

Analysis of Proposed Consent Order To Aid Public Comment
In the Matter of Constellation Brands, Inc., File No. 092-3035

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Constellation Brands, Inc. (“the company”). The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

This matter involves alleged unsubstantiated claims made in advertising for the beverage alcohol product Wide Eye schnapps, introduced by the company in 2007. Wide Eye contains 30% alcohol by volume plus caffeine. The company promoted Wide Eye through Internet advertising, including web video and print ads. Among other things, the company made the following claims about Wide Eye: “Wake up @ WideEye.com,” “I am your wake up call,” “Wakes up sweet, then goes off like an alarm,” and “When you party with the world’s first caffeinated schnapps it’ll seem like the rest of the world is sleepwalking through life.”

According to the FTC complaint, the company represented, expressly or by implication, that consumers who drink Wide Eye will remain alert when consuming alcohol. The complaint alleges that the company did not possess and rely upon a reasonable basis that substantiated the representation at the time it was made. Therefore, the representation was, and is, false and misleading.

The proposed consent order contains provisions designed to prevent the company from engaging in similar acts and practices in the future. Part I of the proposed consent order prohibits the company, in connection with the advertising, sale, or distribution of Wide Eye or any other beverage alcohol product containing caffeine, ginseng, taurine, guarana, or any stimulant, from representing, expressly or by implication, including through the use of a product name or endorsement, that consumers who drink such a product will remain alert when consuming alcohol unless that representation is true, non-misleading, and, at the time it is made, the company possesses and relies upon competent and reliable scientific evidence that substantiates the representation. Part II of the consent order further prevents the company from representing, expressly or by implication, including through the use of a product name or endorsement, that any beverage alcohol product or any ingredient therein will counteract the effects of alcohol consumption, unless that representation is true, non-misleading, and, at the time it is made, the company possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Parts III through VI of the consent order require the company to keep copies of relevant advertisements and promotional materials, to provide copies of the order to certain of its personnel, to notify the Commission of changes in corporate structure, and to file compliance reports with the Commission. Part VII provides that the order will terminate after twenty (20) years with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.