

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Timothy J. Muris, Chairman**
 Sheila F. Anthony
 Mozelle W. Thompson
 Orson Swindle
 Thomas B. Leary

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In the Matter of)
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DIAGEO PLC,)
a public limited company,)
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and)
)
VIVENDI UNIVERSAL S.A.,)
a French societe anonyme.)
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Docket No. C-4032

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Diageo plc (“Diageo”) and Pernod Ricard S.A. (“Pernod Ricard”) of certain voting securities and assets of the Seagram Spirits and Wine business conducted by various subsidiaries of Respondent Vivendi Universal S.A. (“Vivendi Universal”), and Respondents 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 Respondents Diageo and Vivendi Universal 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents 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 Respondents that the law has been violated as alleged in such Complaint, or that the facts

as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated 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, 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 finding and issues the following Decision and Order (“Order”):

1. Respondent Diageo is a public limited company organized, existing and doing business under and by virtue of the laws of England and Wales, with its office and principal place of business located at 8 Henrietta Place, London W1M 9AG, England. Diageo's principal subsidiary in the United States is headquartered at Six Landmark Square, Stamford, CT 06901.
2. Respondent Vivendi Universal is a societe anonyme organized, existing and doing business under and by virtue of the laws of France, with its office and principal place of business located at 42, avenue de Friedland, 75380 Paris Cedex, France. Vivendi Universal's principal subsidiary in the United States conducting its spirits, wine and beverages business is headquartered at 375 Park Avenue, New York, NY 10152.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “Diageo” means Diageo plc, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Diageo plc (including, but not limited to, Guinness UDV Amsterdam B.V. and Guinness UDV North America, Inc.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- B. “Vivendi Universal” means Vivendi Universal S.A., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Vivendi Universal S.A. (including, but not limited to, The Seagram Company Ltd.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Respondents” means Diageo and Vivendi Universal, individually and collectively.
- D. “Commission” means the Federal Trade Commission.
- E. “Pernod Ricard” means Pernod Ricard S.A., a societe anonyme, organized, existing and doing business under and by virtue of the laws of France, with its office and principal place of business located at 142 boulevard Haussman, 75379 Paris, France; and its subsidiaries and affiliates, including without limitation Austin, Nichols & Co., Inc., a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 105 Corporate Park Drive, Suite 200, West Harrison, NY 10604.
- F. “SSWG Acquisition” means the proposed acquisition of voting securities of various entities, as well as certain assets, of the Vivendi Universal SSWG Business, by Diageo and Pernod Ricard pursuant to the Stock and Asset Purchase Agreement.
- G. “SSWG Acquisition Date” means the date on which Diageo and Pernod Ricard acquire the SSWG Business from Vivendi Universal, pursuant to the Stock and Asset Purchase Agreement.
- H. “SSWG Business” means the business operated by Vivendi Universal as the Seagram Spirits and Wines Group that is engaged in, among other things, research, development, production, distribution and sale of distilled spirits, wine and other beverage products.
- I. “Stock and Asset Purchase Agreement” means the Stock and Asset Purchase Agreement among Vivendi Universal, Diageo and Pernod Ricard, dated as of December 19, 2000, as amended, pursuant to which the SSWG Acquisition is to be accomplished.
- J. “Framework Agreement” means the Framework and Implementation Agreement between Diageo and Pernod Ricard, dated as of December 4, 2000, as amended, which, among other things, defines the manner in which Diageo and Pernod Ricard are separating the businesses and assets of the SSWG Business to be acquired by each of them, and particularly, the allocation of the Non-Rum Overlap Companies and Assets to Pernod Ricard after the closing of the SSWG Acquisition. The Framework Agreement includes all amendments, exhibits, attachments, related agreements and schedules thereto, and is contained in Confidential Appendix III, attached hereto.
- K. “Agreements” means the Trademark Agreement and the Transition Services Agreements.

- L. “Back Office Services Agreement” means the agreement, contained in Confidential Appendix V, attached hereto, pursuant to which the JES Back Office will provide certain transitional administrative services to Pernod Ricard after the SSWG Acquisition Date.
- M. “Business Day” means any day excluding Saturday, Sunday and any United States federal holiday.
- N. “Captain Morgan Rum” means “Captain Morgan Original Spiced Rum” and any other brand or product that uses the trade name or trademark “Captain Morgan” in connection with rum or a rum-based beverage product.
- O. “Captain Morgan Rum Business” means all of the operations and businesses related to the research, development, production, marketing, advertising, promotion, distribution, sale or after-sales support for Captain Morgan Rum.
- P. “Captain Morgan Rum Confidential Business Information” means all information that is not in the public domain relating to the Captain Morgan Rum Business, including the research, development, production, marketing, advertising, promotion, distribution, sale or after-sales support of Captain Morgan Rum.
- Q. “Captain Morgan Rum Employee(s)” means:
1. all Persons employed by the JES U.S. Spirits Business with responsibility for, or who directly participated in (irrespective of the portion of working time involved), the research, development, production, marketing, advertising, promotion, distribution, sale or after-sales support of Captain Morgan Rum within the eighteen (18) month period prior to the SSWG Acquisition Date who become employed by Respondent Diageo at any time prior to the divestiture of the Malibu Rum Assets; and
 2. all Persons employed by Respondent Diageo or who continue in the employ of JES 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 Captain Morgan Rum in the United States at any time after the SSWG Acquisition Date and prior to the divestiture of the Malibu Rum Assets.
- R. “Chivas” means “Chivas,” “Chivas Regal,” “Chivas Brothers,” and any other product owned or sold by the SSWG Business that uses the trade name or trademark “Chivas” in connection with Scotch whisky or a Scotch whisky product.
- S. “Chivas Companies and Assets” means all of Respondent Vivendi Universal’s rights, title and interests in and to the businesses and assets of the SSWG Business relating to Chivas that Pernod Ricard is entitled to acquire pursuant to the Framework Agreement, including, but not limited, to

Chivas Brothers Limited and any Scotch whisky distilleries that produce whisky used in the blending of Chivas or exchanged to acquire other whisky used in the blending of Chivas.

- T. “Closing Date” means the date on which Respondent Diageo and a Commission-approved Acquirer close on a transaction to divest the Malibu Rum Assets pursuant to this Order.
- U. “Commission-approved Acquirer” means any entity approved by the Commission to acquire the Malibu Rum Assets that are required to be divested pursuant to this Order.
- V. “Co-packing Agreement” means the agreement, contained in Confidential Appendix V, attached hereto, pursuant to which Diageo will provide transitional bottling services to Pernod Ricard for Seagram's Gin products and Seagram's Scotch Whisky products (as those products are identified in the Co-packing Agreement) in the United States.
- W. “Cost” means direct cash cost of raw materials and labor.
- X. “Diageo Disposals Team” means those individuals selected by Diageo to oversee the process of selling the “Pernod Ricard On-sale Businesses” and the “Seagram Venture Businesses,” as defined in and pursuant to the terms of the Framework Agreement, to third parties, as that team is supplemented or reconstituted by Respondent Diageo from time to time. The individuals, and their titles, on the Diageo Disposals Team as of the date on which Respondent Diageo agreed to this Order are identified in Confidential Appendix VI.
- Y. “Diageo/Pernod Ricard Supervisory Committee” means the committee of Diageo and Pernod Ricard executives established under the Framework Agreement, and as supplemented or reconstituted by Respondent Diageo and Pernod Ricard from time to time, that is responsible for overseeing the aspects of the Diageo - Pernod Ricard relationship specified in the Framework Agreement until all transactions and commitments specified in the Framework Agreement have been accomplished.
- Z. “Diageo Firewalled Senior Executives” means Respondent Diageo's Chief Executive Officer, Chief Financial Officer and the executive responsible for the SSWG Acquisition, and their respective staffs.
- AA. “Diageo U.S. Spirits Business” means Respondent Diageo's business engaged in the research, development, production, distribution, marketing, sale or after-sale support of distilled spirits in the United States, other than the Held Separate Business.
- BB. “Diageo U.S. Spirits Employees” means all Persons employed by the Diageo U.S. Spirits Business with responsibility for, or who directly participate in (irrespective of the portion of working time

involved), the research, development, production, distribution, marketing, sales or after-sales support of distilled spirits in the United States.

- CC. “Divestiture Agreement” means any agreement between Respondent Diageo and a Commission-approved Acquirer (or between a trustee appointed pursuant to Paragraph VIII.A. of this Order and a Commission-approved Acquirer) and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Malibu Rum Assets to be divested 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 VIII.A. of this Order.
- EE. “The Glenlivet” means “The Glenlivet” and any other product owned or sold by the SSWG Business that uses the trade name or trademark “The Glenlivet” in connection with Scotch whisky or a Scotch whisky product.
- FF. “The Glenlivet Companies and Assets” means all of Respondent Vivendi Universal’s rights, title and interests in and to the businesses and assets of the SSWG Business relating to The Glenlivet that Pernod Ricard is entitled to acquire pursuant to the Framework Agreement, including The Glenlivet Distillers Ltd.
- GG. “Held Separate Business” means the JES U.S. Spirits Business.
- HH. “Interim Monitor” means the Interim Monitor appointed by the Commission pursuant to Paragraph IV.A. of the Order to Hold Separate and Maintain Assets in this matter.
- II. “JES” means Joseph E. Seagram & Sons, Inc. (U.S.A.), a corporation organized and existing under the laws of Indiana, with its principal place of business located at 375 Park Avenue, New York, NY 10152-0192, which is the primary entity responsible for the SSWG Business.
- JJ. “JES Back Office” means those facilities, assets and personnel of JES and its subsidiaries that provide administrative services and that will provide such services for Pernod Ricard and its subsidiaries and affiliates following the SSWG Acquisition Date pursuant to the Back Office Services Agreement.
- KK. “JES U.S. Spirits Business” means the JES business engaged in the research, development, production, distribution, marketing, sale or after-sale support of distilled spirits in the United States, which among other things, is responsible for developing global brand strategies for the Captain Morgan Rum Business.

- LL. “Malibu Rum” means “Malibu Rum” and any other brand or product owned, produced or sold by Respondent Diageo that uses the trade name or trademark “Malibu” in connection with rum or any beverage product.
- MM. “Malibu Rum Assets” means all of Respondent Diageo’s rights, titles and interests, worldwide, as of the Closing Date, in and to all assets, tangible and intangible, of the Malibu Rum Business, including, without limitation, the following:
1. all Malibu Rum Intellectual Property;
 2. all Malibu Rum Confidential Business Information;
 3. all Malibu Rum Sales and Marketing Materials;
 4. all assets relating to the research, development, production (*provided, however*, the only assets relating to production and manufacturing that are included in this definition are those identified in Paragraph I.MM.11.), distribution, marketing, promotion, sale, or after-sales support of Malibu Rum worldwide;
 5. a copy of all vendor lists, and all names of manufacturers and suppliers under contract with Respondent Diageo who or which produce for, or supply to, Respondent Diageo in connection with the production or sale of Malibu Rum;
 6. at the option of the Commission-approved Acquirer, all rights, title and interest in and to inventories of products, raw materials, supplies and parts, including work-in-process and finished case goods, packaging and point of sale materials specifically related to Malibu Rum;
 7. at the option of the Commission-approved Acquirer 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 Malibu Rum, regardless of whether such agreements relate 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 rum distillers, joint venture partners, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors, and consignees including, but not limited to, the Malibu Rum Input Supply Agreements;
 8. all unfilled customer orders for finished Malibu Rum as of the Closing Date (a list of such orders for customers within the United States, Canada, Mexico, and the European Union to

be provided to the Commission-approved Acquirer within twenty (20) Business Days after the Closing Date);

9. all rights under warranties and guarantees, express or implied, relating to Malibu Rum;
10. all books, records and files relating to Malibu Rum; and
11. at the Commission-approved Acquirer's option:
 - a. all rights, titles and interests in and to the blending and bottling plant located at 283 Horner Avenue, Etobicoke, Ontario, Canada, ON M8Z 4Y4 ("Canadian Plant"), that is used in the production, blending, bottling or packaging of Malibu Rum or other distilled spirits;
 - b. all machinery, fixtures, equipment, vehicles, furniture, tools and other personal property associated with the Canadian Plant, (except for those assets that are used exclusively in the manufacture of products other than Malibu Rum and are listed on the attached Confidential Appendix I); and
 - c. all machinery, equipment, tools, and other personal property specifically relating to the bottle sleeving equipment at the blending and bottling plant located at Strada Statale 63, Santa Vittoria, D'Alba, 12069 Italy.

Provided, however, that the Malibu Rum Assets shall not include:

- a. any rights to use Respondent Diageo's general business strategies or practices relating to product formulation or market research activities or methods or methodologies that Respondent Diageo 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 relating to such business strategies or practices contain the results of product formulation or marketing research activities relating to Malibu Rum, Respondent Diageo shall divest those results to the Commission-approved Acquirer and the Commission-approved Acquirer shall be entitled to use such product formulation or marketing research results;
- b. any rights, 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 Diageo (other than the assets included in the Malibu Rum Assets as a result of Paragraph I.MM.11.);
- c. any interest in any distributor of beverage alcohol;

- d. any Payables or Receivables;
- e. any contracts for the procurement or receipt of goods or services for Respondent Diageo on a company-wide or portfolio-wide basis; and
- f. that portion of any document or other material containing information solely relating to a brand or business other than Malibu Rum.

Provided further, however, in cases in which documents or other materials included in the Malibu Rum Assets contain information that (1) relates both to Malibu Rum and other brands or businesses of Respondent Diageo, and (2) such information cannot be segregated in a manner that preserves the usefulness of the information as it relates to Malibu Rum, then Respondent Diageo shall be required only to provide copies of the documents and materials containing this information. The purpose of this proviso is to ensure that Respondent Diageo provides the Commission-approved Acquirer with the above-described information without requiring Respondent Diageo completely to divest itself of information that, in content, also relates to brands and businesses other than Malibu Rum.

NN. “Malibu Rum Business” means all of the operations and businesses of Respondent Diageo related to the research, development, production, marketing, advertising, promotion, distribution, sale or after-sales support for Malibu Rum.

OO. “Malibu Rum Confidential Business Information” means all information owned by Respondent Diageo as of the Closing Date that is not in the public domain relating to the Malibu Rum Assets, including the research, development, production, marketing, advertising, promotion, distribution, sale or after-sales support of Malibu Rum. *Provided, however,* that where such confidential business information also relates to other brands or businesses of Respondent Diageo, Respondent Diageo shall grant the Commission-approved Acquirer the rights to use such confidential business information on a non-exclusive basis in connection with the Malibu Rum Business.

PP. “Malibu Rum Employee(s)” means:

- 1. all Malibu Rum Key Employees; and
- 2. all persons designated as, or otherwise functioning as, brand managers for Malibu Rum, at any time from the date Respondent Diageo signs the Agreement Containing Consent Orders until the Closing Date. (A list of such individuals performing such roles as of the date Respondent Diageo signed the Agreement Containing Consent Orders is attached as Confidential Appendix II.C.)

QQ. “Malibu Rum Input Supply Agreements” means the following agreements:

