

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-
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, 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”):

1. Respondent Pernod is a société anonyme, organized, existing and doing business under and by virtue of the laws of The French Republic, with its office and principal place of business located at 12, place des Etats-Unis, 75783 Paris Cedex 16, France. Pernod's principal subsidiary in the United States is Pernod Ricard USA, Inc. ("Pernod Ricard USA"), headquartered at 100 Manhattanville Road, Purchase, NY 10577.
2. V&S Vin & Sprit AB (publ) is an aktiebolag organized, existing, and doing business under and by virtue of the laws of The Kingdom of Sweden, with its office and principal place of business located at Årstängsvägen 19A SE-117 97 Stockholm, Sweden. V&S's principal subsidiary in the United States is the Absolut Spirits Company, Inc. ("ASCI"), headquartered at 401 Park Avenue South, New York, NY 10016.
3. The Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in the Order, the following definitions shall apply:

- A. "Pernod" or "Respondent" means Pernod Ricard S.A., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Pernod (including, but not limited to, Pernod Ricard USA and Allied Domecq), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Pernod shall include V&S.
- B. "V&S" means V&S Vin & Sprit AB (publ), its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by V&S (including, but not limited to, ASCI), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. "Commission" means the Federal Trade Commission.
- D. "Absolut Vodka" means any brand or product that uses the trade name or Trademark "Absolut", including, without limitation, all such products that are vodka or vodka based beverages.

- E. “Absolut Vodka Assets” means all of Respondent’s rights, title and interest, worldwide, as of the Absolut Vodka Closing Date, in and to all assets, tangible and intangible, of the Absolut Vodka Business, including, without limitation, such rights, titles, and interests, in the following:
1. Absolut Vodka Intellectual Property;
 2. Absolut Vodka Confidential Business Information;
 3. Absolut Vodka Sales and Marketing Materials;
 4. assets relating to the research, development, production, distribution, marketing, promotion, sale, or after-sales support of Absolut Vodka;
 5. copies of all vendor lists, and all names of manufacturers and suppliers under contract with Respondent who or that produce for, or supply to, Respondent in connection with the sale of Absolut Vodka;
 6. at the Acquirer’s option, all rights, title and interest in and to inventories of products, raw materials, supplies and parts, including work-in-process and finished goods, packaging and point of sale materials related to Absolut Vodka;
 7. at the Acquirer’s option, and to the extent transferable, divisible or assignable, all rights, title and interest in and to agreements (except contracts of employment), express or implied, relating to research, design, development, production, distribution, marketing, promotion, sale or after-sales support of Absolut Vodka, regardless of whether such agreements relate exclusively to such purposes, including, but not limited to, warranties, guarantees, and contracts with customers (together with associated bid and performance bonds, if any), other vodka distillers, joint venture partners, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors, and consignees;
 8. all unfilled customer orders for Absolut Vodka as of the Absolut Vodka Closing Date (a list of such orders to be provided to the Acquirer within twenty (20) days after the Absolut Vodka Closing Date);
 9. all rights under warranties and guarantees, express or implied, relating to Absolut Vodka;
 10. all books, records, and files relating to Absolut Vodka;

11. at the Acquirer's option, all rights under the Absolut Vodka Input Supply Agreements to the extent legally transferable to the Acquirer; and
12. at the Acquirer's option, the Absolut Vodka Manufacturing Facilities.

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 information. If such information can be segregated in a manner that preserves the

usefulness of the information as it relates to Absolut Vodka, then the copies provided to the Acquirer may be redacted to delete information that relates to brands and businesses of Respondent other than Absolut Vodka, and the copies or originals retained by Respondent shall be redacted to delete information that relates to Absolut Vodka. The purpose of this proviso is to ensure that Respondent provides the Acquirer with the above-described information without requiring Respondent completely to divest itself of information which, in content, 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 participated in (irrespective of the portion of working time involved), the research, development, production, marketing, advertising, promotion, distribution, sale or after-sales support of Absolut Vodka within an eighteen (18) month period prior to the Acquisition Date; and
 - 2. all persons employed by Pernod with responsibility for, or who directly participate in (irrespective of the portion of working time involved), the research, development, production, marketing, advertising, promotion, distribution, sale or after-sales support of Absolut Vodka in the United States at any time after the Acquisition Date and prior to the Absolut Vodka Closing Date.
- J. “Absolut Vodka Firewalled Employee(s)” means the Absolut Vodka Future Board Members, the Absolut Vodka Senior Managers, and the Absolut Vodka Employees.
- K. “Absolut Vodka Future Board Member(s)” means any person(s) appointed or designated by Respondent to the Future Joint Venture Board of Managers.

- L. “Absolut Vodka Income Stream” means either:
1. all sales revenues realized from the sales of Absolut Vodka within the United States net of Supply Cost and continuing at least until such time as Respondent either: (1) ceases and desists from marketing, selling, or distributing Stolichnaya Vodka in the United States, or (2) ceases to have any Ownership Interest in the Absolut Vodka Assets; or
 2. a stipulated amount equal to at least twenty (20) percent of gross sales revenue realized from the sales of Absolut Vodka within the United States and continuing at least until such time as Respondent either: (1) ceases and desists from marketing, selling, or distributing Stolichnaya Vodka in the United States, or (2) ceases to have any Ownership Interest in the Absolut Vodka Assets.
- M. “Absolut Vodka Input Supply Agreements” means any agreement with a Third Party to supply an ingredient(s) or input(s) used in the production of Absolut Vodka.
- N. “Absolut Vodka Intellectual Property” means all intellectual property throughout the world related to Absolut Vodka including, without limitation, the following:
1. Trademarks;
 2. Trade Dress;
 3. Copyrights;
 4. trade secrets, know-how and other confidential or proprietary technical, business, research, development and other information, and all rights in any jurisdiction to limit the use or disclosure thereof;
 5. Patents;
 6. Production Technology; and
 7. all research materials, technical information, and data contained in software;

provided, however, that where such intellectual property also relates to other brands or businesses of Respondent, Respondent shall grant the Acquirer rights to use such intellectual property on a non-exclusive basis in connection with the

Absolut Vodka Business.

- O. “Absolut Vodka Manufacturing Facilities” means the following facilities that have been used in the production, blending, bottling or packaging of Absolut Vodka or other distilled spirits:
1. the distillery located at Ugerupsvägen 50, Kristianstad, Sweden;
 2. the bottling plant located at Köpmannagatan 29, Åhus, Sweden; and
 3. all the real estate, equipment, machinery, fixtures, vehicles, furniture, 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, BS13 8AR, 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 Jim Beam Worldwide 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, Ardmore Scotch, Teacher’s Highland Cream Scotch, Courvoisier VS Cognac, DeKuyper Cordials, Starbucks Liqueurs, and Gilbey’s Gin.
- X. “Beam Brands Confidential Business Information” means all information that is not in the public domain relating to the Beam Brands, including the research, development, production, marketing, advertising, promotion, distribution, sales or after-sales support of the Beam Brands.
- Y. “Cease and Desist Date” means the day exactly six (6) months after the Acquisition Date.
- Z. “Copyrights” means rights to all original works of authorship of any kind related to Absolut Vodka and any registrations and applications for registrations thereof, including, but not limited to, the following: all promotional materials for retailers; all promotional materials for customers; copyrights in development data and reports relating to the research and development of Absolut Vodka or of any materials used in the research, development, manufacture, marketing or sale of Absolut Vodka, including all raw data relating to quality trials of the Absolut Vodka, customer information, promotional and marketing materials, the Absolut Vodka sales forecasting models, Website content and advertising and display materials; all records relating to employees who accept employment with the Acquirer (excluding any personnel records the transfer of which is prohibited by applicable law); all records, including customer lists, sales force call activity reports, vendor lists, sales data, slotting allowance data, speaker lists, manufacturing records, manufacturing processes, and supplier lists; all data contained in laboratory notebooks relating to Absolut Vodka.

- AA. “Direct Cost” means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. “Direct Cost” to SPI or its designee(s) for its use of any of Respondent’s employees’ labor shall not exceed the average hourly wage rate for such employee.
- BB. “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.
- CC. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to Paragraph V. of this Order.
- DD. “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.
- EE. “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);
 2. The following information for each such employee:
 - a. the date of hire and effective service date;
 - b. job title or position held;
 - c. a specific job description of the employee’s responsibilities related to the relevant products; *provided, however*, in lieu of this description, Respondent may provide the employee’s most recent performance appraisal;
 - d. the base salary and current wage;

- e. the most recent bonus paid, aggregate annual compensation for the Respondent’s last fiscal year and current target or guaranteed bonus, if any;
 - f. employment status (*i.e.*, active, on leave, on disability, and 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 descriptions.
- FF. “Fortune Brands” means Fortune Brands, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its headquarters address located at 520 Lake Cook Road, Deerfield, Illinois 60015-5611.
- GG. “Future Employees” means employees of the Future Joint Venture.
- HH. “Future Joint Venture” means the joint venture between ASCI and Fortune Brands, Inc. for the marketing and distribution of ASCI Brands and Beam Brands as contemplated by the Master Transaction Agreement dated March 20, 2001, by and among V&S Vin & Sprit AB, the Absolut Spirits Company, Inc., Jim Beam Brands Worldwide, Inc., Jim Beam Brands Co., and Fortune Brands, Inc., and all amendments, exhibits, attachments, agreements, and schedules thereto.
- II. “Government Entity” means any Federal, state, local or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.
- JJ. “Interim Monitor” means a monitor appointed pursuant to Paragraph IV. of this Order or Paragraph III. of the Order to Hold Separate and Maintain Assets.
- KK. “Jim Beam Worldwide” means Jim Beam Brands Worldwide, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 510 Lake Cook Road, Deerfield, IL 60015; and its subsidiaries and affiliates, including without limitation Jim Beam Brands Co. d/b/a Fortune Brands, Inc.
- LL. “Non-Competing Firm” means any Person *excluding*: (1) the Respondent; and (2) any Person that engages in the business of manufacturing, marketing, distributing or selling brands of vodka other than Absolut Vodka.

- MM. “Orders” means the Order to Hold Separate and Maintain Assets and this Decision and Order.
- 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, assets or other interests or beneficial ownership in a specified entity or specified asset(s).
- OO. “Patents” means all patents, patent applications, including provisional patent applications, and statutory invention registrations, in each case existing as of the Absolut Vodka Closing Date, and includes all reissues, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for patents and registrations thereto in the world, related to Absolut Vodka.
- PP. “Pernod Brands” means Wild Turkey Bourbon, Russell’s Reserve Bourbon, The Glenlivet Scotch, Aberlour Scotch, Scapa Scotch, Ballantine’s Scotch, Martell VS Cognac, Hiram Walker Cordials, Kahlua Liqueurs, Tia Maria Coffee Liqueur, and Seagram’s Gin.
- QQ. “Pernod Brands Confidential Business Information” means all information that is not in the public domain relating to the Pernod Brands, including the research, development, production, marketing, advertising, promotion, distribution, sales or after-sales support of the Pernod Brands.
- RR. “Pernod Employees” means all employees of Pernod *excluding* the Absolut Vodka Firewalled Employees.
- SS. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or Government Entity, and any subsidiaries, divisions, groups or affiliates thereof.
- TT. “Production Technology” means all recipes, formulas, blend specifications, technology, trade secrets, know-how, and proprietary information, anywhere in the world, relating to the production and bottling of Absolut Vodka.
- UU. “SPI” means Spirits International 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 Chemin Louis-Dunant 17, 1202 Geneva; and its subsidiaries and affiliates, including without limitation SPI Spirits (Cyprus) Limited, a corporation organized, existing, and doing business under and

by virtue of the laws of Cypress, with its office and principal place of business located at 249, 28th October Street, 3035 Limassol, Cyprus.

- 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 all current and past trade dresses related to Absolut Vodka, including without limitation, product packaging, ornamentations, and designs, and the lettering of the product trade name or brand name.
- GGG. “Trademarks” means all proprietary names or designations, trademarks, service marks, trade names, and brand names, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights, and associated goodwill.
- HHH. “Website” means the content of the Website(s) located at the Domain Names, the Domain Names, and all copyrights in such Website(s), to the extent owned by Respondent; *provided, however*, this term shall not include the following: (1) content owned by Third Parties and other intellectual property not owned by Respondent that is incorporated in such Website(s), such as stock photographs, *except* to the extent that Respondent can convey any rights to that intellectual property; or (2) content unrelated to Absolut Vodka.

II.

IT IS FURTHER ORDERED that:

- A. Not later than the Cease and Desist Date either:
1. Respondent shall cease and desist, directly or indirectly, from marketing, selling or distributing Stolichnaya Vodka in the United States, or
 2. Respondent shall divest the Absolut Vodka Assets pursuant to Paragraph II.D. of this Order, *unless*, on or before the Cease and Desist Date, Respondent submits to the Commission a court order demonstrating that the conditions for divestiture of the Absolut Vodka Income Stream as described in Paragraph II.C. of this Order have been met, in which case Respondent may divest the Absolut Vodka Income Stream pursuant to Paragraph II.C. of the Order *in lieu* of a divestiture of the Absolut Vodka Assets.
- B. Until Respondent ceases to market, sell, and/or distribute Stolichnaya Vodka in the United States, Respondent shall comply and continue to comply with the terms of the Stolichnaya Transition Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of SPI or to reduce any obligations of Respondent under such agreement) whereby Respondent terminates its rights and interest in the Stolichnaya Distribution Agreement;

provided, however, that if Respondent has terminated its rights held under the Stolichnaya Distribution Agreement prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that the manner in which the termination was accomplished is not acceptable, the Commission may direct Respondent, or appoint a Divestiture Trustee, to effect such modifications to the Stolichnaya Transition Agreement (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order;

provided further, however, that Respondent may not modify or amend the Stolichnaya Transition Agreement without receiving the prior approval of the Commission.

The Stolichnaya Transition Agreement shall be deemed incorporated into this Order, and any failure by Respondent to comply with any term of the Stolichnaya Transition Agreement shall constitute a failure to comply with this Order.

- C. If a court enjoins or prohibits Respondent from terminating the Stolichnaya Distribution Agreement or requires Respondent to continue the marketing, sale or distribution of Stolichnaya Vodka in the United States for a period of time extending beyond the Cease and Desist Date then, not later than six (6) months after the Cease and Desist Date, Respondent shall either:
1. divest the Absolut Vodka Income Stream, absolutely and in good faith, at no minimum price, to a Non-Competing Firm that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; *provided, however*, that the agreement to divest the Absolut Vodka Income Stream is not required to extend beyond the time period that Respondent both: (1) retains an Ownership Interest in the Absolut Vodka Assets, and (2) markets, sells, or distributes 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 bonuses, and a vesting of all pension benefits (as permitted by law) until the Absolut Vodka Closing Date;
4. Respondent shall provide the following financial incentives to the Absolut Vodka Future Board Members and the Absolut Vodka Senior Managers to continue in their employment positions pending such divestiture to the Acquirer:
 - a. a retention incentive equal to at least ten (10) percent of the employee's annual salary (including any bonuses) as of the date the Order to Hold Separate and Maintain Assets is issued by the Commission, to be paid to those Absolut Vodka Future Board Members and Absolut Vodka Senior Manager who continue their employment with Respondent until the Absolut Vodka Closing Date;
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 and been terminated at such time, less any severance payment actually paid by the Acquirer;
6. not later than the earlier of the following dates: (1) ten (10) Days after notice by staff of the Commission to the Respondent to provide the Employee Information; or (2) ten (10) days after the Absolut Vodka Closing Date Respondent shall provide the Acquirer with a complete list of the Absolut Vodka Employees and each employee's related Employee Information;

7. Respondent shall provide the Acquirer with an opportunity to inspect the personnel files and other documentation relating to the Absolut Vodka Employees, at the request of the Acquirer;
8. for a period ending no earlier than six (6) months after the Absolut Vodka Closing Date, Respondent shall provide the Acquirer with an opportunity to enter into employment contracts with the Absolut Vodka Employees. Respondent shall not interfere with the employment by the Acquirer of any Absolut Vodka Employee, shall not offer any incentive to such employees to decline employment with the Acquirer or to accept other employment with Respondent, and shall remove any impediments that may deter such employees from accepting employment with the Acquirer, including, but not limited to, 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 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 period of one (1) year following the Absolut Vodka Closing Date, Respondent shall not, directly or indirectly, solicit or otherwise attempt to induce any employee of the Acquirer with any responsibility relating to Absolut Vodka who is a former employee of Respondent to terminate any employment relationship with the Acquirer;

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 the Acquirer; (2) Respondent hires employees who apply for employment with Respondent, as long as such employees were not specifically solicited by Respondent; or (3) the Acquirer has terminated the individual's employment or has otherwise granted a release to the individual to permit the individual to be employed by Respondent;
10. Respondent shall require, as a condition of continued employment after the Absolut Vodka Closing Date, that each Absolut Vodka Employee and other Pernod Employees within the United States who possess Absolut Vodka Confidential Business Information sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Absolut Vodka Confidential Business Information (including, without limitation, all field experience) strictly confidential, including the non-disclosure of such information to all Stolichnaya Employees and any officer, director, or

manager (at the brand management level or higher), of Pernod. Such agreement shall provide for the following:

- a. restrictions on the use of Absolut Vodka Confidential Business Information;
- b. appropriate conduct relating to information that could be used to the detriment of Absolut Vodka; and
- c. sanctions for violation of the terms of such 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 Absolut Vodka Closing Date. Respondent shall provide a copy of such agreement to the Acquirer, 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 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 receipt of a request from SPI:
1. Respondent shall provide SPI or its designee(s) with a complete list of the Stolichnaya Employees and each employee's related Employee Information; and
 2. Respondent shall provide SPI or its designee(s) with an opportunity to inspect the personnel files and other documentation relating to the Stolichnaya Employees;

provided, however, that in cases in which applicable law restricts access to the information required to be provided to SPI or its designee(s) pursuant to this paragraph, Respondent shall use best efforts to ensure that such information is provided to SPI or its designee(s) consistent with applicable law.

- 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 terminated the individual's employment or has otherwise granted a release to the individual to permit the individual to be employed by Respondent.

J. Respondent shall require, as a condition of continued employment after the Stolichnaya Termination Date, that each Stolichnaya Employee and other Pernod Employees within the United States who possess Stolichnaya Confidential Business Information sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Stolichnaya Confidential Business Information (including, without limitation, all field experience) strictly confidential, including the non-disclosure of such information to all Absolut Vodka Firewalled Employee and any officer, director, or manager (at the brand management level or higher), of Pernod. Such agreement shall provide for the following:

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);

provided however, this paragraph shall not preclude any officer, director, or senior-level executive of Pernod who is charged with the direct responsibility to oversee the Stolichnaya Distribution Agreement and the Stolichnaya Transition Agreement from receiving aggregated sales data on Stolichnaya Vodka.

- K. Respondent shall institute procedures and requirements to ensure that all Pernod Employees do not:
1. disclose or make available, directly or indirectly, any Absolut Vodka Confidential Business Information to any Stolichnaya Employee or any other Pernod Employee who directly participates in the marketing, advertising, promotion, distribution, sale or after-sales support of Stolichnaya Vodka in the United States; or
 2. disclose or make available, directly or indirectly, any Stolichnaya Confidential Business Information to the Absolut Vodka Business or to any Absolut Vodka Firewalled Employee.

Respondent shall obtain an executed non-disclosure agreement from each of the individuals that fall within the following categories pursuant to which each such individual agrees to comply with the terms of this paragraph: (1) all salaried Pernod Employees located in the United States *except* production-line workers or manufacturing-line workers; (2) all salaried Stolichnaya Employees; and, (3) any individual so designated by the Interim Monitor.

- 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 distribution of Stolichnaya Vodka for a period of up to six (6) months after the Acquisition Date. Respondent shall provide the services required by this Paragraph in a non-discriminatory fashion to SPI or its designee(s) with service levels comparable to those Respondent provided to the Stolichnaya Held Separate Business prior to the Acquisition.
- N. Until the earlier to occur of: (1) the Stolichnaya Termination Date or (2) the Absolut Vodka Closing Date, Respondent shall take such actions as are necessary to maintain the full economic viability and marketability of the Absolut Vodka Business and the Stolichnaya Held Separate Business, respectively, and the assets associated with such businesses, to minimize any risk of loss of competitive potential for such businesses, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of such assets. Respondent shall not sell,

transfer, encumber or otherwise impair such assets (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the above-described businesses.

- O. The purpose of Paragraph II. is:
1. to ensure the continued use of the assets associated with Stolichnaya Held Separate Business in the research, development, manufacture, distribution, sale and marketing of Stolichnaya Vodka;
 2. to ensure the continued use of the Absolut Vodka Assets in the research, development, manufacture, distribution, sale and marketing of Absolut Vodka;
 3. to create a viable and effective competitor in the relevant market alleged in the Complaint who is independent of Respondent; and,
 4. to remedy the lessening of competition resulting from the Acquisition as alleged in the Complaint in a timely and sufficient manner.

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 withholds its consent to such notification program.

- B. Within six (6) months of the Acquisition Date, Respondent shall implement a database protocol within the Future Joint Venture that limits the Absolut Vodka Firewalled Employees from having access to information relating to the Beam Brands;

provided, however, Respondent shall not be deemed in violation of this Paragraph if Fortune Brands withholds its consent to such database protocol.

- C. For a period of one (1) year after the Acquisition Date:
1. Respondent shall not hire a Future Employee who worked on any of the Beam Brands, irrespective of working time;

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 Future Employees; (2) 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; and
 2. Respondent shall not transfer a Stolichnaya Employee to any position in the Future Joint Venture.
- 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 earlier of:
 - a. the expiration of the Future Joint Venture;
 - b. the date Respondent ceases and desists from participating, directly or indirectly, in the Future Joint Venture; or
 - c. the day six (6) months from 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, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondent's compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Respondent shall 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 representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
6. Respondent shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
7. Respondent shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondent, and any reports submitted by the Acquirer, Fortune Brands and/or SPI with respect to the performance of Respondent's obligations under the Orders, the Stolichnaya Transition Agreement or any Divestiture Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Orders.
8. Respondent may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and

assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.

- E. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- 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, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee;

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *provided, however*, that the Divestiture Trustee appointed pursuant to this Paragraph may be the same person appointed as Interim Monitor pursuant to the relevant provisions of the Order to Hold Separate and Maintain Assets in this matter;
 8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and
 9. Respondent may require the Divestiture Trustee and each of the 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 Business Information, in any instance wherein Respondent's counsel (including in-house counsel under appropriate confidentiality arrangements) either retain unredacted copies of documents or other materials provided to an Acquirer or access original documents (under circumstances where copies of documents are insufficient or otherwise unavailable) provided to an Acquirer, Respondent shall assure that Respondent's counsel do so only in order to do the following:

- A. Comply with the Divestiture Agreement(s), this Order, any law (including, without limitation, any requirement to obtain regulatory licenses or approvals), any data retention requirement of any applicable Government Entity, or any taxation requirements; or

- B. Defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture of the Absolut Vodka Assets or the Absolut Vodka Income Stream (as is relevant), or the businesses associated with the Absolut Vodka products;

provided, however, that Respondent may disclose such information as necessary for the purposes set forth in this Paragraph pursuant to an appropriate confidentiality order, agreement or arrangement; and

provided further, however, that pursuant to this Paragraph VI., Respondent shall: (1) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the Acquirer (but shall not be deemed to have violated this requirement if the Acquirer withholds such agreement unreasonably); and (2) use its best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

VII.

IT IS FURTHER ORDERED that:

- A. Within five (5) days of the Acquisition, Respondent shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondent has fully complied with Paragraphs II. and III. of this Order, Respondent shall:
1. submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with the Orders;
 2. at the same time, submit a copy of its verified report concerning compliance with the Orders to the Interim Monitor, if any Interim Monitor has been appointed; and
 3. in its verified reports, include, among other things, a full description of the efforts being made to comply with the relevant Paragraphs of the Orders, all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all persons contacted, copies of all written communications to and from such persons, all internal memoranda, and all reports and recommendations concerning completing the obligations.

- C. One (1) year after the date this Order becomes final, annually for the next nine years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondent shall file a verified written report with the Commission that includes information regarding any modifications or amendments to any Divestiture Agreement(s) that Respondent entered without the prior approval of the Commission, and sets forth in detail the manner and form in which they have complied and are complying with the Orders.

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 determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to any Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of such Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and
- B. to interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date on which the Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

**NON-PUBLIC APPENDIX I
THE STOLICHNAYA DISTRIBUTION AGREEMENT**

[Redacted From The Public Record Version But Incorporated By Reference]

**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]