

Complaint

IN THE MATTER OF

PERNOD RICARD S.A.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL
TRADE COMMISSION ACT*Docket C-4224; File No. 081 0119**Complaint, July 17, 2008 – Decision, October 14, 2008*

This consent order addresses the proposed acquisition by Pernod Ricard S.A. of V&S Vin & Sprit AB (publ). The companies are direct and significant competitors in the super-premium vodka market. In addition, after the acquisition, Pernod Ricard would become a joint venture partner with Beam Global Spirits & Wine, Inc., and share in the management of Future Brands LLC, which distributes Beam Global products. As a joint venture partner, Pernod Ricard would have access to competitively sensitive information about Beam Global brands that compete with Pernod Ricard brands. In regard to the vodka market, the order requires that Pernod Ricard divest its interest in distributing Stolichnaya Vodka back to the brand owner, Spirits International BV. If Pernod Ricard fails to complete the required divestiture within 6 months, the Commission may appoint a divestiture trustee to sell V&S's Absolut Vodka assets and business to a Commission-approved acquirer. An exception may be made because of ongoing litigation between Spirits International and others regarding ownership of the Stolichnaya trademark and related rights to sell vodka under that label. If Pernod Ricard is prohibited by court order from divesting its distribution rights to Stolichnaya Vodka, instead of divesting the Absolut Vodka assets, it would have the option of divesting the income stream from its sales of Absolut Vodka. The order requires that Pernod Ricard help ensure that the acquirer of the Stolichnaya Vodka business is able to continue operations in a fully competitive manner, including providing key employees with financial incentives to remain with Pernod Ricard (in order that those employees might then be available for hire by the acquirer); providing lists of key employees to the acquirer; temporarily providing technical assistance and training at the acquirer's request; and temporarily providing back-office procedures to the acquirer. In regard to the Future Brands joint venture, the order prohibits Pernod Ricard from acquiring any business information on Beam Global brands through certain firewall procedures: the Pernod Ricard designees to the Future Brands Board of Managers cannot be officers or directors of Pernod Ricard; Pernod will recommend to the Future Brands board that it implement database protocols limiting Pernod designated

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board member access to information about Beam Global brands; and Pernod will allow an interim monitor to supervise all of the firewall-related protections and requirements.

Participants

For the Commission: *Sonia Ballard, Joseph Brownman, Leslie Farber, Jennifer Lee, Jeanne Liu, Matthew J. Reilly, W. Stephen Sockwell, and Laura Sullivan.*

For the Respondents: *Gary Kubek, Debevoise & Plimpton; and Ken Logan, Simpson Thatcher.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Respondent Pernod Ricard, S. A. (“Pernod Ricard”) entered into an agreement with V&S Vin & Sprit AB (publ), (“V&S”) in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that the terms of such agreement, were they to be satisfied, would result in a violation of Section 7 of the Clayton Act, 15 U.S.C. §18, and Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. Respondent Pernod Ricard, S.A.

1. Respondent Pernod Ricard is a société anonyme, or corporation, 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.

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2. In the United States, Pernod Ricard operates through a wholly-owned subsidiary corporation, Pernod Ricard USA, Inc., whose offices are located at 100 Manhattanville Road, Purchase, New York 10577.

3. Among other things, Pernod Ricard produces distilled spirits that it distributes, markets, and sells in the United States. Some of those brand lines of distilled spirits are Martell Cognac, Seagram's Gin, Hiram Walker Cordials, and Kahlua Coffee Liqueur. Pernod Ricard also produces, markets, distributes, and sells, Chivas Regal, Ballantine's, The Glenlivet Scotches, Jameson Irish whiskey, Beefeater Gin, and the line of Wild Turkey Bourbons. Pernod Ricard also markets, distributes, and sells, but does not produce, the line of Stolichnaya Vodka.

4. Pernod Ricard had total revenues, from all products, of about E6.4 billion in the year ended June 30, 2007. Pernod Ricard's United States sales of all distilled spirits products in the year ended June 30, 2007, totaled about \$1.4 billion.

5. Pernod Ricard is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

II. Third Party V&S Vin & Sprit AB (publ)

6. V&S is an aktiebolag, or corporation, wholly-owned by The Kingdom of Sweden. V&S is 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 19 ASE-117 97, Stockholm, Sweden.

7. Among other things, V&S produces and sells distilled spirits products from facilities that it owns and operates. The V&S brands of distilled spirits sold in the United States include the

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lines of Absolut Vodka, Level Vodka, Plymouth Gin, and Cruzan Rum.

8. In the United States, V&S operates its distilled spirits business through a wholly-owned subsidiary corporation, The Absolut Spirits Company, Incorporated (“ASCI”). ASCI is a Delaware corporation with its offices and principal place of business located at 401 Park Avenue South, New York, New York 10016.

9. V&S had total revenues, from all products, of about SEK (Swedish krona) 10 billion in 2007. V&S’s United States revenues from all distilled spirits products in 2007 were about SEK 4 billion.

10. V&S is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

III. Third Party Future Brands

11. Future Brands LLC (“Future Brands”) is a marketing, sales, and distribution joint venture corporation of ASCI and Beam Global Spirits & Wine, Inc. (“Beam Global”), a division of Fortune Brands, Inc. (“Fortune Brands”). Future Brands is organized, existing and doing business under and by virtue of the laws of Delaware with its office and principal place of business located in the offices of Fortune Brands at 300 Tower Parkway, Lincolnshire, Illinois 60069.

12. Future Brands was created in 2001 by agreement of Beam Global and ASCI. Under the terms of that agreement, the Future Brands joint venture is scheduled to end in 2012.

13. Future Brands markets, sells, and distributes all of the distilled spirits brands of both Beam Global and ASCI that are

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available for sale in the United States. The brands of Beam Global include the lines of Courvoisier Cognac; DeKuyper Cordials; Starbucks Coffee Liqueur; Jim Beam, Knob Creek, Bakers, Basil Hayden, and Booker's Bourbon; Laphroaig and Teacher's Scotch; and Gilbey's Gin. The brands of ASCI include the lines of Absolut Vodka, Level Vodka, Plymouth Gin, and Cruzan Rum. Future Brands had total revenues, in 2007, of about \$1.48 billion.

14. Beam Global and ASCI sell distilled spirits that fall into different marketing and price point segments of various distilled spirits product categories and are not substantial and direct competitors of one another. Because ASCI sells no distilled spirits products other than through Future Brands, ASCI and Future Brands are not substantial or direct competitors of one another either.

15. The principal economic benefit to Beam Global and ASCI of the Future Brands joint venture is their cost savings or efficiencies from the joint marketing, selling, and distribution of their products. Neither ASCI nor Beam Global receives direct or significant financial or economic benefit or profits from, or is financially burdened by, activities associated with any profit or loss from the sale of any of the products in the Future Brands joint venture. The economic benefit from the actual sale of the products in the joint venture are maintained by the brand owners.

16. Before its acquisition of V&S, Pernod Ricard had no business relationship with Future Brands. As a marketer, seller, and distributor of distilled spirits products similar to distilled spirits products marketed, sold, and distributed by Future Brands, Pernod Ricard had been a direct and substantial competitor of Future Brands.

17. After its acquisition of V&S, Pernod Ricard will replace ASCI as a joint venture partner of Beam Global, and Beam Global and Pernod Ricard will share in the management of Future

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Brands. Upon becoming the joint venture partner of Beam Global, Pernod Ricard will necessarily acquire access to competitively sensitive information about all Beam Global products, including products with which Pernod Ricard is in direct and substantial competition.

IV. The Proposed Acquisition and Transaction

18. On or about March 30, 2008, Pernod Ricard and The Kingdom of Sweden entered into their Share Purchase Agreement Regarding the Shares in V&S Vin & Sprit AB (publ) (“the acquisition agreement”).

19. Under the terms of the acquisition agreement, Pernod Ricard will acquire all of the shares of V&S (“the proposed acquisition”) for a sum equal to a combination of euros, dollars, and interest payments totaling approximately \$9 billion.

V. Nature of Trade and Commerce

A. Relevant Product Markets

a. Not larger than premium-priced vodkas

20. A relevant product market to assess the competitive effects of the proposed acquisition is a market no larger than all premium-priced vodkas.

21. Vodka is a clear alcoholic beverage distilled from a starch source, most commonly potatoes, wheat, or rye, but sometimes also from corn, sugar beets, grapes, or citrus fruit. Flavored vodkas are common, and vodka may be flavored by the addition of flavor-containing ingredients and by allowing it to sit for sufficient time for the flavors to infuse the vodka.

22. Vodka sold in the United States ranges from value priced products to high end brands, differentiated from the value priced

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bands by a combination of attributes associated with a brand name and associated cache, which include bottle characteristics, country of origin, number of times distilled, taste, and the nature and extent of associated advertising and promotion. High end vodka brands are all premium priced over the value brands. Industry participants generally divide the high end vodka products into three segments: (a) premium vodka, (b) super premium vodka, and (c) ultra premium vodka.

23. The most popular premium vodka product in the United States is Smirnoff Red Label Vodka. The two most popular super premium vodka brands sold in the United States are Absolut Vodka (a V&S product distributed by Future Brands), the largest selling super premium vodka, and Stolichnaya Vodka (distributed by Pernod Ricard), the second largest selling super premium vodka. The most popular ultra premium vodka sold in the United States is Grey Goose Vodka.

24. Total United States sales in 2007 of all premium priced vodkas were about 28 million 9-liter equivalent cases, which represents about \$5 billion in retail sales. Total United States sales in 2007 of all vodkas in the super premium segment were about nine million 9-liter equivalent cases, which represents about \$1.9 billion in retail sales.

b. Cognac

25. A second relevant product market to assess the competitive effects of the proposed acquisition is Cognac.

26. Cognac is a type of brandy, or distilled wine, which may be produced and bottled only in the Charente region of France. Two popular Cognac brands sold in the United States are Martell (a Pernod Ricard product), and Courvoisier (a Beam Global and Future Brands product). Total sales of Cognac in the United States

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in 2007 were about four million 9-liter equivalent cases, which represent about \$1.5 billion in retail sales.

c. Domestic cordials

27. A third relevant product market to assess the competitive effects of the proposed acquisition is domestic cordials.

28. Cordials (sometimes referred to as liqueurs) are sweet distilled spirits flavor drinks, with sugar added. Domestic cordials normally are identified by a specific flavor or main ingredient, whereas imported cordials (or liqueurs) are generally higher priced than domestic cordials, are blends of herbs, flavors, and spices, and are identified primarily by brand. Domestic cordials are used primarily in cocktail recipes with a base alcohol, most commonly vodka. The two most popular lines of domestic cordials sold in the United States are Hiram Walker, (a Pernod Ricard product), and DeKuyper, (a Beam Global and Future Brands product). Total sales of domestic cordials in the United States in 2007 were about 4.5 million 9-liter equivalent cases, which represent about \$500 million in retail sales.

d. Coffee liqueurs

29. A fourth relevant product market to assess the competitive effects of the proposed acquisition is all coffee liqueurs.

30. Coffee liqueurs are spirit based, usually from rum or vodka, and sweetened with added sugar and flavored with coffee. The two most popular product lines of coffee liqueurs sold in the United States are Kahlua, (a Pernod Ricard product), the largest selling brand, and Starbucks, (a Beam Global and Future Brands product), the second largest selling brand. Total sales of coffee liqueurs in the United States in 2007 were about two million 9-liter equivalent cases, which represent about \$350 million in retail sales.

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e. Popular gin

31. A fifth relevant product market to assess the competitive effects of the proposed acquisition is popular gin.

32. Gin is a distilled spirit made from grain, primarily wheat or rye, that is flavored with juniper berries and other herbs and spices, which are normally referred to as botanicals. Popular gin is gin that is principally made and bottled in North America, is generally advertised, promoted, and available throughout the United States, and sold at retail at prices that are lower than the premium gins, which are imported from the United Kingdom, but higher than the gins that are not widely advertised and promoted. Two brands of popular gin sold in the United States are Seagram's (a Pernod Ricard product), the largest selling product, and Gilbey's, (a Beam Global and Future Brands product), the third largest selling product. Total sales of popular gin in the United States in 2007 were about 4.5 million 9-liter equivalent cases, which represent about \$500 million in retail sales.

B. Relevant Geographic Markets

33. The relevant geographic markets in which to assess the effects of the proposed acquisition are: (a) the United States, and (b) individual states and territories of the United States.

C. Market Structure

34. The relevant markets are (a) highly concentrated, whether measured by the Herfindahl-Hirschman Index ("HHI") or by two-firm and four-firm concentration ratios, or (b) structured so that the products of Pernod Ricard and V&S are the first and second choices for a substantial number of the customers of these products.

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D. Conditions of Entry

35. Entry into each of the relevant markets would not be timely, likely, or sufficient to prevent any of the following anticompetitive effects from occurring.

VI. Effects of the Acquisition

36. Pernod Ricard, with its line of Stolichnaya Vodka, is a direct and substantial competitor of ASCI in connection with the marketing, sale, and distribution of ASCI's line of Absolut Vodka.

37. Pernod Ricard, with its line of Martell Cognac, is a direct and substantial competitor of Beam Global and the Future Brands joint venture in connection with the production, marketing, sale, or distribution of their line of Courvoisier Cognac.

38. Pernod Ricard, with its line of Hiram Walker cordials, is a direct and substantial competitor of Beam Global and the Future Brands joint venture in connection with the production, marketing, sale, or distribution of their line of DeKuyper cordials.

39. Pernod Ricard, with its line of Kahlua Coffee Liqueur, is a direct and substantial competitor of Beam Global and the Future Brands joint venture in connection with the production, marketing, sale, and distribution of their line of Starbucks Coffee Liqueur.

40. Pernod Ricard, with its line of Seagram's gins, is a direct and substantial competitor of Beam Global and Future Brands joint venture in connection with the production, marketing, sale, or distribution of their line of Gilbey's Gin.

41. The proposed acquisition may substantially lessen competition in each relevant market in some or all of the following ways, among others:

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(a) by eliminating actual direct and substantial competition between Pernod Ricard and V&S, Beam Global, or Future Brands;

(b) by increasing the likelihood that Pernod Ricard will unilaterally exercise market power; and

(c) by increasing the likelihood of, or facilitating, overt collusion, tacit collusion, or coordinated interaction;

each of which may result in higher prices to consumers.

VII. Violations Charged

42. The agreement described in Paragraphs 18 and 19 constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and the proposed acquisition, if consummated would violate 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.

43. The acquisition constitutes a violation 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this seventeenth day of July, 2008, issues its Complaint against Respondent Pernod Ricard.

By the Commission.

Order to Maintain Assets

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

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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,

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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.

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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.

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- 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

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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;

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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:

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- 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.

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- 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

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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.

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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:

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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

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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

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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

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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

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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:

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- 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.

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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 (“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

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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 that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Hold Separate and Maintain Assets and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having modified the Decision and Order in certain respects, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("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.

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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 the Order, the following definitions 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, ASCI), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.
- D. “Absolut Vodka” means any brand or product that uses the trade name or Trademark “Absolut”, including, without limitation, all such products that are vodka or vodka based beverages.

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- E. “Absolut Vodka Assets” means all of Respondent’s rights, title and interest, worldwide, as of the Absolut Vodka Closing Date, in and to all assets, tangible and intangible, of the Absolut Vodka Business, including, without limitation, such rights, titles, and interests, in the following:
1. Absolut Vodka Intellectual Property;
 2. Absolut Vodka Confidential Business Information;
 3. Absolut Vodka Sales and Marketing Materials;
 4. assets relating to the research, development, production, distribution, marketing, promotion, sale, or after-sales support of Absolut Vodka;
 5. copies of all vendor lists, and all names of manufacturers and suppliers under contract with Respondent who or that produce for, or supply to, Respondent in connection with the sale of Absolut Vodka;
 6. at the Acquirer’s option, all rights, title and interest in and to inventories of products, raw materials, supplies and parts, including work-in-process and finished goods, packaging and point of sale materials related to Absolut Vodka;
 7. at the Acquirer’s option, and to the extent transferable, divisible or assignable, all rights, title and interest in and to agreements (except contracts of employment), express or implied, relating to research, design, development, production, distribution, marketing, promotion, sale or after-sales support of Absolut Vodka, regardless of whether such agreements relate

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exclusively to such purposes, including, but not limited to, warranties, guarantees, and contracts with customers (together with associated bid and performance bonds, if any), other vodka distillers, joint venture partners, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors, and consignees;

8. all unfilled customer orders for Absolut Vodka as of the Absolut Vodka Closing Date (a list of such orders to be provided to the Acquirer within twenty (20) days after the Absolut Vodka Closing Date);
9. all rights under warranties and guarantees, express or implied, relating to Absolut Vodka;
10. all books, records, and files relating to Absolut Vodka;
11. at the Acquirer's option, all rights under the Absolut Vodka Input Supply Agreements to the extent legally transferable to the Acquirer; and
12. at the Acquirer's option, the Absolut Vodka Manufacturing Facilities.

provided, however, that the Absolut Vodka Assets shall not include:

- a. any right to use Respondent's general business strategies or practices relating to product information formulation or market research activities or methods or methodologies that Respondent uses on a company-wide basis for the purposes of formulating, marketing, promoting, managing, or selling its various brands, *except* that, to the extent that documents or other materials

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relating to such business strategies or practices contain the results of product formulation or marketing research activities relating to Absolut Vodka, Respondent shall divest those results to the Acquirer and the Acquirer shall be entitled to use such product formulation or marketing research results;

- b. any right, title and interest in or to any owned or leased real property and improvements, office space, office equipment and furniture, management information systems, software, and personal property used by Respondent, other than such assets that comprise the Absolut Vodka Manufacturing Facilities;
- c. any interest in any wholesale distributor of beverage alcohol;
- d. any payables or receivables related to transactions that are fully performed on or prior to the Absolut Vodka Closing Date;
- e. any contract for the procurement or receipt of goods or services for Respondent on a company-wide or portfolio-wide basis; and
- f. that portion of any document or other material containing information relating solely to a brand or business other than Absolut Vodka;

provided further, however, in cases in which documents or other materials included in the Absolut Vodka Assets contain information that relates both to Absolut Vodka and other brands or businesses of Respondent, Respondent shall be required to provide only copies of the documents

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and materials containing this information. If such information can be segregated in a manner that preserves the usefulness of the information as it relates to Absolut Vodka, then the copies provided to the Acquirer may be redacted to delete information that relates to brands and businesses of Respondent other than Absolut Vodka, and the copies or originals retained by Respondent shall be redacted to delete information that relates to Absolut Vodka. The purpose of this proviso is to ensure that Respondent provides the Acquirer with the above-described information without requiring Respondent completely to divest itself of information which, in content, relates also to brands and businesses other than Absolut Vodka.

- F. “Absolut Vodka Business” means all of the operations and business related to the research, development, production, marketing, advertising, promotion, distribution, sale or after-sales support for Absolut Vodka.
- G. “Absolut Vodka Closing Date” means the date on which Respondent (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey Absolut Vodka Assets to an Acquirer.
- H. “Absolut Vodka Confidential Business Information” means all information that is not in the public domain relating to the Absolut Vodka Business, including the research, development, production, marketing, advertising, promotion, distribution, sales or after-sales support of Absolut Vodka.
- I. “Absolut Vodka Employee(s)” means:
 - 1. all persons employed by V&S with responsibility for, or who directly participated in (irrespective of the portion of working time involved), the research,

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development, production, marketing, advertising, promotion, distribution, sale or after-sales support of Absolut Vodka within an eighteen (18) month period prior to the Acquisition Date; and

2. all persons employed by Pernod with responsibility for, or who directly participate in (irrespective of the portion of working time involved), the research, development, production, marketing, advertising, promotion, distribution, sale or after-sales support of Absolut Vodka in the United States at any time after the Acquisition Date and prior to the Absolut Vodka Closing Date.
- J. “Absolut Vodka Firewalled Employee(s)” means the Absolut Vodka Future Board Members, the Absolut Vodka Senior Managers, and the Absolut Vodka Employees.
- K. “Absolut Vodka Future Board Member(s)” means any person(s) appointed or designated by Respondent to the Future Joint Venture Board of Managers.
- L. “Absolut Vodka Income Stream” means either:
1. all sales revenues realized from the sales of Absolut Vodka within the United States net of Supply Cost and continuing at least 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 Absolut Vodka Assets; or
 2. a stipulated amount equal to at least twenty (20) percent of gross sales revenue realized from the sales of Absolut Vodka within the United States and

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continuing at least 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 Absolut Vodka Assets.

M. “Absolut Vodka Input Supply Agreements” means any agreement with a Third Party to supply an ingredient(s) or input(s) used in the production of Absolut Vodka.

N. “Absolut Vodka Intellectual Property” means all intellectual property throughout the world related to Absolut Vodka including, without limitation, the following:

1. Trademarks;
2. Trade Dress;
3. Copyrights;
4. trade secrets, know-how and other confidential or proprietary technical, business, research, development and other information, and all rights in any jurisdiction to limit the use or disclosure thereof;
5. Patents;
6. Production Technology; and
7. all research materials, technical information, and data contained in software;

provided, however, that where such intellectual property also relates to other brands or businesses of Respondent, Respondent shall grant the Acquirer rights to use such

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intellectual property on a non-exclusive basis in connection with the Absolut Vodka Business.

- O. “Absolut Vodka Manufacturing Facilities” means the following facilities that have been used in the production, blending, bottling or packaging of Absolut Vodka or other distilled spirits:
1. the distillery located at Ugerupsvägen 50, Kristianstad, Sweden;
 2. the bottling plant located at Köpmannagatan 29, Åhus, Sweden; and
 3. all the real estate, equipment, machinery, fixtures, vehicles, furniture, tools, supplies and other personal property associated with the preceding facilities.
- P. “Absolut Vodka Sales and Marketing Materials” means all marketing and promotional materials used anywhere in the world related to Absolut Vodka or the Absolut Vodka Assets as of the Absolut Vodka Closing Date, including, without limitation: all advertising materials; customer lists; contribution statements; Website(s) and Domain Name(s); product data; profit and loss statements; price lists; mailing lists; sales materials; marketing information (*e.g.*, customer sales and competitor data); catalogs, sales promotion literature and other promotional materials; spend records related to advertising, marketing or promotion; training and other materials associated with the Absolut Vodka Assets; and all copyrights in and to the Absolut Vodka Sales and Marketing Materials.
- Q. “Absolut Vodka Senior Manager(s)” means all persons designated as, or otherwise functioning as, brand managers for Absolut Vodka. The Absolut Vodka Senior Manager(s)

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include, without limitation, those individuals identified in Appendix III. attached to this Order.

- R. “Acquirer” means a Person approved by the Commission to acquire particular assets or rights that Respondent is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.
- S. “Acquisition” means the acquisition contemplated by the Share Purchase Agreement Regarding the Shares in V&S dated March 30, 2008, by and among The Kingdom of Sweden and Pernod Ricard S.A., and all amendments, exhibits, attachments, agreements, and schedules thereto.
- T. “Acquisition Date” means the date Respondent closes on the Acquisition.
- U. “Allied Domecq” means Allied Domecq International Holdings BV, a corporation organized, existing, and doing business under and by virtue of the laws of The Netherlands, with its office and principal place of business located at The Pavilions, Bridgwater Road, Bedminster Down, Bristol, BS138AR, United Kingdom; and its subsidiaries and affiliates, including without limitation Allied Domecq Spirits & Wine USA, LLC, a limited liability corporation organized, existing, and doing business under and by virtue of the laws of Michigan, with its office and principal place of business located at 355 Riverside Avenue, Westport, CT 06880.
- V. “ASCI Brands” means all V&S distilled spirits marketed, sold or distributed by the Future Joint Venture including, but not limited to, Absolut Vodka, Level Vodka, Cruzan Rum, and Plymouth Gin.
- W. “Beam Brands” means all Beam Global distilled spirits marketed, sold, or distributed by the Future Joint Venture including, without limitation, Jim Beam Bourbon, Knob

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Creek Bourbon, Bakers Bourbon, Basil Hayden Bourbon, Booker's Bourbon, Laphroaig Scotch, Ardmores Scotch, Teacher's Highland Cream Scotch, Courvoisier VS Cognac, DeKuyper Cordials, Starbucks Liqueurs, and Gilbey's Gin.

- X. "Beam Brands Confidential Business Information" means all information that is not in the public domain relating to the Beam Brands, including the research, development, production, marketing, advertising, promotion, distribution, sales or after-sales support of the Beam Brands.
- Y. "Beam Global" means Beam Global Spirits & Wine, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its headquarters address located at 510 Lake Cook Road, Deerfield, Illinois 60015; and its subsidiaries and affiliates, including without limitation Jim Beam Brands Co. and Fortune Brands, Inc.
- Z. "Cease and Desist Date" means the day exactly six (6) months after the Acquisition Date.
- AA. "Copyrights" means rights to all original works of authorship of any kind related to Absolut Vodka and any registrations and applications for registrations thereof, including, but not limited to, the following: all promotional materials for retailers; all promotional materials for customers; copyrights in development data and reports relating to the research and development of Absolut Vodka or of any materials used in the research, development, manufacture, marketing or sale of Absolut Vodka, including all raw data relating to quality trials of the Absolut Vodka, customer information, promotional and marketing materials, the Absolut Vodka sales

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forecasting models, Website content and advertising and display materials; all records relating to employees who accept employment with the Acquirer (excluding any personnel records the transfer of which is prohibited by applicable law); all records, including customer lists, sales force call activity reports, vendor lists, sales data, slotting allowance data, speaker lists, manufacturing records, manufacturing processes, and supplier lists; all data contained in laboratory notebooks relating to Absolut Vodka.

- BB. “Direct Cost” means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. “Direct Cost” to SPI or its designee(s) for its use of any of Respondent’s employees’ labor shall not exceed the average hourly wage rate for such employee.
- CC. “Divestiture Agreement” means any agreement between Respondent and an Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that have been approved by the Commission to accomplish the requirements of this Order.
- DD. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to Paragraph V. of this Order.
- EE. “Domain Name” means the domain names (universe resource locators), and registrations thereof, issued by any Person that issues and maintains the domain name registration; *provided, however*, this term shall not include

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any Trademark or service mark right to such domain names other than the rights to the Trademarks or service marks required to be divested.

FF. “Employee Information” means the following, for each employee, and to the extent permitted by the law:

1. A complete and accurate list of the names of all employees (including former employees who were employed by Respondent within ninety (90) days of the execution of any Divestiture Agreement);
2. The following information for each such employee:
 - a. the date of hire and effective service date;
 - b. job title or position held;
 - c. a specific job description of the employee’s responsibilities related to the relevant products; *provided, however*, in lieu of this description, Respondent may provide the employee’s most recent performance appraisal;
 - d. the base salary and current wage;
 - e. the most recent bonus paid, aggregate annual compensation for the Respondent’s last fiscal year and current target or guaranteed bonus, if any;
 - f. employment status (*i.e.*, active, on leave, on disability, and whether full or part time); and
 - g. any other material terms and conditions of employment that are not otherwise generally available to similarly situated employees; and

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3. at the Acquirer's or SPI's option (as is relevant), copies of all employee benefit plans and summary plan descriptions.

GG. "Fortune Brands" means Fortune Brands, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its headquarters address located at 510 Lake Cook Road, Deerfield, Illinois 60015-5611.

HH. "Future Employees" means employees of the Future Joint Venture.

II. "Future Joint Venture" means Future Brands, LLC, a limited liability company organized, existing, and doing business as a limited liability company under and by virtue of the laws of Delaware, with its headquarters office located at 510 Lake Cook Road, Deerfield, Illinois 60015. The Future Joint Venture operates as a joint venture between ASCI and Beam Global for the marketing and distribution of ASCI Brands and Beam Brands as contemplated by the Master Transaction Agreement dated March 20, 2001, by and among V&S Vin & Sprit AB, the Absolut Spirits Company, Inc., Jim Beam Brands Worldwide, Inc., Jim Beam Brands Co., and Fortune Brands, Inc., and all amendments, exhibits, attachments, agreements, and schedules thereto.

JJ. "Government Entity" means any Federal, state, local or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.

KK. "Interim Monitor" means a monitor appointed pursuant to Paragraph IV. of this Order or Paragraph III. of the Order to Hold Separate and Maintain Assets.

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- LL. “Non-Competing Firm” means any Person *excluding*: (1) the Respondent; and (2) any Person that engages in the business of manufacturing, marketing, distributing or selling brands of vodka other than Absolut Vodka.
- MM. “Orders” means the Order to Hold Separate and Maintain Assets and this Decision and Order.
- NN. “Ownership Interest” means any and all rights, title, and interest, present or contingent, of the Respondent to hold any voting or nonvoting stock, share capital, equity, assets or other interests or beneficial ownership in a specified entity or specified asset(s).
- OO. “Patents” means all patents, patent applications, including provisional patent applications, and statutory invention registrations, in each case existing as of the Absolut Vodka Closing Date, and includes all reissues, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for patents and registrations thereto in the world, related to Absolut Vodka.
- PP. “Pernod Brands” means Wild Turkey Bourbon, Russell’s Reserve Bourbon, The Glenlivet Scotch, Aberlour Scotch, Scapa Scotch, Ballantine’s Scotch, Martell VS Cognac, Hiram Walker Cordials, Kahlua Liqueurs, Tia Maria Coffee Liqueur, and Seagram’s Gin.
- QQ. “Pernod Brands Confidential Business Information” means all information that is not in the public domain relating to the Pernod Brands, including the research, development, production, marketing, advertising, promotion, distribution, sales or after-sales support of the Pernod Brands.

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RR. “Pernod Employees” means all employees of Pernod *excluding* the Absolut Vodka Firewalled Employees.

SS. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or Government Entity, and any subsidiaries, divisions, groups or affiliates thereof.

TT. “Production Technology” means all recipes, formulas, blend specifications, technology, trade secrets, know-how, and proprietary information, anywhere in the world, relating to the production and bottling of Absolut Vodka.

UU. “SPI” means Spirits International BV, a corporation organized, existing, and doing business under and by virtue of the laws of The Netherlands, with its office and principal place of business located at Chemin Louis-Dunant 17, 1202 Geneva; and its subsidiaries and affiliates, including without limitation SPI Spirits (Cyprus) Limited, a corporation organized, existing, and doing business under and by virtue of the laws of Cypress, with its office and principal place of business located at 249, 28th October Street, 3035 Limassol, Cyprus.

VV. “Stolichnaya Brand Organisation” means The Stolichnaya Brand Organisation Limited, a company organized, existing, and doing business under and by virtue of the laws of Scotland, with registered office located at 111-113 Renfrew Road, Paisley, PA3 4DY, United Kingdom, and its principal place of business headquartered at 40 Conduit Street, London, W1S 2YQ, United Kingdom.

WW. “Stolichnaya Vodka” means any brand or product that uses the trade name or Trademark “Stolichnaya”,

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including, without limitation, all such products that are vodka or vodka based beverages.

XX. “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.

YY. “Stolichnaya Confidential Business Information” means all information that is not in the public domain relating to Stolichnaya Vodka, including the research, development, production, marketing, advertising, promotion, distribution, sales or after-sales support of Stolichnaya Vodka.

ZZ. “Stolichnaya Employee(s)” means, within an eighteen (18) month period prior to the Acquisition Date:

1. all persons employed by the Stolichnaya Brand Organisation; and
2. any other Pernod employee with primary responsibilities related to the research, development, production, marketing, advertising, promotion, distribution, sale or after-sales support of Stolichnaya Vodka in the United States.

AAA. “Stolichnaya Distribution Agreement” means the Trademark, Supply and Distribution Agreement dated November 15, 2000, by and among Allied Domecq International Holdings BV, Allied Domecq Spirits & Wine USA, Inc. d/b/a Allied Domecq Spirits, SPA, SPI International NV, and SPI Spirits (Cyprus) Limited, and all amendments, exhibits, attachments, agreements, and

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schedules thereto. The Stolichnaya Distribution Agreement is contained in non-public Appendix I, attached to this Order.

BBB. “Stolichnaya Termination Date” means the date Respondent ceases and desists from the marketing, sale, and/or distribution of Stolichnaya Vodka in the United States.

CCC. “Stolichnaya Transition Agreement” means the Transition Agreement dated March 13, 2008, by and among Spirits International BV, SPI Spirits (Cyprus) Limited,, Allied Domecq International Holdings BV, Allied Domecq Spirits & Wine USA LLC, Allied Domecq Spirits and Wine Limited, and Pernod Ricard S.A., and all amendments, exhibits, attachments, agreements, and schedules thereto, and includes the employee retention bonus program dated as of May 20, 2008. The Stolichnaya Transition Agreement is contained in non-public Appendix II, attached to this Order.

DDD. “Supply Cost” means a cost calculated not to exceed the manufacturer’s average direct per unit cost to manufacture the particular units of Absolut Vodka products for the twelve (12) month period immediately preceding the accrual of the relevant sales revenue. “Supply Cost” shall expressly exclude any intracompany business transfer profit.

EEE. “Third Party” means any Person other than the Respondent.

FFF. “Trade Dress” means all current and past trade dresses related to Absolut Vodka, including without limitation, product packaging, ornamentations, and designs, and the lettering of the product trade name or brand name.

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GGG. “Trademarks” means all proprietary names or designations, trademarks, service marks, trade names, and brand names, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights, and associated goodwill.

HHH. “Website” means the content of the Website(s) located at the Domain Names, the Domain Names, and all copyrights in such Website(s), to the extent owned by Respondent; *provided, however*, this term shall not include the following: (1) content owned by Third Parties and other intellectual property not owned by Respondent that is incorporated in such Website(s), such as stock photographs, *except* to the extent that Respondent can convey any rights to that intellectual property; or (2) content unrelated to Absolut Vodka.

II.

IT IS FURTHER ORDERED that:

A. Not later than the Cease and Desist Date either:

1. Respondent shall cease and desist, directly or indirectly, from marketing, selling or distributing Stolichnaya Vodka in the United States, or
2. Respondent shall divest the Absolut Vodka Assets pursuant to Paragraph II.D. of this Order, *unless*, on or before the Cease and Desist Date, Respondent submits to the Commission a court order demonstrating that the conditions for divestiture of the Absolut Vodka Income Stream as described in Paragraph II.C. of this Order have been met, in which case Respondent may divest the Absolut Vodka Income Stream pursuant to

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Paragraph II.C. of the Order *in lieu* of a divestiture of the Absolut Vodka Assets.

- B. Until Respondent ceases to market, sell, and/or distribute Stolichnaya Vodka in the United States, Respondent shall comply and continue to comply with the terms of the Stolichnaya Transition Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of SPI or to reduce any obligations of Respondent under such agreement) whereby Respondent terminates its rights and interest in the Stolichnaya Distribution Agreement;

provided, however, that if Respondent has terminated its rights held under the Stolichnaya Distribution Agreement prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that the manner in which the termination was accomplished is not acceptable, the Commission may direct Respondent, or appoint a Divestiture Trustee, to effect such modifications to the Stolichnaya Transition Agreement (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order;

provided further, however, that Respondent may not modify or amend the Stolichnaya Transition Agreement without receiving the prior approval of the Commission.

The Stolichnaya Transition Agreement shall be deemed incorporated into this Order, and any failure by Respondent to comply with any term of the Stolichnaya Transition Agreement shall constitute a failure to comply with this Order.

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- C. If a court enjoins or prohibits Respondent from terminating the Stolichnaya Distribution Agreement or requires Respondent to continue the marketing, sale or distribution of Stolichnaya Vodka in the United States for a period of time extending beyond the Cease and Desist Date then, not later than six (6) months after the Cease and Desist Date, Respondent shall either:
1. divest the Absolut Vodka Income Stream, absolutely and in good faith, at no minimum price, to a Non-Competing Firm that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; *provided, however*, that the agreement to divest the Absolut Vodka Income Stream is not required to extend beyond the time period that Respondent both: (1) retains an Ownership Interest in the Absolut Vodka Assets, and (2) markets, sells, or distributes Stolichnaya Vodka in the United States; *provided further, however*, that, once the Commission approves an agreement to divest the Absolut Vodka Income Stream, Respondent may not modify or amend such agreement without receiving the prior approval of the Commission; or
 2. divest the Absolut Vodka Assets, absolutely and in good faith, at no minimum price, to an Acquirer in a manner that receives the prior approval of the Commission.
- D. If Respondent continues to market, sell or distribute Stolichnaya Vodka in the United States, directly or indirectly, beyond the Cease and Desist Date for any reason other than: (1) by order of a court as described in Paragraph II.C. of this Order; or (2) due to circumstances wholly beyond Respondent's control and which

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circumstances Respondent could not have prevented by its exercise of prudence, diligence, and care and for which the Commission determines, in its sole discretion, that Respondent has made a satisfactory showing of such circumstances, then, not later than six (6) months after the Cease and Desist Date:

1. Respondent shall divest the Absolut Vodka Assets, absolutely and in good faith, at no minimum price, to an Acquirer in a manner that receives the prior approval of the Commission;
2. Respondent shall use its best efforts to assist the Acquirer in securing supply contracts with all input suppliers used in the production of Absolut Vodka, including, without limitation, any suppliers of flavorings or other ingredients for Absolut Vodka;
3. Respondent shall provide the Absolut Vodka 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 Absolut Vodka Closing Date;
4. Respondent shall provide the following financial incentives to the Absolut Vodka Future Board Members and the Absolut Vodka Senior Managers to continue in their employment positions pending such divestiture to the Acquirer:
 - a. a retention incentive equal to at least ten (10) percent of the employee's annual salary (including any bonuses) as of the date the Order to Hold Separate and Maintain Assets is issued by the Commission, to be paid to those Absolut Vodka

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Future Board Members and Absolut Vodka Senior Manager who continue their employment with Respondent until the Absolut Vodka Closing Date;

5. Respondent shall provide the Absolut Vodka Future Board Members and Absolut Vodka Senior Managers who accept employment with the Acquirer following the divestiture of the Absolut Vodka Assets, an additional incentive equal to at least twenty (20) percent of such employee's annual salary under the following terms:
 - a. ten (10) percent to be paid at the beginning of the employee's employment with the Acquirer; and
 - b. a severance payment if, less than twelve (12) months after the date such employee commences employment with the Acquirer, the Acquirer terminates the employment of such employee for reasons other than cause. The amount of such severance payment shall be equal to the payment that such employee would have received had he or she remained in the employ of Respondent and been terminated at such time, less any severance payment actually paid by the Acquirer;
6. not later than the earlier of the following dates: (1) ten (10) Days after notice by staff of the Commission to the Respondent to provide the Employee Information; or (2) ten (10) days after the Absolut Vodka Closing Date Respondent shall provide the Acquirer with a complete list of the Absolut Vodka Employees and each employee's related Employee Information;
7. Respondent shall provide the Acquirer with an opportunity to inspect the personnel files and other

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documentation relating to the Absolut Vodka Employees, at the request of the Acquirer;

8. for a period ending no earlier than six (6) months after the Absolut Vodka Closing Date, Respondent shall provide the Acquirer with an opportunity to enter into employment contracts with the Absolut Vodka Employees. Respondent shall not interfere with the employment by the Acquirer of any Absolut Vodka Employee, shall not offer any incentive to such employees to decline employment with the Acquirer or to accept other employment with Respondent, and shall remove any impediments that may deter such employees from accepting employment with the Acquirer, including, but not limited to, 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 the Acquirer. In addition, Respondent shall not make any counteroffer to such an Absolut Vodka Employee who has received a written offer of employment from the Acquirer;
9. for a period of one (1) year following the Absolut Vodka Closing Date, Respondent shall not, directly or indirectly, solicit or otherwise attempt to induce any employee of the Acquirer with any responsibility relating to Absolut Vodka who is a former employee of Respondent to terminate any employment relationship with the Acquirer;

provided, however, it shall not be deemed a violation of this provision if: (1) Respondent advertises for employees in newspapers, trade publications or other media not targeted specifically at the employees of the Acquirer; (2) Respondent hires employees who apply for employment with Respondent, as long as such

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employees were not specifically solicited by Respondent; or (3) the Acquirer has terminated the individual's employment or has otherwise granted a release to the individual to permit the individual to be employed by Respondent;

10. Respondent shall require, as a condition of continued employment after the Absolut Vodka Closing Date, that each Absolut Vodka Employee and other Pernod Employees within the United States who possess Absolut Vodka Confidential Business Information sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Absolut Vodka Confidential Business Information (including, without limitation, all field experience) strictly confidential, including the non-disclosure of such information to all Stolichnaya Employees 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 Absolut Vodka Confidential Business Information;
 - b. appropriate conduct relating to information that could be used to the detriment of Absolut Vodka; and
 - c. sanctions for violation of the terms of such agreement;

Respondent shall send such agreement by e-mail with return receipt requested or similar transmission, and keep on file such return receipts for one (1) year after the Absolut Vodka Closing Date. Respondent shall provide a copy of such agreement to the Acquirer, and

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also maintain complete records of all such agreements at the corporate headquarters of Pernod Ricard USA. Respondent shall also provide an officer's certificate to the Commission, stating that such acknowledgment program has been implemented in compliance with the terms of this Paragraph. Respondent shall make available copies of all certifications, notifications and reminders sent to Respondent's employees, at the request of the Acquirer; and

11. Respondent shall provide the back office services related to the distribution of Absolut Vodka for a period of up to six (6) months after the Absolut Vodka Closing Date. Respondent shall provide the services required by this paragraph in a non-discriminatory fashion to the Acquirer with service levels comparable to those Respondent provided to the Absolut Vodka Business prior to the Absolut Vodka Closing Date.
- E. Any Divestiture Agreement related to the Absolute Vodka Assets or the Absolut Vodka Income Stream shall be deemed incorporated into this Order, and any failure by Respondent to comply with any term of the Divestiture Agreement shall constitute a failure to comply with this Order. Respondent shall include in any Divestiture Agreement a specific reference to this Order and the remedial purpose thereof.
- F. Until the Stolichnaya Termination Date, 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). Respondent shall also provide the financial incentives set forth in the employee retention bonus program issued pursuant to the Stolichnaya Transition Agreement to the

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

G. 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.

H. 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

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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).

- I. For a period of ending no earlier than one (1) year after the Stolichnaya Termination Date, Respondent shall not, directly or indirectly, solicit or otherwise attempt to induce any employee of SPI or its designee(s) with any responsibility relating to Stolichnaya Vodka who is a former employee of Respondent to terminate their employment relationship with SPI or its designee(s);

provided, however, it shall not be deemed a violation of this provision if: (1) Respondent advertises for employees in newspapers, trade publications or other media not targeted specifically at the employees of SPI or its designee(s); (2) Respondent hires employees who apply for employment with Respondent, as long as such employees were not specifically solicited by Respondent; or (3) SPI or its designee(s) has terminated the individual's employment or has otherwise granted a release to the individual to permit the individual to be employed by Respondent.

- J. Respondent shall require, as a condition of continued employment after the Stolichnaya Termination Date, that each Stolichnaya Employee and other Pernod Employees within the United States who possess Stolichnaya Confidential Business Information sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Stolichnaya Confidential Business Information (including, without limitation, all field experience) strictly confidential, including the non-

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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:

1. Restrictions on the use Stolichnaya Confidential Business Information;
2. Appropriate conduct relating to information that could be used to the detriment of Stolichnaya Vodka; and
3. Sanctions for violation of the terms of the agreement.

Respondent shall send such agreement by e-mail with return receipt requested or similar transmission, and keep on file such return receipts for one (1) year after the Stolichnaya Termination Date. Respondent shall provide a copy of such agreement to SPI or its designee(s), and also maintain complete records of all such agreements at the corporate headquarters of Pernod Ricard USA. Respondent shall also provide an officer's certificate to the Commission, stating that such acknowledgment program has been implemented in compliance with the terms of this Paragraph. Respondent shall make available copies of all certifications, notifications and reminders sent to Respondent's employees at the request of SPI or its designee(s);

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.

- K. Respondent shall institute procedures and requirements to ensure that all Pernod Employees do not:

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1. disclose or make available, directly or indirectly, any Absolut Vodka Confidential Business Information to any Stolichnaya Employee or any other Pernod Employee who directly participates in the marketing, advertising, promotion, distribution, sale or after-sales support of Stolichnaya Vodka in the United States; or
2. disclose or make available, directly or indirectly, any Stolichnaya Confidential Business Information to the Absolut Vodka Business or to any Absolut Vodka Firewalled Employee.

Respondent shall obtain an executed non-disclosure agreement from each of the individuals that fall within the following categories pursuant to which each such individual agrees to comply with the terms of this paragraph: (1) all salaried Pernod Employees located in the United States *except* production-line workers or manufacturing-line workers; (2) all salaried Stolichnaya Employees; and, (3) any individual so designated by the Interim Monitor.

- L. Respondent shall, at the request of SPI or its designee(s), for a period of up to six (6) months following the Stolichnaya Termination Date and at its Direct Cost to SPI or its designee(s), provide such technical assistance and training, and make available such personnel, as are reasonably necessary to enable SPI or its designee(s) to market, sell and distribute Stolichnaya Vodka in substantially the same manner and quality as that achieved by Respondent.
- M. At the request of SPI or its designee(s), Respondent shall provide the back office services related to the distribution of Stolichnaya Vodka for a period of up to six (6) months after the Acquisition Date. Respondent shall provide the

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services required by this Paragraph in a non-discriminatory fashion to SPI or its designee(s) with service levels comparable to those Respondent provided to the Stolichnaya Held Separate Business prior to the Acquisition.

N. Until the earlier to occur of: (1) the Stolichnaya Termination Date or (2) the Absolut Vodka Closing Date, Respondent shall take such actions as are necessary to maintain the full economic viability and marketability of the Absolut Vodka Business and the Stolichnaya Held Separate Business, respectively, and the assets associated with such businesses, to minimize any risk of loss of competitive potential for such businesses, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of such assets. Respondent shall not sell, transfer, encumber or otherwise impair such assets (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the above-described businesses.

O. The purpose of Paragraph II. is:

1. to ensure the continued use of the assets associated with Stolichnaya Held Separate Business in the research, development, manufacture, distribution, sale and marketing of Stolichnaya Vodka;
2. to ensure the continued use of the Absolut Vodka Assets in the research, development, manufacture, distribution, sale and marketing of Absolut Vodka;
3. to create a viable and effective competitor in the relevant market alleged in the Complaint who is independent of Respondent; and,

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4. to remedy the lessening of competition resulting from the Acquisition as alleged in the Complaint in a timely and sufficient manner.

III.

IT IS FURTHER ORDERED that:

A. For the remaining term of the Future Joint Venture:

1. Respondent shall not appoint or designate any individuals who are officers or directors of Respondent to serve as Absolut Vodka Future Board Members and such individuals shall not serve on the Future Joint Venture Board of Managers;
2. Respondent shall participate in the management of the Future Joint Venture operations using reasonable business practices in a manner similar to the operation of the Future Joint Venture prior to the Acquisition;
3. Respondent shall notify Commission staff of any dispute between Respondent and Fortune Brands regarding the management of the Future Joint Venture or that implicates the requirements of this Order that the parties have not been able to resolve in a timely manner;
4. Respondent shall ensure that no Absolut Vodka Future Board Member accesses, uses, or discloses any Beam Brands Confidential Business Information *unless*:
 - a. Respondent receives the prior approval of Fortune Brands for the Absolut Vodka Future Board Member to access, use, or disclose the particular

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Beam Brands Confidential Business Information in question; or

- b. the Absolut Vodka Future Board Member's access to or use of such information is reasonably necessary for that individual to carry out his or her fiduciary responsibilities to the Future Joint Venture;
5. Respondent shall ensure that no Absolut Vodka Future Board Member discloses any Beam Brands Confidential Business Information to any other Person(s) outside the Future Joint Venture that is not specifically authorized by Fortune Brands to receive the particular information;
6. Respondent shall ensure that no Absolut Vodka Senior Manager and/or Absolut Vodka Employee discloses any Beam Brands Confidential Business Information to any Absolut Vodka Future Board Member or Pernod Employee;
7. Respondent shall notify each Future Employee of the restrictions contained in this Order regarding the use, conveyance, provision, or disclosure of the Beam Brands Confidential Business Information; and
8. Respondent shall send the above-described notification by e-mail with return receipt requested or similar transmission, and keep on file such return receipts for (1) year after the such notification is sent. Respondent shall maintain complete records of all such notifications at the corporate headquarters of Pernod Ricard USA, and provide an officer's certificate to the Commission stating that such notification program has

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been implemented in compliance with the terms of this paragraph;

provided, however, Respondent shall not be deemed in violation of the notification provisions contained in this paragraph if Fortune Brands unreasonably withholds its consent to such notification program.

- B. As soon as practicable, and in any event no later than ninety (90) days after the Acquisition Date, Respondent shall, with the assistance of Fortune Brands, the Future Joint Venture and/or the Interim Monitor (if appointed), identify select database items containing Beam Brands Confidential Business Information as to which it is feasible to implement a protocol within the Future Joint Venture that limits the Absolut Vodka Firewalled Employees from having access to such information relating to the Beam Brands and implement such protocol. With respect to other Beam Brands Confidential Business Information, Respondent shall, with the assistance of Fortune Brands, the Future Joint Venture and/or the Interim Monitor (if appointed), take such actions as are reasonably practicable to limit the Absolut Vodka Firewalled Employees from having access to such information relating to the Beam Brands;

provided, however, Respondent shall not be deemed in violation of this Paragraph if Fortune Brands unreasonably withholds its consent to such database protocol;

provided further, however, Respondent's obligations under this paragraph shall terminate on the date that Respondent ceases and desists from participating, directly or indirectly, in the Future Joint Venture.

- C. For a period of one (1) year after the Acquisition Date:

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1. Respondent shall not hire a Future Employee who worked on any of the Beam Brands, irrespective of working time;

provided, however, it shall not be deemed a violation of this provision if: (1) Respondent advertises for employees in newspapers, trade publications or other media not targeted specifically at the Future Employees; (2) Respondent hires employees who apply for employment with Respondent, as long as such employees were not specifically solicited by Respondent; or (3) the Future Joint Venture has terminated the individual's employment or has otherwise granted a release to the individual to permit the individual to be employed by Respondent;

provided further, however, Respondent shall require, as a condition of employment, that each Future Employee sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Beam Confidential Business Information (including, without limitation, all field experience) strictly confidential, including the non-disclosure of such information to all Pernod Employees and Absolut Vodka Firewalled Employee;

2. Respondent shall not transfer a Stolichnaya Employee to any position in the Future Joint Venture; and
3. Respondent shall not appoint or designate any Absolut Vodka Future Board Member to a senior management position for Respondent regarding any of Respondent's brands which compete with Beam Brands in the domestic cordials, cognac, coffee liqueur or popular gin categories.

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- D. The purpose of this Paragraph III is to prevent Respondent from using the Beam Brands Confidential Business Information to the detriment of the marketing, sales, or distribution of the Beam Brands; to the benefit of the Pernod Brands or any other brand(s) subsequently acquired by the Respondent; or from otherwise using such information in an anticompetitive manner or in any unfair method of competition.

IV.

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 Order, the Order to Hold Separate and Maintain Assets, 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

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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 later of:
 - a. the date Respondent ceases and desists from participating, directly or indirectly, in the Future Joint Venture; or
 - b. the Stolichnaya Termination Date (or, if the Absolut Vodka Assets are divested, the Absolut Vodka Closing Date);

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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,

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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 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.

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- 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 Order may be the same person appointed as a Divestiture Trustee pursuant to Paragraph V. of this Order.

V.

IT IS FURTHER ORDERED that:

- A. If Respondent has not ceased and desisted from marketing, selling and/or distributing Stolichnaya Vodka in the United States on or before the Cease and Desist Date, the Commission may appoint a trustee (“Divestiture Trustee”) to assign, grant, license, divest, transfer, deliver or otherwise convey the assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed pursuant to Paragraph II. in a manner that satisfies the requirements of Paragraph II. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other

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relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the assets that are required

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by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed;

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times;
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;
4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute

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and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondent from among those approved by the Commission; and, *provided further, however*, that Respondent shall select such Person within five (5) days after receiving notification of the Commission's approval;

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;

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6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation 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 Divestiture Trustee;
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *provided, however,* that the Divestiture Trustee appointed pursuant to this Paragraph may be the same person appointed as Interim Monitor pursuant to the relevant provisions of the Order to Hold Separate and Maintain Assets in this matter;
8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and
9. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

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- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

VI.

IT IS FURTHER ORDERED that:

With respect to the Absolut Vodka Confidential Business Information, in any instance wherein Respondent's counsel (including in-house counsel under appropriate confidentiality arrangements) either retain unredacted copies of documents or other materials provided to an Acquirer or access original documents (under circumstances where copies of documents are insufficient or otherwise unavailable) provided to an Acquirer, Respondent shall assure that Respondent's counsel do so only in order to do the following:

- A. Comply with the Divestiture Agreement(s), this Order, any law (including, without limitation, any requirement to obtain regulatory licenses or approvals), any data retention requirement of any applicable Government Entity, or any taxation requirements; or
- B. Defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture of the Absolut Vodka Assets or the Absolut Vodka Income Stream (as is

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relevant), or the businesses associated with the Absolut Vodka products;

provided, however, that Respondent may disclose such information as necessary for the purposes set forth in this Paragraph pursuant to an appropriate confidentiality order, agreement or arrangement; and

provided further, however, that pursuant to this Paragraph VI., Respondent shall: (1) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the Acquirer (but shall not be deemed to have violated this requirement if the Acquirer withholds such agreement unreasonably); and (2) use its best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

VII.

IT IS FURTHER ORDERED that:

- A. Within five (5) days of the Acquisition, Respondent shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondent has fully complied with Paragraphs II. and III. of this Order, Respondent shall:
 1. 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 the Orders;
 2. at the same time, submit a copy of its verified report concerning compliance with the Orders to the Interim Monitor, if any Interim Monitor has been appointed; and

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3. in its verified reports, include, among other things, a full description of the efforts being made to comply with the relevant Paragraphs of the Orders, all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all persons contacted, copies of all written communications to and from such persons, all internal memoranda, and all reports and recommendations concerning completing the obligations.
- C. One (1) year after the date this Order becomes final, annually for the next nine years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondent shall file a verified written report with the Commission that includes information regarding any modifications or amendments to any Divestiture Agreement(s) that Respondent entered without the prior approval of the Commission, and sets forth in detail the manner and form in which they have complied and are complying with the Orders.

VIII.

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 Order.

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IX.

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 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.

X.

IT IS FURTHER ORDERED that this Order shall terminate on October 14, 2018.

By the Commission.

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NON-PUBLIC APPENDIX I

**THE STOLICHNAYA DISTRIBUTION AGREEMENT
[Redacted From the Public Record, But Incorporated By
Reference]**

NON-PUBLIC APPENDIX II.

**THE STOLICHNAYA TRANSITION AGREEMENT
[Redacted From the Public Record, But Incorporated By
Reference]**

NON-PUBLIC APPENDIX III.

**THE ABSOLUT VODKA SENIOR MANAGERS
[Redacted From the Public Record, But Incorporated By
Reference]**

Analysis to Aid Public Comment

ANALYSIS OF CONSENT ORDERS TO AID PUBLIC COMMENT**I. Introduction**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“consent agreement”) from Respondent Pernod Ricard S.A. (“Pernod Ricard”) in connection with its proposed acquisition of V&S Vin & Sprit AB (Publ) (“V&S”) from The Kingdom of Sweden. Among other things, the consent agreement requires that Pernod Ricard, currently the distributor of Stolichnaya Vodka, as a condition to acquiring V&S and its Absolut Vodka brand, cease distributing Stolichnaya Vodka. Pernod Ricard obtained the rights to distribute the Stolichnaya Vodka brand from its owner, Spirits International BV (“SPI”), a corporation headquartered in Geneva, Switzerland, and organized and doing business under the laws of The Netherlands. Absolut Vodka and Stolichnaya Vodka are “super premium” vodkas and, for a substantial number of consumers, they are close price substitutes. Total annual United States retail sales of these two brands are about \$1.9 billion.

The Commission and Respondent Pernod Ricard also have agreed to entry of an Order To Hold Separate and Maintain Assets (“Hold Separate Order”). The Hold Separate Order requires Pernod Ricard to maintain the competitive viability of assets relating to the distribution of Stolichnaya Vodka during the six-month period that the consent agreement permits it to own Absolut Vodka while also distributing Stolichnaya. The Hold Separate Order further requires that Pernod Ricard refrain from exercising direction or control over the Stolichnaya Vodka distribution business. Pernod Ricard must nevertheless maintain all Stolichnaya Vodka operations in the regular and ordinary course in accordance with past practices. Compliance with the terms of the Hold Separate Order will be supervised by an interim monitor.

Analysis to Aid Public Comment

The proposed consent agreement will also remedy information exchange concerns in four additional distilled spirits markets: Cognac, domestic cordials, coffee liqueur, and popular gin. The Commission's concerns in these four markets arise because of an ongoing joint venture between V&S and Beam Global Spirits & Wine, Inc. ("Beam Global"), a Fortune Brands, Inc., subsidiary, for the joint management of all of their distilled spirits distribution businesses. After the acquisition, Pernod Ricard will assume the management function role held by V&S for the joint venture brands and have access to competitively sensitive information about Beam Global brands which compete with Pernod Ricard brands that are not in the joint venture. The consent agreement requires Pernod Ricard to set up strict procedures that limit the flow of information to its employees, both within the joint venture as well as within Pernod Ricard itself. Because neither party to the joint venture profits from actions by the joint venture in connection with the sale of products, the Commission does not believe that a structural remedy in the form of a required divestiture of Pernod Ricard's brands that compete with the Beam Global brands in the joint venture is necessary. Total annual United States retail sales in the four markets combined are about \$2.4 billion.

II. Respondent Pernod Ricard

Respondent Pernod Ricard is a corporation 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. In the United States, Pernod Ricard operates through a wholly-owned subsidiary corporation, Pernod Ricard USA, Inc., with offices located at 100 Manhattanville Road, Purchase, New York 10577. Pernod Ricard's United States revenues from all distilled spirits products in the year ending June 30, 2007, totaled about \$2.5 billion.

Analysis to Aid Public Comment

Pernod Ricard produces distilled spirits that it distributes, markets, and sells in the United States. Some of its more popular brand lines of distilled spirits are Martell Cognac, Hiram Walker Cordials, and Kahlua Coffee Liqueur. Pernod Ricard also produces, markets, distributes, and sells, Chivas Regal, Ballantine's, The Glenlivet Scotches, Jameson Irish Whiskey, Beefeater Gin, and the line of Wild Turkey Bourbons. Pernod Ricard also markets, distributes, and sells, but does not produce or own, the line of Stolichnaya Vodkas.

III. V&S (the acquired company)

V&S is a corporation wholly-owned by The Kingdom of Sweden, and is organized, existing and doing business under and by virtue of the laws of The Kingdom of Sweden. Its office and principal place of business is located at Formansvagen 19, S-100 74, Stockholm, Sweden. In the United States, V&S operates its distilled spirits business through a wholly-owned subsidiary, The Absolut Spirits Company, Incorporated ("ASCI"). ASCI is a Delaware corporation with its office and principal place of business located at 401 Park Avenue South, New York, New York 10016. V&S produces and sells distilled spirits products from facilities that it owns and operates. The brands of V&S include the lines of Absolut Vodka, Level Vodka, Plymouth Gin, and Cruzan Rum. V&S's United States revenues from all distilled spirits products in 2007 were about \$800 million.

IV. The Future Brands Joint Venture

Future Brands LLC ("Future Brands") is the joint venture corporation of ASCI and Beam Global. Future Brands is a Delaware corporation with its office and principal place of business located in the offices of Fortune Brands at 300 Tower Parkway, Lincolnshire, Illinois 60069. Future Brands distributes all of the distilled spirits products of ASCI and Beam Global in the United States. The Future Brands joint venture corporation was created in 2001 and under the terms of that agreement, is

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scheduled to end in 2012. Future Brands had total revenues, in 2007, of about \$1.48 billion.

The brands of Beam Global include: the lines of Courvoisier Cognac; DeKuyper Cordials; Starbucks Coffee Liqueur; Jim Beam, Knob Creek, Bakers, Basil Hayden, and Booker's Bourbon; Laphroig and Teacher's Scotch; and Gilbey's Gin. Beam Global and ASCI sell distilled spirits that fall into different marketing and price point segments.

The principal economic benefit to Beam Global and ASCI of their Future Brands joint venture is cost savings or efficiencies from the joint marketing, selling, and distribution of their products. The economic benefit from the actual sale of the products that are distributed by the Future Brands joint venture are maintained by Beam Global and ASCI, as brand owners, and not by Future Brands.

V. The Transaction

On March 30, 2008, Respondent Pernod Ricard and The Kingdom of Sweden entered into their Share Purchase Agreement Regarding the Shares in V&S. Under the terms of the acquisition agreement, Pernod Ricard will acquire all of the shares of V&S for a sum equal to a combination of euros, dollars, and interest payments totaling approximately \$9 billion.

VI. The Complaint and Competitive Effects**A. The Stolichnaya - Absolut Overlap in the "Super Premium" Vodka Segment**

The Commission also made public a Complaint that it intends to issue. According to that Complaint, Pernod Ricard, with Stolichnaya Vodka, and V&S, with Absolut Vodka, are direct and significant competitors in the super-premium vodka segment. The

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Complaint further alleges that Stolichnaya Vodka and Absolut Vodka are vodka brands that are close substitutes for a substantial number of customers of these brands.

The proposed acquisition raises competitive concerns because it would eliminate substantial competition between Pernod Ricard and V&S in connection with the distribution, marketing, and sale of Stolichnaya Vodka and Absolut Vodka. If Pernod Ricard owns Absolut Vodka while also being the distributor of Stolichnaya Vodka, it could profitably raise the price of either Absolut Vodka or Stolichnaya Vodka. Many consumers who would be unwilling to pay a higher price for the brand whose price was increased would switch to the other brand. In its Complaint, the Commission stated it has reason to believe that the proposed transaction would have anticompetitive effects and violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

**B. The Pernod Ricard-Beam Global Brand Overlaps
and the Future Brands Joint Venture**

The Complaint also alleges that the proposed acquisition by Respondent Pernod Ricard of V&S may substantially lessen competition in four additional distilled spirits markets. In these markets – Cognac, domestic cordials, coffee liqueur, and popular gin – Pernod Ricard has brands that compete with the Beam Global brands that are distributed by Future Brands. Before its acquisition of V&S, Pernod Ricard had no business relationship with Future Brands. As a marketer, seller, and distributor of distilled spirits products similar to distilled spirits products, marketed, sold, and distributed by Beam Global and Future Brands, Pernod Ricard had been a direct and substantial competitor of Beam Global and Future Brands.

After its acquisition of V&S, Pernod Ricard will step into the competitive shoes of V&S (and ASCI) and replace ASCI as a joint venture partner of Beam Global. Pernod Ricard, as a joint

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venture partner, will have access to competitively sensitive information about Beam Global brands that compete with Pernod Ricard brands that are not in the joint venture, as shown in the following chart:

Market	Pernod Ricard Brands	Beam Global Brands
Cognac	Martell	Courvoisier
Domestic Cordials	Hiram Walker	DeKuyper
Coffee Liqueur	Kahlua and Tia Maria	Starbucks
Popular Gin	Seagram's	Gilbey's

Each of these markets is highly concentrated and difficult to enter. Pernod Ricard and Beam Global are among the two largest suppliers of these spirits in the United States. These companies have spent significant sums of money to create and maintain distinct brand equities.

Beam Global and Pernod Ricard, upon becoming joint venture partners after the acquisition, will share in the management of Future Brands. Under the terms of the joint venture agreement, Pernod Ricard will be required to designate three of its seven member Board of Managers. This will mean that Pernod Ricard employees, in connection with their responsibilities as managers of Future Brands, will have access to competitively sensitive information about all the Beam Global products in the joint venture. These are brands with which Pernod Ricard is now, and after the acquisition will be, in direct and substantial competition. The Commission in its Complaint stated it has reason to believe

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that if Pernod Ricard obtains competitively sensitive information about the Beam Global brands listed in the table above, the proposed transaction would have anticompetitive effects and would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The principal anticompetitive effect is likely to be the ability of competitors in each of the four markets, including but not limited to Beam Global and Pernod Ricard, to raise prices by facilitating future potential coordinated interaction.

VII. The Consent Agreement**A. The Stolichnaya - Absolut Overlap in the “Super Premium” Vodka Segment**

Under the terms of the consent agreement, to remedy the competitive concerns associated with the Stolichnaya Vodka overlap, Pernod Ricard will not be permitted to have an ownership interest in Absolut Vodka and also keep its rights to distribute Stolichnaya Vodka. Pernod Ricard will therefore be required to divest its interest in distributing Stolichnaya Vodka within six (6) months from the date it acquires V&S. That divestiture will revert back to brand owner SPI.

In the event that Pernod Ricard fails to complete the required divestiture within six (6) months, the Commission may appoint a divestiture trustee to sell the Absolut Vodka assets and business to a Commission-approved acquirer. The principal purpose of this alternative Absolut Vodka divestiture requirement is to give Pernod Ricard significant incentives to comply with the Stolichnaya Vodka divestiture requirements of the consent agreement.

There is one exception to the requirement that Pernod Ricard divest the Absolut Vodka assets and business in the event it fails to comply with the Commission-ordered divestiture relating to Stolichnaya Vodka. If Pernod Ricard by court order is prohibited

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from divesting its distribution rights to Stolichnaya Vodka, instead of divesting the Absolut Vodka assets, Pernod Ricard would have the option of divesting either (a) the future anticipated income stream from its sales of Absolut Vodka, or (b) a stipulated amount of at least 20% of the gross sales revenue of Absolut Vodka. The reason for this exception relates to the ongoing litigation between SPI and others regarding ownership of the Stolichnaya trademark and related rights to sell vodka under that label. That litigation, which upon agreement with the parties pending their settlement discussions, has been stayed by court order. The Commission has no view on the merits of this private litigation but is concerned that a court possibly may require that the competitive status quo of the distribution of Stolichnaya Vodka be maintained beyond the six (6) month period that the consent order would allow Pernod Ricard to own Absolut Vodka and distribute Stolichnaya Vodka. The income stream divestiture option (or the stipulated 20% or more of gross sales revenue) will be for the time period commencing twelve (12) months after Pernod Ricard will have acquired V&S and continue until Pernod Ricard divests its rights to distribute Stolichnaya Vodka. The purpose of the income stream divestiture requirement is to remove potential incentives on the part of Pernod Ricard to impair the marketability of Stolichnaya Vodka, which because of its closeness to Absolut Vodka, will benefit sales of Absolut Vodka. Because a court order preventing Pernod Ricard from divesting its rights to distribute Stolichnaya Vodka would not have caused willful noncompliance with the divestiture requirements of the consent order, the purpose of the alternative divestiture requirements of the order was to prevent interim competitive harm, rather than incentives to divest Stolichnaya Vodka distribution rights. The Commission believes that the sale of the future income stream of Absolut Vodka under the circumstances of a court order preventing Pernod Ricard from divesting Stolichnaya Vodka distribution rights would eliminate significant incentives on the part of Pernod Ricard from impairing the marketability of Stolichnaya Vodka because Pernod Ricard would

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not benefit from any *increase* in the Absolut Vodka income stream during the period of its joint ownership of Absolut Vodka and distribution of Stolichnaya Vodka, having already sold (at a predetermined price) the future value of *all* income stream benefits.

The consent agreement also requires that Pernod Ricard undertake certain activities to help ensure that the acquirer of the Stolichnaya Vodka assets and distribution business will be able to continue operations in a fully competitive manner. Those requirements include: (a) providing key Stolichnaya Vodka business employees with financial incentives to remain with Pernod Ricard (in order that those employees might then be available for hire by the acquirer); (b) providing lists of key employees to the acquirer; (c) for up to six (6) months, providing such reasonable technical assistance and training as the acquirer may request for the continued distribution of Stolichnaya Vodka; and (d) for up to six (6) months, providing the kinds of back office procedures to the acquirer that Pernod Ricard had already been undertaking for its own purposes.

**B. The Pernod Ricard - Fortune Brands Overlaps
and the Future Brands Joint Venture**

Under the terms of the consent agreement, Pernod Ricard will be prohibited from acquiring any business information of the Future Brands joint venture. To ensure that this will not occur, Pernod Ricard has agreed to the following firewall procedures: (a) the Pernod Ricard designees to the Future Brands Board of Managers cannot be officers or directors of Pernod Ricard; (b) Pernod shall recommend to the Future Brands board that it implement database protocols limiting Pernod designated board member access to information about Beam Global brands; and (c) Pernod will allow an interim monitor to supervise all of the firewall-related protections and requirements.

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C. The Hold Separate Order

Accompanying the consent agreement is a Hold Separate Order. The purpose of this order, the terms of which Pernod Ricard has also agreed to undertake, is to prevent competitive harm pending the required divestiture of the Stolichnaya distribution agreement, and to ensure that the Stolichnaya Vodka assets required to be divested by Pernod Ricard will remain a competitively viable business. Under the terms of this agreement, Pernod Ricard will be required to (a) hold the Stolichnaya Vodka business separate and apart from all other Pernod Ricard business activities; (b) exercise no direction or control over the Stolichnaya Vodka business; (c) maintain operations of the Stolichnaya Vodka business, including preserving business relationships, in accordance with past practice; and (d) provide the Stolichnaya Vodka business with capital and other funds to operate at current levels and maintain the competitiveness of the business. The agreement also provides for the appointment of an interim monitor. Among other things, the monitor will be empowered to ensure that during the period of time that Pernod Ricard will own the Absolut Vodka line and also distribute Stolichnaya Vodka, that the Stolichnaya Vodka business will be separately managed from the other Pernod Ricard businesses.

VIII. The Opportunity for Public Comment

The Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed consent agreement and the comments received, and will decide whether it should withdraw from the consent agreement or make final the Decision and Order.

By accepting the consent agreement subject to final approval, the Commission anticipates that the competitive problems alleged

Analysis to Aid Public Comment

in the Complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the consent agreement. It is not intended to constitute an official interpretation of the consent agreement, nor is it intended to modify the terms of the orders in any way.

Complaint

IN THE MATTER OF

**FRESENIUS MEDICAL CARE AG & CO. KGaA,
AND
DAIICHI SANKYO COMPANY, LTD.**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL
TRADE COMMISSION ACT*Docket C-4236; File No. 081 0146**Complaint, October 20, 2008 – Decision, October 20, 2008*

This consent order relates to a proposed agreement between subsidiaries of Fresenius Medical Care and Daiichi Sankyo to grant an exclusive license to Fresenius subsidiary FMC USA Manufacturing to manufacture, distribute, and sell Venofer, a preparation used to treat dialysis patients, to independent outpatient dialysis clinics in the United States. Luitpold Pharmaceuticals, a subsidiary of Daiichi Sankyo, retains the right to sell Venofer in the United States to any other customer, including doctor's offices, hospitals and hospital-based dialysis clinics. The transaction may enable Fresenius to increase prices it charges its own clinics, which, in turn, would raise reimbursement rates that the Centers for Medicare & Medicaid Services pays for Venofer. Under the order, Fresenius is restricted from reporting an intra-company transfer price higher than the level set forth in the order, which is derived from current market prices. The order further provides that if a generic Venofer product receives final approval by the U.S. Food and Drug Administration, Fresenius would be required to report its intra-company transfer price at either the level set forth in the order or the lowest price at which Fresenius sells Venofer to any customer, whichever is lowest, until December 31, 2011. On January 1, 2012, the order removes the lowest-priced-customer restriction, while the level set forth in the order remains in place. The order also provides that if Medicare & Medicaid Services implements regulations that eliminate the potential anticompetitive harm of this transaction, those regulations will supersede the order. The order prohibits Luitpold and Fresenius from sharing confidential business information relating to the manufacture, sale, or distribution of Venofer, and requires the parties to provide notice to the Commission prior to modifying the license agreement. Finally, the order provides that the Commission may appoint a Monitor Trustee if necessary.