
Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Allied Domecq Spirits & Wine Americas, Inc. and Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker, Delaware and Michigan corporations, respectively (hereinafter collectively referred to as Allied).

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint in this matter concerns two nearly identical television advertisements for Allied's Kahlua White Russian pre-mixed cocktail. According to the complaint, these ads falsely represented that the product was a "LOW ALCOHOL BEVERAGE." Allied has ceased making this representation.

Paragraph seven of the complaint sets out several reasons why the Kahlua White Russian pre-mixed cocktail should not be represented as a low alcohol beverage. It has a significant alcohol content, 11.8 proof (5.9% alcohol by volume), equal to or greater than numerous other alcohol beverages. For example, a Kahlua White Russian has substantially more alcohol ounce for ounce than many beers, malt liquors and wine coolers. For some people, drinking as few as two or three Kahlua White Russians will begin to impair normal functions, such as driving. It is also pertinent that the Bureau of Alcohol, Tobacco and Firearms has limited use of the term "low alcohol," for the purposes of beer and malt liquor, to products with less than 2.5% alcohol by volume. The alcohol content of a Kahlua White Russian is substantially higher, with 5.9% alcohol by volume. Accordingly, the complaint alleges that the low alcohol beverage representation was false or misleading.

The consent order contains provisions designed to remedy the violations charged and to prevent Allied from engaging in similar acts in the future. Part I of the order prohibits any representation that any beverage alcohol product containing 5.9% alcohol by volume is a low alcohol beverage, as well as any misrepresentation, through numerical or descriptive terms, or any other means, of the amount of alcohol contained in any beverage alcohol product. Part I of the order does not prohibit Allied from making any representation about the amount of alcohol contained in any beverage alcohol product that is specifically required in advertising by the Bureau of Alcohol Tobacco and Firearms. Part I of the order also does not prohibit Allied from making non-misleading claims presenting clear and accurate comparisons of the alcohol content of Kahlua White Russians and any other specified beverage alcohol product. Indeed, Commission policy encourages truthful comparative advertising as an important means of informing consumers about the relative merits of competing products. See, In Regard to Comparative Advertising, 15 C.F.R. § 14.15 (favoring comparative advertising generally); Guides for the Use of Environmental Marketing Claims, 16 C.F.R. § 260.6(d)(guidance on comparative environmental claims); Enforcement Policy Statement on Food Advertising, p.10 (1994)(guidance on comparative nutrient content claims).

The remaining parts of the order contain record keeping (Part II); order distribution (Part III); notification of corporate change (Part IV); compliance report filing (Part V) and sunset (VI) provisions.

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