

IN THE MATTER OF
CANANDAIGUA WINE COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3334. Complaint, June 26, 1991—Decision, June 26, 1991

This consent order prohibits, among other things, the maker of Cisco, a flavored wine product, from representing that Cisco is a low-alcohol product, from implying that a bottle of Cisco constitutes a single serving, and from displaying Cisco next to low-alcohol products like wine coolers. In addition, the consent order requires new packaging for the product.

Appearances

For the Commission: *Judith D. Wilkenfeld.*

For the respondent: *Ronald A. Block, McDermott, Will & Emery,*
Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Canandaigua Wine Company ("respondent"), has violated Sections 5 and 12 of the Federal Trade Commission Act (15 U.S.C. 45 and 52), and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Canandaigua Wine Company is a Delaware corporation with its office and principal place of business located at 116 Buffalo Street, Canandaigua, New York.

PAR. 2. Respondent has advertised, offered for sale, sold, and distributed fruit-flavored wine products with an alcohol content of 20% by volume to the public under the registered trademark Cisco. Cisco is a "food" as that term is defined in Section 12 of the Federal Trade Commission Act.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce.

PAR. 4. Respondent has distributed or caused to be distributed Cisco in packaging resembling that of a wine cooler or other low-alcohol, single-serving beverage. The Cisco bottles, depicted on attached

Exhibits 1-5, have shapes similar to the bottles of many wine coolers or other low-alcohol, single-serving beverages. The Cisco bottle glass is clear, as is the glass of many wine coolers. The beverage displayed in the Cisco bottles is colored similarly to the beverages displayed in many wine cooler bottles. And, the Cisco flavor names are similar to the flavor names of many wine coolers.

PAR. 5. Respondent has disseminated or has caused to be disseminated promotional materials for Cisco that describe its packaging as cooler-style and suggest that Cisco should be sold alongside similar bottles. This promotional material includes, but is not limited to, material containing the following statements:

The key to selling Cisco is proper cold box placement. Keep it cold so Cisco buyers can experience "the thrill of the chill".

Cisco is available in 5 refreshing flavors: Berry, Red, Gold, Peach and Orange. And it comes packaged in distinctive cooler-style bottles, in both 375 ml and 750 ml sizes.

PAR. 6. Respondent has disseminated or has caused to be disseminated point-of-sale advertisements for Cisco that suggest that it can be consumed in the same manner and quantities as wine coolers or other low-alcohol, single-serving beverages. These advertisements have included, but not been limited to, two point-of-sale posters, each of which depicts a model holding and about to consume the contents of an opened, full, 375 ml (12.7 ounce) bottle of Cisco; and, another point-of-sale poster which depicts a model holding and about to consume the contents of a large wine glass, full of Cisco.

PAR. 7. Through the packaging, marketing, and advertising referred to in paragraphs four, five, and six, respondent represented, expressly or by implication, that Cisco wine products are wine coolers or other low-alcohol, single-serving beverages.

PAR. 8. In truth and in fact, Cisco wine products are not wine coolers or other low-alcohol, single-serving beverages. Cisco is 20% alcohol by volume (40 proof) and is three to five times as potent as a wine cooler or other low-alcohol, single-serving beverage. A single 375ml bottle of Cisco has the same quantity of alcohol as five one ounce servings of 80 proof vodka. Therefore, the representations set forth in paragraph seven are false and misleading.

PAR. 9. Through the packaging, marketing, and advertising referred to in paragraphs four, five, and six, respondent represented, expressly or by implication, that consumers may drink Cisco in

quantities similar to wine coolers or other low alcohol, single-serving beverages with no increased risk of injury.

PAR. 10. In truth and fact, many consumers may not consume Cisco in quantities similar to wine coolers or other low-alcohol, single-serving beverages with no increased risk of injury. Consumption of Cisco as if it were a wine cooler or other low-alcohol beverage has caused a significant number of persons consuming Cisco, who believed it to be a wine cooler, to suffer alcohol poisoning, resulting in unconsciousness and hospital emergency room care. Therefore, the representation set forth in paragraph nine is false and misleading.

PAR. 11. The acts and practices of respondent as alleged in this complaint constitute deceptive acts or practices in or affecting commerce and false advertisements in violation of Sections 5 and 12 of the Federal Trade Commission Act.

Complaint

114 F.T.C.

EXHIBIT 1

EXHIBIT 1



CANANDAIGUA WINE COMPANY
Complaint

EXHIBIT 2

EXHIBIT 2



Complaint

114 F.T.C.

EXHIBIT 3

EXHIBIT 3



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Complaint

EXHIBIT 4

EXHIBIT 4



Complaint

114 F.T.C.

EXHIBIT 5

EXHIBIT 5



DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said 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, and waivers and other provision as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Canandaigua Wine Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 116 Buffalo Street, in the City of Canandaigua, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

PART I.

(A) *It is ordered*, That respondent, Canandaigua Wine Company, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, but not including any wholesaler or retailer, in connection with the advertising, offering for sale, sale, or distribution in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, of Cisco brand wine or any other flavored wine product containing more than 14% but not more than 24% alcohol by volume, do forthwith cease and desist from:

1) Representing, directly or by implication, that any such product is a low-alcohol product that contains less than 7% alcohol by volume;

2) Representing, directly or by implication, that any package of any such product contains only a single serving unless the contents of said container are 100 milliliters or less; and,

3) Requesting or otherwise encouraging any distributor or retailer to display any such product with or next to any alcoholic beverage that contains less than 7% alcohol by volume.

(B) *Provided*, That:

1) The packaging for the respective products depicted in Exhibit A attached hereto, in any size or flavor, or packaging that does not differ therefrom in any material respect, shall not constitute a violation of subparagraphs (A)(1) or (A)(2);

2) The shipment prior to July 1, 1991, to any wholesaler of Cisco in the packaging depicted in Exhibit B in any size or flavor, or packaging that does not differ therefrom in any material respect, shall not constitute a violation of subparagraphs (A)(1) or (A)(2). Shipment to any wholesaler of any such product in the packaging depicted in Exhibit B, or in a substantially similar bottle with the same or a substantially similar label configuration, after July 1, 1991, shall constitute a violation of either of those subparagraphs except to the extent that, and only so long as, shipping Cisco repackaged as depicted in Exhibit A1 to any wholesaler from the Cisco bottling facility normally supplying it with Cisco is prevented solely by an act or acts outside respondent's control, such as, but not limited to, failure of the glass manufacturer(s) to deliver the bottles, failure of the bottler to bottle the product, failure to receive changeover parts from

bottling equipment producers, or failure of the label provider to provide the labels; and, only if and so long as respondent has acted in good faith and has used all reasonable efforts to effectuate shipping to wholesalers from said bottling plants, the product repackaged as depicted in Exhibit A1 at the earliest possible date after July 1, 1991. *Provided*, that in no event shall the shipping of Cisco to any wholesaler in the packaging depicted in Exhibit B or in a substantially similar bottle with the same or substantially similar label configuration continue for more than 90 days after July 1, 1991; and,

3) Advertising for the products depicted in Exhibit A, other than Cisco, created and first disseminated before the date of signing of this agreement, shall not constitute a violation of subparagraphs (A)(1) or (A)(2).

(C) *Provided further*, That no representation prohibited by subparagraphs (A)(1) or (2) shall arise in whole or part from any label, bottle or other container to the extent such label, bottle or other container has been formally approved prior to its use under Section 105(e) of the Federal Alcohol Administration Act, 27 U.S.C. 205(e) and the regulations thereunder.

PART II.

It is further ordered, That respondent, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any unflavored wine product containing more than 14% but not more than 24% alcohol by volume, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from distributing any product in the bottle with the label configuration depicted on Exhibit B hereto, or in any substantially similar bottle with that or a substantially similar label configuration.

PART III:

It is further ordered, That respondent shall, at any time prior to twenty (20) days following the date this order becomes final, send by first class mail to all Cisco distributors and to all retailers of Cisco whose names and addresses shall have been requested from and to the extent they have been furnished by such distributors, a letter:

A) Requesting the removal from retail display and disposal or return

to CWC of all existing Cisco point-of-sale advertising and promotional materials depicting any human form; and

B) Requesting that Cisco not be displayed for sale with or next to any alcoholic beverage containing less than 7% alcohol by volume, on the shelf, in the cooler or coldbox, or otherwise; and, that Cisco instead be displayed with other fortified wines, if these are sold.

The distributor letter shall be sent to all active Cisco wholesalers as of the date of mailing. The retailer letter shall be sent within 30 days of receipt of retailers' names and addresses from their wholesalers.

PART IV.

It is further ordered, That respondent shall distribute a copy of this order to each of its operating divisions and to each of its officers, directors, agents, or employees, but not including wholesalers or retailers, having sales, advertising, or policy responsibilities with respect to the subject matter of this order, and secure from each such person a signed statement acknowledging receipt of the order.

PART V.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of a subsidiary, or any other change in the corporation that may affect compliance obligations under this order.

PART VI.

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this order, and at such other times as the Commission may require, file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order.

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Decision and Order

EXHIBIT A

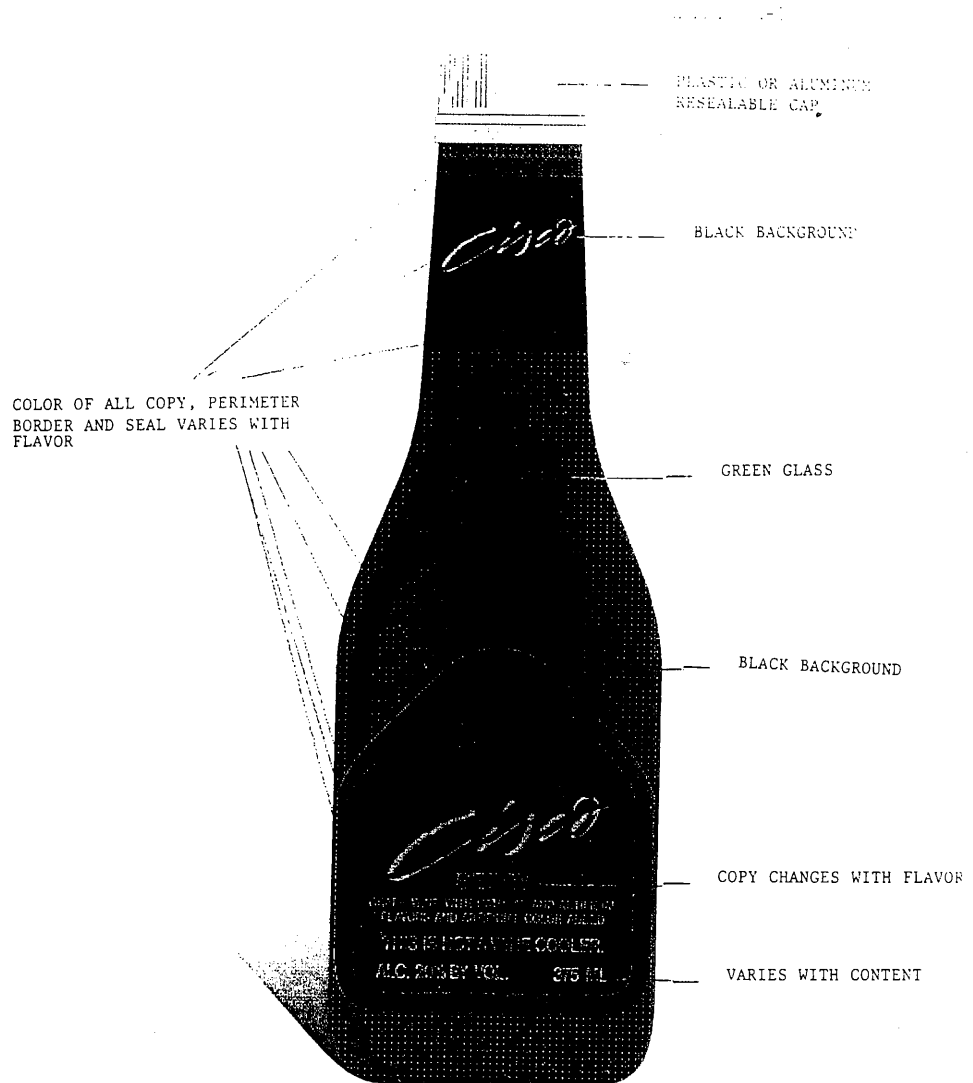


EXHIBIT A-2









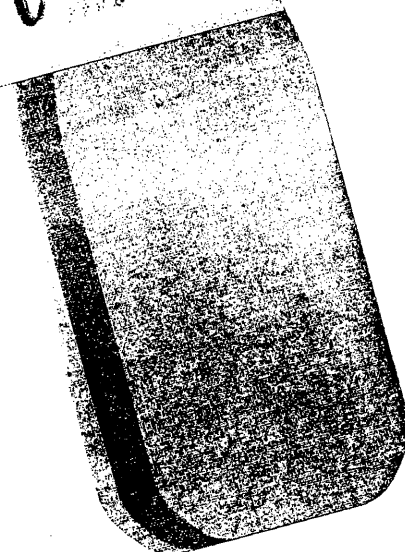
FEDERAL TRADE COMMISSION DECISIONS
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EXHIBIT B



Coca-Cola
THIS IS NOT A WINE COOLER
ALC. 20% BY VOL. 175 ML



IN THE MATTER OF
KINNEY DRUGS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9227. Complaint, April 19, 1989—Decision, July 1, 1991*

This consent order prohibits, among other things, a pharmaceutical firm from organizing or entering into any agreement among pharmacy firms to withdraw from or refuse to enter into a third-party payer prescription drug plan; for ten years, from stating or communicating to any pharmacy firm the intent to enter into or refuse to enter into any third-party payer prescription drug plan; and for eight years, from providing comments or advice to any pharmacist or pharmacy firm on the desirability or appropriateness of entering into or refusing to enter into any third-party prescription drug plan.

Appearances

For the Commission: *Karen G. Bokat* and *Michael D. McNeeley*.

For the respondent: *Robert J. Leader, Case & Leader*, Gouverneur, N.Y.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent Kinney Drugs, Inc. with a violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondent having been served with a copy of that complaint, together with a notice of the contemplated relief; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint, a statement that the signing of said 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, and waivers and other provisions as required by the Commission's Rules; and

The Secretary of the Commission having thereafter withdrawn this

*Complaint previously published at 114 FTC 327 (1991).