

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of

ALLIED DOMECQ SPIRITS & WINE AMERICAS, INC., and ALLIED DOMECQ
SPIRITS & WINE USA, INC. d.b.a. HIRAM WALKER corporations

FILE NO. 982 3050

**AGREEMENT CONTAINING
CONSENT ORDER**

The Federal Trade Commission has conducted an investigation of certain acts and practices of Allied Domecq Spirits & Wine Americas, Inc. and Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker, corporations ("proposed respondents"). Proposed respondents, having been represented by counsel, are willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Allied Domecq Spirits & Wine Americas, Inc. and Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker, by their duly authorized officer, and counsel for the Federal Trade Commission that:

1.a. Proposed respondent Allied Domecq Spirits & Wine Americas, Inc. is a Delaware corporation with its principal office or place of business at 3000 Town Center, Southfield, MI 48075.

1.b. Proposed respondent Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker is a Michigan corporation with its principal office or place of business at 3000 Town Center, Southfield, MI 48075. Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker is a wholly owned subsidiary of Allied Domecq Spirits & Wine Americas, Inc.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint.

3. Proposed respondents waive:

- a. Any further procedural steps;
- b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider

appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondents' address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the draft complaint and consent order. They understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, "respondents" shall mean Allied Domecq Spirits & Wine Americas, Inc. and Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker, corporations, their successors and assigns, and their officers, agents, representatives, and employees.
2. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of beverage alcohol products in or affecting commerce shall not, in any manner, expressly or by implication:

A. Represent that any beverage alcohol product containing 5.9% alcohol by volume is a low alcohol beverage; or

B. Misrepresent, through numerical or descriptive terms, or any other means, the

amount of alcohol contained in any beverage alcohol product.

Provided, however, that a statement of alcohol percent by volume shall not violate this order if it is within the tolerances identified for such beverage in 27 C.F.R. 4.36 (b)(1) and (2)(wines containing 7 percent or more alcohol); 27 C.F.R. 5.37(b)(distilled spirits); 27 C.F.R. 7.71 (c)(1) and (2)(malt beverages); and 27 C.F.R. 24.257 (a)(4)(wine beverages containing less than 7 percent alcohol); and

Provided, further, that nothing in this order shall prohibit respondents from making any representation about the amount of alcohol contained in any beverage alcohol product that is specifically required in advertising for such product by regulation or order promulgated by the Bureau of Alcohol Tobacco and Firearms pursuant to the Federal Alcohol Administration Act.

II.

IT IS FURTHER ORDERED that respondents Allied Domecq Spirits & Wine Americas, Inc. and Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker and their successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by Part I of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

Provided, however, that Subparts A & B of this Part shall not apply to representations of alcohol percent by volume content or proof required or permitted in advertising by the Bureau of Alcohol, Tobacco and Firearms.

III.

IT IS FURTHER ORDERED that respondents Allied Domecq Spirits & Wine Americas, Inc. and Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker and their successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having direct or supervisory responsibilities with respect to the creation or approval of advertising that is the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

IV.

IT IS FURTHER ORDERED that respondents Allied Domecq Spirits & Wine Americas, Inc. and Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker and their successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) that may affect compliance obligations arising under this

order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

V.

IT IS FURTHER ORDERED that respondents Allied Domecq Spirits & Wine Americas, Inc. and Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker and their successors and assigns, shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VI.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent(s) did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this day of , 19

ALLIED DOMEQ SPIRITS & WINE AMERICAS, INC.

By: _____
George McCarthy President

ALLIED DOMEQ SPIRITS & WINE USA, INC. D/B/A HIRAM WALKER

By: _____
George McCarthy

President

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