

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: William E. Kovacic, Chairman
Pamela Jones Harbour
Jon Leibowitz
J. Thomas Rosch

_____)
In the Matter of)
) Docket No. C-4224
PERNOD RICARD S.A.,)
)
a French société anonyme.)
_____)

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Pernod Ricard S.A. (“Pernod” or “Respondent”) of V&S Vin & Sprit AB (publ) (“V&S”) from The Kingdom of Sweden and Respondent having been furnished thereafter with a copy of a draft Complaint (“Complaint”) that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”) containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Hold Separate and Maintain Assets and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having modified the Decision and Order in certain respects, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

rights, titles, and interests, in the following:

1. Absolut Vodka Intellectual Propert

provided, however, that the Absolut Vodka Assets shall not include:

- a. any right to use Respondent's general business strategies or practices relating to product information formulation or market research activities or methods or methodologies that Respondent uses on a company-wide basis for the purposes of formulating, marketing, promoting, managing, or selling its various brands, *except* that, to the extent that documents or other materials relating to such business strategies or practices contain the results of product formulation or marketing research activities relating to Absolut Vodka, Respondent shall divest those results to the Acquirer and the Acquirer shall be entitled to use such product formulation or marketing research results;
- b. any right, title and interest in or to any owned or leased real property and improvements, office space, office equipment and furniture, management information systems, software, and personal property used by Respondent, other than such assets that comprise the Absolut Vodka Manufacturing Facilities;
- c. any interest in any wholesale distributor of beverage alcohol;
- d. any payables or receivables related to transactions that are fully performed on or prior to the Absolut Vodka Closing Date;
- e. any contract for the procurement or receipt of goods or services for Respondent on a company-wide or portfolio-wide basis; and
- f. that portion of any document or other material containing information relating solely to a brand or business other than Absolut Vodka;

provided further, however, in cases in which documents or other materials included in the Absolut Vodka Assets contain information that relates both to Absolut Vodka and other brands or businesses of Respondent, Respondent shall be required to provide only copies of the documents and materials containing this

relates also to brands and businesses other than Absolut Vodka.

- F. “Absolut Vodka Business” means all of the operations and business related to the research, development, production, marketing, advertising, promotion, distribution, sale or after-sales support for Absolut Vodka.
- G. “Absolut Vodka Closing Date” means the date on which Respondent (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey Absolut Vodka Assets to an Acquirer.
- H. “Absolut Vodka Confidential Business Information” means all information that is not in the public domain relating to the Absolut Vodka Business, including the research, development, production, marketing, advertising, promotion, distribution, sales or after-sales support of Absolut Vodka.
- I. “Absolut Vodka Employee(s)” means:
 - 1. all persons employed by V&S with responsibility for, or who directly participa

2. a stipulated amount equal to at least twenty (20) percent of gross sales revenue re

tools, supplies and other personal property associated with the preceding facilities.

- P. “Absolut Vodka Sales and Marketing Materials” means all marketing and promotional materials used anywhere in the world related to Absolut Vodka or the Absolut Vodka Assets as of the Absolut Vodka Closing Date, including, without limitation: all advertising materials; customer lists; contribution statements; Website(s) and Domain Name(s); product data; profit and loss statements; price lists; mailing lists; sales materials; marketing information (*e.g.*, customer sales and competitor data); catalogs, sales promotion literature and other promotional materials; spend records related to advertising, marketing or promotion; training and other materials associated with the Absolut Vodka Assets; and all copyrights in and to the Absolut Vodka Sales and Marketing Materials.
- Q. “Absolut Vodka Senior Manager(s)” means all persons designated as, or otherwise functioning as, brand managers for Absolut Vodka. The Absolut Vodka Senior Manager(s) include, without limitation, those individuals identified in Appendix III. attached to this Order.
- R. “Acquirer” means a Person approved by the Commission to acquire particular assets or rights that Respondent is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.
- S. “Acquisition” means the acquisition contemplated by the Share Purchase Agreement Regarding the Shares in V&S dated March 30, 2008, by and among The Kingdom of Sweden and Pernod Ricard S.A., and all amendments, exhibits, attachments, agreements, and schedules thereto.
- T. “Acquisition Date” means the date Respondent closes on the Acquisition.
- U. “Allied Domecq” means Allied Domecq International Holdings BV, a corporation organized, existing, and doing business under and by virtue of the laws of The Netherlands, with its office and principal place of business located at The Pavilions, Bridgwater Road, Bedminster Down, Bristol, BS138AR, United Kingdom; and its subsidiaries and affiliates, including without limitation Allied Domecq Spirits & Wine USA, LLC, a limited liability corporation organized, existing, and doing business under and by virtue of the laws of Michigan, with its office and principal place of business located at 355 Riverside Avenue, Westport, CT 06880.

- V. “ASCI Brands” means all V&S distilled spirits marketed, sold or distributed by the Future Joint Venture including, but not limited to, Absolut Vodka, Level Vodka, Cruzan Rum, and Plymouth Gin.

- W. “Beam Brands” means all Beam Global distilled spirits marketed, sold, or distributed by the Future Joint Venture including, without limitation, Jim Beam Bourbon, Knob Creek Bourbon, Bakers Bourbon, Basil Hayden Bourbon, Booker’s Bourbon, Laphroaig Scotch, Ardmores Scotch, Teacher’s Highland Cream Scotch,

of any of Respondent's employees' labor shall not exceed the average hourly wage rate for such employee.

- CC. "Divestiture Agreement" means any agreement between Respondent and an Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that have been approved by the Commission to accomplish the requirements of this Order.
- DD. "Divestiture Trustee" means the trustee appointed by the Commission pursuant to Paragraph V. of this Order.
- EE. "Domain Name" means the domain names (universe resource locators), and registrations thereof, issued by any Person that issues and maintains the domain name registration; *provided, however*, this term shall not include any Trademark or service mark right to such domain names other than the rights to the Trademarks or service marks required to be divested.
- FF. "Employee Information" means the following, for each employee, and to the extent permitted by the law:
 - 1. A complete and accurate list of the names of all employees (including former employees who were employed by Respondent within ninety (90) days of the execution of any Divestiture Agreement);

whether full or part time); and

g. any other material terms and conditions of employment that are not otherwise generally available to similarly situated employees; and

3. at the Acquirer's or SPI's option (as is relevant), copies of all employee benefit plans and summary plan desc

NN. "Ownership Interest" means any and all rights, title, and interest, present or contingent, of the Respondent to hold any voting or nonvoting stock, share capital, equity

- VV. “Stolichnaya Brand Organisation” means The Stolichnaya Brand Organisation Limited, a company organized, existing, and doing business under and by virtue of the laws of Scotland, with registered office located at 111-113 Renfrew Road, Paisley, PA3 4DY, United Kingdom, and its principal place of business headquartered at 40 Conduit Street, London, W1S 2YQ, United Kingdom.
- WW. “Stolichnaya Vodka” means any brand or product that uses the trade name or Trademark “Stolichnaya”, including, without limitation, all such products that are vodka or vodka based beverages.
- XX. “Stolichnaya Held Separate Business” means the Stolichnaya Brand Organisation and all of the operations and businesses related to the research, development, production, marketing, advertising, promotion, distribution, sale or after-sales support for Stolichnaya Vodka related thereto.
- YY. “Stolichnaya Confidential Business Information” means all information that is not in the public domain relating to Stolichnaya Vodka, including the research, development, production, marketing, advertising, promotion, distribution, sales or after-sales support of Stolichnaya Vodka.
- ZZ. “Stolichnaya Employee(s)” means, within an eighteen (18) month period prior to the Acquisition Date:
1. all persons employed by the Stolichnaya Brand Organisation; and
 2. any other Pernod employee with primary responsibilities related to the research, development, production, marketing, advertising, promotion, distribution, sale or after-sales support of Stolichnaya Vodka in the United States.
- AAA. “Stolichnaya Distribution Agreement” means the Trademark, Supply and Distribution Agreement dated November 15, 2000, by and among Allied Domecq International Holdings BV, Allied Domecq Spirits & Wine USA, Inc. d/b/a Allied Domecq Spirits, SPA, SPI International NV, and SPI Spirits (Cyprus) Limited, and all amendments, exhibits, attachments, agreements, and schedules thereto. The Stolichnaya Distribution Agreement is contained in non-public Appendix I, attached to this Order.
- BBB. “Stolichnaya Termination Date” means the date Respondent ceases and desists from the marketing, sale, and/or distribution of Stolichnaya Vodka in the United States.
- CCC. “Stolichnaya Transition Agreement” means the Transition Agreement dated March 13, 2008, by and among Spirits International BV, SPI Spirits (Cyprus)

Limited., Allied Domecq International Holdings BV, Allied Domecq Spirits & Wine USA LLC, Allied Domecq Spirits and Wine Limited, and Pernod Ricard S.A., and all amendments, exhibits, attachments, agreements, and schedules thereto, and includes the employee retention bonus program dated as of May 20, 2008. The Stolichnaya Transition Agreement is contained in non-public Appendix II, attached to this Order.

DDD. "Supply Cost" means a cost calculated not to exceed the manufacturer's average direct per unit cost to manufacture the particular units of Absolut Vodka products for the twelve (12) month period immediately preceding the accrual of the relevant sales revenue. "Supply Cost" shall expressly exclude any intracompany business transfer profit.

EEE. "Third Party" means any Person other than the Respondent.

FFF. "Trade Dress" means the visual appearance of a product or service, including but not limited to the design, color, shape, and texture of the product or service, and the design, color, shape, and texture of the packaging or container of the product or service.

Stolichnaya Vodka in the United States; *provided further, however*, that, once the Commission approves an agreement to divest the Absolut Vodka Income Stream, Respondent may not modify or amend such agreement without receiving the prior approval of the Commission; or

2. divest the Absolut Vodka Assets, absolutely and in good faith, at no minimum price, to an Acquirer in a manner that receives the prior approval of the Commission.

D. If Respondent continues to market, sell or distribute Stolichnaya Vodka in the United States, directly or indirectly, beyond the Cease and Desist Date for any reason other than: (1) by order of a court as described in Paragraph II.C. of this Order; or (2) due to circumstances wholly beyond Respondent's control and which circumstances Respondent could not have prevented by its exercise of prudence, diligence, and care and for which the Commission determines, in its sole discretion, that Respondent has made a satisfactory showing of such circumstances, then, not later than six (6) months after the Cease and Desist Date:

1. Respondent shall divest the Absolut Vodka Assets, absolutely and in good faith, at no minimum price, to an Acquirer in a manner that receives the prior approval of the Commission;
2. Respondent shall use its best efforts to assist the Acquirer in securing supply contracts with all input suppliers used in the production of Absolut Vodka, including, without limitation, any suppliers of flavorings or other ingredients for Absolut Vodka;
3. Respondent shall provide the Absolut Vodka Employees with continued financial compensation and employment benefits, including providing them with the same employee benefits, regularly scheduled raises and

at 7:31 PM (see schedule) Tj348400 0.0000 TD(nefit: 0.0000 TD5imum pr aen TD(re)Tj9.2400

5. Respondent shall provide the Absolut Vodka Future Board Members and Absolut Vodka Senior Managers who accept employment with the Acquirer following the divestiture of the Absolut Vodka Assets, an additional incentive equal to at least twenty (20) percent of such employee's annual salary under the following terms:
 - a. ten (10) percent to be paid at the beginning of the employee's employment with the Acquirer; and
 - b. a severance payment if, less than twelve (12) months after the date such employee commences employment with the Acquirer, the Acquirer terminates the employment of such employee for reasons other than cause. The amount of such severance payment shall be equal to the payment that such employee would have received had he or she remained in the employ of Respondent a

affect the ability of those individuals to be employed by the Acquirer. In addition, Respondent shall not make any counteroffer to such an Absolut Vodka Employee who has received a written offer of employment from the Acquirer;

9. for a

Pernod Ricard USA. Respondent shall also provide an officer's certificate to the Commission, stating that such acknowledgment program has been implemented in compliance with the terms of this Paragraph. Respondent shall make available copies of all certifications, notifications and reminders sent to Respondent's employees, at the request of the Acquirer; and

11. Respondent shall provide the back office services related to the distribution of Absolut Vodka for a period of up to six (6) months after the Absolut Vodka Closing Date. Respondent shall provide the services required by this paragraph in a non-discriminatory fashion to the Acquirer with service levels comparable to those Respondent provided to the Absolut Vodka Business prior to the Absolut Vodka Closing Date.
- E. Any Divestiture Agreement related to the Absolute Vodka Assets or the Absolut Vodka Income Stream shall be deemed incorporated into this Order, and any failure by Respondent to comply with any term of the Divestiture Agreement shall constitute a failure to comply with this Order. Respondent shall include in any Divestiture Agreement a specific reference to this Order and the remedial purpose thereof.
 - F. Until the Stolichnaya Termination Date, Respondent shall provide the Stolichnaya Employees with continued financial compensation and employment benefits, including providing them with the same employee benefits, regularly scheduled raises and bonuses, and a vesting of all pension benefits (as permitted by law). Respondent shall also provide the financial incentives set forth in the employee retention bonus program issued pursuant to the Stolichnaya Transition Agreement to the Stolichnaya Employees to continue in their employment positions until the Stolichnaya Termination Date.
 - G. At any time after the Acquisition Date, and within ten (10) days of Respondent's

H. For a period ending no earlier than six (6) months after the Stolichnaya Termination Date, Respondent shall provide SPI or its designee(s) with an opportunity to enter into employment contracts with the Stolichnaya Employees, which may be contingent upon the Respondent's termination of Respondent's marketing, sale, and distribution of Stolichnaya Vodka. Respondent shall not interfere with the employment by SPI or its designee(s) of any Stolichnaya Employee, shall not offer any incentive to such employees to decline employment with SPI or its designee(s) or to accept other employment with Respondent, and shall remove any impediments that may deter such employees from accepting employment with SPI or its designee(s), including, but not limited to, any confidentiality provisions relating to Stolichnaya Vodka or any non-compete or confidentiality provisions of employment or other contracts with Respondent that would affect the ability of those individuals to be employed by SPI or its designee(s). In addition, Respondent shall not make any counteroffer to such a Stolichnaya Employee who has received a written offer of employment from the SPI or its designee(s).

I. For a period of ending no earlier than one (1) year after the Stolichnaya Termination Date, Respondent shall not, directly or indirectly, solicit or otherwise attempt to induce any employee of SPI or its designee(s) with any responsibility relating to Stolichnaya Vodka who is a former employee of Respondent to terminate their employment relationship with SPI or its designee(s);

provided, however, it shall not be deemed a violation of this provision if: (1) Respondent advertises for employees in newspapers, trade publications or other media not targeted specifically at the employees of SPI or its designee(s); (2) Respondent hires employees who apply for employment with Respondent, as long as such employees were not specifically solicited by Respondent; or (3) SPI or its designee(s) has ter

1. Restrictions on the use Stolichnaya Confidential Business Information;
2. Appropriate conduct relating to information that could be used to the detriment of Stolichnaya Vodka; and
3. Sanctions for violation of the terms of the agreement.

Respondent shall send such agreement by e-mail with return receipt requested or similar transmission, and keep on file such return receipts for one (1) year after the Stolichnaya Termination Date. Respondent shall provide a copy of such agreement to SPI or its designee(s), and also maintain complete records of all such agreements at the corporate headquarters of Pernod Ricard USA.

Respondent shall also provide an officer's certificate to the Commission, stating that such acknowledgment program has been implemented in compliance with the terms of this Paragraph. Respondent shall make available copies of all certifications, notifications and reminders sent to Respondent's employees at the request of SPI or its designee(s).

- L. Respondent shall, at the request of SPI or its designee(s), for a period of up to six (6) months following the Stolichnaya Termination Date and at its Direct Cost to SPI or its designee(s), provide such technical assistance and training, and make available such personnel, as are reasonably necessary to enable SPI or its designee(s) to market, sell and distribute Stolichnaya Vodka in substantially the same manner and quality as that achieved by Respondent.

- M. At the request of SPI or its designee(s), Respondent shall provide the back office services related to the distributio

III.

IT IS FURTHER ORDERED that:

- A. For the remaining term of the Future Joint Venture:
1. Respondent shall not appoint or designate any individuals who are officers or directors of Respondent to serve as Absolut Vodka Future Board Members and such individuals shall not serve on the Future Joint Venture Board of Managers;
 2. Respondent shall participate in the management of the Future Joint Venture operations using reasonable business practices in a manner similar to the operation of the Future Joint Venture prior to the Acquisition;
 3. Respondent shall notify Commission staff of any dispute between Respondent and Fortune Brands regarding the management of the Future Joint Venture or that implicates the requirements of this Order that the parties have not been able to resolve in a timely manner;
 4. Respondent shall ensure that no Absolut Vodka Future Board Member accesses, uses, or discloses any Beam Brands Confidential Business Information *unless*:
 - a. Respondent receives the prior approval of Fortune Brands for the Absolut Vodka Future Board Member to access, use, or disclose the particular Beam Brands Confidential Business Information in question; or
 - b. the Absolut Vodka Future Board Member's access to or use of such information is reasonably necessary for that individual to carry out his or her fiduciary responsibilities to the Future Joint Venture;
 5. Respondent shall ensure that no Absolut Vodka Future Board Member discloses any Beam Brands Confidential Business Information to any other Person(s) outside the Future Joint Venture that is not specifically authorized by Fortune Brands to receive the particular information;
 6. Respondent shall ensure that no Absolut Vodka Senior Manager and/or Absolut Vodka Employee discloses any Beam Brands Confidential Business Information to any Absolut Vodka Future Board Member or Pernod Employee;

7. Respondent shall notify each Future Employee of the restrictions contained in this Order regarding the use, conveyance, provision, or disclosure of the Beam Brands Confidential Business Information; and
8. Respondent shall send the above-described notification by e-mail with return receipt requested or similar transmission, and keep on file such return receipts for (1) year after the such notification is sent. Respondent shall maintain complete records of all such notifications at the corporate headquarters of Pernod Ricard USA, and provide an officer's certificate to the Commission stating that such notification program has been implemented in compliance with the terms of this paragraph;

provided, however, Respondent shall not be deemed in violation of the notification provisions contained in this paragraph if Fortune Brands unreasonably withholds its consent to such notification program.

- B. As soon as practicable, and in any event no later than ninety (90) days after the Acquisition Date, Respondent shall, with the assistance of Fortune Brands, the Future Joint Venture and/or the Interim Monitor (if appointed), identify select database items containing Beam Brands Confidential Business Information as to which it is feasible to implement a protocol within the Future Joint Venture that limits the Absolut Vodka Firewalled Employees from having access to such information relating to the Beam Brands and implement such protocol. With respect to other Beam Brands Confidential Business Information, Respondent shall, with the assistance of Fortune Brands, the Future Joint Venture and/or the Interim Monitor (if appointed), take such actions as are reasonably practicable to limitat ions

Respondent hires employees who apply for employment with Respondent, as long as such employees were not specifically solicited by Respondent; or (3) the Future Joint Venture has terminated the individual's employment or has otherwise granted a release to the individual to permit the individual to be employed by Respondent;

provided further, however, Respondent shall require, as a condition of employment, that each Future Employee sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Beam Confidential Business Information (including, without limitation, all field experience) strictly confidential, including the non-disclosure of such information to all Pernod Employees and Absolut Vodka Firewalled Employee;

2. Respondent shall not transfer a Stolichnaya Employee to any position in the Future Joint Venture; and
 3. Respondent shall not appoint or designate any Absolut Vodka Future Board Member to a senior management position for Respondent regarding any of Respondent's brands which compete with Beam Brands in the domestic cordials, cognac, coffee liqueur or popular gin categories.
- D. The purpose of this Paragraph III is to prevent Respondent from using the Beam Brands Confidential Business Information to the detriment of the marketing, sales, or distribution of the Beam Brands; to the benefit of the Pernod Brands or any other brand(s) subsequently acquired by the Respondent; or from otherwise using such information in an anticompetitive manner or in any unfair method of competition.

IV.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent signs the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that Respondent expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order, the Order to Hold Separate and Maintain Assets, the Stolichnaya Transition Agreement and any Divestiture Agreement.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Interim Monitor,

Respondent shall be deemed to have consented to the selection of the proposed Interim Monitor.

- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondent's compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- D. If an Interim Monitor is appointed, Respondent shall consent to the following terms and conditions regarding the powers, duties, authority, and responsibilities of the Interim Monitor:
1. The Interim Monitor shall have the power and authority to monitor Respondent's compliance with: the divestiture, hold separate, and asset maintenance obligations of the Orders; the restrictions on the use, conveyance, provision, or disclosure of the identified confidential business information under the Orders; and, the related requirements of the Orders. The Interim Monitor shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission.
 2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 3. The Interim Monitor shall serve until the later of:
 - a. the date Respondent ceases and desists from participating, directly or indirectly, in the Future Joint Venture; or
 - b. the Stolichnaya Termination Date (or, if the Absolut Vodka Assets are divested, the Absolut Vodka Closing Date);

provided, however, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

4. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondent's personnel,

cooperate with all reasonable requests of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondent's compliance with the Orders.

5. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other repre

- F. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
- G. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.
- H. The Interim Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to Paragraph V. of this Order.

V.

IT IS FURTHER ORDERED that:

- A. If Respondent has not ceased and desisted from marketing, selling and/or distributing Stolichnaya Vodka in the United States on or before the Cease and Desist Date, the Commission may appoint a trustee (“Divestiture Trustee”) to assign, grant, license, divest, transfer, deliver or otherwise convey the assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed pursuant to Paragraph II. in a manner that satisfies the requirements of Paragraph II. 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, Respondent shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets. 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 Respondent to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent 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 divestiture required by this Order.

- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed;
 2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times;
 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;
 4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the

Divestiture Trustee shall divest to the acquiring Person selected by Respondent from among those approved by the Commission; and, *provided further, however*, that Respondent shall select such Person within five (5) days after receiving notification of the Commission's approval;

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, 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 Respondent, 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;
6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability claim, whether or not re

Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

VI.

IT IS FURTHER ORDERED that:

With respect to the Absolut Vodka Confidential Bb respeny c12r(Tj,000 0.0000 TD(S F)Tj16j8.1400

provided further, however, that pursuant to this Para

VIII.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of Respondent;
- B. any proposed acquisition, merger or consolidation of Respondent; or
- C. any other change in Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

IX.

IT IS FURTHER ORDERED that, for purposes of deteo.0000 TD(nt s)Tjp 0.0000 46.4.0000 TD(poses

NON-PUBLIC APPENDIX I

NON-PUBLIC APPENDIX II.
THE STOLICHNAYA TRANSITION AGREEMENT
[Redacted From the Public Record Version, But Incorporated By Reference]

NON-PUBLIC APPENDIX III.
THE ABSOLUT VODKA SENIOR MANAGERS
[Redacted From the Public Record Version, But Incorporated By Reference]