

CONSTELLATION BRANDS, INC., )  
 a corporation. )  
 \_\_\_\_\_ )

AGREEMENT CONTAINING  
 CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of Constellation Brands, Inc. (“proposed respondent”). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

**IT IS HEREBY AGREED** by and between Constellation Brands, Inc. and the Federal Trade Commission that:

1. Proposed respondent Constellation Brands, Inc. is a Delaware corporation with its principal office or place of business at 207 High Point Drive, Building 200, Victor, NY 14561.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondent waives:
  - A. Any further procedural steps;
  - B. The requirement that the Commission’s decision contain a statement of findings of fact and conclusions of law; and
  - C. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to

I.

IT IS ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of Wide Eye or any other beverage alcohol product containing caffeine, ginseng, taurine, guarana, or any stimulant, in or affecting commerce, shall not represent, in any manner, expressly or by implication, including through the use of a product name or endorsement, that consumers who drink such product will remain alert when consuming alcohol, unless the representation is true, non-misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

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officers, directors, and other employees with managerial authority having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

IT IS FURTHER ORDERED that respondent Constellatio

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2009.

CONSTELLATION BRANDS, INC.

By: \_\_\_\_\_  
Thomas Mullin  
Executive Vice President

FEDERAL TRADE COMMISSION

By: \_\_\_\_\_  
Janet M. Evans  
Division of Advertising Practices

APPROVED:

\_\_\_\_\_  
Heather Hipsley  
Acting Associate Director  
Division of Advertising Practices

\_\_\_\_\_  
Eileen Harrington  
Acting Director  
Bureau of Consumer Protection