents failed to disclose material
10 information regarding the ownership of and the liabilities associated with its core asset, the
11 company's brewery. The Offering Memorandum stated that Black Bear completed the
12 acquisition of Yakima Brewing on January 4, 2002. The Offering Memorandum included
13 financial statements for 2002, which stated that Yakima Brewing had approximately \$2.2
14 million in total assets. Of this amount, \$1.1 million of the assets represented brewery
15 machinery and approximately \$975,000 represented a building.

16 17. The Respondents failed to disclose to investors that in December 2001, Black Bear
17 executed a \$1.68 million promissory note to International Wine & Spirits, Ltd. ("IWS"), as part
18 of the purchase of Yakima Brewing.¹ Under the terms of the note, Black Bear was required to
19 make monthly payments to IWS and pay the principal balance in February 2006.

20 18. Furthermore, the Respondents also failed to disclose to investors that Black Bear
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24 ¹ IWS is a holding company for Ste. Michelle Wine Estates (formerly Stimson Lane
25 Vineyard & Estates), which produces wines under the Chateau Ste. Michelle and Columbia
Crest labels.

1 missed numerous payments that were due under the note, and received a Notice of Default in
2 June 2003. Under the terms of the note, this triggered a default interest rate of eighteen percent
3 (18%) upon the principal balance. Two months later, after missing more payments, the
4 Respondents received a Second Notice of Default and Acceleration, in which IWS demanded
5 immediate payment of the entire principal balance and accrued interest.

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7 19. Moreover, the Respondents failed to disclose to prospective investors that in December
8 2003, in the midst of the offering, Black Bear entered into a new agreement with IWS, that in
9 the words of Brown, "gave the brewery back to them." Brown, on behalf of Black Bear and
10 Yakima Brewing, executed a Deed in Lieu of Foreclosure Agreement to IWS. As part of the
11 agreement, Black Bear conveyed the brewery's real property and equipment back to IWS, and
12 also transferred various trademarks and trade names to IWS. The property and its equipment
13 are now leased from IWS.

14 20. The Offering Memorandum distributed by the Respondents failed to disclose material
15 information about the principals of Yakima Brewing. Among other things, the Offering
16 Memorandum failed to disclose that Tranum and Brown failed at a previous similar business
17 venture, including a proposed brewery in Atlanta, Georgia that ultimately resulted in losses to
18 investors in a related \$4.2 million bond offering. The Offering Memorandum misrepresented
19 that Brown graduated from the University of South Florida and had a B.S. in finance from the
20 University of Florida.
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22 21. The Offering Memorandum failed to disclose other material information, including, but
23 not limited to, current financial statements, disclosure of the company's cash flow problems,
24 and the basis for its ability to pay investors an annual dividend of 7.75% of their investment.
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1 The Offering Memorandum also failed to disclose related party transactions, including loans to
2 the company from Tranum and Brown. In February 2004, in the midst of the offering, Tranum
3 received at least one payment in the amount of \$25,000.

4 **REGISTRATION STATUS**

5 22. Yakima Brewing is not currently registered to offer or sell securities in the state of
6 Washington and has not previously been so registered.

7 23. On June 14, 2002, Tranum and Brown filed a notice of claim of exemption from
8 securities registration in Washington pursuant to WAC 460-44A-504. The claim of exemption
9 stated that Yakima Brewing was conducting a \$250,000 offering of common stock, and that the
10 company's shares would be sold for \$2 per share to no more than twenty non-accredited
11 investors.

12 24. At all relevant times to this order, neither Brown nor Tranum was registered as a
13 security salesperson or broker-dealer in the state of Washington.

15 **THREAT TO THE INVESTING PUBLIC**

16 25. The Securities Administrator finds that the continued offering of Yakima Brewing stock
17 in the manner as described in the Tentative Findings of Fact, presents a threat to the investing
18 public.

19 Based upon the Tentative Findings of Fact, the following Conclusions of Law are made:
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2 **CONCLUSIONS OF LAW**

3 1. The offer or sale of Yakima Brewing preferred stock described above constitutes the
4 offer or sale of a security, as defined in RCW 21.20.005(10) and (12).

5 2. Yakima Brewing, Brown, and Tranum have each violated RCW 21.20.010 because, in
6 connection with the offer or sale of said securities, they each made untrue statements of
7 material fact or omitted to state material facts necessary in order to make the statements made,
8 in the light of the circumstances under which they were made, not misleading.

9 3. Yakima Brewing, Brown, and Tranum have each violated RCW 21.20.140, the securities
10 registration provision of the Securities Act, because they offered and/or sold securities for which
11 there was no registration on file with the Securities Administrator, and it appears that they do not
12 otherwise qualify for an exemption from registration.

13 4. Brown and Tranum have each violated RCW 21.20.040, the salesperson registration
14 provision of the Securities Act, because they offered and/or sold securities while not registered
15 as a securities salesperson or broker-dealer in the state of Washington.

16 5. The Securities Administrator finds and concludes that an emergency exists, that
17 continued violations of the Securities Act constitute a threat to the investing public, and that a
18 summary order to cease and desist from those violations is in the public interest and necessary
19 for the protection of the investing public.
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1 **SUMMARY ORDER**

2 Based on the foregoing,

3 NOW, THEREFORE, IT IS HEREBY SUMMARILY ORDERED that Yakima
4 Brewing and Malting Co., Inc.; Paul C. Brown, Jr.; and J. Gregory Trantum, their agents and
5 employees each cease and desist from violating RCW 21.20.010, the anti-fraud section of the
6 Securities Act.

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8 It is further SUMMARILY ORDERED that Yakima Brewing and Malting Co., Inc.;
9 Paul C. Brown, Jr.; and J. Gregory Trantum, their agents and employees each cease and desist
10 from offering or selling securities in any manner in violation of RCW 21.20.140, the section of
11 the Securities Act of Washington requiring registration.

12 It is further SUMMARILY ORDERED that Paul C. Brown, Jr. and J. Gregory Trantum
13 cease and desist from violating RCW 21.20.040, the section of the Securities Act that requires
14 registration of securities salespersons and broker-dealers.

15 **NOTICE OF INTENT TO IMPOSE FINES**

16 Pursuant to RCW 21.20.395, and based upon the above Tentative Findings of Fact and
17 Conclusions of Law, the Securities Administrator finds that Yakima Brewing and Malting Co.,
18 Inc.; Paul C. Brown, Jr.; and J. Gregory Trantum have committed knowing or reckless violations
19 of the Securities Act such that the imposition of a fine is required. Therefore, the Securities
20 Administrator intends to order that Yakima Brewing and Malting Co., Inc.; Paul C. Brown, Jr.;
21 and J. Gregory Trantum shall each be liable for and shall each pay a fine in an amount up to
22 \$10,000 for each violation.

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2 **NOTICE OF INTENT TO ORDER AFFIRMATIVE RELIEF**

3 Pursuant to RCW 21.20.390, and based upon the above Tentative Findings of Fact and
4 Conclusions of Law, the Securities Administrator finds that affirmative action is warranted to
5 correct the conditions resulting from the Respondents' violations. Therefore, the Securities
6 Administrator intends to order that Yakima Brewing and Malting Co., Inc.; Paul C. Brown, Jr.;
7 and J. Gregory Trantum shall be jointly and severally liable for and shall provide appropriate
8 affirmative action, including, without limitation, a requirement to pay the costs, fees, and other
9 expenses incurred in the conduct of this investigation.
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11 **AUTHORITY AND PROCEDURE**

12 This Order is entered pursuant to the provisions of RCW 21.20.390 and RCW
13 21.20.395, and is subject to the provisions of RCW 34.05. The Respondents may each make a
14 written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND
15 AND OPPORTUNITY FOR HEARING accompanying this Order. A request for a hearing
16 should be in writing and should be sent to Michael E. Stevenson, Securities Administrator, c/o
17 Robert Kondrat, Department of Financial Institutions, P.O. Box 9033, Olympia, WA 98507-
18 9033.
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2 If a Respondent does not make a timely hearing request, the Securities Administrator
3 intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and make
4 the Summary Order to Cease and Desist permanent as to that Respondent and impose the fine and
5 affirmative relief as set forth.

6 WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

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8 Dated this 18th day of August, 2004

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11 Michael E. Stevenson
Securities Administrator

12 Approved by:

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15 Martin Cordell
16 Chief of Enforcement

17 Presented by:

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19 Robert Kondrat
20 Financial Legal Examiner