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[REDACTED]

July 26, 2005

Via E-Mail

B. Michael Verne
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
Room 303
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

RE: Application of Hart-Scott-Rodino Antitrust Improvements Act

Dear Mike:

I am writing to confirm your advice regarding the application of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), to the transaction described below, as we discussed this morning during our telephone conversation. Based on your advice, the parties will not make any filings under the HSR Act. Accordingly, please call me to confirm that this letter does not misstate the views of the Premerger Notification Office on the matter.

As we discussed, "Licensor" intends to grant to "Licensee" an "exclusive license" to use a trademark (the "Licensed Mark") in connection with the manufacture, distribution and sale of certain types of products (the "Licensed Products") in the U.S. (as well as Mexico and Canada). After discussions with the client and a review of the draft license agreement, it became apparent that this "exclusive license" would have significant exceptions. In particular, the following exceptions would exist:

1. Licensor would retain the right to sell the Licensed Products to hotels, motels and other lodging facilities for use at such facilities (as opposed to resale).
 2. Licensor must approve all parties to whom Licensee may sell the Licensed Products and, with the limited exception of a few listed parties, any approval that has been granted with respect to a party may be subsequently withdrawn by the Licensor.
- [REDACTED]

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3. Licensor may sell Licensed Products as part of a combination sale, premium or giveaway with non-Licensed Products. These sales may even be made to parties who are otherwise customers of Licensee for the Licensed Products.
4. Licensor may sell directly to consumers through direct mail, the Internet and other direct-to-consumer vehicles. Consumers are currently purchasing the Licensed Products through the Licensor's web site.
5. Licensor-affiliated stores that are otherwise customers of Licensee for Licensed Products can purchase "special Licensed Products that are not of the sort typically produced by Licensee" from another party if the price charged by the other party is more than 10% less than the price charged by Licensee (the addition of "more than 10%" is new since our conversation this morning).
6. Licensor (and not Licensee) may sell Licensed Products to certain types of customers as stated in the license agreement, such as clubs (e.g., Costco, BJ's, etc.). We do not expect Licensor to sell to any clubs, but Licensor does retain this right.

Based on the foregoing facts, you concurred with our analysis that this license would not be "exclusive" for purposes of the HSR Act. Consequently, no transfer of an asset is occurring and the parties to this license agreement would not be required to file a Notification and Report Form under the HSR Act with respect to this license grant.

Please call me at [REDACTED] to confirm that this letter correctly reflects our conversation and that it does not mischaracterize the views of the Premerger Notification Office. Unless I hear from you to the contrary, I will advise my client to rely on our discussions. Thank you very much for taking the time to discuss this matter with me, and I look forward to hearing from you soon.

Very truly yours,

[REDACTED]

AGREE -
B. Michael Verne
7/26/05

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