

OBJECTIONS TO FTC FINAL SETTLEMENT DEAL WITH CONSTELLATION BRANDS INC

Jul. 5, 2009

BY EDWIN MOLDAUER

To FTC – Federal Trade Commission, Office of the Secretary, Room H-135 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

Constellation Brands, File No. 092 3035

Subject: Objection to a FINAL FTC settlement deal w/ Constellation Brands Inc CBI/Canandaigua Wine Co Inc CWCI – for deceptive activities.

This is not an isolate event; a mistake as Constellation Brands surely argued. It is a carefully planned activity to deceive when and wherever possible. It is also not the first time this company, its management and owners engaged in such activities. Deception is inherent in the business model of Constellation Brands Inc.

I surely know all about such activities; first as an employee of the Constellation Group (the identity of the true employer is not known) and second as a long term litigant in US and other countries where fraudulent activities associated with this company surfaced.

I recommend that FTC should not engaged in a FINAL settlement discussion with Constellation Brands Inc and its subsidiaries. Any settlement will only be a slap on the wrist and forgotten, until another racket surfaces.

FTC should reject any settlements with Constellation Brands Inc for the following reasons:

1. CBI had been previously fined for deceptive marketing activities in Oct 2006. New York Attorney General Eliot Spitzer said 15 wine and liquor suppliers agreed to pay \$2.3 million and to reform their marketing practices to resolve an investigation into illegal marketing practices.
2. CBI was involved in tax evasions activities since 2000, and is apparently still under IRS investigation. Constellation Brands (often using names of subsidiaries) was already involved in lengthy litigation resulting in tax payments of over 100 million dollars under some amnesty arrangements. The company was used via a family trust for deceptive tax activities.
3. CBI finally admitted to financial irregularities in Australia in 2008 following its acquisitions of BRL Hardy in 2003. The same type irregularities were reported in US, starting 2001.
4. Allegation of financial irregularities in US since 2001 and up to 2008 were validated by the dismissal of Constellation's libel and misappropriation of trade secrets claims in US federal court in Fresno: see Canandaigua Wine Co Inc v Moldauer (filed 2002 – dismissed in 2009). Reference is made to closure of concentrate business with a loss of US jobs and misstatement of earnings.
5. Arthur Anderson (of Enron) fame was the same auditors for Constellation Brands Inc.
6. The decision from Department of Labor (in the Sarbanes Oxley Act claim) refers to write-offs/mismanagement of earning to the tune of over 832 million dollars following the sale of

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Almaden and Paul Masson wineries. This again related to misstatement of earnings and financial irregularities in USA to artificially prop and boost stock prices.

7. A claim for fraud was filed in the District Court. It was opposed on jurisdiction grounds and is now pending in the Court of Appeals in New Zealand. Although Constellation Brands Inc claims it has no business in New Zealand, Constellation Brands Inc owns and controls half of the wine business in that country, following the acquisition of BRL Hardy, Vincor, Nobilo and Kim Crawford in 2003. Even more so, in its own filings with the SEC and its investors public reports, it claimed to be doing business in New Zealand.
8. DOL, SEC and FBI were aware of the financial irregularities, but and not contact IRS which was investigating the tax fraud.
9. One key element in the deception process is the identity of the companies. Constellation in the name of one company, but it said to be part of trade name of another.
10. During Arbitration proceedings in US (see Moldauer v CBI /CWCI) the companies alleged commercial engagement and not employment engagement (see employment fraud)
11. DOL, SEC and FBI were aware of the financial irregularities since 2002 in US that culminated with many US job losses and losses to investors. Similar events occurred in Australia.
12. Company reporting is incomplete, misleading even when filed with the regulators
13. It is undisputed that Constellation Brands had a deal with DOL in a similar way as WalMart had, where a 15 days advance notice before an audit or investigation by the Department of Labor. Upon receiving a complaint about a potential violation CBI headquarters are notified of the complaint. The Department will not launch its own investigation during that time. Such an arrangement allows the employer to cover up evidence of a violation and would discourage aggrieved employees who might fear retribution from the company from ever filing a complaint. It is undisputed that there was cooperation the way information was disseminated to the public. In early stages DOL actively propagated allegation of libel and misappropriation of trade secrets via the internet. This claims have been now dismissed considering the extensive tax and financial irregularities uncovered. The employment of the CEO of Canandaigua Wine Co Inc, Jon Moramarco is now terminated.

SIGNED : EDWIN MOLDAUER