BEFORE THE STATE BOARD OF EQUALIZATION

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
VIDAL SASSOON OF NEW YORK, INC.)

Appearances:

For Appellant: Richard H. Nimmons
Certified Public Accountant

For Respondent: Gary M. Jerrit
Counsel

O P I N I O N

This appeal is made pursuant to section 25666 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Vidal Sassoon of New York, Inc., against proposed assessments of additional franchise tax in the amounts of $2,081, $10,116 and $13,300 for the income years 1972, 1973, and 1974, respectively.

Appeal of Vidal Sassoon of New York, Inc.

The issue for determination is whether appellant has established error in respondent's determination that the worldwide operations of appellant and its affiliated corporations constituted a single unitary business during the years at issue.

In support of its contention that appellant was operating as part of a unitary business during the period under appeal, respondent relied primarily upon statements contained in various newspaper articles. These articles indicate that Vidal Sassoon began business as a hair stylist in London in 1954. In 1960 the business was incorporated as Vidal Sassoon, Ltd. Between 1960 and 1964, Vidal Sassoon, Ltd., acquired three more corporations, Vidal Sassoon Sloan Street, Ltd., Vidal Sassoon Grosvenor House, Ltd., and Vidal Sassoon Products, Ltd. In 1964, Vidal Sassoon established residency in New York City and began doing business in this country. In 1967, he incorporated appellant, Vidal Sassoon of New York, Inc.,. and in that same year he opened his first school of hairdressing in London. In 1969, appellant opened a salon in Beverly Hills, California. By 1974 the operations had expanded to include 20 corporations doing business in England, Germany, Italy, Canada and the United States. During the years at issue, the principal activities of these corporations included the operation of men's and women's salons and hairdressing schools. By the period on appeal, all of the corporations were held directly or indirectly by Vidal Sassoon, Inc., a Delaware corporation (hereinafter "Vidal Sassoon, U.S.") incorporated in 1970. Vidal Sassoon Holding, Ltd. (hereinafter "Vidal Sassoon, U.K.") was the first-tier European corporation while all of the United States corporations, including appellant, were wholly owned by Vidal Sassoon, U.S.

Vidal Sassoon was president and chairman of the board of both Vidal Sassoon, U.S., and Vidal Sassoon, U.K. In addition, out of an eight-person board of directors in each of the above corporations, three directors--Vidal Sassoon, Thomas Yeardye, and Ivan Sassoon--were common to both boards in 1972, while four--the above three plus John Addey--were common in 1973. In 1974 Vidal Sassoon, Thomas Yeardye and John Addey served on both boards. Respondent based its determination primarily upon the use of the common name, the operation of similar businesses, and the shared directors and officer. Respondent buttressed this determination by noting that some intercompany financing and a worldwide stock option plan existed. Moreover, respondent points out that in 1976 appellant began to file a combined report on a worldwide basis.

In opposition to respondent's determination, appellant observes that the operations of the affiliated corporations were not characterized by any degree of centralization. During the years at issue, Thomas Yeardye exclusively conducted the affairs of the British and European group, while Joseph Soloman exclusively conducted those of the United States group. Vidal Sassoon himself was the only common officer. Moreover, each group maintained its own legal counsel, public relations firm, advertising, insurance arrangements, accounting and financial departments, and banking relationships. Significantly, each group employed separate departments, known as artistic teams, involved in style development and salon training. As a result of these separate teams, the hairstyles of each group did differ considerably, with those of the European group being more avant-garde. Purchasing of supplies was done separately and independently, and no exchange of employees occurred. Replying to respondent's assertions, appellant answers that the alleged intercompany financing was an isolated and relatively minor transaction in which the British group merely deposited 75,000 pounds sterling in a bank account as security for loans incurred by the United States group. Moreover, appellant explains that its change to combined reporting in 1976 was the result of a complete corporate reorganization in which Thomas Yeardye moved to the United States to take over the salons and schools on a worldwide basis. Based upon the above, appellant contends that for the appeal years the two corporate groups should be treated as two separate operations.

When a taxpayer derives income from sources both within and without California, it is required to measure its California franchise tax liability by its net income derived from or attributable to sources within this state. (Rev. & Tax. Code, § 25101.) If the taxpayer is engaged in a unitary business with affiliated corporations, the amount of income attributable to California sources must be determined by applying an apportionment formula to the total income derived from the combined unitary operations of the affiliated companies. (See Edison California Stores, Inc. v. McColgan, 30 Cal.2d 472 [183 P.2d 16] (1947); John Deere Plow Co. v. Franchise Tax Board, 38 Cal.2d 214 [238 P.2d 569] (1951), app. dism., 343 U.S. 939 [96 L.Ed. 13451 (1952).) If, however, the enterprises are truly separate and distinct so that the segregation of income may be made clearly and accurately, the separate accounting method may properly be used. (Butler Bros. v. McColgan, 17 Cal.2d 664, 667 [111 P.2d 334] (1941) affd., 315 U.S. 501 [86 L.Ed. 991] (1942).)

The California Supreme Court has determined that a unitary business is definitely established by the presence of: (1) unity of ownership; (2) unity of operation as evidenced by central purchasing, advertising, accounting, and management divisions; and (3) unity of use in a centralized executive force and general system of operation. (Butler Bros. v. McColgan, supra, 17 Cal.2d at 678.) The court has also stated that a business is unitary when the operation of the business within California contributes to or, is dependent upon the operation of the business outside the state. (Edison California Stores, Inc., supra, 30 Cal.2d at 481.) These principles have been reaffirmed in more recent cases. (Superior Oil Co. v. Franchise Tax Board, 60 Cal.2d 406 [34 Cal.Rptr. 545, 386 P.2d 33] (1963); Honolulu Oil Corp. v. Franchise Tax Board, 60 Cal.2d 417 [34 Cal.Rptr. 552, 386 P.2d 40] (1963).) The existence of a unitary business may be established if either the three unities or the contribution or dependency test is satisfied. (Appeal of F. W. Woolworth Co., Cal. St. Bd. of Equal., July 31, 1972; Appeal of Browning Manufacturing Co., et al., Cal. St. Bd. of Equal., Sept. 14, 1972.)

The presence of unity of ownership, a prerequisite to the existence of a unitary business under either the three unities or the contribution or dependency test, does not appear to be contested.

The first area of controversy appears to be the degree of integration of the executive forces of the two groups. It is, of course, well settled that the integration of executive forces is an element of exceeding importance and constitutes significant evidence of a unitary business operation. (See, e.g., Chase Brass & Copper Co. v. Franchise Tax Board, 10 Cal.App.3d 496 [87 Cal.Rptr. 239], app. dism. and cert. den., 400 U.S. 961 [27 L.Ed.2d 3811 (1970); Appeal of Grolier Society, Inc., Cal. St. Bd. of Equal., Aug. 19, 1971; Appeal of Monsanto Co., Cal. St. Bd. of Equal., Nov. 6, 1970.) The cornerstone of respondent's contention here that the executive forces were closely integrated is, of course, the fact that Vidal Sassoon himself was president and chairman of the board of both corporations. However, the record is devoid of any facts which would indicate that, during the period at issue, Mr. Sassoon set overall management policy or closely supervised the implementation of policies or otherwise imposed centralized management upon both groups. (Compare, Appeal of Credit Bureau Central, Inc., Cal. St. Bd. of Equal., Feb. 2, 1981.) The most significant evidence of Mr. Sassoon's imposition of management policy

noted by respondent is a quotation from a newspaper article stating that he's "a very active chairman, and [he screams] like hell." (San Francisco Sunday Examiner & Chronicle, June 24, 1979, at 6, col. 1.) However, that same article, quoting Mr. Sassoon, indicates that he was not omnipotent. Mr. Sassoon stated that "[t]his was not a one-man band." Moreover, other newspaper articles indicate that Joseph Soloman primarily set the management direction of the United States group. One article stated that the successes of the United States operations "belong to Joseph Soloman." (Los Angeles Times, July 15, 1980, at Part IV, page 1, col. 1.) Since, during the years at issue, Joseph Soloman supervised only the United States operations, and since he appears to have set the overall management policies of those operations, we cannot conclude that executive forces of the two groups were closely integrated.

Moreover, as indicated above; each group employed separate artistic teams which developed separate and distinct hairstyles. In addition, such factors as the existence of separate training regimens, separate public relations arrangements, lack of employee exchanges and of common policies are indicative of an absence of a common or integrated system of operation. Accordingly, we must conclude that unity of use did not exist in the instant matter during the years at issue.

Moreover, based upon the evidence presented by appellant, we cannot conclude that unity of operation existed. As indicated above, there is no evidence of central purchasing, advertising, accounting, or management divisions. (Cf. Butler Bros. v. McColgan, supra.) In addition, separate banking and insurance arrangements were made by each group. The alleged intercompany financing was both a minor and isolated event, and the worldwide stock option plan was of limited scope and significance. Accordingly, we must conclude that the three unities test has not been met in the instant situation.

It is well settled, however, that a unitary business may exist if the alternative Edison test is satisfied, i.e., if the business carried on within the state contributes to or is dependent upon the operation of the business outside California. Accordingly, to find for respondent under this test, we must be convinced that the British and European groups contributed to or were dependent upon the operations of the business carried on within this state. However, even applying this latter test to the facts presented to us, we must conclude that, during the years under review, appellant and its British and European affiliates were not engaged in a single unitary enterprise.

Based upon the facts presented to us, during the period at issue, we must find that the businesses in the United States and in Europe were operated autonomously. While there was some overlap between the directors of each corporation, it was certainly not as complete or pervasive as, for example, in Woolworth, where one company's directors were all members of the other's board of directors. The only common officer to both was Vidal Sassoon himself. As indicated above, Joseph Soloman ran the operations in the United States, while Thomas Yeardye ran those in Europe. Moreover, while each organization was engaged in the same general business, each employed its own artistic team, each of which was responsible for its own corporation's style development and salon training. Accordingly, there was little opportunity for exchanges of significant information and know-how. Indeed, the strongest link between the two organizations appears to be the common name "Sassoon." However, we have indicated before that the mere use of a common name is not 'always of overwhelming significance in establishing a unitary-business. (See Appeal of H & R Block, Inc., Cal. St. Bd. of Equal., June 6, 1968.) As noted in various newspaper articles, several rival organizations also used the same or similar sounding names. Indeed, one Maurice Sasson produced "Sasson designer jeans," while a hair stylist named Tony Sassoon operated a hair salon in Los Angeles. While the name "Sassoon" is apparently well recognized and has a certain recognition value, it cannot be said that it is of the same stature as the name "Woolworth" with that company's common trademarks, trade names and slogans which are clearly and unmistakably known to the public. Unlike the taxpayer in Appeal of Maryland Cup Corporation, decided by this board'on March 23, 1970, there is no evidence here that the common name was advertised or promoted on a worldwide basis during the years at issue.

Viewing the record as a whole, we believe that operations in the United States were clearly distinct from those in Europe, and that there was no substantial contribution or dependency between the two. We therefore conclude that respondent's determination that appellant's worldwide operations constituted a single unitary business during the years at issue is erroneous and must be reversed.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Vidal Sassoon of New York, Inc., against proposed assessments of additional franchise tax in the amounts of **$2,081**, **$10,116** and $13,300 for the income years 1972, 1973, and 1974, respectively, be and the same is hereby reversed.

Done at Sacramento, California, this 27th day of June , 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis and Mr. Bennett present.

Richard Nevins , Chairman

Ernest J. Dronenburg, Jr. , Member

Conway H. Collis , Member

William M. Bennett , Member

, Member