

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Federal Trade Commission,

Petitioner,

v.

Retail Services & Systems, Inc. d/b/a Total Wine
& More,

Respondent.

Case No. _____

**PETITION OF THE FEDERAL TRADE COMMISSION FOR A SHOW CAUSE
HEARING AND AN ORDER ENFORCING CIVIL INVESTIGATIVE DEMAND**

The Federal Trade Commission (“FTC” or “Commission”), by its designated attorneys and pursuant to Section 20 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 57b-1, petitions this Court for an Order requiring Respondent, Retail Services & Systems, Inc. d/b/a Total Wine & More (“Respondent” or “Total Wine”), to comply with a civil investigative demand (“CID”).¹ The Commission issued the CID to Total Wine to aid its ongoing law enforcement investigation into whether Southern Glazer’s Wine & Spirits, LLC (“Southern”), a distributor of wine and spirits, has (1) engaged in discriminatory practices in its sales to retailers in violation of the Robinson-Patman Act, 15 U.S.C. § 13, as amended, and/or (2) engaged in other unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

¹ CIDs are a type of investigative administrative subpoena. *See, e.g., FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1087 (D.C. Cir. 1992); *General Fin. Corp. v. FTC*, 700 F.2d 366, 367-68 (7th Cir. 1983); *FTC v. LabMD, Inc.*, No. 1:12-CV-3005-WSD, 2012 WL 13104826, at *4 (N.D. Ga. Nov. 26, 2012). Proceedings to enforce CIDs are properly initiated by a petition and order to show cause (rather than a complaint and summons) and are summary in nature. *See, e.g., Order to Show Cause, FTC v. Reckitt Benckiser Pharms., Inc.*, No. 3:14-MC-00005 (E.D. Va. Aug. 26, 2014), ECF No. 6; *see also United States v. Am. Target Advert., Inc.*, 257 F.3d 348, 355 (4th Cir. 2001); *United States v. Markwood*, 48 F.3d 969, 981–82 (6th Cir. 1995); *FTC v. Carter*, 636 F.2d 781, 789 (D.C. Cir. 1980); *FTC v. MacArthur*, 532 F.2d 1135, 1141–42 (7th Cir. 1976); *Genuine Parts Co. v. FTC*, 445 F.2d 1382, 1388 (5th Cir. 1971).

Specifically, the CID seeks documents and information from Total Wine relevant to determining whether Southern is violating Sections 2(a) and 2(e) of the Robinson-Patman Act by giving preferential pricing and services to certain favored, large chain retailers—such as Total Wine—that it does not provide to small independent retailers.

FTC staff attempted for months to work cooperatively with Total Wine to secure compliance; however, Total Wine’s CID response remains severely deficient in multiple respects. Rather than negotiate a limited set of document custodians and keyword searches for responding to the CID (as every other retailer CID recipient has done in this investigation), Total Wine filed an administrative petition to limit the CID, which was denied by the Commission. Notwithstanding the Commission’s order to comply in full, Total Wine unilaterally narrowed the scope of the CID in a manner inconsistent with the CID’s specifications and refused to search any employee’s custodial files for responsive documents. Total Wine has not asserted any colorable legal ground for its noncompliance. Its refusal to fulfill its obligations under the CID has burdened and delayed the Commission’s investigation into possible discriminatory conduct in the wine and spirits industry and is contrary to the public interest.

As set forth below and in the accompanying memorandum, the FTC has met all requirements for judicial enforcement of the CID. Accordingly, the Commission requests that this Court order Total Wine to appear and show cause why it should not have to comply with the CID, and enter an order directing Total Wine to produce the specified documents and information within twenty days.²

A declaration under penalty of perjury by FTC attorney Christina Brown, which verifies the allegations of this Petition, is attached hereto as Exhibit 1 (“Brown Declaration”). Additional

² To avoid further obstruction and delay at this juncture, the FTC requests only that Total Wine cure the deficiencies identified in paragraph 25, *infra*, rather than *every* deficiency in its CID response.

exhibits supporting this Petition are identified in the accompanying Index of Petitioner’s Exhibits in Appendix B.

PETITION ALLEGATIONS

To support this Petition, the Commission alleges the following:

THE PARTIES

1. The Commission is an administrative agency of the United States government, organized and existing pursuant to the FTC Act, 15 U.S.C. § 41 *et seq.* The Commission is authorized by Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), to prevent unfair or deceptive acts or practices in or affecting commerce. The Commission is also authorized to enforce Section 2 of the Robinson-Patman Act, 15 U.S.C. § 13, as amended, which generally prohibits a seller of commodities from providing discriminatory prices and non-price services to different purchasers.

2. Respondent, Total Wine, is a privately held alcohol retailer that sells wines and/or spirits to consumers through “257 superstores across 28 states,” including 20 retail locations in the Commonwealth of Virginia. Pet. Ex. 29. Public sources indicate that Total Wine generated roughly \$3 billion in revenue from retail sales of wine and spirits in 2017, growing to more than \$5 billion in revenue by 2021. Pet. Exs. 30-31³. Total Wine purchases wine and/or spirits from Southern in nineteen states, including Virginia. Brown Decl. ¶ 6. Total Wine touts using its “tremendous buying power and special relationships with producers, importers and wholesalers [to] bring [it] considerable savings[.]” Pet. Ex. 29. Total Wine is one of Southern’s top retail customers. Brown Decl. ¶ 6.

³ Peter High, *Founder of \$3 Billion Total Wine & More Discussed His Career and Future in Politics*, Forbes (June 12, 2017), <https://www.forbes.com/sites/peterhigh/2017/06/12/founder-of-3-billion-total-wine-more-discusses-his-career-and-his-future-in-politics/?sh=46acb3a552a2>; *Total Wine’s Revenues Top \$5 Billion, As National Expansion Continues*, Shanken News Daily (July 7, 2021), <https://www.shankennewsdaily.com/index.php/2021/07/07/28971/total-wines-revenues-top-5-billion-as-national-expansion-continues>.

JURISDICTION AND VENUE

3. Section 3 of the FTC Act, 15 U.S.C. § 43, authorizes the Commission to prosecute any inquiry necessary to its duties in any part of the United States. Section 6 of the Act, 15 U.S.C. § 46, empowers the Commission to gather and compile information concerning, and to investigate from time to time, the business and practices of persons, partnerships, or corporations engaged in commerce or whose business affects commerce, with certain exceptions not relevant here. Section 20 of the Act, 15 U.S.C. § 57b-1, empowers the Commission to issue CIDs to require any person, including both targets and third parties, to produce documents or other information, to file written reports or answers, and to give oral testimony relating to any Commission law enforcement investigation.

4. This Court has jurisdiction to enforce the Commission's duly issued CIDs, including the CID issued to Total Wine, under Section 20(e) of the FTC Act, 15 U.S.C. § 57b-1(e), which provides in pertinent part:

Whenever any person fails to comply with any civil investigative demand duly served upon him under this section, or whenever . . . such person refuses to surrender such material, the Commission, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section.

15 U.S.C. § 57b-1(e). Section 20(h) authorizes the Court “to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.” 15 U.S.C. § 57b-1(h). This Court also has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345.

5. Total Wine engages in commerce in this district, as the term “commerce” is defined under Section 4 of the FTC Act. 15 U.S.C. § 44. Because the Eastern District of Virginia is a

jurisdiction within which Total Wine “is found, or transacts business,” Brown Decl. ¶ 6, venue is proper under Section 20 of the FTC Act. 15 U.S.C. § 57b-1(e).

THE COMMISSION’S INVESTIGATION

6. FTC staff initiated this investigation after receiving complaints from participants in the alcohol production, distribution, and retail industry. Brown Decl. ¶ 3. The purpose of the inquiry is to determine whether Southern, the largest distributor of wine and spirits in the United States, has (1) engaged in discriminatory practices in its sales to retailers in violation of the Robinson-Patman Act, 15 U.S.C. § 13, as amended; and/or (2) engaged in unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Brown Decl. ¶ 3.

7. Of particular relevance to this Petition, staff is investigating whether Southern may be discriminating in price by selling wine and spirits of like grade and quality to small independent retailers at prices higher than the prices it extends to large, favored chain retailers, such as Total Wine, in violation of Section 2(a) of the Robinson-Patman Act. Brown Decl. ¶ 4. Similarly, staff seeks to determine whether Southern may be providing Total Wine and other large chain retailers with illegal, discriminatory non-price services, such as shelf stocking and other forms of free labor and marketing support, that it does not provide to smaller independent retailers, in violation of Section 2(e) of the Robinson-Patman Act. *Id.*

8. As part of this investigation, on February 23, 2023, the Commission issued nearly identical CIDs to ten of Southern’s largest chain retailer customers, including Total Wine, under the authority of FTC Resolution No. P210100. This resolution authorizes the use of any and all compulsory process to obtain information and documents, including from third parties,

to investigate whether any persons, partnerships, corporations, or others have engaged or are engaging in unfair, deceptive, anticompetitive,

collusive, coercive, predatory, exploitative, or exclusionary acts or practices in, or affecting commerce targeting current or prospective workers or small business operators, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, or any statutes or rules enforced by the Commission; and to determine the appropriate action or remedy, including whether monetary relief would be in the public interest.

Brown Decl. ¶ 5; Pet. Exs. 2-3.⁴

9. The CID was signed by Commission Chair Lina Khan, under the authority delegated by the Commission in Section 2.7(a) of its Rules of Practice. 16 C.F.R. § 2.7(a). Brown Decl. ¶ 5; Pet. Ex. 2. Pursuant to the Commission's Rules, Total Wine was served with the CID by expedited delivery service on February 27, 2023. Brown Decl. ¶ 5. The CID requires Total Wine to respond to two interrogatories, six data requests, and eleven document requests on or before March 25, 2023. Brown Decl. ¶ 7; Pet. Ex. 2. As instructed by the CID, upon compliance, the recipient "must certify that such responses are complete by completing the 'Form of Certificate of Compliance' set forth on the back of the CID form or by signing a declaration under penalty of perjury pursuant to 28 U.S.C. § 1746." Brown Decl. ¶ 7; Pet. Ex. 2.

10. The CID seeks information from Total Wine about, *inter alia*, (a) the wine and spirits purchased or sold by Total Wine at the retail level, including sales and purchase data (Specifications 1-2, 7-11, 17); (b) formal and informal agreements between Total Wine and its distributors or suppliers (Specification 3); (c) Total Wine's negotiation processes for pricing, rebates, promotions, coupons, and other discounts (Specifications 3-4, 16); (d) services provided to Total Wine by Southern (Specifications 5-6); (e) Total Wine's market share and competition at the wine and spirits retailer level (Specifications 12-13); (f) Total Wine's inventory and storage processes (Specifications 14-15); and (g) Total Wine's strategies, practices, or policies regarding

⁴ The Robinson-Patman Act is a statute enforced by the Commission.

retail sales of wine and spirits (Specifications 12-13). Brown Decl. ¶ 8; Pet. Ex. 2. This information will assist FTC staff to determine whether Southern is providing discriminatory prices, free labor, marketing support, or other advantages to Total Wine or other favored, large chain retailers that it does not make available to small independent retailers. Brown Decl. ¶ 9. This information also will help staff evaluate whether any such sales satisfy the “in commerce” requirement of the Robinson-Patman Act, *see* 15 U.S.C. § 13(a), and whether any such discriminatory pricing is excused by a valid defense, such as a good-faith attempt to meet competition or as cost-justified by documented cost differences in selling to favored and disfavored purchasers. *See* 15 U.S.C. § 13(a), (b); Brown Decl. ¶ 9.

11. The CID informed Total Wine that it must raise any “factual or legal objections” to the CID by filing a petition to limit or quash the CID with the Commission within 20 days after service. Pet. Ex. 2; *see* 16 C.F.R. § 2.10(a).

FTC EFFORTS TO SECURE TOTAL WINE’S COMPLIANCE WITH THE CID

12. Between February 24, 2023, and April 5, 2023, FTC staff conferred with Total Wine’s counsel seven times and exchanged over eighteen emails and letters in an effort to secure Total Wine’s timely compliance with the CID. Brown Decl. ¶¶ 10-11, 14. Staff repeatedly invited Total Wine to propose a set of relevant employees (“document custodians”) and search terms to delimit its search for materials responsive to certain specifications asking for “all documents.” *See, e.g.*, Brown Decl. ¶¶ 10-11, 14; Pet. Exs. 6-10, 12.

13. During this period, FTC staff agreed to extend the CID return date once and agreed to extend the Rule 2.10(a)(1) 20-day deadline to petition to limit or quash the CID twice, conditioning those extensions on Total Wine’s commitment to produce an initial set of priority materials, to promptly provide staff with a proposed production plan, to inform staff of any

requests to modify the CID, to propose document custodians, and to explain what review methodology it would use to identify responsive material. *See* Brown Decl. ¶ 12; Pet. Exs. 8-9.

14. On April 3, Total Wine made an initial production consisting of one employee chart, one document, and a sample of sales data responsive to Specification 10 for just ten of its wine and spirits products. Brown Decl. ¶ 13; Pet. Ex. 11. Total Wine’s transmittal letter objected to the CID and stated that Total Wine would not otherwise respond to the specifications without a global resolution of its objections. Brown Decl. ¶ 13; Pet. Ex. 11. After lengthy negotiations about Total Wine’s objections and staff’s proposed deferral of certain responses, Total Wine opted to file a petition to limit the CID. Brown Decl. ¶ 15. No other retailer filed a petition to limit or quash its respective, nearly identical CID. *Id.*

TOTAL WINE’S PETITION TO LIMIT THE CID

15. Total Wine filed its petition to limit the CID on April 7, 2023. Brown Decl. ¶ 15; Pet. Ex. 4.⁵ Total Wine asserted that it should not be required to fully comply and requested that the Commission limit certain aspects of the CID, including the definitions of “Relevant Product” and “Distributor” as used in various specifications, the CID’s relevant period, specifications that seek confidential and proprietary data, certain data specifications, and specifications seeking “all documents.” Pet. Ex. 4. Total Wine’s petition to limit the CID advanced arguments asserting overbreadth, irrelevance to the investigation, and unreasonable burden on Total Wine. *Id.* Notably, Total Wine’s petition did not raise a categorical objection to searching employee custodial files for responsive materials and affirmatively represented it was willing to discuss “the

⁵ Because Total Wine requested confidential treatment for certain information contained in its petition to limit (Pet. Ex. 4), which the Commission referenced in its order denying the petition (Pet. Ex. 5), the Commission has filed redacted versions of exhibits 4 and 5, accompanied by a motion to seal documents temporarily.

appropriateness of word searches of certain custodial files” in response to specifications requiring production of “all documents” related to a topic. *Id.* at 15.

16. On May 19, 2023, the Commission denied Total Wine’s petition to limit the CID, finding insufficient basis or support for Total Wine’s objections. Pet. Ex. 5. The Commission concluded that Total Wine’s “narrow view of relevance to the Commission’s investigation is unjustified” and that the definitions Total Wine contended were overly broad were “well within the scope of the Commission’s investigation.” *Id.* at 4. Additionally, the Commission concluded that the mere fact that a CID requires production of confidential or sensitive business information is no basis for noncompliance, noting that the Commission is generally prohibited from disclosing any documents and information obtained through compulsory process. *Id.* at 5 n.1. The Commission did not limit the five-year timeframe of the CID as requested by Total Wine, finding that the information was relevant to the investigation. *Id.* at 6. Lastly, the Commission found that Total Wine’s conclusory statements regarding data specifications were insufficient to demonstrate an undue burden. *Id.* at 8.

17. The Commission’s order directed Total Wine to “comply in full with the Commission’s Civil Investigative Demand no later than June 16, 2023,” or at such other date as the FTC staff may determine. Pet. Ex. *Id.* at 9. The Commission also encouraged FTC staff and Total Wine to continue to discuss the use of keyword searches of certain custodial files as a means of complying with the “all documents” specifications. *Id.* at 8.

TOTAL WINE’S NONCOMPLIANCE WITH THE COMMISSION ORDER

18. Consistent with the Commission’s order and FTC staff’s previous efforts, FTC staff again made multiple attempts to confer with Total Wine regarding its CID compliance and reiterated the offer to address any purported burden associated with document requests by

negotiating a set of keyword searches and document custodians. *See, e.g.*, Brown Decl. ¶ 17; Pet. Exs. 14-15, 17-19.

19. Total Wine stonewalled every such attempt and refused to schedule a conference with FTC staff in advance of the Commission-ordered compliance deadline. *See, e.g.*, Brown Decl. ¶ 17; Pet. Ex. 18. Contradicting its prior position before the Commission, Total Wine’s counsel flatly rejected FTC staff’s efforts to confer on custodians and instead asserted “we do not think custodians are necessary for Total Wine to conduct a reasonably diligent search [in] this case.” Brown Decl. ¶ 17; Pet. Ex. 16.

20. On June 15 and 17, 2023, Total Wine made a limited production of materials, which it proclaimed “should relieve [Total Wine] of any further production obligations.” Brown Decl. ¶ 18; Pet. Ex. 20; *see also* Pet. Ex. 21. With this incomplete production, Total Wine not only granted itself the relief previously denied by the Commission, but also narrowed its response in ways not sought in its Petition. For example, Total Wine unilaterally narrowed the definitions of “Distributor” and “Relevant Products,” declining to produce certain data relating to any entity other than Southern. Total Wine did not stop there. Total Wine also refused to search for or produce any responsive internal or external email communications or other documents from any employee’s custodial files, limited its production of certain datasets to information from just four states, failed to produce complete data responsive to Specification 11, and failed to include any explanation or definitions of the fields in several datasets. Brown Decl. ¶ 18. Notably, Total Wine did not provide the certification of compliance required by the CID and the FTC Act. *Id.*

21. In a series of communications between July 6, 2023 and August 23, 2023, FTC staff notified Total Wine that it was in default of its obligations under the CID, identified numerous deficiencies in its CID response, and set forth a schedule and various proposals for Total Wine to

make further limited and specific productions in order to avoid a CID enforcement action. Brown Decl. ¶ 19; Pet. Exs. 22-23, 25, 27.

22. Ultimately, FTC staff requested that Total Wine cure its production deficiencies on a schedule through the following steps: (1) search and produce documents responsive to Specifications 3, 6, 12-13, and 15-16 from the files of five Total Wine employees, who FTC staff has reason to believe likely possess relevant information;⁶ (2) provide definitions of the fields in certain datasets in its production, and (3) produce the five categories of materials identified and offered by Total Wine in its letter dated August 15, 2023. Brown Decl. ¶¶ 20, 23; Pet. Exs. 24, 27. Staff also provided a set of seven proposed keyword searches for Total Wine to run to help identify responsive documents in the files of the five proposed custodians. Brown Decl. ¶ 23; Pet. Ex. 25.

23. Total Wine ignored the interim deadlines set in the FTC's proposals, rejected the seven proposed keyword searches without offering any suggested modifications or counterproposals, and declared that it would make no additional productions unless and until FTC staff waived any requirement that Total Wine produce from any custodian's files or internal emails responsive to Specifications 3, 6, 12-13, and 15-16. Brown Decl. ¶ 24; Pet. Exs. 26, 28.

24. To date, Total Wine's CID response remains deficient in myriad ways—including the failure to search for and produce *any* document responsive to *any* CID Specification from *any* employee's custodial files.

⁶ FTC staff identified Thomas Trone, Travis Smith, Eli Aguilera, Angela Weber, and Troy Rice as individuals likely to possess relevant documents based on their job titles, responsibilities, and information gleaned through documents produced by other CID recipients. At no time has Total Wine provided any explanation or argument that these individuals are not likely to possess documents responsive to the identified CID specifications. Brown Decl. ¶ 20. Because Total Wine refused to engage with FTC staff in a collaborative process to identify custodians likely to possess responsive materials, the Commission also seeks here the ability to require Total Wine to search no more than three additional custodians' files if the Commission deems it necessary to capture non-duplicative responsive documents based on information later obtained in the investigation.

25. The Commission seeks an order compelling Total Wine to cure certain specific deficiencies by producing the following categories of responsive materials:

- a. Documents responsive to Specifications 3, 6, 12-13, and 15-16 from the files of Total Wine employees Thomas Trone, Travis Smith, Eli Aguilera, Angela Weber, Troy Rice—and no more than three additional custodians if the Commission deems it necessary to capture non-duplicative responsive information—identified using the seven keyword searches listed in Appendix A;
- b. Documents responsive to Specification 13, wherever they are found;
- c. Data for purchases of Relevant Products from two additional Distributors, Republic National Distributing Company and Breakthru Beverage Group or their respective affiliates, responsive to Specification 7;
- d. A single, consolidated dataset export that merges Total Wine’s prior response to Specification 11;
- e. Internally created maps identifying stores and competitors (similar to what Total Wine produced for Arizona, California, Florida, and Texas), for all states where Total Wine and its affiliates conduct business with Southern, responsive to Specification 12;⁷
- f. Addresses and opening dates for Total Wine’s warehouses in California and Florida, responsive to Specification 14;
- g. Southern-related Cost Collection Files, QD Buy Tools, Pre-Sell Reports, Out-of-Stock Reports, Vendor Unknown Reports, and Vendor-Does-Not-Carry Reports (similar to what Total Wine produced for Arizona, California, Florida, and Texas) for all states where Total Wine and its affiliates conduct business with Southern, responsive to Specification 15; and
- h. Descriptions of all fields in the datasets produced by Total Wine, similar to the keys provided for datasets responsive to Specifications 7 and 10 and as directed by CID Instruction I.7(c), including for the Cost Collection Files, QD Buy Tools, Pre-Sell Reports, Out-of-Stock Reports, Vendor Unknown Reports, and Vendor-Does-Not-Carry Reports.

26. Total Wine’s refusal to produce these materials has burdened, delayed, and impeded the Commission’s investigation.

⁷ In addition to Arizona, California, Florida and Texas, FTC staff believes that there are fifteen other states where Total Wine purchases Relevant Products from Southern: Colorado, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, New Mexico, Nevada, New York, South Carolina, and Washington.

27. No previous application for the relief sought herein has been made to this Court or any other.

PRAYER FOR RELIEF

WHEREFORE, the Commission invokes the aid of this Court and prays for:

- a. Immediate issuance of an order, substantially in the form attached, directing Total Wine to appear and show cause why it should not produce the materials specified in paragraph 25 (a)-(h) above, in response to the CID; and,
- b. For a prompt determination of this matter and entry of an order requiring Total Wine to produce the information specified in paragraph 25 (a)-(h) within twenty (20) days of such order; and,
- c. For such other relief as this Court deems just and proper.

Dated: October 20, 2023

Respectfully submitted,

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APPENDIX A
Keyword Searches

1. (“Distributor Search Term”) OR (“Supplier Search Term”) w/15 (pric* OR rebat* OR incentiv* OR promotion* OR quantit* OR volume OR discount* OR coupon* OR scan* OR chargeback* OR adjust* OR “QD” or “CQD” or “IRC” or deal* or channel)
2. (“Distributor Search Term”) OR (“Supplier Search Term”) w/15 (agree* OR contract*)
3. (“Distributor Search Term”) w/15 (load* OR restock* OR unload* OR deliver* OR servic* OR display* OR material* OR tasting* OR event* OR input* OR survey* OR merchandi* OR “category captain” OR ((shelves OR shelf) w/2 (stock* OR rotat* OR reset)))
4. (competitor* OR competition* OR Kroger OR Albertson* OR BevMo* OR “Beverage and More” OR “Beverage & More” OR Specs OR Spec’s OR Costco* OR “Sams w/2 Club” OR “Sam’s w/2 Club” OR “Sam w/2 Club” OR Walmart OR “Wal-Mart” OR independent OR indy OR indies) w/15 ((market w/5 share*) OR strength* OR weakness* OR specializ* OR “SWOT” OR aggressiv* OR undercut* OR threat* OR position* OR opportunit* OR expan* OR grow* OR capacit* OR strategy OR pric* OR (barrier* w/5 (entry OR enter*)))
5. board w/5 (report* OR presentation* OR summary)
6. “business plan” OR (strateg* w/2 “plan”) OR (“strateg*” w/5 (“business” OR “enterprise” OR “roadmap*” OR “objective*” OR “priorit*” OR “initiative*”)) OR ((annual OR quarterly) w/5 budget*)
7. (strateg* OR practice* OR polic*) w/20 ((inventory w/3 manage*) OR procure* OR purchas* OR allocat* OR warehous* OR storage)

“**Distributor Search Term**” means (breakthrubev.com OR johnsonbrothers.com OR rndc-usa.com OR southernglazers.com OR winebow.com OR BREAKTHRU OR “JOHNSON BROTHERS” OR “REPUBLIC NATIONAL” OR “RNDC” OR SOUTHERN OR WINEBOW OR “SG” OR “Southern Glazers” OR “Southern Glazer’s” OR “sgws.com” OR sgws)

“**Supplier Search Term**” means (Diageo OR Bacardi OR Beam OR “Brown Forman” OR “Brown-Forman” OR Pernod OR MHUSA OR Moet OR Hennessy OR Campari OR “William Grant” OR Tito* OR “Fifth Generation” OR @titosvodka.com OR @diageo.com OR @bacardi.com OR @beamsuntory.com OR @b-f.com OR @pernod-ricard.com OR @mhusa.com OR @campari.com OR @wgrant.com)

APPENDIX B
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- Exhibit 1 Declaration of Christina Brown
- Exhibit 2 Civil Investigative Demand (“CID”) issued to Total Wine February 23, 2023
- Exhibit 3 FTC Resolution No. P210100
- Exhibit 4 Total Wine’s Petition to Limit Civil Investigative Demand filed April 7, 2023
- Exhibit 5 Commission’s Order Denying Petition to Limit Civil Investigative Demand issued May 19, 2023
- Exhibit 6 February 24, 2023 Email from W. Harrell
- Exhibit 7 February 28, 2023 Email from A. Mufti
- Exhibit 8 March 16, 2023 Letter from A. Mufti
- Exhibit 9 March 24, 2023 Letter from A. Mufti
- Exhibit 10 March 30, 2023 Email from A. Mufti
- Exhibit 11 April 3, 2023 Letter from S. Weissman
- Exhibit 12 April 5, 2023 Letter from A. Mufti
- Exhibit 13 April 12, 2023 Email from C. Brown
- Exhibit 14 May 22, 2023 Email from A. Mufti
- Exhibit 15 May 31, 2023 Email from A. Mufti
- Exhibit 16 June 2, 2023 Email from S. Weissman
- Exhibit 17 June 7, 2023 Email from C. Brown
- Exhibit 18 June 12, 2023 Email from A. Mufti
- Exhibit 19 June 13, 2023 Email from A. Mufti
- Exhibit 20 June 15, 2023 Letter from S. Weissman
- Exhibit 21 June 17, 2023 Letter from S. Weissman
- Exhibit 22 July 6, 2023 Email from A. Mufti
- Exhibit 23 July 26, 2023 Letter from A. Mufti
- Exhibit 24 August 15, 2023 Letter from S. Weissman
- Exhibit 25 August 18, 2023 Letter from A. Mufti
- Exhibit 26 August 21, 2023 Letter from S. Weissman
- Exhibit 27 August 23, 2023 Letter from A. Mufti
- Exhibit 28 August 28, 2023 Letter from S. Weissman
- Exhibit 29 Total Wine & More, <https://www.totalwine.com/about-us/our-company>
- Exhibit 30 Peter High, *Founder of \$3 Billion Total Wine & More Discussed His Career and Future in Politics*, Forbes, June 12, 2017
- Exhibit 31 *Total Wine’s Revenues Top \$5 Billion, As National Expansion Continues*, Shanken News Daily, July 7, 2021