

IN THE MATTER OF
ALLIED DOMECQ SPIRITS & WINE AMERICAS, INC., ET AL.

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

Docket C-3858. Complaint, March 5, 1999--Decision, March 5, 1999

This consent order, among other things, prohibits two Michigan-based corporations, that advertise and distribute alcohol beverages, from misrepresenting the alcohol content, through numerical or descriptive terms, of any alcohol product.

Participants

For the Commission: *Richard Kelly, Janet Evans, C. Lee Peeler and Janis Pappalardo.*

For the respondents: *Theodore Voorhees, Covington & Burling, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Allied Domecq Spirits & Wine Americas, Inc. and Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker, corporations ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. 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.

2. 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. Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker is a wholly-owned subsidiary of Allied Domecq Spirits & Wine Americas, Inc.

3. Respondents have advertised, offered for sale, sold, and distributed beverage alcohol products to the public, including Kahlua White Russian, a pre-mixed cocktail. Kahlua White Russian is a "food" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

4. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

5. Respondents disseminated or caused to be disseminated advertisements for Kahlua White Russian, including but not necessarily limited to the attached Exhibits A and B. These advertisements contain the following statement: "LOW ALCOHOL BEVERAGE."

6. Through the means described in paragraph five, respondents represented, expressly or by implication, that the Kahlua White Russian is a low alcohol beverage.

7. In truth and in fact, the Kahlua White Russian is not 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.

Therefore, the representation set forth in paragraph six was false or misleading.

8. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices, and the making of false advertisements, in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

EXHIBIT A

Exhibit A - 1

Kahlua "Jumpin' Joint" /

Depictions	Verbal
• Doorway with neon sign reading "Club Kahlua White Russian"	(street sounds such as a honk)
• Close up on doorway as door starts to open	(music starts: Big Band/Swing style-Brown Sugar)
• Viewer sees a man leaving the club and walks behind a couple entering	(music continues)
• Viewer walks up to maitre'd who greets viewer	(music continues)
• Viewer begins to walk through club observing atmosphere, an attractive girl smiles at viewer	(music continues/band member says "Hit It")
• Waitress walks by with a tray of Kahlua White Russians SUPER: LOW ALCOHOL BEVERAGE	(music continues)
• Viewer walks by a couple drinking Kahlua White Russians who make eye contact and smile at viewer	(music continues)
• A couple gets up from a table and starts dancing	(music continues)
• Close up of band in full swing	(music continues/lyrics begin: "Yeah,")
• Pan of dance floor while viewer walks through dancers toward a table of friends	(music with lyrics: "Yeah")
• Waitress walks by with a tray of Kahlua White Russians	(music with lyrics: "Yeah, Brown Sugar")
• Viewer walks off to table of friends who smile and invite viewer to join	(music)

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EXHIBIT A

- Close up of Kahlua White Russian (music with lyrics: "How Come you Taste So Good?")
- Viewer picks up glass revealing napkin with writing "Kahlua White Russian How come you taste So GOOD?" Voice: "Kahlua White Russian: How Come you Taste So Good?"
- **SUPER:**
©1997 Kahlua' Pre-Mixed Cocktails.
5.9% alc./vol., Hiram Walker.
Southfield, MI.

Exhibit A - 2

**Kahlua "Jumpin' Joint" Ad
(VIDEOCASSETTE)**

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EXHIBIT B

Exhibit B - 1

Kahlua "Jumpin' Joint/Alt."

Depictions	Verbal
• Doorway with neon sign reading "Club Kahlua White Russian"	(street sounds such as a honk)
• Close up on doorway as door starts to open	(music starts: Big Band/Swing style-Brown Sugar)
• Viewer sees a man leaving the club and walks behind a couple entering	(music continues)
• Viewer walks up to maitre'd who greets viewer	(music continues)
• Viewer begins to walk through club observing atmosphere, an attractive girl smiles at viewer	(music continues/band member says "Hit It")
• Waitress walks by with a tray of Kahlua White Russians SUPER: LOW ALCOHOL BEVERAGE	(music continues)
• Viewer walks by a couple drinking Kahlua White Russians who make eye contact and smile at viewer	(music continues)
• A couple gets up from a table and starts dancing	(music continues)
• Close up of band in full swing	(music continues/lyrics begin: "Yeah,")
• Pan of dance floor while viewer walks through dancers toward a table of friends	(music with lyrics: "Yeah")
• Waitress walks by with a tray of Kahlua White Russians	(music with lyrics: "Yeah, Brown Sugar")
• Viewer walks off to table of friends who smile and invite viewer to join	(music)

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EXHIBIT B

- Close up of Kahlua White Russian (music with lyrics: "How Come you Taste So Good?")
- Viewer picks up glass revealing napkin with writing "Kahlua White Russian How come you taste So GOOD?" Voice: "Kahlua White Russian: How Come you Taste So Good?"
- SUPER:
LOW ALCOHOL BEVERAGE
©1997 Kahlua® Pre-Mixed Cocktails,
5.9% alc./vol., Hiram Walker,
Southfield, MI. Voice: "Low alcohol beverage"

Exhibit B - 2

**Kahlua "Jumpin' Joint/Alt." Ad
(VIDEOCASSETTE)**

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents 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 the respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondents 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 that it had reason to believe that the respondent has violated the 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 Allied Domecq Spirits & Wine Americas, Inc. is a Delaware corporation with its principal office or place of business at 3000 Town Center, Southfield, MI.

2. 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. Allied Domecq Spirits & Wine USA, Inc. d/b/a Hiram Walker is a wholly-owned subsidiary of Allied Domecq Spirits & Wine Americas, Inc.

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

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 CFR 4.36(b)(1) and (2) (wines containing 7 percent or more alcohol); 27 CFR 5.37(b) (distilled spirits); 27 CFR 7.71(c)(1) and (2) (malt beverages); and 27 CFR 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.

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 on March 5, 2019, 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.

IN THE MATTER OF
BECK'S NORTH AMERICA, INC.

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

Docket C-3859. Complaint, March 5, 1999--Decision, March 5, 1999

This consent order, among other things, prohibits a Connecticut-based corporation, that advertises and distributes Beck's Beer, from disseminating advertisements that depicts a person consuming alcohol beverages on a boat while engaging in activities that pose a substantial risk of serious injury from falling overboard.

Participants

For the Commission: *Janet Evans, Richard Kelly, C. Lee Peeler,*
and *Dennis Murphy.*

For the respondent: *Pro se.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Beck's North America, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Beck's North America, Inc. is a Delaware corporation with its principal office or place of business at 57 Old Post Road No. 2, Greenwich, Connecticut.
2. Respondent has advertised, labeled, offered for sale, sold and distributed products to the public, including Beck's Beer. Beck's Beer is a liquid beverage consisting of 5% alcohol by volume (10 proof).
3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.
4. Respondent has disseminated or caused to be disseminated advertisements for Beck's Beer, including but not necessarily limited to the attached television advertisements, Exhibits A and B. Exhibits A and B depict a number of passengers in various places on a sailing boat at sea. On the deck of the boat is a large bucket of ice, filled with bottles of Beck's Beer. Almost all of the passengers are holding bottles of beer, with one passenger standing precariously on the