

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: William E. Kovacic, Chairman
Pamela Jones Harbour
Jon Leibowitz
J. Thomas Rosch

_____)
In the Matter of)
) Docket No. C-4224
PERNOD RICARD S.A.,)
)
a French société anonyme.)
_____)

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Pernod Ricard S.A. (“Pernod” or “Respondent) of V&S Vin & Sprit AB (publ) (“V&S”) from The Kingdom of Sweden, and Respondent having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Hold Separate and Maintain Assets (“Hold Separate Order”):

1. Respondent Pernod is a société anonyme, organized, existing and doing business under and by virtue of the laws of The French Republic, with its office and

principal place of business located at 12, place des Etats-Unis, 75783 Paris Cedex 16, France. Pernod's principal subsidiary in the United States is Pernod Ricard USA, Inc. ("Pernod Ricard USA"), headquartered at 100 Manhattanville Road, Purchase, NY 10577.

2. V&S Vin & Sprit AB (publ) is an aktiebolag organized, existing, and doing business under and by virtue of the laws of The Kingdom of Sweden, with its office and principal place of business located at Årstängsvägen 19A SE-117 97 Stockholm, Sweden. V&S's principal subsidiary in the United States is the Absolut Spirits Company, Inc. ("ASCI"), headquartered at 401 Park Avenue South, New York, NY 10016.
3. The Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order to Hold Separate and Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. "Pernod" or "Respondent" means Pernod Ricard S.A., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Pernod (including, but not limited to, Pernod Ricard USA and Allied Domecq), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Pernod shall include V&S.
- B. "V&S" means V&S Vin & Sprit AB (publ), its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by V&S (including, but not limited to, the Absolut Spirits Company, Incorporated, "ASCI"), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. "Commission" means the Federal Trade Commission.

- D. “Decision and Order” means the:
1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final Decision and Order by the Commission; and
 2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission.
- E. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order to Hold Separate and Maintain Assets.
- F. “Orders” means the Decision and Order and this Order to Hold Separate and Maintain Assets.
- G. “Stolichnaya Held Separate Business” means the Stolichnaya Brand Organisation and all of the operations and businesses related to the research, development, production, marketing, advertising, promotion, distribution, sale or after-sales support for Stolichnaya Vodka related thereto.

II.

IT IS FURTHER ORDERED that from the date this Hold Separate Order becomes final:

- A. Respondent shall take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Stolichnaya Held Separate Business, and shall prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer, or impairment of the Stolichnaya Held Separate Business or assets related thereto except for ordinary wear and tear.
- B. Until such time as Respondent either: (1) ceases and desists from marketing, selling, or distributing Stolichnaya Vodka in the United States, or (2) ceases to have any Ownership Interest in the Absolute Vodka Assets:
1. Respondent shall hold the Stolichnaya Held Separate Business separate, apart, and independent from Respondent Pernod, and vest the Stolichnaya Held Separate Business with all rights, powers, and authority necessary to conduct its business; and
 2. Respondent shall not exercise direction or control over, or influence directly or indirectly, the Stolichnaya Held Separate Business or any of its operations, *except* to the extent that Respondent Pernod must exercise

direction or control over the Stolichnaya Held Separate Business as is necessary to assure compliance with the Stolichnaya Distribution Agreement, the Stolichnaya Transition Agreement, this Hold Separate Order, the Decision and Order, and all applicable laws.

- C. Respondent shall maintain the operations of the Stolichnaya Held Separate Business in the regular and ordinary course of business and in accordance with its past practice (including regular repair and maintenance of the assets of such businesses) and shall use its best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors; customers; employees; and others having business relationships with the Stolichnaya Held Separate Business. Respondent's responsibilities shall include, but are not limited to, the following:
1. Respondent shall provide the Stolichnaya Held Separate Business with sufficient capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the Stolichnaya Held Separate Business;
 2. Respondent shall continue, at least at their scheduled pace, any additional expenditures for the Stolichnaya Held Separate Business authorized prior to the date Respondent signed the Consent Agreement including, but not limited to, all research, development, manufacture, distribution, marketing, and sales expenditures;
 3. Respondent shall provide such resources as may be necessary to respond to competition against the Stolichnaya Held Separate Business and/or prevent any diminution of sales of Stolichnaya Vodka prior to the termination of Respondent's marketing, sale and/or distribution of Stolichnaya Vodka;
 4. Respondent shall provide such resources as may be necessary to maintain the competitive strength and positioning of Stolichnaya Vodka at major customer accounts;
 5. Respondent shall make available for use by the Stolichnaya Held Separate Business funds sufficient to perform all routine maintenance of the Stolichnaya Held Separate Business;
 6. Respondent shall provide the Stolichnaya Held Separate Business with such funds as are necessary to maintain the viability, marketability, and competitiveness of Stolichnaya Vodka;

7. Respondent shall provide such support services to the Stolichnaya Held Separate Business as were being provided to this business by Respondent as of the date Respondent signed the Consent Agreement; and
 8. Respondent shall cooperate with the Interim Monitor in the performance of his or her obligations under Paragraph III. of this Hold Separate Order.
- D. Until such time as Respondent either: (1) ceases and desists from marketing, selling, or distributing Stolichnaya Vodka in the United States, or (2) ceases to have any Ownership Interest in the Absolute Vodka Assets:
1. Respondent shall not use, directly or indirectly, any Stolichnaya Confidential Business Information other than to comply with (1) the requirements of this Hold Separate Order and the Decision and Order, (2) Respondent's obligations under the Stolichnaya Distribution Agreement and the Stolichnaya Transition Agreement, or (3) applicable law;
 2. Respondent shall not disclose or convey any Stolichnaya Confidential Business Information, directly or indirectly, to any person *except* SPI or its designee(s);
 3. Respondent shall not provide, disclose or otherwise make available, directly or indirectly, any Stolichnaya Confidential Business Information to the Absolut Vodka Firewalled Employees; and
 4. immediately after Respondent signs the Consent Agreement, Respondent shall, as soon as practicable and without delay, develop and implement procedures to ensure that the Stolichnaya Employees do not:
 - a. provide, disclose or otherwise make available, directly or indirectly, any Stolichnaya Confidential Business Information in contravention of this Hold Separate Order; and/or
 - b. solicit, access or use any Absolut Vodka Confidential Business Information that they are prohibited under this Hold Separate Order from receiving for any reason or purpose.
- E. Not later than ten (10) days after the Acquisition Date, with respect to all Stolichnaya Employees:
1. Respondent shall provide written notification that each employee shall be required to maintain all Stolichnaya Confidential Business Information (including, without limitation, all field experience) strictly confidential,

including the non-disclosure of such information to all Absolut Vodka Firewalled Employee and any officer, director, or manager (at the brand management level or higher), of Pernod. Such agreement shall provide for the following:

- a. restrictions on the use of Stolichnaya Confidential Business Information;
 - b. appropriate conduct relating to information that could be used to the detriment of Stolichnaya Vodka; and
 - c. sanctions for violation of the terms of the agreement;
2. Respondent shall obtain an executed non-disclosure agreement from each such Stolichnaya Employee pursuant to which each such individual agrees to comply with the terms of this paragraph; and
 3. Respondent shall maintain complete records of all such agreements at the corporate headquarters of Pernod Ricard USA, and provide an officer's certification to the Commission stating that such acknowledgment program has been implemented and is being complied with. Respondent shall provide SPI with copies of all certifications, notifications, and reminders sent its personnel;

provided however, this paragraph shall not preclude any officer, director, or senior-level executive of Pernod who is charged with the direct responsibility to oversee the Stolichnaya Distribution Agreement and the Stolichnaya Transition Agreement from receiving aggregated sales data on Stolichnaya Vodka.

- F. Respondent shall staff the Stolichnaya Held Separate Business with employees sufficient to maintain the viability, marketability, and competitiveness of the Stolichnaya Held Separate Business including, but not limited to, the Stolichnaya Employees.
- G. Respondent shall provide the Stolichnaya Employees with continued financial compensation and employment benefits, including providing them with the same employee benefits, regularly scheduled raises and bonuses, and a vesting of all pension benefits (as permitted by law) until the termination of Pernod's distribution of Stolichnaya Vodka;
- H. Respondent shall also provide the financial incentives set forth in the employee retention bonus program issued pursuant to the Stolichnaya Transition Agreement

to the Stolichnaya Employees to continue in their employment positions until the Stolichnaya Termination Date.

- I. At any time after the Acquisition Date, and within ten (10) days of Respondent's receipt of a request from SPI:
1. Respondent shall provide SPI or its designee(s) with a complete list of the Stolichnaya Employees and each employee's related Employee Information; and
 2. Respondent shall provide SPI or its designee(s) with an opportunity to inspect the personnel files and other documentation relating to the Stolichnaya Employees;

provided, however, that in cases in which applicable law restricts access to the information required to be provided to SPI or its designee(s) pursuant to this paragraph, Respondent shall use best efforts to ensure that such information is provided to SPI or its designee(s) consistent with applicable law.

- J. For a period ending no earlier than six (6) months after the Stolichnaya Termination Date, Respondent shall provide SPI or its designee(s) with an opportunity to enter into employment contracts with the Stolichnaya Employees, which may be contingent upon the Respondent's termination of Respondent's marketing, sale, and distribution of Stolichnaya Vodka. Respondent shall not interfere with the employment by SPI or its designee(s) of any Stolichnaya Employee, shall not offer any incentive to such employees to decline employment with SPI or its designee(s) or to accept other employment with Respondent, and shall remove any impediments that may deter such employees from accepting employment with SPI or its designee(s), including, but not limited to, any confidentiality provisions relating to Stolichnaya Vodka or any non-compete or confidentiality provisions of employment or other contracts with Respondent that would affect the ability of those individuals to be employed by SPI or its designee(s). In addition, Respondent shall not make any counteroffer to such a Stolichnaya Employee who has received a written offer of employment from the SPI or its designee(s);

provided, however, that nothing in this Hold Separate Order requires or shall be construed to require Respondent to terminate the employment of any employee or prevents Respondent from continuing the employment of the Stolichnaya Employees (other than the requirements that employees maintain certain information confidential as prescribed in this Hold Separate Order).

- K. The purpose of this Hold Separate Order is to maintain the full economic viability, marketability, and competitiveness of the Stolichnaya Held Separate Business, to minimize any risk of loss of competitive potential for Stolichnaya Vodka, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Stolichnaya Held Separate Business except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent signs the Consent Agreement in this matter, the Commission may appoint a monitor (“Interim Monitor”) to assure that Respondent expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Hold Separate Order, the Decision and Order, the Stolichnaya Transition Agreement and any Divestiture Agreement.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Interim Monitor, Respondent shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondent’s compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- D. If an Interim Monitor is appointed, Respondent shall consent to the following terms and conditions regarding the powers, duties, authority, and responsibilities of the Interim Monitor:

1. The Interim Monitor shall have the power and authority to monitor Respondent's compliance with: the divestiture, hold separate, and asset maintenance obligations of the Orders; the restrictions on the use, conveyance, provision, or disclosure of the identified confidential business information under the Orders; and, the related requirements of the Orders. The Interim Monitor shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission.
2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The Interim Monitor shall serve until the earlier of:
 - a. the expiration of the Future Joint Venture;
 - b. the date Respondent ceases and desists from participating, directly or indirectly, in the Future Joint Venture; or
 - c. the day six (6) months from the Absolut Vodka Closing Date.

provided, however, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders;

4. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondent's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondent's compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Respondent shall cooperate with all reasonable requests of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondent's compliance with the Orders.
5. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.

6. Respondent shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
 7. Respondent shall report to the Interim Monitor in accordance with the requirements of this Hold Separate Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondent, and any reports submitted by the Acquirer, Fortune Brands and/or SPI with respect to the performance of Respondent's obligations under the Orders, the Stolichnaya Transition Agreement or any Divestiture Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Orders.
 8. Respondent may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
 - F. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
 - G. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

- H. The Interim Monitor appointed pursuant to this Hold Separate Order may be the same person appointed as a Divestiture Trustee pursuant to Paragraph V. of the Decision and Order.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Hold Separate Order becomes final, and every sixty (60) days thereafter until Respondent has fully complied with Paragraphs II. and III. of the Decision and Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Hold Separate Order and the Decision and Order; *provided, however*, that, after the Decision and Order in this matter becomes final, the reports due under this Hold Separate Order may be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondent pursuant to Paragraph VII. of the Decision and Order.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of Respondent;
- B. any proposed acquisition, merger or consolidation of Respondent; or
- C. any other change in Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Hold Separate Order.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to any Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of such Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of such Respondent related to compliance with

this Hold Separate Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and

- B. to interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate on the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after the day Respondent either:
 - 1. ceases and desists from marketing, selling, or distributing Stolichnaya Vodka in the United States, or
 - 2. ceases to have any Ownership Interest in the Absolute Vodka Assets.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: July 17, 2008