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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91183753
Party	Plaintiff Heaven Hill Distilleries, Inc.
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Attachments	HYPNOTIZER - Motion for Summary Judgment.pdf (2 pages)(10812 bytes) HYPNOTIZER - Memo in Support of Motion.pdf (22 pages)(61712 bytes) HYPNOTIZER - Opposition Exhibit A.PDF (104 pages)(9184326 bytes) HYPNOTIZER - Opposition Exhibits B-G.PDF (28 pages)(812762 bytes)

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/Matthew A. Williams/
Matthew A. Williams
November 4th, 2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HEAVEN HILL DISTILLERIES, INC.,)		
)		
Opposer,	)	Opposition No.	91183753
)		
v.)		
	)	Serial No.	77/266,196
DIALLO YASSINN PATRICE,	)	Mark:	HYPNOTIZER
	)	Intl Class:	033
Respondent.)		

OPPOSER'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO SUSPEND

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Section 528.01 of the TTAB Manual of Procedure, Opposer Heaven Hill Distilleries, Inc. ("Heaven Hill") hereby moves for summary judgment sustaining its opposition, Opposition Number 91183753, to Respondent Diallo Yassinn Patrice's application to register the HYPNOTIZER mark for liqueur on the grounds Patrice's use of the HYPNOTIZER mark on liqueur is likely to cause confusion, mistake, or deception as to source, sponsorship, or affiliation with Heaven Hill's HPNOTIQ mark for liqueur and Patrice's use of the HYPNOTIZER mark on liqueur will dilute the distinctive quality of Heaven Hill's HPNOTIQ mark.

Opposer Heaven Hill additionally moves the TTAB, pursuant to 37 C.F.R. § 2.127(d) and Section 528.03 of the TTAB Manual of Procedure, to suspend this proceeding pending the TTAB's determination of Heaven Hill's Motion for Summary Judgment.

The attached Memorandum in Support of Opposer's Motion for Summary Judgment and Motion to Suspend sets forth the undisputed facts and arguments in support of this Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the foregoing Opposer's Brief has been served upon

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via overnight courier (Federal Express Tracking No. 7919 8366 8442), this 4th day of November, 2008.

/Matthew A. Williams/
One of Counsel for Opposer, Heaven Hill
Distilleries, Inc.

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/Matthew A. Williams/
Matthew A. Williams
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DIALLO YASSINN PATRICE,)	Mark:	HYPNOTIZER
)	Intl Class:	033
Respondent.)		

**MEMORANDUM IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY
JUDGMENT AND MOTION TO SUSPEND**

INTRODUCTION

Opposer Heaven Hill Distilleries, Inc. ("Heaven Hill") owns all right, title, and interest in and to the HPNOTIQ mark. Heaven Hill has used, and continues to use, the HPNOTIQ mark extensively in connection with liqueur as well as other goods and services and owns federal trademark registrations for use of the HPNOTIQ mark with candles, beverage and glassware, clothing, and most importantly liqueur.

Despite repeated failed attempts to register the confusingly similar HYPNOTIZER mark, Diallo Yassinn Patrice ("Diallo") filed Application Serial Number 77/266,196 on August 28, 2007 to register HYPNOTIZER for use in connection with a variety of alcoholic beverages in international class 033.

The material facts in this case are not in dispute. The evidence and well-established legal precedent indisputably show that Diallo's use of HYPNOTIZER for alcoholic beverages in international class 033 would create a likelihood of confusion in the marketplace. Therefore, as a matter of law, the TTAB should grant Heaven Hill's Motion for Summary Judgment and deny Diallo's application to register the HYPNOTIZER mark.

STATEMENT OF FACTS

A. HEAVEN HILL'S RIGHTS IN THE HPNOTIQ MARK

In 2003, Heaven Hill acquired the rights to HPNOTIQ from Global Perspectives, Inc. ("Global Perspectives") and embarked on an aggressive marketing campaign to grow the brand's recognition both in the United States and abroad. *See* Affidavit of Justin Ames, Heaven Hill's Senior Brand Manager for HPNOTIQ liqueur at ¶ 5, attached hereto as Ex. A. As a result of this extensive, multi-faceted marketing campaign, which included, among other investments, more than \$15 million dollars in direct marketing investments, HPNOTIQ has experienced spectacular growth in the marketplace. Ames Aff. ¶¶ 6 & 12. In fact, from 2003-2005 HPNOTIQ was the seventh largest brand of cordial or liqueur in the United States and the number one fruit-based liqueur sold in the United States. Ames Aff. ¶ 7.

The strength of the HPNOTIQ mark is further evidenced by the brand's sales figures. In 2002, the year before Heaven Hill acquired the mark, HPNOTIQ liqueur had a volume of 85,000 nine-liter cases with an approximate retail value of \$24,489,000 at the suggested retail price of \$24.99 for a 750 ml bottle. Ames Aff. ¶ 5. By 2005, Heaven Hill's efforts had grown HPNOTIQ sales to a volume of 600,000 nine-liter cases with an approximate retail value of \$179,928,000—an increase of 605%. *Id.* Remarkably, the growth of Heaven Hill's HPNOTIQ liqueur accounted for more than 19% of the overall growth in the cordial and liqueur market during this period. *Id.* ¶ 6. Clearly, these sales figures reflect the distinctive

appeal and phenomenal strength that the HPNOTIQ mark has attained due to Heaven Hill's marketing efforts.

The fame and notoriety of the HPNOTIQ mark has also transcended the realm of industry insiders and marketing campaigns. For example, unsolicited articles about the popularity, success, and versatility of Heaven Hill's HPNOTIQ liqueur have appeared in numerous publications including *The Dallas Morning News*, *Gotham*, *Penthouse*, *People*, *Star*, *Cosmopolitan*, *InStyle*, and *Wine Enthusiast*. *Id.* ¶ 9. And between January and October of 2004, references to or images of HPNOTIQ liqueur appeared in more than 240 articles in newspapers from Florida to Alaska, industry publications, CBS MarketWatch, and magazines. *Id.*

The fame and recognition of the HPNOTIQ mark in today's pop culture is further demonstrated by the unsolicited references to HPNOTIQ liqueur in popular music. HPNOTIQ liqueur is orally referenced in the lyrics of at least twenty-seven songs from artists such as R. Kelly, Ice Cube, Lil Kim, Usher, & David Banner. *Id.* ¶ 11. Unsolicited oral or visual references to HPNOTIQ liqueur have also appear in at least thirteen different music videos, including videos from R. Kelly, Fabolus featuring P. Diddy, Nick Cannon, and Lloyd Banks. *Id.* It is clear that the mark has infiltrated today's pop culture and is widely recognized and embraced by today's consumers.

In addition to traditional advertising efforts, Heaven Hill has also invested heavily in developing a grassroots advertising campaign using word-of-mouth advertising to build the strength and recognition of the HPNOTIQ brand. *Id.* ¶¶ 10, 12, 14-17. These efforts have included "celebrity seeding," the HPNOTIQ Ambassador program, and "Shout Outs" in nightclubs. *Id.* An innovative music marketing partnership with INgrooves, a digital music label,

has also been used to establish consumer association of the HPNOTIQ brand of liqueur with the cutting-edge music culture. *Id.* ¶ 10.

“Celebrity seeding” refers to a variety of marketing efforts designed to get HPNOTIQ liqueur into the hands of celebrities in an effort to encourage the celebrity to try the product and endorse it to their friends and other celebrities. *Id.* ¶ 17. For HPNOTIQ, these “seeding” activities have ranged from buying a bottle of HPNOTIQ liqueur for a celebrity dining at a restaurant, sending a gift basket with a bottle of HPNOTIQ liqueur to a celebrity, serving samples of HPNOTIQ liqueur at celebrity events, sponsoring film festival or award ceremonies, and making HPNOTIQ liqueur available to celebrities at festivals and parties. *Id.* Some examples of festivals and parties where HPNOTIQ liqueur has been made available include: the 33rd Annual American Music Awards; Jessica Simpson’s 25th Birthday Party; the Make-A-Wish Foundation Gala; and the Motown Remixed Album Release Party. *Id.*

To further market the product, the Ambassador Program utilizes of a number of independent contractors (“Ambassadors”) located throughout the United States. *Id.* ¶ 15. These Ambassadors engage in on-premise marketing at nightclubs and other venues where HPNOTIQ liqueur can be purchased by the drink (known in the industry as “on-premise sales”). *Id.* This on-premise marketing includes activities such as orally announcing HPNOTIQ drink specials, handing out samples of HPNOTIQ to club patrons, and handing out promotional materials such as T-shirts, towels, and hats. *Id.* In cities where Heaven Hill has no Ambassadors, it coordinates with independent promoters to conduct similar activities. *Id.*

“Shout Outs” refer to a specific form of grassroots advertising which involves club “disk jockeys” (“DJs”) who are “spinning” music. A DJ, compensated directly or indirectly by Heaven Hill, is engaged to mention (i.e. Shout Out) HPNOTIQ orally over the club’s sound

system while spinning music for the club's patrons. *Id.* ¶ 16. This results in increased sales of HPNOTIQ drinks and increased aural name recognition of HPNOTIQ liqueur. *Id.*

The success of this array of grassroots marketing efforts is reflected not only in HPNOTIQ liqueur's position as the seventh largest liqueur and cordial brand in the United States but also in industry publications such as *Market Watch*. In the October 2004 issue, *Market Watch* noted the success of Heaven Hill's unique grassroots marketing campaign for HPNOTIQ and specifically highlighted its use of Shout Outs by club DJs. *Id.* ¶ 10.

The widespread availability of HPNOTIQ liqueur further demonstrates Heaven Hill's success in establishing HPNOTIQ as a renowned brand of liqueur. HPNOTIQ is available by the bottle in more than five-thousand off-premise (package) retail outlets nationwide. *Id.* ¶ 18. It is also available by the drink in more than one thousand on-premise venues such as restaurants, bars, and nightclubs, including 100 national accounts that have multiple units in different locations such as T.G.I. Fridays and Applebee's. *Id.* ¶ 19.

Widespread availability has also made aural recognition of the HPNOTIQ mark particularly important to sales in both off-premise locations and on-premise venues. In off-premise locations, bottles of HPNOTIQ liqueur and other alcoholic beverages are often kept behind the counter, requiring the consumer to orally request a brand by its name (i.e. its mark) from a sales clerk. *Id.* ¶ 18. In virtually all of the on-premise locations, orders for alcoholic beverages like HPNOTIQ liqueur are placed almost exclusively through oral requests by the beverage's name (i.e. its mark). *Id.* ¶ 20. Consequently, aural name recognition of a mark is extremely important to the owner of a mark for an alcoholic beverage like HPNOTIQ.

Further stressing the importance of proper aural recognition of the mark, HPNOTIQ is a fanciful mark which is not descriptive of the product. Instead it is a coined term

that has three syllables and is frequently pronounced “hip-no-teek.” *Id.* ¶ 22. It does not describe the liqueur nor does it describe or any other product sold under the HPNOTIQ mark. *Id.* ¶ 24. In fact, Heaven Hill owns two United States trademark registrations on the Principal Register for use of the HPNOTIQ mark with liqueur—U.S. Trademark Registration Numbers 2,642,855 (“the ‘855 registration”) and 2,282,475 (“the ‘475 registration”), and two registrations for use with non-liqueur goods.

The ‘855 registration for the use of the HPNOTIQ mark with liqueur was issued on October 29, 2002, to Heaven Hill’s predecessor-in-interest, Global Perspectives, based on use in commerce that began in September 2001. This registration was subsequently assigned to Heaven Hill in 2003, and a copy of the assignment was recorded with the USPTO on January 7, 2003. The ‘475 registration for the mark HPNOTIQ & HQOPN design for use with liqueur issued on March 16, 2004 from an application filed by Global Perspectives on October 31, 2002 and assigned to Heaven Hill in 2003. Current printouts of information from the electronic database records of the USPTO showing the current status and title of these registrations are attached to this Memorandum as Exhibits C and D respectively. Neither of these registrations for the use of the HPNOTIQ mark with liqueur restricts the channels of trade that liqueur bearing the HPNOTIQ mark will travel through, the territory in which the liqueur bearing the HPNOTIQ mark will be sold, or the classes of customers or consumers to which liqueur bearing the HPNOTIQ mark will be marketed. *See* Exs. C & D.

Heaven Hill additionally owns U.S. Trademark Registration Number 2,834,130 for the use of HPNOTIQ with clothing, namely shirts, and U.S. Trademark Registration Number 2,834,133 for the use of HPNOTIQ with candles and beverage glassware. These registrations originally issued on April 20, 2004. Current printouts of information from the electronic

database records of the USPTO showing the current status and title of these registrations are attached to this Memorandum as Exhibits E and F respectively.

B. DIALLO'S APPLICATION FOR THE HYPNOTIZER MARK

On August 28, 2007, Diallo filed Application Serial No. 77/266,196 (the '196 application) to register the mark HYPNOTIZER for alcoholic beverages in international class 033. On April 8, 2008, the application was subsequently published for opposition and Heaven Hill timely filed the current opposition, Opposition No. 91183753, to protect its HPNOTIQ mark against Diallo's confusingly similar HYPNOTIZER mark.

The '196 application, however, is simply the latest chapter in a long history of Diallo attempting to trade on the goodwill and recognition of Heaven Hill's HPNOTIQ mark in the U.S. and elsewhere. On February 18, 2005, Diallo originally applied for a French trademark registration to use the HYPNOTIZER mark in connection with "beers; mineral waters; alcoholic beverages; wines; and spirits" *See* Affidavit of Matthew Williams, at ¶ 4, attached hereto as Ex. B. On May 25, 2005, Heaven Hill timely opposed Diallo's application on the ground that the use of the HYPNOTIZER mark in conjunction with the listed goods would likely cause confusion with its HPNOTIQ mark, French trademark registration number 023143392. *Id.* ¶ 5. Despite Heaven Hill's pending opposition, Diallo managed to obtain a registration for HYPNOTIZER, French trademark registration number 053342166, under a provision of French law that allows one to obtain a provisional registration in order to gain international rights in a mark. *Id.* ¶ 4.

Diallo then proceeded to use this initial French registration to obtain an international registration, 873089, under the provisions of the Madrid Protocol. *Id.* ¶ 6. This registration, granted by the International Bureau ("IB") on July 10, 2005, designated the United States as one of the countries in which Diallo desired protection. *Id.* The international registration subsequently entered the U.S. as a Section 66(a) application, Serial No. 79/019547

(the '547 application), and Heaven Hill timely opposed, Opposition No. 91173767. As part of its opposition, Heaven Hill requested and was granted a motion to suspend the proceeding before the TTAB, pending the outcome of the French opposition.

On November 25, 2005, the French NIPO found Diallo's HYPNOTIZER mark confusingly similar to Heaven Hill's HPNOTIQ mark and cancelled Diallo's registration for use with any type of alcoholic beverage, including beer. *Id.* ¶ 7. Diallo then appealed the NIPO's decision to the Court of Appeals of Paris, which on May 10, 2006, concluded there was a risk of confusion in allowing Diallo's registration of the HYPNOTIZER mark insofar as it pertained to alcoholic beverages and denied Diallo's appeal. *Id.* ¶ 8, Ex. 2. Following expiration of the period during which Diallo was able to appeal to France's Supreme Court, the IB cancelled Diallo's international registration to the extent that it extended to alcoholic beverages. *Id.* ¶ 9. Finally, after Diallo failed to transform the '547 application into a U.S. national application, it too was cancelled. *Id.* ¶ 10.

Recently, Heaven Hill was again placed in the position of having to defend its HPNOTIQ mark against yet another attempt by Diallo to register the confusing similar HYPNOTIZER mark. As with the prior application, the '196 application seeks to register the HYPNOTIZER mark for use in connection with alcoholic beverages in international class 033 in order to trade on the goodwill Heaven Hill has built in its HPNOTIQ mark. In fact, the only relevant difference between the two applications is the fact that the '547 application was based on an international registration while the '196 application was filed directly with the USPTO.

On September 24, 2007, Heaven Hill took the first steps to oppose Diallo once again. Before examination was complete, Heaven Hill informed the Trademark Administrator in a Letter of Protest, a copy of which is attached as Exhibit G, of Diallo's previous failed attempt

to register the mark, including the Paris court's finding of similarity between the marks. Heaven Hill also informed the Administrator of the Examiner's failure to identify Heaven Hill's marks due to an inadequate search performed during examination. The Administrator denied this protest and allowed publication of the mark on April 8, 2008. On April 25, 2008, Heaven Hill instituted the current action before the Trademark Trial and Appeal Board to again oppose the registration of the mark HYPNOTIZER.

ARGUMENT

The law in this case is clear: The USPTO may not register a mark when it is confusingly similar to a previously registered mark. The facts in this case are also clear: The HYPNOTIZER mark is confusingly similar to Heaven Hill's HPNOTIQ mark when applied to the goods listed in the '196 application. Therefore, since Heaven Hill's registrations predate Diallo's application for HYPNOTIZER, the TTAB should deny Diallo's application.

1. HEAVEN HILL HAS MET THE REQUIRED BURDEN TO ESTABLISH ITS ENTITLEMENT TO SUMMARY JUDGMENT.

Under Rule 56 of the Federal Rules of Civil Procedure and Section 528.01 of the TTAB Manual of Procedure, the TTAB should enter summary judgment when the moving party demonstrates that there "is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

Here, there is no genuine issues of material fact regarding the following issues: the investment Heaven Hill has made in the HPNOTIQ mark for liqueur; the priority of Heaven Hill's HPNOTIQ mark; the similarity of the marks; the similarity of the goods for which Heaven Hill's HPNOTIQ mark is registered and the goods for which Diallo seeks registration of his HYPNOTIZER mark; the identical channels of trade through which the parties' respective goods

will travel; and the identical classes of customers and consumers to which the parties' respective goods will be marketed.

Applying the law to these undisputed facts leads to the inescapable conclusion that the TTAB should grant summary judgment to Heaven Hill and reject Diallo's application to register HYPNOTIZER for goods in international class 033.

2. HEAVEN HILL'S PRIOR USE AND REGISTRATION OF HPNOTIQ PRECLUDES DIALLO'S REGISTRATION OF HYPNOTIZER.

Under the Lanham Act, the USPTO may not register a mark when it is likely to cause confusion, mistake, or deception with a registered or common-law mark. 15 U.S.C. § 1052(d); *see also id.* § 1063 (citing dilution as grounds for opposition). Here, the record shows that Heaven Hill currently owns four federal registrations for HPNOTIQ, including two for use with liqueur, and that all four of the registrations were issued before Diallo filed the '196 application. Exs. A-D. Additionally, the record also shows that Heaven Hill has made extensive and widespread use of its HPNOTIQ mark in the sale of HPNOTIQ branded liqueur since acquiring the mark from Global Perspectives in early 2003. Heaven Hill's continued use of the mark has built on Global Perspective's prior use of the mark. Thus, priority is not an issue. Because, as demonstrated below, Diallo's intended use of HYPNOTIZER in connection with alcoholic beverages is likely to cause confusion, to cause mistake, or to deceive, his application to register HYPNOTIZER must be denied.

3. DIALLO'S USE OF HYPNOTIZER FOR ALCOHOLIC BEVERAGES WILL LIKELY CAUSE CONFUSION WITH HEAVEN HILL'S PRIOR USE OF HPNOTIQ FOR LIQUEUR.

The factors commonly used in analyzing marks for a likelihood of confusion are as follow: "(1) strength of the senior mark; (2) relatedness of the goods or services; (3) similarity of the marks; (4) evidence of actual confusion; (5) marketing channels used;

(6) likely degree of purchaser care; (7) the intent of defendant in selecting the mark; and (8) likelihood of expansion of the product lines.” *Daddy’s Junky Music Stores, Inc. v. Big Daddy’s Family Music Center*, 109 F.3d 275, 280, 42 U.S.P.Q.2d 1173 (6th Cir. 1997); accord *In re E. I. duPont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 U.S.P.Q. 563 (C.C.P.A 1973) (listing similar factors). But Heaven Hill “need not show that all, or even most, of the factors listed are present in any particular case to be successful.” *Champions Golf Club, Inc. v. The Champions Golf Club, Inc.*, 78 F.3d 1111, 1116 (6th Cir. 1996). Rather, the factors “are simply a guide to help determine whether confusion is likely,” and “[t]he ultimate question remains whether relevant consumers are likely to believe that the products or services offered by the parties are affiliated in some way.” *Daddy’s Junky Music Stores*, 109 F.3d at 280. After consideration of these eight factors, there can be no doubt that Diallo’s attempt to register HYPNOTIZER will cause confusion and should be denied.

A. STRENGTH OF HEAVEN HILL'S HPNOTIQ MARK.

The strength of Heaven Hill's HPNOTIQ mark is properly evaluated by looking at its inherent strength and its acquired strength. *TCPIP Holding Co. v. Haar Communications*, 244 F.3d 88, 100, 57 U.S.P.Q.2d 1969 (2d Cir. 2001). The inherent strength of a mark is found in its "degree of inherent distinctiveness," with an arbitrary and fanciful mark, such as HPNOTIQ, enjoying the broadest protection. *See id.* Alternatively, the acquired strength of a mark relates to the consumer recognition of the mark in the marketplace, with more protection being provided to marks that have broad recognition in the marketplace. *See Virgin Enters. Ltd. v. Nawab*, 335 F.3d 141, 147, 67 U.S.P.Q.2d 1420 (2d Cir. 2003). Therefore, an inherently distinctive mark that has also attained widespread recognition in the marketplace should receive the broadest scope of protection. *Id.* at 148.

Here, Heaven Hill's HPNOTIQ mark is an arbitrary and fanciful mark that does not describe the product. Ames Aff. ¶¶ 22, 24. Any association between the product marketed by Heaven Hill and the HPNOTIQ mark is the direct result of Heaven Hill's efforts. Thus, it is by definition an inherently strong mark that is deserving of "broad, muscular protection" under the law. *Virgin Enters. Ltd.*, 335 F.3d at 147.

The HPNOTIQ mark also enjoys widespread recognition in the marketplace, demonstrating a high degree of acquired strength. HPNOTIQ liqueur is the seventh largest liqueur in terms of sales volume in the United States and has been riding a wave of explosive growth since 2003. Ames Aff. ¶¶ 5-9. It is not only available in every state but is sold in a variety of locations including more than five thousand off-premise (package) retail outlets, a thousand on-premise venues, and approximately 100 national on-premise chains. *Id.* ¶¶ 18-19.

Heaven Hill's obvious success in building recognition for HPNOTIQ liqueur has been recognized by the numerous awards it has received for the brand's success. HPNOTIQ liqueur was named a 'Hot Brand' by *IMPACT* in 2004 and 2006, received the *Adams Growth Brand* 'Rising Star' award in 2003 and 2004, and was even named one of *Drinks International's* 'DI Dozen' in 2003." *Id.* ¶ 8. Unsolicited references to Heaven Hill's HPNOTIQ liqueur have also appeared in at least twenty-seven songs since the products introduction. These songs by a variety of artists including R. Kelly, Ice Cube, Lil Kim, Usher, & David Banner have also lead to unsolicited oral and visual references in over thirteen music videos from artists such as R. Kelly, Fabolus featuring P. Diddy, Nick Cannon, and Lloyd Banks. *Id.* ¶ 11.

Thus, the undisputed evidence shows that Heaven Hill's HPNOTIQ mark is a strong and inherently distinctive mark that enjoys widespread recognition in the marketplace. A

mark like HPNOTIQ is clearly deserving of the “broad, muscular protection” reserved for inherently distinct yet widely recognized marks.

B. RELATEDNESS OF THE GOODS.

To find a likelihood of confusion, the goods only need to be “related in some manner.” *Time Warner Entertainment Co., L.P. v. Jones*, 65 U.S.P.Q.2d 1650, 1661 (T.T.A.B. 2002). Here, the products listed in Diallo’s application and Heaven Hill’s registrations are more than just related, they are identical goods: alcoholic beverages. In fact, when considering this issue, the Court of Appeals of Paris concluded that Diallo’s attempt to register the mark for alcoholic beverages necessarily included the class of beverages known as liqueur. Williams Aff. Ex. 2, p.2 Moreover, the court also found that both goods were so inherently related in the minds of consumers that use of overlapping marks would clearly be confusing to the general public. *Id.* Ex. 2, p.3.

Even though the goods are clearly identical, the TTAB must also evaluate any restrictions as to the channels of trade and classes of purchasers. Both Heaven Hill’s HPNOTIQ registrations and Diallo’s ‘196 application fail to place any restrictions on either the channels of trade or classes of purchasers. In such situations, the TTAB must assume that “the identified goods move in all channels of trade that would be normal for such goods, and that the goods would be purchased by all potential customers.” *In re Elbaum*, 211 U.S.P.Q. 639, 640 (T.T.A.B. 1981). If Diallo’s application were granted, the same consumers would, therefore, be exposed to both HPNOTIQ and HYPNOTIZER brand alcoholic beverages and would be confused as to their source. Facing a similar situation involving similar marks for alcoholic beverages, KAHLUA and CHULA, the TTAB recognized that, when the products are identical “and move in the same trade channels to the same classes of purchasers, the degree of similarity required between the words to sustain a claim of likelihood of confusion is less than that otherwise needed

in situations involving dissimilar, non-competing products.” *Jules Berman & Assocs., Inc. v. Consol. Distilled Prods., Inc.*, 202 U.S.P.Q. 67, 70 (T.T.A.B. 1979). Thus, this factor weighs heavily in Heaven Hill's favor.

C. SIMILARITY OF THE MARKS.

When analyzing the similarity of marks, courts look at “the general impression conveyed to the purchasing public by the respective marks.” *Educational Testing Serv. v. Touchstone Applied Science*, 739 F. Supp. 847, 850, 16 U.S.P.Q.2d 1865 (S.D.N.Y. 1990) (citation omitted). When the product is frequently ordered via an oral request, the phonetic similarity of the mark often guides the decisions, especially with respect to alcoholic beverages. *See, e.g., David Sherman Corp. v. Heublein, Inc.*, 340 F.2d 377 (8th Cir. 1965) (finding SARNOFF for vodka to be confusingly similar to SMIRNOFF also for vodka); *Brown-Forman Distillery Co. v. Arthur M. Bloch Liquor Importers, Inc.*, 99 F.2d 708 (7th Cir. 1938) (finding OLD FOSTER for whiskey to be confusingly similar to OLD FORESTER also for whiskey); *Jules Berman*, 202 U.S.P.Q. 67 (T.T.A.B. 1979) (finding CHULA for coffee-flavored liqueur to be confusingly similar to KAHLUA also for coffee-flavored liqueur) ; *Beck & Co. v. Package Distibs. of America, Inc.*, 198 U.S.P.Q. 573 (T.T.A.B. 1978) (finding EX BIER for beer to be confusingly similar to BECK’S BEER also for beer).

In each of the cited cases, the finder-of-fact recognized that the marks were not identical in sight, meaning, or sound, but concluded that the aural similarity of the marks was sufficient to support a finding that the junior mark would create a likelihood of confusion in the marketplace. For example, in *Beck & Co.*, the TTAB stated that “similarity in sound alone can lead to likelihood of confusion, particularly where the goods involved may be purchased by verbal order.” 198 U.S.P.Q. at 576. The TTAB further concluded that, even though it believed there would be no confusion if the products were encountered side-by-side in a supermarket,

there was a likelihood of confusion resulting from the aural similarity of the junior user's EX BIER mark for beer and the senior user's BECK'S BEER mark beer. *Id.* The TTAB also stressed this similarity because both products were sold in "restaurants and clubs, where they would be ordered orally." *Id.*

The other cited cases reach similar conclusions. In *Jules Berman*, the TTAB concluded that since CHULA was "virtually identical" in sound to Kahlua, there existed a "viable likelihood of confusion and/or mistake . . . in crowded bars or restaurant where a bartender could serve 'CHULA' liqueur when 'KAHLUA' was ordered." 202 U.S.P.Q. at 70-71. In *Brown-Forman*, the court concluded that the marked auditory similarity between OLD FORESTER and OLD FOSTER would lead to a "probability of confusion" between the marks "when sales are made by the drink." 99 F.2d at 710. Finally, in *David Sherman* the court recognized that it is "well known that liquor is ordered by the spoken word" leading the court to conclude that SARNOFF for vodka was likely to cause confusion with SMIRNOFF for vodka. 340 F.2d at 382.

Here, since the first two syllables of Diallo's junior HYPNOTIZER mark are pronounced identically to the first two syllables in Heaven Hill's HPNOTIQ mark, *Ames Aff.* ¶ 22, the marks are at least as aurally similar as those marks compared in the above cited cases where a likelihood of confusion was found. In fact, because Diallo intends to use his HYPNOTIZER mark on a variety of alcoholic beverages, the same type of goods on which Heaven Hill uses its HPNOTIQ mark, similar concerns exist surround the aural recognition of the mark. Alcoholic beverages are ordered orally and that makes it especially likely that the use of phonetically similar marks to identify competing brands will result in customer confusion,

mistake, or deception. *See* 340 F.2d at 382. Furthermore, the close similarity of marks can make them virtually identical in crowded bars and restaurants. *See* 202 U.S.P.Q. at 70-71..

The term HPNOTIQ is a play on the word hypnotic, achieved through a fanciful spelling and the fact that the word hypnotic is not descriptive or suggestive of a liqueur product. The word hypnotic is synonymous with the words mesmerizing, spellbinding, compelling, enthralling, fascinating, magnetic, and absorbing (per Encarta online Thesaurus). These words all have positive meanings and suggest strongly appealing, desirable qualities or attributes. The use of HPNOTIQ to identify Heaven Hill's liqueur product thus instantly captures consumers' attention and fosters a psychological impression of attraction, appeal, and desirability in their minds. This strong mental reaction associated with the HPNOTIQ mark is sufficient alone to overpower any difference in appearance or sound with the HYPNOTIZER mark. *See* Standard Oil Co. V. Standard Oil Co., 252 F.2d 65, 116 U.S.P.Q. 176 (10th Cir. 1958); *see also* Faberge, Inc. v. Madison Shirt Corp., 192 U.S.P.Q. 223 (T.T.A.B. 1976) (Finding that the marks "Brut" and "Brutus" both invoked similar mental reaction in the minds of consumers). HPNOTIQ's strength as a mark rests in the fact that its phonetic association with the word hypnotic produces positive connotations that arise from that word's synonyms, which consumers then, in turn, subconsciously associate with Heaven Hill's product. Diallo's attempt to register HYPNOTIZER as a mark to sell beverage alcohol products is a transparent attempt to evoke the same mental reaction in the minds of consumers through the use of a variation on the root word which is the phonetic equivalent of the HPNOTIQ mark. Thus despite the different spellings and the differences in phonetic pronunciation of the two marks, the use of HYPNOTIZER as a mark to identify beverage alcohol products inevitably, and unavoidably suggest an association between Heaven Hill and its HPNOTIQ product and

Diallo and his product(s). Because there is no such association, consumers will be confused and Heaven Hill will be injured.

D. EVIDENCE OF ACTUAL CONFUSION.

Because Diallo's application is an intent-to-use application, there has not yet been evidence of actual confusion between goods bearing the HPNOTIQ mark and those bearing the HYPNOTIZER mark. The lack of actual confusion, however, has no bearing on whether Diallo's HYPNOTIZER mark poses a likelihood of confusion with Heaven Hill's HPNOTIQ mark: "Due to the difficulty of securing evidence of actual confusion, a lack of such evidence is rarely significant, and the factor of actual confusion is weighted heavily only when there is evidence of past confusion, or perhaps, when the particular circumstances indicate such evidence should have been available." *Daddy's Junky Music Stores*, 109 F.3d at 284 (internal quotation marks omitted). Under the circumstances of this case, the lack of evidence of actual confusion at this point is to be expected and has no significance.

E. MARKETING CHANNELS USED.

"This factor . . . consists of considerations of how and to whom the respective goods or services of the parties are sold." *Champions Golf Club*, 78 F.3d at 1120 (citation omitted). In this case, the products are substantially identical and neither Heaven Hill's registrations nor Diallo's application contains any restrictions on the distribution or marketing channels that will be used or the customers to whom the products sold under the respective marks will be marketed. This lack of restriction, even if the goods were not identical, creates the presumption that both products will move in the same marketing channels toward the same customers, meaning that the TTAB must assume that Heaven Hill's and Diallo's respective liqueurs will reach the same audience. See *In re Elbaum*, 211 U.S.P.Q. at 640; accord *The NASDAQ Stock Market, Inc. v. Antarctica, S.R.L.*, 69 U.S.P.Q.2d 1718, 1732 (T.T.A.B. 2003)

(“Moreover, the channels of trade are not limited, so our analysis of likelihood of confusion must assume that the goods will be marketed to all possible consumers.”).

Here, considering that the goods are identical and considering that the type of goods in question, alcoholic beverages, is highly regulated, there can be no question that Heaven Hill's HPNOTIQ brand alcoholic beverage and Diallo's HYPNOTIZER brand alcoholic beverages would have to move through the same marketing channels.

F. LIKELY DEGREE OF PURCHASER CARE.

“The degree of care with which consumers likely purchase the parties’ goods or services may affect the likelihood of confusion.” *Daddy’s Junky Music*, 109 F.3d at 285. Here, Alcoholic beverages are usually consumed in a short period of time and little care is likely to be demonstrated by consumers. Add to this the fact that “a purchaser of a low cost item ordinarily exercises minimal care in selecting the item,” and it is easy to see that there is likely to be a low level of purchaser care when encountering the HPNOTIQ or HYPNOTIZER marks. *Dream Team Collectibles v. N.B.A. Properties, Inc.*, 958 F. Supp. 1401, 1417 (E.D. Mo. 1997). Here, it is undisputed that Heaven Hill's HPNOTIQ sells for as little as \$2.99 at off-premise outlets such as liquor stores and as little as \$4.00 in on-premise establishments such as nightclubs. *Ames Aff.* ¶ 21. This obviously places it in the category of a low cost item where there is likely to be less purchaser care.

The likelihood of confusion due to this lowered purchaser care is further increased by Diallo's use of a mark that is strikingly similar to Heaven Hill's well-known HPNOTIQ mark. In nightclubs and restaurants where orders are routinely placed orally, patrons may hear people order HPNOTIQ and HYPNOTIZER drinks without being able to distinguish the phonetically similar marks in such noisy environments. Alternatively, they may even believe that one mark is simply a shortened abbreviation for the other. Finally, given the renown of HPNOTIQ as one of

the Top 10 liqueurs in the United States and the fact that it is likely that some consumers of HPNOTIQ have only been aurally exposed to the mark in restaurants and nightclubs, consumers may also associate Diallo's HYPNOTIZER mark with Heaven Hill's mark when encountering the mark visually. *See Recot Inc. v. Becton*, 54 U.S.P.Q.2d 1894, 1898 (“Famous marks are accorded more protection precisely because they are more likely to be remembered and associated in the public mind than a weaker mark.”). The low degree of purchaser care clearly weighs in Heaven Hill's favor.

G. INTENT OF APPLICANT.

Applicant, Diallo, cannot deny knowledge of Heaven Hill's HPNOTIQ mark at the time he filed this recent application for use of the mark HYPNOTIZER. Applicant previously attempted to register the mark in both his home country of France and the U.S., and in both instances was unsuccessful due to oppositions prosecuted by Heaven Hill based on the existence of a likelihood of confusion its HPNOTIQ mark when both marks were used, or intended to be used, in connection with alcoholic beverages. Therefore, Diallo's continued attempts to register the mark, while knowledgeable of the previous findings of confusing similarity, is sufficient to support a finding of intentional copying. *Daddy's Junky Music Stores*, 109 F.3d at 286. As numerous courts have concluded, when a junior user, such as Diallo, attempts to enter the market and has the entire universe of marks from which to choose for his product, the junior user's choice should be looked on with suspicion. *Florence Mfg. Co. v. J.C. Dowd & Co.*, 178 F. 73 (2d Cir. 1910); *see also Stork Restaurant v. Sahati*, 166 F.2d 348 (9th Cir. 1948) (“This thought that a newcomer has an ‘infinity’ of other names to choose from without infringing upon a senior appropriation runs through the decisions like a leitmotif.”); *John Walker & Sons, Ltd. v. Bethea*, 305 F. Supp. 1302 (D.S.C. 1969) (“At that point he (defendant) had an infinity of names from which to choose.”). This is especially true when the junior user

chooses a mark that is "so near to his successful rival that the public may fail to distinguish between them." *Id.* Therefore, Diallo's choice to play off the strength of Heaven Hill's HPNOTIQ mark when he conceived of the HYPNOTIZER mark should clearly be looked at with suspicion. Diallo has blatantly attempted to trade on the goodwill Heaven Hill has built in its HPNOTIQ mark that is evidenced in part by the remarkable sales growth experienced by HPNOTIQ since 2003. Diallo should not be allowed to ride on Heaven Hill's coattails and avail himself of the goodwill associated with the HPNOTIQ mark.

H. LIKELIHOOD OF EXPANSION OF PRODUCT LINES.

This factor is irrelevant in this case. Diallo's registration for HYPNOTIZER is for alcoholic beverages—simply another way of referring to a wide range of liqueurs. Heaven Hill already owns two registrations for its HPNOTIQ mark in connection with liqueurs, an identical range of products.

4. DOUBTS AS TO LIKELIHOOD OF CONFUSION MUST BE RESOLVED IN FAVOR OF THE SENIOR USER—HEAVEN HILL

The factors discussed above provide more than sufficient support for a finding of a likelihood of confusion between Heaven Hill's use of HPNOTIQ for liqueur and Diallo's use of HYPNOTIZER for substantially the same goods. But even if there were any doubts, these doubts must be resolved in favor of the senior user—Heaven Hill. *Interstate Brands Corp. and Interstate Brands West Corp. v. McKee Foods corp.*, 53 U.S.P.Q.2d 1910, 1915 (T.T.A.B. 2000). It is clear that "one who adopts a mark similar to the mark of another for the same . . . good . . . does so at his own peril and any doubt as to the similarity of the marks must be resolved against him." *Id.*

SUMMARY

Heaven Hill's HPNOTIQ mark is a strong and distinctive mark that enjoys widespread recognition in the marketplace. Diallo has made repeated attempts to trade on this recognition and register the HYPNOTIZER mark. He has repeatedly chosen to ignore courts and administrative bodies that have found a likelihood of confusion between his HYPNOTIZER mark and Heaven Hill's HPNOTIQ mark when both marks are used in connection with alcoholic beverages. Diallo's application should be rejected pursuant to 15 U.S.C. §§ 1052, 1063 and Heaven Hill's motion for summary judgment should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the foregoing Opposer's Brief has been served upon

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Courcouronnes 91080
France

via overnight courier (Federal Express Tracking No. 7919 8366 8442), this 4th day of November, 2008.

/Matthew A. Williams/
One of Counsel for Opposer, Heaven Hill
Distilleries, Inc.

20306099.3

Exhibit A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HEAVEN HILL DISTILLERIES, INC.,)		
)		
Opposer,	)	Opposition No.	91183753
)		
v.)		
	)	Serial No.	77/266,196
DIALLO YASSINN PATRICE,	)	Mark:	HYPNOTIZER
	)	Intl Class:	033
Respondent.)		

AFFIDAVIT OF JUSTIN AMES

Comes now the Affiant, Justin Ames, after first having been duly sworn, and hereby states as follows:

1. I am over 18 years of age, and I have personal knowledge of the matters described in this declaration and in the attached affidavits.

2. I am submitting this Affidavit in support of the Memorandum in Support of Opposer's Motion for Summary Judgment that is being filed in the above captioned proceeding.

3. I am currently employed by Heaven Hill Distilleries, Inc. ("Heaven Hill") as Senior Brand Manager for HPNOTIQ liqueur, Christian Brothers brandy, and other alcoholic beverages like cognac and rum. I have been employed by Heaven Hill in this or a similar capacity since joining Heaven Hill on June 30, 2003.

4. In this capacity, I have personal knowledge of the marketing expenditures in support of the HPNOTIQ brand; the sales figures for HPNOTIQ liqueur; the relative position of HPNOTIQ liqueur vis-à-vis other liqueurs in the liqueur marketplace; the marketplace, including

sales outlets and channels of distribution, for liqueurs and other alcoholic beverages; and the trademark registrations held by Heaven Hill for its HPNOTIQ trademark.

5. Since acquiring HPNOTIQ liqueur in 2003, Heaven Hill has grown the brand from a volume of 85,000 nine-liter cases per year with an approximate retail value of \$24,489,000 at the suggested retail price of \$24.99 to a volume of 600,000 nine-liter cases in 2005 with an approximate retail value of \$179,928,000—an increase of 605%. These volumes are documented in the attached table from the 2006 edition of the *Adams Liquor Handbook* attached hereto as Exhibit 1 and referred to hereinafter as *Adams*. Based on my experience in and knowledge of the alcoholic beverage industry, this publication is widely viewed as the most reliable and accurate source for volume information and is used by all of the major players in the industry.

6. Not only has Heaven Hill's HPNOTIQ liqueur experienced tremendous growth, Heaven Hill's sales of HPNOTIQ liqueur account for more than 19% of the overall growth of the Cordial and Liqueur market segment from 17,654,000 nine-liter cases in 2001 to 20,725,000 nine-liter cases in 2005. *See Ex. 1.*

7. HPNOTIQ liqueur was the seventh largest brand of cordial or liqueur brand in the United States in each of 2003, 2004, and 2005, surpassing the sales of other well-known brands such as Grand Marnier, Cointreau, Chambord, and Midori. *See Ex. 1.* In fact, Heaven Hill's HPNOTIQ liqueur is the number one fruit-based liqueur sold in the United States.

8. The success of Heaven Hill's HPNOTIQ liqueur has also been recognized by the numerous industry awards Heaven Hill has received since acquiring the HPNOTIQ brand in 2003, including HPNOTIQ liqueur being named a "Hot Brand" by *IMPACT* in 2004 and 2006,

receiving the *Adams Growth Brand* "Rising Star" award in 2003 and 2004, and being named one of *Drinks International's* "DI Dozen" in 2003. *See* Ex. 2.

9. Further demonstrating the fame of Heaven Hill's HPNOTIQ liqueur, unsolicited articles about the popularity, success, and versatility of Heaven Hill's HPNOTIQ liqueur have appeared in numerous publications including such diverse publications as *The Dallas Morning News*, *Gotham*, *Penthouse*, *People*, *Star*, *Cosmopolitan*, *InStyle*, and *Wine Enthusiast*. Cover shots and excerpts from these magazines and others appear in the marketing material attached hereto as Exhibit 3. In the first ten months of 2004, references to or images of HPNOTIQ liqueur appeared in more than 240 articles in printed publications or on websites of newspapers from Florida to Alaska, industry publications, CBS Marketwatch, and magazines including national publications such as *Bride's Magazine*. A complete set of these articles is attached hereto as Exhibit 4.

10. Several of the articles referred to above, reflect both Heaven Hill's efforts to build the strength of the HPNOTIQ brand of liqueur through word-of-mouth advertising and its success in doing so. For example, the articles attached hereto as Exhibit 5, document Heaven Hill's 2004 music marketing partnership with INgrooves, a digital music label, to establish a connection between HPNOTIQ liqueur and the cutting edge musical culture. And the October 2004 article from *Market Watch*, attached hereto as Exhibit 6, cites to Heaven Hill's success in utilizing a grassroots advertising campaign to establish the HPNOTIQ brand liqueur—noting in particular the use of club DJs to frequently mention HPNOTIQ in clubs as they spin music.

11. Further demonstrating the fame of Heaven Hill's HPNOTIQ liqueur are the 27 songs which feature unsolicited oral references to HPNOTIQ liqueur in their lyrics. Unsolicited

oral and visual references to HPNOTIQ liqueur have also appeared in 13 music videos, although in many of these videos the reference is oral and the word HPNOTIQ never appears visually. Exhibit 7 contains a partial list of these songs and music videos.

12. Such success and fame have not come cheaply or easily. Since acquiring HPNOTIQ liqueur in 2003, Heaven Hill has spent over \$15 million dollars on marketing HPNOTIQ liqueur. This figure includes, but is not limited to, expenditures on traditional print advertising; product placements in theatrical movies and television shows including *Desperate Housewives*, *Grey's Anatomy*, and *CSI Miami*; celebrity seeding; the HPNOTIQ Ambassador program; and "Shout Outs" in nightclubs.

13. Since May 2004, Heaven Hill has utilized an extensive, traditional print advertising campaign to promote its HPNOTIQ liqueur. A complete listing of the advertising schedules from May 2004 through April 2007 is attached hereto as Exhibit 8. As indicated in these schedules, advertisements for HPNOTIQ liqueur have appeared in 37 different publications, including *GQ*, *InStyle*, *Rolling Stone*, and *U.S. Weekly*. From May 2006 through May 2007 alone, print advertising resulted in more than 150 million impressions, which is the number of times an advertisement is viewed by different people. Heaven Hill's advertising schedule for May 2007 through April 2008 generated 225 million additional impressions. Ex. 9.

14. Both the Ambassador program and "Shout Outs" are grassroots marketing activities that take place primarily in nightclubs in order to create a word-of-mouth buzz about HPNOTIQ liqueur.

15. The Ambassador program utilizes a number of independent contractors ("Ambassadors") located in cities throughout the United States. These Ambassadors engage in

on-premise marketing at nightclubs and other venues where HPNOTIQ liqueur can be purchased by the drink. This on-premise marketing includes activities such as orally announcing HPNOTIQ drink specials, handing out samples of HPNOTIQ to club patrons, and handing out promotional materials including T-shirts, towels, and hats. In cities that do not have an Ambassador, independent promoters conduct similar activities.

16. "Shout Outs" refer to oral marketing of the HPNOTIQ brand by a DJ in a club that serves HPNOTIQ by the drink. A Heaven Hill sales person, Ambassador, or independent promoter compensates the DJ to mention HPNOTIQ orally while the DJ is spinning music in the club. These "Should Outs" are meant to encourage sales and oral name recognition of HPNOTIQ liqueur.

17. Celebrity seeding is another form of marketing frequently utilized in the marketing of HPNOTIQ liqueur. Celebrity seeding refers to marketing activities meant to get a product in front of a celebrity. The idea is to encourage a celebrity to try the product, like it, endorse it and recommend it to friends and other celebrities. With regard to HPNOTIQ liqueur, these activities have included buying a bottle HPNOTIQ liqueur for a celebrity while dining at a restaurant, sending a gift basket to the celebrity with a bottle of HPNOTIQ liqueur, serving samples of HPNOTIQ liqueur at celebrity events, participating in celebrity gift lounges, sponsoring a film festival or awards ceremony like the Sundance Film Festival or the Grammy's, and making it available to celebrities at festivals and parties. Examples of festivals and parties where HPNOTIQ liqueur has been made available include: the 33rd Annual American Music Awards; Jessica Simpson's 25th Birthday Party; the Make-A-Wish Foundation Gala; and the Motown Remixed Album Release Party. See Exhibit 11 for additional events at which HPNOTIQ was made available to celebrities and others.

18. HPNOTIQ liqueur is sold by the bottle nationwide in more than five thousand off-premise outlets, i.e. locations where the beverage cannot be consumed on the premises of the establishment selling it. These off-premise outlets include grocery stores, convenience stores, and liquor stores. In many of these outlets, bottles of HPNOTIQ liqueur and other alcoholic beverages are kept behind the counter, requiring the customer to make an oral request to the sales clerk for a specific brand.

19. HPNOTIQ is also available nationwide by the drink in more than a thousand on-premise outlets such as bars, nightclubs, and restaurants, including the 100 national accounts that have multiple units in different locations such as T.G.I. Fridays, and Applebee's that are listed in Exhibit 10.

20. In venues that sell HPNOTIQ liqueur and other alcoholic beverages by the drink, customers almost exclusively order the alcoholic beverage of their choice by making an oral request for the beverage to a waiter or bartender.

21. HPNOTIQ liquor is available in off-premise retail outlets in a variety of packages, with some costing as little as \$2.99. Where HPNOTIQ is available by the drink in on-premise establishments, the cost of a single drink can be as little as \$4.00.

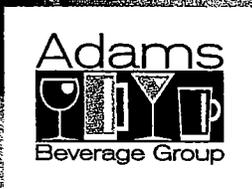
22. As a marketing professional, I believe the oral similarity of the HYPNOTIZER mark to Heaven Hill's registered HPNOTIQ mark could lead to confusion. HPNOTIQ is a coined term that, while intended to be pronounced "hip-not-ik," is frequently pronounced in a variety of ways, including but not limited to "hip-no-teek." HYPNOTIZER similarly begins

Ames Affidavit

Exhibit 1

ADAMS LIQUOR HANDBOOK 2006

THE ORIGINAL SOURCE FOR DATA ON
**SPIRITS SALES
AND CONSUMPTION**



A D A M S

LIQUOR HANDBOOK

2 0 0 6

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Adams Wine & Spirits Industry Marketing

Adams Fact Book

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Note Regarding Electronic Version

Consumption tables and charts are available on CD-ROM. Pages included on CD-ROM are indicated with a disk icon on top of page.

To order CD version, additional copies of the Liquor Handbook, or other Adams Beverage Group publications please contact:

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■ APPENDIX A

■ APPENDIX B

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Leading Brands of Cordials & Liqueurs, 2000-2005

(Thousands 9-Liter Cases)

Brand	Origin	Supplier	2000	2001	2002	2003	2004	2005	04/05 %Chg
DeKuyper	USA	Beam Global Wine & Spirits	2,563	2,563	2,590	2,735	2,810	2,779	-1.1%
Southern Comfort	USA	Brown-Forman Beverages	1,252	1,269	1,304	1,322	1,389	1,448	4.2%
Hiram Walker Cordials	USA	Pernod Ricard USA	1,070	1,040	1,030	1,050	1,060	1,015	-4.2%
E & J Cask & Cream	USA	E & J Gallo Winery	520	510	515	505	495	492	-0.6%
Bols Cordials	USA	William Grant & Sons	420	430	440	460	460	465	1.1%
Arrow Cordials	USA	Luxco	400	390	390	390	395	375	-5.1%
Mr. Boston Cordials	USA	Constellation Brands	279	302	278	296	314	341	8.6%
Jacquin Cordials	USA	Charles Jacquin et Cie	310	305	305	305	320	310	-3.1%
Leroux	USA	Beam Global Wine & Spirits	334	324	315	315	310	308	-0.6%
Allen's Cordials	USA	MS Walker Inc	145	160	165	177	190	201	5.8%
Phillips Cordials	USA	Phillips Distilling	230	220	200	190	190	190	0.0%
DuBouchett Cordial	USA	Heaven Hill Distilleries	170	175	170	165	170	170	0.0%
Mohawk Cordial	USA	Boisset America	155	155	156	158	160	162	1.3%
Amaretto di Amore	USA	Constellation Brands	86	86	108	124	138	148	7.2%
Starbucks	USA	Beam Global Wine & Spirits	--	--	--	--	2	135	++
Montezuma Blue	USA	Constellation Brands	59	123	140	143	139	132	-4.8%
Gaetano Cordials	USA	Shaw-Ross Int'l Importers	100	110	124	130	132	129	-2.3%
Montezuma Triple Sec	USA	Constellation Brands	100	96	112	113	123	126	2.4%
Paramount Cordials	USA	Paramount	110	110	110	105	100	115	15.0%
99 Schnapps	USA	Constellation Brands	n/a	48	73	85	105	109	3.8%
Godiva	USA	Diageo	60	65	70	76	84	92	9.5%
Potter's Cordials	USA	Frank-Lin Distillers	80	70	70	70	67	67	-0.3%
Ryan's Original Cream	USA	White Rock Distilleries	35	37	45	52	53	54	1.9%
Sabroso Coffee	USA	Constellation Brands	60	60	60	56	55	53	-3.6%
Total Leading Brands			8,538	8,648	8,770	9,022	9,261	9,416	1.7%
Others			856	827	725	738	741	760	2.6%
Total Domestic Cordials			9,394	9,475	9,495	9,760	10,002	10,176	1.7%
Jagermeister	Germany	Sidney Frank Importing	600	700	900	1,300	1,800	2,300	27.8%
Baileys	Ireland	Diageo	974	1,031	1,084	1,277	1,276	1,283	0.5%
Kahlua	Mexico	Pernod Ricard USA	1,400	1,350	1,300	1,250	1,260	1,255	-0.4%
Hpnotiq	France	Heaven Hill Distilleries	--	--	85	610	630	600	-4.8%
Grand Marnier	France	Moet Hennessy USA	440	460	474	488	517	547	5.8%
Alize	France	Kobrand	600	600	600	580	530	485	-8.5%
Carolan's Irish Cream	Ireland	Sky Spirits USA	276	305	315	325	345	350	1.4%
Di Saronno	Italy	Bacardi USA	280	285	285	285	305	320	4.9%
Cointreau	France	Remy Cointreau USA	162	183	202	225	248	260	4.8%
Romana Sambuca Black/Caffe	Italy	Diageo	227	231	230	234	236	228	-3.4%
Rumple Minze	Germany	Diageo	217	220	223	224	224	228	1.8%
Goldschlager	Switzerland	Diageo	229	224	226	219	218	218	0.0%
Yukon Jack	Canada	Diageo	250	230	225	217	212	210	-0.9%
Kamora	Mexico	Beam Global Wine & Spirits	220	216	210	200	185	181	-2.2%
Chambord	France	Brown-Forman Beverages	140	145	145	150	155	164	5.8%
Tequila Rose Liqueur	Mexico	McCormick Distilling	220	200	177	163	155	164	5.8%
Midori	Japan	Sky Spirits USA	133	148	151	150	152	155	2.0%
Frangelico	Italy	William Grant & Sons	140	145	145	145	145	148	2.1%
Dr. McGillicuddy's	Canada	Sazerac	165	180	120	130	130	130	0.0%
Emmet's	Ireland	Diageo	152	144	145	135	128	130	1.6%
St. Brendan's	Ireland	Luxco	125	120	130	140	128	120	-6.3%
Tuaca	Italy	Brown-Forman Beverages	52	64	75	91	101	115	13.9%
Aguardiente Cristal	Colombia	Shaw-Ross Int'l Importers	97	98	100	100	100	95	-5.0%
Drambuie	Scotland	Bacardi USA	95	95	95	90	90	87	-3.3%
B & B / Benedictine	France	Bacardi USA	95	95	95	90	88	83	-5.7%
Black Haus	Germany	Diageo	110	113	111	92	87	79	-9.2%
Licor 43	Spain	William Grant & Sons	40	40	42	48	50	50	0.0%
Remy Red	France	Remy Cointreau USA	125	125	110	110	71	45	-36.6%
Total Leading Brands			7,564	7,747	8,000	9,068	9,566	10,030	4.9%
Others			488	432	534	490	496	519	4.6%
Total Imported Liqueurs			8,052	8,179	8,534	9,558	10,062	10,549	4.8%
Total Leading Brands			16,102	16,395	16,770	18,090	18,827	19,446	3.3%
Others			1,344	1,259	1,260	1,228	1,237	1,279	3.4%
Total Cordials & Liqueurs			17,446	17,654	18,030	19,318	20,064	20,725	3.3%

(++) Greater than 100%. n/a Not Available.

Ames Affidavit

Exhibit 10

ACCOUNT

- | | |
|----|--------------------------|
| 1 | 99 Restaurants |
| 2 | American Café |
| 3 | Anton's Airfood |
| 4 | Applebee's |
| 5 | Austin Grill |
| 6 | Bahama Breeze |
| 7 | BD's Mongolian BBQ |
| 8 | Benihana's |
| 9 | Bennigan's |
| 10 | Bertucci's |
| 11 | Bonefish |
| 12 | Bravo! |
| 13 | Buca di Beppo |
| 14 | Bugaboo Grill |
| 15 | California Pizza Kitchen |
| 16 | Cameron Mitchell |
| 17 | Capital Grille |
| 18 | Carraba's |
| 19 | Champp's |
| 20 | Chart House |
| 21 | Cheddar's |
| 22 | Cheesecake Factory |
| 23 | Chesapeake Foods |
| 24 | Chevy's |
| 25 | Chili's |
| 26 | China Grill |
| 27 | Copeland's |
| 28 | Damon's |
| 29 | Dave and Buster's |
| 30 | Doherty Group |
| 31 | Elephant Bar |
| 32 | ESPN Zone |
| 33 | Flat Top Grill |
| 34 | Fleming's |
| 35 | Fox and Hound |
| 36 | Garfield's |
| 37 | Gordon Biersch |
| 38 | Grindstone Charley's |
| 39 | Hacienda |
| 40 | Hard Rock Café |
| 41 | HMS Host |
| 42 | Houlihan's |
| 43 | House of Blues |
| 44 | Houston's |
| 45 | Howl at the Moon |
| 46 | Hyatt Corporation |
| 47 | InterContinental Hotels |
| 48 | Interstate Hotels |
| 49 | Jillian's |
| 50 | Joe's Crab Shack |
| 51 | La Paz |

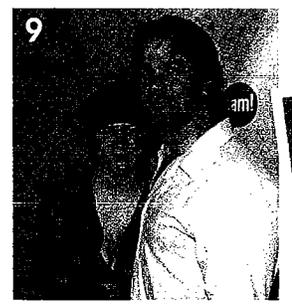
52	Landry's Seafood
53	Legal Seafood
54	Levy Restaurants
55	Loews Hotels
56	Logan's Roadhouse
57	Lone Star Steakhouse
58	Longhorn Steakhouse
59	Macaroni Grill
60	Maggiano's Little Italy
61	Main Street and Main
62	Marie Callendars
63	Marriott
64	Max and Erma's
65	McCormick and Schmick
66	Morton's
67	O'Charley's
68	Olive Garden
69	Omni Hotels
70	Outback
71	Pargo/Slades
72	PF Chang's
73	Phillips Seafood
74	Quality Dining
75	Rafferty's
76	Rainforest Café
77	Red Hot and Blue
78	Red Lobster
79	Red Robin
80	Ritz-Carlton Hotels
81	RJ Gator's
82	Roadhouse Grill
83	Rock Bottom
84	Roy's
85	Ruby Tuesday
86	Ruth's Chris
87	Shells
88	Spirit Cruises
89	Starwood Hotels
90	Steak and Ale
91	Texas Roadhouse
92	TGIFriday's
93	The Melting Pot
94	The Palm
95	Tia's Tex-Mex
96	Tony Romas
97	Tumbleweed
98	Uno Corporation
99	Wildfire
100	Yardhouse

Ames Affidavit

Exhibit 11



1. Grammy's Style Studio Party, singer Adam Gaynor of Matchbox 20
2. Grammy's Style Studio Party, singer Paul Stanley of KISS
3. Grammy's Style Studio Party, singer Fergie of Black Eyed Peas
4. Shannon Elizabeth's Birthday Party, Shannon Elizabeth and guest
5. Carl Wilson Foundation Event, Mark Wahlberg and fiancée Rhea Durham
6. Wedding Season Launch Party, actress Molly Ringwald
7. Wedding Season Launch Party gift bag
8. Second Annual Very Hep Day Party, Sex and the City actor Willie Garson and guests
9. Down With Love Release Party, actor Peter Reckell
10. Actor Jonathon Silverman
11. Fan Fair, country singer Katie Cook



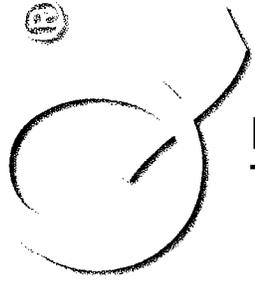
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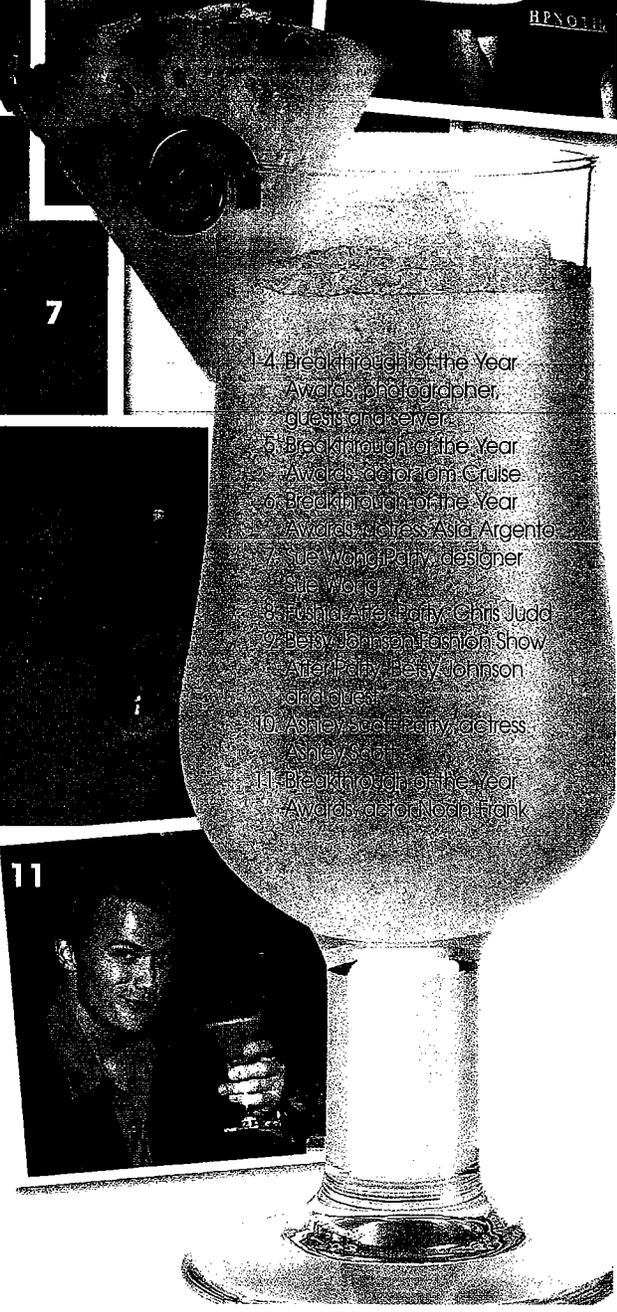
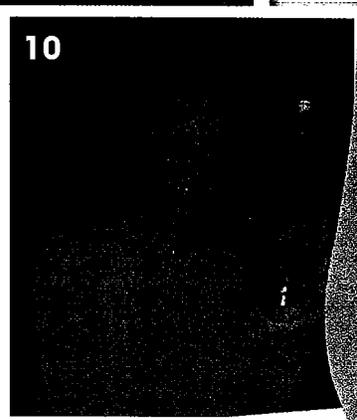
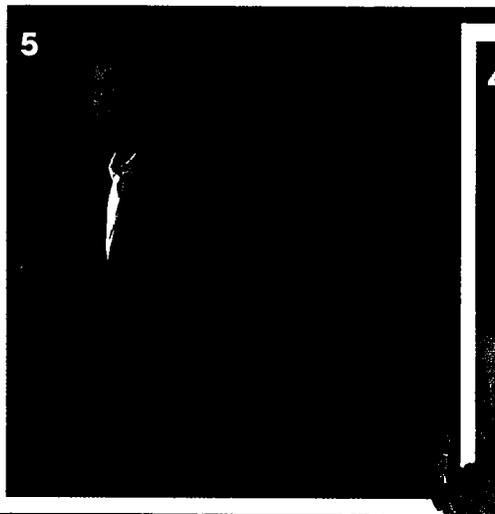
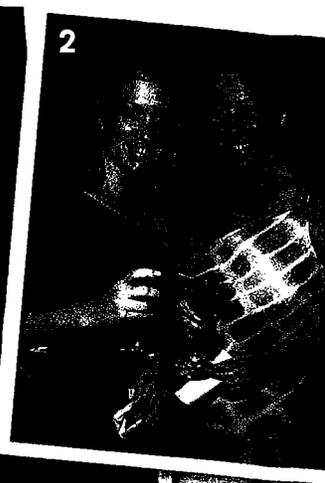
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Photography courtesy of WireImage



IT'S AT ALL
THE BEST PARTIES.

THE
BEST
PARTIES



- 1. Breakthrough of the Year Awards, photographer, guest, and server.
- 2. Breakthrough of the Year Awards, actor Tom Cruise.
- 3. Breakthrough of the Year Awards, actress Asia Argento.
- 4. Sue Wong Party, designer, fire, and food.
- 5. Fashion After Party, Chris Jude.
- 6. Betsy Johnson Fashion Show After Party, Betsy Johnson and guest.
- 7. Ashley Scott Party, actress Ashley Scott.
- 8. Breakthrough of the Year Awards, actor Noah Frank.

IT'S AT ALL
THE BEST PARTIES.

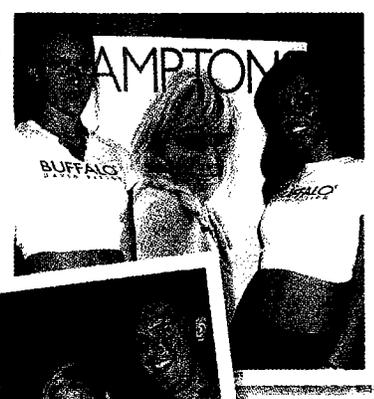


- 33rd Annual American Music Awards
- InStyle Aspen Celebrity Downhill
- Jessica Simpson's 25th Birthday Party
- Desperate Housewives "Back to School" Party Hosted by People Magazine
- WB "Make a Discovery" Oscar Retreat
- E! Entertainment Television's Summer Splash
- Reebok & ESPN Celebrate 20 Years of the Reebok Pump
- 14th Annual Music Video Production Awards
- Comedy Central's "Drawn Together 2: Hawaii" Premiere Party
- Skating with Celebrities Premiere Party at IVAR
- 4th Annual WeSparkle Variety Hour After Party
- Silver Rose Awards & Auction benefiting the Jenesse Center
- 2nd Annual Halloween Benefit for the 18th Street Arts Center
- Elle Décor & Grace Home Furnishings "Go Glamour! Celebration"
- Heritage Collection by Keds Fall Launch
- United Talent Agency Foundation Event
- E! Young Hollywood Party
- Rize Premiere After Party
- Lords of Dogtown Premiere After Party
- 26th Annual LACE Art Auction
- The Laurence School Annual Fundraiser
- Reebok/Sportie LA Event
- Create: Fixate Art Exhibit
- Night of 100 Stars
- Buena Vista Upronts Party
- Make-A-Wish Foundation Wish Night Gala
- Yari Film Group American Film Market Cocktail Party

ENTERTAINMENT WEEKLY



- Pre-MTV Movie Awards Style Lounge
- LOST: Season 1 DVD Launch Party
- STAR Grammy Style Lounge
- Blender Magazine's Rock and Roll Issue Party
- Jamie-Lynn DiScala's 24th Birthday Party
- Dreamworks' Annual Charity Golf Classic
- Silver Spoon 2nd Annual Hollywood Dog & Baby Buffet
- Michael Black Modern Vintage Fashion Show
- Anastasia Pre-Oscar Retreat
- "The Daddy Box" Fundraiser
- Complex Fusicology Event
- The Hollywood Reporter's 34th Annual Key Art Awards
- Motown Remixed Album Pre-Release Party
- Entertainment Weekly's "Must List" Edition Party
- Berman/Turner Art Gallery Opening
- Emerging Female Film-makers Fundraiser
- Pasadena Museum of Art Exhibit Opening
- Red Carpet Boutique Benefitting the Step Up Women's Network
- ScopeHamptons Art Fair
- Karen Lynne Gallery, Beverly Hills SEBA Opening
- Puma Fashion Show/Interview Magazine Event
- Undiscovered premiere
- Gotham Labor Day party
- Diddy St. Tropez party



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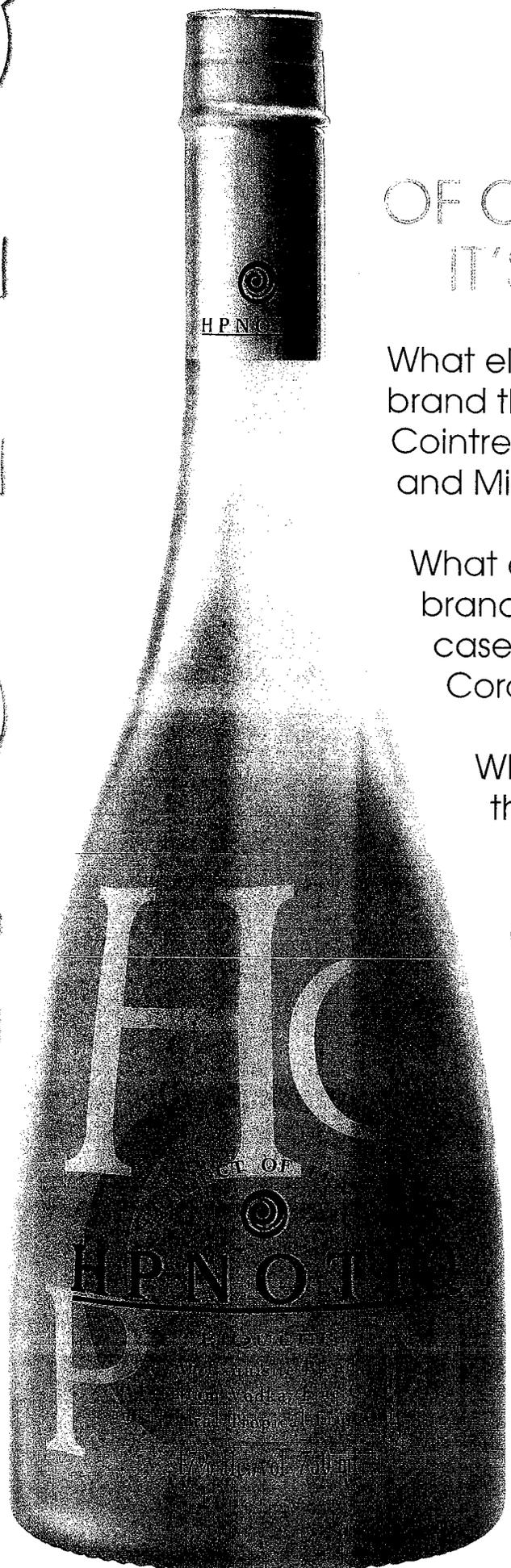
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Exhibit 2

HPNOTIQ



OF COURSE, IT'S HPNOTIQ

What else can you say about a brand that outsells Grand Marnier®, Cointreau®, Chambord®, and Midori®?

What else can you say about the brand responsible for 40% of the case sales gain for the entire Cordial and Liqueur category?*

What else can you say about this award-winning brand?



Plenty!

See other side.

* Based on 2006 Adams Report

The awards, accolades and sales are pouring in so fast, it's HPNOTIQ.

Impact Hot Brand in 2004 and 2006

2004: Named significant new product because of the brand's outstanding performance in its launch year.

2006: Named a "Hot Brand" again. Recognized as an established brand with at least 15% sales growth from 2004-2005.

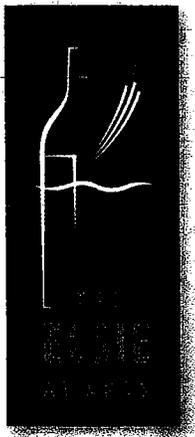


Adams Growth Brand

Rising Star Award identifies the fastest growing brands of the year. HPNOTIQ wins two years running.

Drinks International

- The most read and respected spirits trade publication in Europe and Asia
- Selected as one of the most dynamic, successful brands in the world



Eisie Award

Presented by Liquor Control Board of Ontario, the single largest purchaser of wine and spirits in the world.

- Best new distilled spirits product launch
- Attained first year's target sales in only 3 months despite a very limited, late launch



Unparalleled Creativity

HPNOTIQ's advertising has been a consistent award winner recognized by:

- Beverage Dynamics-Best Ad Campaign
- Creativity Annual-Two years in a row
- International Communicator Award
- US Ad Review
- Regional and local awards including ADDY Best of Show

"HPNOTIQ® has hit the spirits industry like a bolt out of the blue."
Advertising Age

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Spirit brands Specialities

Wines & Fortifieds

January 2004

International

The buyers' guide to the drinks business

REVEALED
the best of 2003



brand review

Turning now to Q, G&J's 45% abv top notch, five-times-distilled gin. It's a brand which has come a long way since its original launch in '98 in the US and Canada. Much the same as with Grey Goose it was created as front-runner in the super-premium US gin category, where unlike vodka, there had been very little development. G&J believed that there was "a definite opportunity".

"Added to this the renewed interest in classic cocktails, especially Martinis, meant that we created a product that would deliver on flavour both as a Martini and as a long drink," said the company's Pip Fitzherbert. While the early success was achieved in North America, more recently Q has been doing well in Japan, the Middle East, Mexico and Caribbean cruise liners. Now Australia and New Zealand are coming on stream.

"This success is allowing us to be selective as to where the brand needs to be seen and which markets it needs to be in," Fitzherbert told **Drinks International**. The UK is a case in point. "Initially the brand will only be available in the UK through quality on-trade outlets such as selected prestige style bars in the West End of London and four- and five-star hotels across the country, including the renowned De Vere chain. However, there are plans to extend distribution to the off-trade, with an emphasis on selected wholesalers and a distribution deal with a key, premium retailer," said Fitzherbert. Wherever Q is it will be positioned as an aspirational, top quality brand targeted very much at discerning ABC1 gin connoisseurs.

In a drive to give the brand a clear identity, along with a more contemporary look, and to ram home the quality of the gin as well as its heritage, Q had a makeover this year. This has been "extremely well received".

At the same time the name was shortened from Daresbury's Quintessential Warrington Dry Gin to "The Quintessential Warrington Dry Gin".

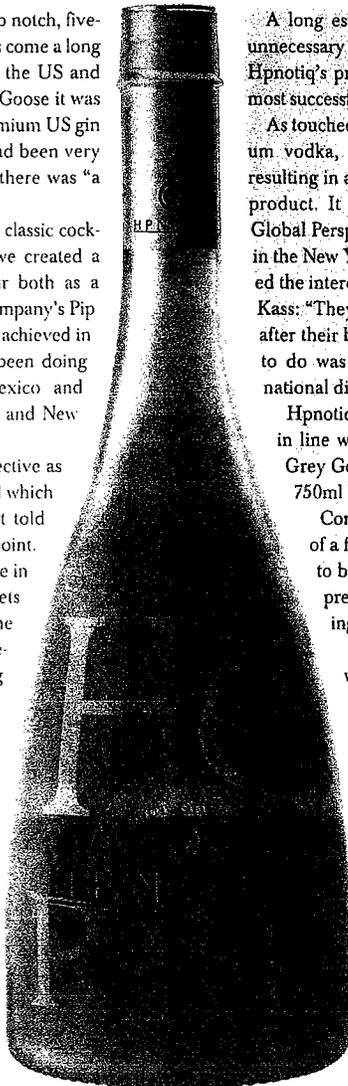
"It appeared that consumers did not really know what to call the brand - Daresburys, Daresbury's Q, or just Q. This is having a significant effect in the market and we have now established a brand call mentality - 'Q and T please'," said Fitzherbert.

Trade advertising has also been developed for Q under the banner, "Adding 'Q'-Dosh to Kudos". The initial aim of the advertising is to generate confidence in the brand while at the same time underlining the profit potential. All of which is more than enough reason for Q to make the DI Dozen - by the way its taste alone would have guaranteed its place.

Hpnotiq does the business

As an intriguing cross between vodka and Cognac it's difficult to know where to place Hpnotiq, but it's a brand, handled by Heaven Hill Distillers and it takes its place in the DI Dozen. Its heartland to date is the US and it has got off to a meteoric start - in just a year the brand is on course to join the million-case league in what may be record time.

"We've been in this business a long time, and we're just sitting here, arching our eyebrows about what's happened with this brand," said Heaven Hill Distillers' Larry Kass.



A long established operation not renowned for unnecessary hyperbole, Heaven Hill has described Hpnotiq's progress since its national rollout as the most successful spirits launch in US history.

As touched on, the brand is a mix of super-premium vodka, Cognac, and a blend of fruit juices, resulting in a 17% abv, naturally blue-coloured end product. It was acquired from New York-based Global Perspectives who had enjoyed great success in the New York metropolitan area, and had attracted the interest of a number of majors. According to Kass: "They wanted someone to come in and look after their baby. It was all set up for us, all we had to do was go and turn on the tap in terms of national distribution."

Hpnotiq has a roughly 35/65 on/off-trade split, in line with other US super-premiums such as Grey Goose, and retails at around \$24.99 for a 750ml bottle.

Consumer perception of the brand is more of a flavoured vodka than a Cognac, though to be aligned with either is no bad thing at present in the US, as both sectors are enjoying boom times.

Initial success was in the 'Urban' market, which in the US in recent years has tended to mean African-American. However, Hpnotiq's success is now crossing all boundaries, it has become a favourite of figures such as Dale De Groff and Paul Pacult. It has sponsored the Country Music Awards as well as hip-hop events. "We're as much in the Rainbow Room in Manhattan as the Rumba Room in the Bronx," said Kass. "This is no fad, it's got real staying power."

Beyond the US, Heaven Hill has introduced Hpnotiq to Japan, and is eyeing various European markets, particularly Germany, reporting widespread awareness and excitement surrounding the brand before it even arrives. The London and wider UK on-trade are also on the agenda, as is a wider rollout in South America.

Baltika gets up and goes

In a year which has seen fairly limited movement among the top world beer brands, Baltika has edged out Stella Artois to become the beer representative in this year's DI Dozen. A couple of major achievements stand out. Firstly, Baltika has now established itself as Europe's number two best selling



Hpnotiq is the latest sensation in the Heaven Hill Distillers camp. A vodka and Cognac mix it has forged ahead Stateside and export expectations are running high



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GROWTH BRANDS - Continued

RISING STARS

The Rising Star category includes relatively new brands (on the market four years or less) that can sometimes point toward several of the latest trends in the marketplace. For example, once again this year there are several vodkas (eight) and flavored spirits among the 14 brands included in the category. And 12 of the 14 Rising Stars appeared in this category last year.



Seagram's Vodka (Pernod Ricard USA) has had a notable initial success. The launching of a companion vodka to the renowned Seagram's Gin hit a healthy 460,000 cases in its first year on the market and followed that up in 2004 with a 38.9% increase, to 639,000 cases. HpnotiQ (Heaven Hill Distilleries) is another remarkable success story. The liqueur -- a blend of cognac, vodka and tropical fruit juices -- took off in 2003 with sales of 610,000 cases, and while growth has slowed, the brand still hit sales of 630,000 cases last year. Bacardi Party Drinks (Bacardi USA) joined the pre-mixed cocktail market with a bang, hitting sales of 425,000 in 2003, and last year gained a hefty 45.9% to 620,000 9-liter cases. A Rising Star the last two years, Three Olives Vodka (White Rock Distilleries) doubled its sales in 2004 to 350,000 cases, with some of the gain attributable to successful flavor line extensions. Tarantula Azul (McCormick Distilling), the ready-to-drink Margarita, had a stellar year, nearly tripling its sales in 2004 to 261,000 cases. UV Vodka (Phillips Distilling), which features several flavors, gained an impressive 78.3% in 2004 to 214,000 cases. The superpremium vodka Level (Absolut Spirits Co.), a first time Rising Star, notched sales of 100,000 cases in 2004, its first full year on the market. Yet another vodka, McCormick Flavored Vodka (McCormick Distilling), grew to 62,000 cases last year, while Dewar's 12 (Bacardi USA), the higher-end version of Dewar's White Label Scotch, reached sales of 61,000 cases. The superpremium French imported vodka Ciroc (Diageo) gained 37.5% in 2004 to 55,000 cases, while another vodka, Polar Ice (McCormick Distilling), rose 43.2% in 2004 to 53,000 cases. Pearl Vodka (David Sherman) grew by 30.0% to 52,000 cases, while Forty Creek Canadian Whisky (Shaw-Ross International Importers) registered sales of 42,000 cases. Finally, Corazon Tequila (Sidney Frank Importing), a new Rising Star, notched sales of 28,000 cases in 2004.

Brands less than five full years of age that have exhibited substantial growth over the past few years.

DISTILLED SPIRITS (thousands of 9-liter cases)

Brand	Supplier	2001	2002	2003	2004p	'03/'04 % Chg
Seagram's Vodka	Pernod Ricard USA	--	--	460	639	38.9%
HpnotiQ	Heaven Hill Distilleries	--	85	610	630	3.3%
Bacardi Party	Bacardi USA	--	--	425	620	45.9%
Three Olives	White Rock Distilleries	27	85	175	350	++
Tarantula Azul	McCormick Distilling	--	11	95	261	++
UV Vodka	Phillips Distilling	15	65	120	214	78.3%
Level	Absolut Spirits	--	--	--	100	--

McCormick Vodka - Flavored	McCormick Distilling	8	37	41	62	51.2%
Dewar's 12 Yr Old	Bacardi USA	31	36	50	61	22.0%
Ciroc	Diageo	--	--	40	55	37.5%
Polar Ice	McCormick Distilling	10	21	37	53	43.2%
Pearl Vodka	David Sherman	11	26	40	52	30.0%
Forty Creek	Shaw-Ross Int'l Importers	--	2	40	42	5.0%
Corazon	Sidney Frank Importing	--	8	20	28	40.0%

(p) Preliminary ++Greater than 100%

Wine Rising Stars number 22 this year compared to 16 last year. Most of these wines retail for under \$10, while a handful may sell for between \$12 and \$15. Half of them are imported wines, beginning with the Australian Yellow Tail (W.J. Deutsch & Sons), which in a few short years has overwhelmed the competition, becoming the top-selling imported wine in the U.S. The brand gained more than 2 million cases again last year for a total of 6.5 million, representing a 51.2% increase. Indeed, Yellow Tail's success has apparently spawned a following of flavorful value-priced wines adorned with cute, colorful labels. Other Australian wines include Black Swan (E&J Gallo), which gained 20.0% to 1.2 million cases; Little Penguin (Southcorp), which scored 372,000 cases its first year on the market; Jindalee (Frederick Wildman), which reached 150,000 cases last year; McWilliams (E&J Gallo), which hit 140,000 cases in its third year on the market; and Jackaroo (Click Wine Group), which notched 60,000 cases in 2004. Also from that part of the world, the New Zealand wine Nobilo (Pacific Wine Partners) registered a 61.8% increase (123,000 cases). And from South Africa, Fairview/Spice Route wines (Vineyard Brands) moved up to 73,000 cases.

Brands less than five full years of age that have exhibited substantial growth over the past few years.

WINES (thousands of 9-liter cases)

Brand	Supplier	2001	2002	2003	2004p	'03/'04 % Chg
Yellow Tail	W.J. Deutsch & Sons	225	1,200	4,300	6,500	51.2%
Bella Sera	E & J Gallo Winery	550	1,300	1,400	1,650	17.9%
Black Swan	E & J Gallo Winery	--	25	1,000	1,200	20.0%
BV Century Cellars	Diageo Chateau & Estates	--	--	--	390	--
Little Penguin	Southcorp Wines USA	--	--	--	372	--
Black Box	Pacific Wine Partners/ Constellation	--	--	4	216	++
Papio	Robert Mondavi Winery	--	--	32	194	++
Stimson Estate Cellers	Ste. Michelle Wine Estates	--	39	100	172	72.0%
Frei Brothers	E & J Gallo Winery	40	110	115	150	30.4%
Jindalee	Frederick Wildman	--	--	60	150	++
McWilliams	E & J Gallo Winery	--	35	100	140	40.0%
Red Bicyclette	E & J Gallo Winery	--	--	--	140	--
Wild Horse	Peak Wines International	--	--	28	133	++
One.6/One.9	Brown-Forman Beverages	--	--	--	130	--
Red Diamond	Ste. Michelle Wine Estates	--	--	26	129	++
Nobilo	Pacific Wine Partners/ Constellation	35	51	76	123	61.8%
Osborne Solaz	W.J. Deutsch & Sons	7	20	26	84	++
Fairview/Spice Route	Vineyard Brands	11	30	56	73	30.4%

MacMurry Ranch	E & J Gallo Winery	--	6	35	65	85.7%
Jackaroo	Click Wine Group	--	--	30	60	++
Aquinas	Don Sebastiani & Sons	--	--	8	55	++
Fusee	Don Sebastiani & Sons	--	6	17	50	++

(p) Preliminary ++Greater than 100%

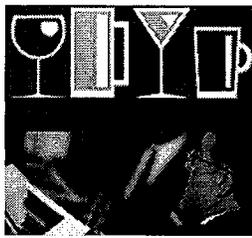
Nine California wines are designated as Rising Stars: BV Century Cellars (Diageo Chateau & Estates) sold just under 400,000 cases in its first year on the market; the varietal bag-in-box wines Black Box (Pacific Wine Partners) also had an impressive 2004, with sales of 216,000 cases; Papio (Robert Mondavi), with bongo-thumping and horn-blowing monkeys on the label, hit 194,000 cases; Frei Brothers (E&J Gallo) reached 150,000 cases, while Wild Horse (Peak Wines) reached 133,000 cases; the low-carb wines One.6 and One.9 (Brown-Forman) registered 130,000 cases in its introductory year, while MacMurray Ranch (E&J Gallo) notched 65,000 cases. Two wines from Don Sebastiani & Sons, Aquinas and Fusee, also had noteworthy sales in 2004.

Two Rising Stars are produced by Washington's Ste. Michelle Wine Estates: Stimson Estate Cellars, which grew 72.0% to 172,000 cases, and Red Diamond, which totaled 129,000 cases.

Other Rising Stars include Bella Sera Italian Table Wine (E&J Gallo), which grew another 250,000 cases last year to 1.65 million; Red Bicycleette, a French import from Gallo, which sold 140,000 cases in its first year on the market; and Osborne Solaz (W.J. Deutsch & Sons), which notched 84,000 cases.

Fast Track | Rising Stars | Established Growth Brands | Comeback Brands

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AMERICA'S GROWTH BRANDS - continued

RISING STARS

The Rising Star category includes relatively new brands (on the market four years or less) that can sometimes point toward several of the latest trends in the marketplace. For example, once again this year there are several vodkas and flavored spirits included in this category. Interestingly, there are 17 brands identified as distilled spirits Rising Stars this year versus only 8 brands last year, suggesting that more new brand activity is being supported in the marketplace.



Hpnotiq (Heaven Hill Distilleries) is one of the great success stories of recent years. The liqueur – a blend of cognac, vodka and tropical fruit juices – has been the inspiration for several new cocktails, and its 2003 sales of 610,000 cases attest to its explosion onto the market. Seagram's Vodka (Pernod Ricard USA) has also made a mark. The re-launching of a companion vodka to the renowned Seagram's Gin hit a healthy 460,000 cases in its first year. Bacardi Party Drinks (Bacardi USA) joined the crowded pre-mixed cocktail market with a bang, hitting sales of 425,000 cases last year. A Rising Star last year, Three Olives (White Rock Distilleries) more than doubled its sales in 2003 to 175,000 cases. Montezuma Blue tequila (Barton Brands) continued its early growth to 145,000 cases, while UV Flavored Vodka (Phillips Distilling) notched sales of 120,000 cases in 2003. Tarantula Azul (McCormick Distilling), the ready-to-drink Margarita, exploded to 95,000 cases in its first full year on the market. Whaler's Rum (Heaven Hill Distilleries) posted steady growth to 85,000 cases. Ketel One Citroen (Nolet Spirits USA), the flavored line extension to the Fast Track Brand, Ketel One vodka, posted a respectable 81,000 cases in 2003, while Dewar's 12 (Bacardi USA), the higher-end version of Dewar's White Label Scotch, reached sales of 50,000 cases. Kuya (Allied Domecq Spirits USA), dubbed a fusion rum by the company, also notched 50,000 cases its first year on the market. Pearl Vodka (Pearl Spirits) grew by 45.2% to 45,000 cases, while McCormick Flavored Vodka (McCormick Distilling) grew to 41,000 cases. Forty Creek (Shaw-Ross International Importers), one of the few new Canadian whiskies introduced to the market in the past few years, posted an impressive 40,000 cases in 2003, as did Ciroc (Schieffelin & Somerset), yet another high-end vodka that debuted in the U.S. last year. Speaking of vodkas, Polar Ice Vodka (McCormick Distilling) rose 76.2% in 2003 to 37,000 cases, and finally Turi vodka (Bacardi USA), from Estonia, rolled out to the tune of 25,000 cases.

DISTILLED SPIRITS

Brands less than five full years of age that have exhibited substantial growth over the past few years.

(thousands of 9-liter cases)

Brand	Supplier	2000	2001	2002	'02/'03 2003p	% Chg
Hpnotiq	Heaven Hill Distilleries	--	--	85	610	++
Seagram's Vodka	Pernod Ricard USA	--	--	--	460	--
Bacardi Party	Bacardi USA	--	--	--	425	--
Three Olives	White Rock Distilleries	25	27	85	175	++
Montezuma Blue	Barton Brands	59	123	140	145	3.6%
UV Flavored Vodka	Phillips Distilling Co.	--	--	65	120	84.6%
Tarantula Azul	McCormick Distilling	--	--	11	95	++
Whaler's Rum	Heaven Hill Distilleries	--	25	75	85	13.3%
Ketel One Citroen	Nolet Spirits USA	43	50	59	81	37.3%

Dewar's 12 Yr Old	Bacardi USA	--	31	36	50	38.9%
Kuya	Allied Domecq Spirits USA	--	--	--	50	--
Pearl Vodka	Pearl Spirits	--	11	31	45	45.2%
McCormick Flavored Vodka	McCormick Distilling	--	8	37	41	10.8%
Forty Creek	Shaw-Ross Int'l Importers	--	--	2	40	++
Ciroc	Schieffelin & Somerset	--	--	--	40	--
Polar Ice Vodka	McCormick Distilling	--	10	21	37	76.2%
Turi	Bacardi USA	--	--	11	25	++

++ Greater than 100% (p) Preliminary

Wine Rising Stars number 16 this year compared to 13 last year. They represent a range of price points, and feature several California wines and a variety of imports. An Australian import happens to lead the list: Yellowtail (W.J. Deutsch & Sons), the wine with the kangaroo on the label, is another fantastic story, having exploded last year to become the top-selling imported wine in the U.S. The brand gained 2.8 million cases last year for a total of 4 million. Other Australian wines included in the Rising Star category include Rothbury (Beringer Blass), which increased sales in 2003 by 33.3%, or 50,000 cases, to 200,000 cases; Stonehaven (Banfi Vintners), which posted sales of 141,000 cases; McWilliams (E&J Gallo), which hit 100,000 cases in its second year on the market; and Koala Blue (Distillerie Stock USA), which posted sales of 60,000 cases in 2003. Also from that part of the world, the New Zealand wine Nobilo (Pacific Wine Partners) notched 76,000 cases last year. From South Africa, Fairview/Spice Route wines (Vineyard Brands) registered 56,000 cases.

WINES

Brands less than five full years of age that have exhibited substantial growth over the past few years.

(thousands of 9-liter cases)

Brand	Supplier	2000	2001	2002	2003p	'02/'03 % Chg
Yellowtail	W.J. Deutsch & Sons	--	225	1,200	4,000	++
Bella Sera	E&J Gallo Winery	--	550	1,300	1,400	7.7%
Stone Cellars	Beringer Blass Wine Estates	--	400	1,100	1,400	27.3%
Redwood Creek	E&J Gallo Winery	--	27	1,000	1,100	10.0%
Black Swan	E&J Gallo Winery	--	--	25	1,000	++
Arbor Mist Wine Blenders	Canandaigua Wine	--	--	--	600	--
Smoking Loon	Don Sebastiani & Sons	5	35	155	330	++
Rothbury	Beringer Blass Wine Estates	20	25	150	200	33.3%
Stonehaven	Banfi Vintners	100	110	117	141	20.5%
Five Rivers	Brown-Forman Beverages	--	58	107	139	29.9%
Frei Brothers	E&J Gallo Winery	--	40	110	115	4.5%
Stimson Estate Cellers	Stimson Lane Vineyards	--	--	39	100	++
McWilliams	E&J Gallo Winery	--	--	35	100	++
Nobilo	Pacific Wine Partners/ Constellation	--	35	51	76	50.5%
Koala Blue	Distillerie Stock USA	--	--	20	60	++
Fairview/Spice Route	Vineyard Brands	--	11	30	56	86.7%

++ Greater than 100% (p) Preliminary

Bella Sera Italian Table Wine (E&J Gallo) grew another 100,000 cases last year to 1.4 million. E&J Gallo numbered three other brands, all from California, among the Rising Stars: Redwood Creek, at a solid 1.1 million cases last year; Black Swan, which exploded to 1 million cases in its first full year out; and Frei Brothers, which numbered a more modest but

respectable 115,000 cases. Other California wines that made the Rising Star list are Stone Cellars (Beringer Blass), which grew an impressive 27.3% to 1.4 million cases; Arbor Mist Wine Blenders (Canandaigua Wine Co.), which garnered sales of 600,000 cases in one year on the market; Smoking Loon (Don Sebastiani & Sons), which more than doubled its sales in 2003 to 330,000 cases; and Five Rivers (Brown-Forman), which reached a respectable 139,000 cases. Finally, Stimson Estate Cellars (Stimson Lane Vineyards) from Washington State, notched sales of 100,000 cases last year.

Fast Track | Established Growth Brands
Rising Stars | Comeback Brands

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Ames Affidavit

Exhibit 3



IT'S THE TALK
OF THE TOWN.

IT'S THE TALK OF THE TOWN.

THE US BUZZZ PAN & DEMI LIVE BACK TOGETHER?

NEW PHOTOS OF THE COUPLE!

PHOTO: CAMERON & JUSTIN They're hot

ANDREW & Their Wild

SHAMEN AND STIRRED

A New Blue Heaven

Rediscovered on

People

WILD WEDNESDAY PROTEST

LADY'S SAVORY UP IN IT FOR SCOTT

PAUL McCARTNEY A DUTY OF THE WIFE

FATH & TIM Saving his 2005 life

People

Ashton & Demi It's Getting HOT!

sexy dinners out, his at her - it's serious

BUZZ OF THE WEEK

THE BUBBLES (from the musical 'The Producers') is a blue-eyed beauty who has made her mark in the industry. She's the one who's been making the most of the public's attention and her professional skills. She's the one who's been making the most of the public's attention and her professional skills. She's the one who's been making the most of the public's attention and her professional skills.

10 great places to Airline manners in At home: Garden

Life SECTION D

Friday, May 30, 2003

Dest

She's 40. He's 25. The sexy star sets Hollywood on fire with the '70s Show hunk

Country

LONGSTAR NICE GUYS - DIXIE CHICK

WHERE COMEDY GETS CRUNKED

AMERICAN BARBECUE

ESSENTIAL DINING IN SANTA FE

THE ELECTRONICS GIFT GUIDE

SPIRIT

AMERICA'S BEST COCKTAILS

9 NEW DRINKS THAT RAISE THE BAR

HOLIDAY HIGH JINKS WITH

COUNTRY

MONCLER'S MISE-EN-SCENE

Natalie Wood Revisited

THE BLUE FIN

YOU'RE GETTING SLEEPY

PARDON MY DUTCH

Hollywood

SCARLETT JOHANSSON ON PEARL JARRING, LOST IN TRANSLATION AND OUTRE OSCAR THANK-YOUS

IT'S HPNOTIQ.

PARTIES

Breaking the Mold

Parties

Ames Affidavit

Exhibit 4

January, 2004



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 koronaborha2.hu



brand review



Turning now to Q, G&J's 45% abv top notch, five-times-distilled gin. It's a brand which has come a long way since its original launch in '98 in the US and Canada. Much the same as with Grey Goose it was created as front-runner in the super-premium US gin category, where unlike vodka, there had been very little development. G&J believed that there was "a definite opportunity".

"Added to this the renewed interest in classic cocktails, especially Martinis, meant that we created a product that would deliver on flavour both as a Martini and as a long drink," said the company's Pip Fitzherbert. While the early success was achieved in North America, more recently Q has been doing well in Japan, the Middle East, Mexico and Caribbean cruise liners. Now Australia and New Zealand are coming on stream.

"This success is allowing us to be selective as to where the brand needs to be seen and which markets it needs to be in," Fitzherbert told *Drinks International*. The UK is a case in point. "Initially the brand will only be available in the UK through quality on-trade outlets such as selected prestige style bars in the West End of London and four- and five-star hotels across the country, including the renowned De Vere chain. However, there are plans to extend distribution to the off-trade, with an emphasis on selected wholesalers and a distribution deal with a key, premium retailer," said Fitzherbert. Wherever Q is it will be positioned as an aspirational, top quality brand targeted very much at discerning ABC1 gin connoisseurs.

In a drive to give the brand a clear identity, along with a more contemporary look, and to ram home the quality of the gin as well as its heritage, Q had a makeover this year. This has been "extremely well received".

At the same time the name was shortened from Daresbury's Quintessential Warrington Dry Gin to "The Quintessential Warrington Dry Gin".

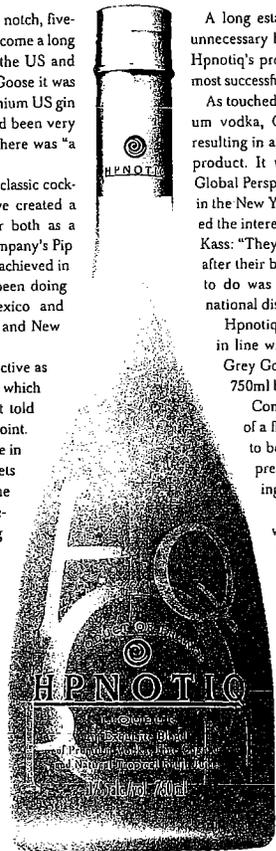
"It appeared that consumers did not really know what to call the brand - Daresburys, Daresbury's Q, or just Q. This is having a significant effect in the market and we have now established a brand call mentality - 'Q and T please'," said Fitzherbert.

Trade advertising has also been developed for Q under the banner, "Adding 'Q'-Dosh to Kudos". The initial aim of the advertising is to generate confidence in the brand while at the same time underlining the profit potential. All of which is more than enough reason for Q to make the DI Dozen - by the way its taste alone would have guaranteed its place.

Hpnotiq does the business

As an intriguing cross between vodka and Cognac it's difficult to know where to place Hpnotiq, but it's a brand, handled by Heaven Hill Distillers and it takes its place in the DI Dozen. Its heartland to date is the US and it has got off to a meteoric start - in just a year the brand is on course to join the million-case league in what may well be record time.

"We've been in this business a long time, and we're just sitting here, arching our eyebrows about what's happened with this brand," said Heaven Hill Distillers' Larry Kass.



A long established operation not renewed for unnecessary hyperbole, Heaven Hill has described Hpnotiq's progress since its national rollout as the most successful spirits launch in US history.

As touched on, the brand is a mix of super-premium vodka, Cognac, and a blend of fruit juices, resulting in a 17% abv, naturally blue-coloured end product. It was acquired from New York-based Global Perspectives who had enjoyed great success in the New York metropolitan area, and had attracted the interest of a number of majors. According to Kass: "They wanted someone to come in and look after their baby. It was all set up for us, all we had to do was go and turn on the tap in terms of national distribution."

Hpnotiq has a roughly 35/65 on/off-trade split, in line with other US super-premiums such as Grey Goose, and retails at around \$24.99 for a 750ml bottle.

Consumer perception of the brand is more of a flavoured vodka than a Cognac, though to be aligned with either is no bad thing at present in the US, as both sectors are enjoying boom times.

Initial success was in the 'Urban' market, which in the US in recent years has tended to mean African-American. However, Hpnotiq's success is now crossing all boundaries, it has become a favourite of figures such as Dale De Groff and Paul Pacult. It has sponsored the Country Music Awards as well as hip-hop events. "We're as much in the Rainbow Room in Manhattan as the Rumba Room in the Bronx," said Kass. "This is no bad, it's got real staying power."

Beyond the US, Heaven Hill has introduced Hpnotiq to Japan, and is eyeing various European markets, particularly Germany, reporting widespread awareness and excitement surrounding the brand before it even

arrives. The London and wider UK on-trade are also on the agenda, as is a wider rollout in South America.

Baltika gets up and goes

In a year which has seen fairly limited movement among the top world beer brands, Baltika has edged out Stella Artois to become the beer representative in this year's DI Dozen. A couple of major achievements stand out. Firstly, Baltika has now established itself as Europe's number two best selling



Hpnotiq is the latest sensation in the Heaven Hill Distillers' camp. A voddy and Cognac mix it has forged ahead Stateside and export expectations are running high

WELCOME TO THE BIN LOUNGE

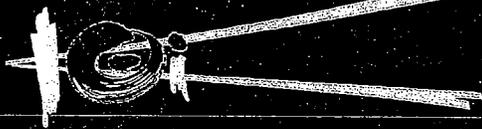
BIN profiles the hottest brands and the California restaurants and bars that are helping to making them so.

HOT BRAND: Hpnotiq Liqueur

HPNOTIQ

Hpnotiq, the blue-tinted combination of cognac, vodka and fruit juice, is one of the fastest growing brands in spirits history.

HOT SPOT: Koi Restaurant



Koi, one of LA's hottest restaurants, is also Southern California's top-selling Hpnotiq account.



Tod serves up Koi's Hpnotiq signature cocktail: Hpnotiq mixed with sake and serving it in a martini glass with fresh raspberries.

Hpnotiq Liqueur, the new urban sipping sensation, is all the rage at Koi—one of LA's hottest pan-asian restaurants. In fact, Koi can go through over 200 bottles of Hpnotiq in a weekend.

According to Jorge, Koi's beverage manager, he attributes some of the success the restaurant has had with Hpnotiq to one of their signature drinks; a sultry tasting concoction made by mixing sake with Hpnotiq and serving it in a martini-glass with fresh raspberries. Also a big part of Hpnotiq's success is the dedication the staff has had in developing the brand to make it unique to Koi.

Imported from France, Hpnotiq, a blue-tinted combination of cognac, vodka and fruit juice got its start as a status icon of hip-hop culture. Emerging from the East Coast club scene, Hpnotiq has crossed over into mainstream American nightlife, and sales are reported to be climbing off the charts.

Embracing traditional Japanese-inspired cuisine with California accents, a décor that takes its inspiration from far-off places such as India and Indonesia, and a design philosophy that adheres to the rigorous tenants of feng shui, Koi blends winning style with culinary substance to create a seamless "New Asian" experience. Opened in early May 2002, the inspired cuisine and soul-soothing space have garnered a loyal following of Hollywood's elite, curious travelers and foodies alike.

This place was made for Hpnotiq. With various post-modern motifs throughout, Koi is as much an intimate gathering place as it is a bar made for enjoying beautiful signature drinks. On weekends Koi attracts big crowds who are often seen striking the pose holding their emerald-colored martinis made with Hpnotiq. Koi is located at 730 N. La Cienega Boulevard in Los Angeles.

Imported by Heaven Hill, Hpnotiq is distributed in California by Young's Market Company. For more info on why Hpnotiq should be on your shelf or back bar (if it isn't already), contact your Young's Market sales representative or visit www.hpnotiq.com. And if you're in the neighborhood stop in and see Jorge at Koi. It's definitely the SoCal Mecca for Hpnotiq and the place rocks—the food's excellent too.

JC

ABOVE: Jorge, Koi's beverage manager with Nadia Al-Amir, Wagstaff Worldwide.
RIGHT: Koi

HPNOTIQ
LIQUEUR
An Exquisite Blend
of Premium Vodka, Fine Cognac,
and Natural Tropical Fruit Juices



Sold on Sunday sal



Albert Amaro Jr., manager of Amaro's on Middleboro Avenue in East Taunton, puts bottles of Hipnotiq, a French liqueur, in the cooler. Amaro is in favor of Sunday liquor sales.

Area merchants have mixed reactions

By JAY LeBLANC and REBECCA SEGALOFF
Gazette Staff Writers

TAUNTON — City officials have yet to make a decision on whether to allow Sunday liquor sales in Taunton, but package store owners and managers are already voicing differing opinions on the matter.

Al Amaro Jr., manager of Amaro's Mini Market on Middle-

boro Avenue in East Taunton, said he's very much in favor of allowing the sale of alcoholic beverages on Sundays.

"I'm all for it," Amaro said. "It will lead to increased revenue for us, and it's definitely an added convenience for our customers. It's good for the state as well, since roughly half of the price of every bottle of alcohol is tax dollars."

Vui Le, manager of Regal

Liquors and Food Mart on Bay Street, said he'll start selling alcoholic beverages on Sundays as soon as the city allows. Le said he's not sure if it will lead to increased revenue, but Regal Liquors and Food Mart is open seven days a week anyway.

"It doesn't really make any difference to me, but it will make the

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Reaction: Merchants see pros, cons to Sunday sales

From Page A1
 customers happy. De said "I think the majority of the people here want liquor stores to be open on Sunday. It's convenient."

Jim Chiesa, owner of Leahy's Liquor Store on Washington Street, said his store won't be open on Sunday regardless of whether city officials decide to allow liquor sales.

"I work six days now, and I don't want to have to work a seventh day," he said.

Dan Walsh, owner of Eagan's Package Store on Cohannet Street, said he enjoys spending Sundays with his family and hopes that city officials vote against allowing Sunday liquor sales.

"I don't want to have to open on Sundays, but I may be forced to or we could lose customers," Walsh said. "I don't think it will create any more business — what we used to do in six days, we'll now do in seven. It will be a convenience for the customers but an added expense for the owners."

City officials plan to address the new state law lifting the ban on Sunday liquor sales at next week's City Council meeting, City Solicitor Steve Torres said.

Although the City Council has the final say, the License Commission must also vote on the issue. License Commission Chair Robert Donnelly said the commission plans to hold a

Sunday liquor license hearing toward the end of January, but before the Super Bowl.

In Dighton and Rehoboth, some local merchants are — reluctantly — asking selectmen to level the playing field when it comes to Sunday liquor sales.

Michael Pacheco, the owner of Chartley Country Liquors on Tremont Street in Rehoboth, said another liquor store just a minute down the road in Attleboro is open Sundays. Pacheco has to be open to be competitive, he said.

But for mom-and-pop operations like his, the new schedule will rob him of his weekends without bringing in any extra cash, he said.

"The last thing I wanted was the state to approve

Sunday sales. There is no extra money to be made with one extra day per week. You just turned six days worth of business and spread it over seven days. But it has become reality," he wrote selectmen.

Dighton Selectman Richard Hegeman said he received a call this weekend from a merchant expressing a similar sentiment.

"My personal feeling is I don't want to deny them the opportunity to do business when every one else in the state might have that opportunity," Hegeman said.

Dighton selectmen have not yet taken up the issue of Sunday liquor sales. Under the new state law, selectmen must approve Sunday liquor sales for them to become legal. Hegeman said he expects selectmen to take up the issue soon.

Rehoboth selectmen have scheduled their public hearing to decide the issue for Jan. 26 at 7:45 p.m. That's in time for Super Bowl Sunday on Feb. 1, Rehoboth

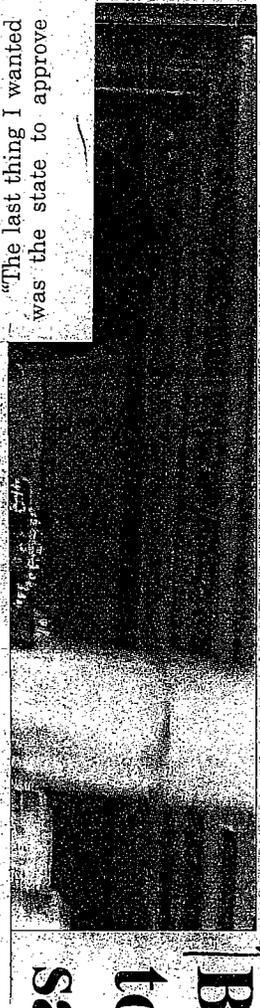
Selectmen Chairman Skip Vadnais pointed out.

Rehoboth Selectman John Ferreira said he favors allowing Sunday sales. Ferreira, who owns Speedway Liquors on Route 6 in town, said he will not open on Sundays. But he might feel different if the store were his primary business.

Dighton has five stores licensed to sell alcohol, three to sell all types of alcohol and two just beer and wine. Rehoboth has six stores licensed to sell alcohol, three to sell all types and three to sell just beer and wine.

Bob Crane, owner of Anawan Beer & Wine, also wrote Rehoboth selectmen requesting they allow Sunday sales. He asked them to approve the measure if they "care at all about supporting Rehoboth business."

"To send my customers out of town to buy because other towns have approved liquor sales is an embarrassment to myself and yourselves," he wrote.



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Dec 18, 2003

Pricey and potent, new brews boost holiday sales

“Trickle-up” economics of bars and bottles drive demand for exotic potables.

By **BOB MERVINE** Staff Writer

ORLANDO — Wally's Mills Avenue Liquors' by-the-drink bar comes complete with red vinyl banquettes and bar stools, red and gold brocade wallpaper and a rich mixture of aromas that a half-century of smoking customers have left behind.

There, you might not expect to find a bottle of 1961 Chateau Lafite Bordeaux

wine from France, for about \$3,000, or an allocated bottle of 56-year-old Macallan scotch for \$2,800.

You would be wrong. “They are expensive because they don't make a lot of it and it's hard to get,” says Martin Snellgrove, co-owner of the nearly 50-year-old bar. “But we have customers who regularly buy those products.”

Wally's is not alone.

Fueled by a decade-long increase in wine consumption that has primed the palate of consumers, sales of high-end spirits are growing across the nation.

Florida is helping to lead the charge.

Nationally, sales of spirits in 2002 increased 2.2 percent over 2001, according to Distilled Spirits Council of the United States.

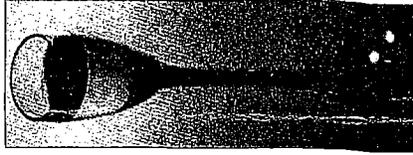
Florida consumption grew by 4.4 percent, making it the No. 2 liquor market in the country, trailing only California.

Locally, Tim Moreno, a regional manager for National Distributing Co. Inc., estimates their wine

and spirits business climbed 15 percent overall this year compared to 2002.

Moreno credits at least part of that to a thirst for exotic and pricey drinks inspired by such TV shows as *Sex in the City*, which is filled with 20- and 30-somethings drinking mojitos and flavored martinis. Such drinks create a “trickle-up” theory of economics: “A guy who spends \$11 on a Ketel One martini doesn't look at the price for a bottle” of Ketel, Moreno says.

Back at Wally's, Snellgrove sees the same demographic driving bottle sales.



Please see **SPIRITS**, page 53

Spirits of the season go upscale

For those planning holiday parties, a word of warning: In the past, the standard formula for determining which types of alcohol to serve was 60 percent liquor to 40 percent wine and beer.

During the last 10 years, that formula has been sliding more toward 50-50, says liquor retailers.

But where before consumers might have bought a few jugs of Relska for those vodka and tonic drinkers, this year they might be expecting something just a little smoother.

Single malt scotch, premium vodka, tequila, cordials and liqueurs are all popular this year.

Small batch bourbons also have a following, but Greg Gentile, owner of Antonio's in Maitland, says, "They've never had the following that the premium vodka and scotch have."

Tequila is big, but those party-goers in search of the drink may be disappointed. Decreased production of the cactus of choice — blue agave — has been off for the last decade because of insect problems combined with labor unrest in the region.

"There are only three 100-percent blue agave tequilas available anymore," says Martin Snellgrove, co-owner of Wally's Mills Avenue Liquors.

Tim Moreno, a regional manager for National Distributing Co. Inc., says many companies now offer the minimum legal requirement of 51 percent blue agave juice, blended with neutral spirits and regular agave cactus.

That's not necessarily bad news for retailers. Says Snellgrove, "Less good tequila simply means the prices go up."

— Bob Mervine

Spirits

Continued from page 3

"The younger generation is drinking top shelf — Grey Goose and Belvedere vodka — while our older customers who drink Smirnoff still drink Smirnoff," he says.

The search for new drinks doesn't stop with premium brands. For some, the more exotic, the better.

"There have been more rums introduced in the past 24 months than at any time in the past 30 years," says Patrick MacElroy, spokesman for Distilled Spirits Council of the United States.

Vodkas alone put 30 new products on the market. Grey Goose, Ketel One, Absolut and Fris all offer exotic flavors. Vincent Van Gogh vodka just introduced a pineapple-flavored product for Hawaiian-themed martinis.

Glenmorangie single malt scotch — the hard liquor equivalent of vintage wine made from grapes grown in only one vineyard — offers a \$50 bottle of 12-year-old scotch aged in either port or sherry wine barrels.

At Antonio's, a 13-year-old Maitland "adult candy store" owned by Greg Gentile, Pear William is among the offerings: a fruit brandy in a hand-blown glass bottle — with a pear inside. "They put the bottle on the fruit on the tree and it grows inside the bottle," Gentile says.

And Wally's sells a lot of Hypnotiq — vodka and cognac and fruit juice. "It's 17 percent alcohol and it takes about three bottles to get a buzz on, but people drink it because that's what their friends tell them to drink," says Snellgrove.

Given this kind of competition, packaging counts. Forget the Stolichnaya. Ultimat, a \$70 Polish vodka blend, comes in a funky bottle with a cobalt-blue base and raised silver lettering.

With some brands of grappa, a fiery liquor distilled from the remains of pressed wine grapes, it's all about the bottle. "Customers pay \$110 for 375 milliliters of grappa and the bottle is worth as much as the grappa," Gentile says.

For the truly adventurous, the ultimate in packaging appeal may be Skor-

ppio-brand grappa: Each bottle contains its own edible stinging insect.

To be sure, all this abundance has a downside for consumers. A favorite brand of rum or Canadian whiskey might now have a range of three or four

"There have been more rums introduced in the past 24 months than at any time in the past 30 years."

Patrick MacElroy,

Distilled Spirits Council of the United States

different quality levels, priced on a graduated scale. As a result, people "get overwhelmed when they look at the selection on the shelf, something that didn't exist five years ago," says Moreno.

Confused or not, consumers are expected to give liquor retailers and distributors a big boost in the next 60 days

"The younger generation is drinking top shelf — Grey Goose and Belvedere vodka — while our older customers who drink Smirnoff still drink Smirnoff."

Martin Snellgrove,

Wally's Mills Avenue Liquors

or so: December and January make up 25 percent of yearly sales.

As for the next new taste, Moreno says flavored rums are on the horizon.

"Bacardi started it last year," says the distributor.

"We look for it to catch on."

Ryan Geddes of the Business Journal of North Florida contributed to this story.

SOURCE: The Daily Herald (Provo, UT)

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The Daily Herald

Steel-ing the show: One of the more poignant moments of the festival so far was when German director Katja von Garnier debuted her Premiere-category film, "Iron Jawed Angles." Starring Hilary Swank, Frances O'Connor, Julia Ormond, Anjelica Huston and Patrick Dempsey, "Angels" follows several young suffragettes in the early 1900s as they campaign for a Constitutional amendment guaranteeing women the right to vote.

After the screening, the audience at the Eccles Theatre gave the film a standing ovation, followed by another standing ovation as von Garnier led a question-and-answer session. Von Garnier said "Angels" is her first English-language film and that she hoped to show the suffragettes were real people -- passionate and committed, but also lively and funny. Added screenwriter Sally Robinson, "I think you can identify with these women and what they were doing, and the spirit of what they were doing ... " Julia Ormond attended the screening and told the audience afterward that she was happy to be a part of the film.

With intense, moving portrayals by Swank, O'Connor and Ormond, "Angels" may eventually do more to recruit young women to vote than all of the half-hearted Rock the Vote campaigns put together.

-- Elyssa Andrus

Packed in a Blender: Throughout the festival, local watering hole Harry O's has become one of Park City's hottest concert venues, thanks to Blender magazine. The magazine is hosting a series of small, intimate concerts, through tonight. Scheduled performers included Murphy Lee (hosted by Nelly), Liz Phair, Pete Yorn and Macy Gray. Tonight's performer is billed simply as a "special guest" by the magazine.

On Friday night, for example, Phair played to a shoulder-to-shoulder crowd, who danced (or tried to, given the packed quarters) under a sparkling disco ball as young women in bright blue wigs offered samples of *Hpnoti^q liqueur* to attendees. That night, my feet were trampled so often that I'm going to have to throw away my black boots, which have turned an odd brown color anyway because of Park City's slush. But, hey, ruining your clothes is half the fun of a concert, isn't it?

For a complete rundown of the music scene during the festival, check out Wednesday's Life & Style section.

-- Elyssa Andrus

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Highlights: Hpnotiq liqueur

Bristol, RI
Phoenix

Providence - New Bedford
Met Area

Thursday

W 6,151

JAN 8, 2004



P20904

LUCE PRESS CLIPPINGS

FROM THE WINE CELLAR

The martini — perhaps the greatest cocktail comeback

For older Americans, the martini will forever be linked with the golden age of Hollywood and the cool sophistication of Frank Sinatra and the "Rat Pack." However, thanks to the introduction of flavored spirits, this classic cocktail has been embraced by a whole new generation of consumers, both at home and at trendy bars, clubs and restaurants throughout the nation.

Few younger fans of the libation probably realize that by the 1970s, the traditional gin martini had become nearly obsolete. While James Bond was still requesting his martini "shaken not stirred" in the movies, few people under the age of 50 were drinking them anymore.

In a recent article in "Beverage Retailer," industry writer Robert Plotkin recalled that when he was working as a bartender in 1973, martinis were only served straight up with two olives and

almost never on the rocks. Once the 1980s rolled around, Gimlets and Kamakazes became the popular choice of bar patrons.



**CHRIS
GASBARRO**

In 1986, six new flavored Stolichnaya vodkas arrived in America, which paved the creative path for the martini's rebirth.

Although the actual renaissance of the martini didn't begin until a few years later in the early 1990s, Plotkin said the launch of the new Stolichnaya vodkas in peach, raspberry, strawberry, vanilla, cinnamon and coffee, and the almost simultaneous release of flavored vodkas by Absolut, amounted to one of the most famous product releases in history. "All of a sudden, every chic nightclub had a martini bar and a martini menu," said Plotkin.

All martinis are made of a base spirit, a modifier and a garnish.

"No one was drinking the martini," he stated.

But, just when the martini seemed poised the go the way of the dinosaurs, an innovative Russian import came to its res-

In what can probably be called the greatest cocktail comeback in history, the base spirit has gone from gin to flavored vodkas and rums and silver tequilas, while the modifier can range from the traditional vermouth to products like Chambord and flavored liqueurs. The garnish, too, has changed from that of strictly olives or pearl onions to twists of lemon or lime, sprigs of mint, or even Hersheys kisses and cinnamon red candy hearts.

While flavor is key for today's cocktail consumers, the rebirth of the martini is no less the result of the quantum leap in the ultra-premium spirits category. Because of these "megatrends," bartenders were encouraged to really go wild in the creation of new and unusual martinis. Light rum or silver tequilas are now being used as a base spirit in addition to gin and vodka, so there is a broad acceptance of different spirits under the umbrella term of "martini."

So, from the cranberry juice-and-Triple-Sec-infused "Cosmo" to concoctions that use spirits like the richly flavored Godiva Chocolate Liqueur or the aqua-hued Hpnotiq, the martini possibilities seem endless. Perhaps, it's time for even Agent 007 to loosen up a little.

TRADE Works

STERLING DISTRIBUTING RETAIL DISPLAYS AND PROMOTIONS



Above left: Shooting some stick with Hpnotiq at Straight Shooters in Omaha.

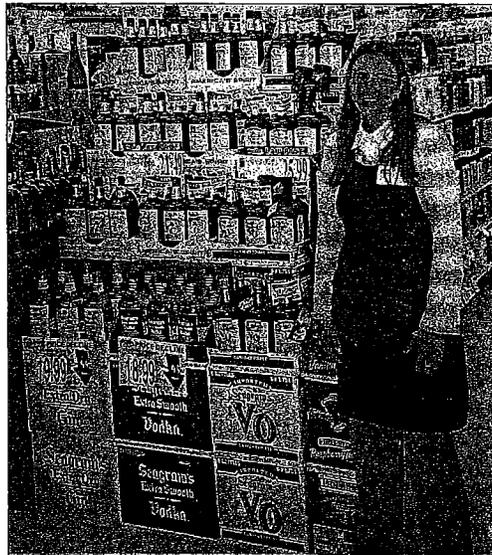


Above center: Hpnotiq party at DJ's Dugout in Omaha.



Above: Hpnotiq night at The Coast in in Omaha.

Below: Captain Morgan bringing people together at The Shark Club in Omaha.



Below: The Captain, the Morganettes and the Boss — Mark — at The Icehouse in Omaha.



Above: Macalena with her Seagram display at Hyvee, 76th and Cass.



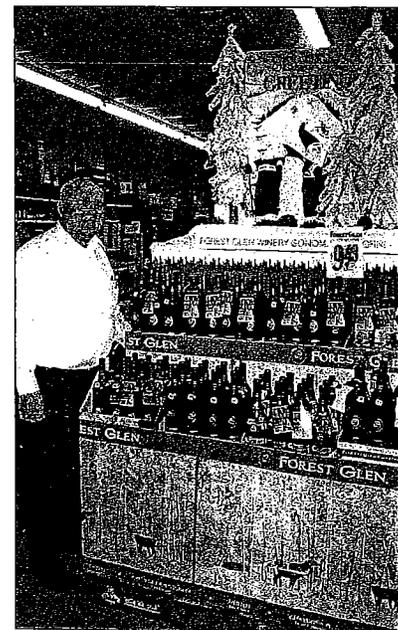
Right: Mike with Christian Brothers Brandy at N Street in Lincoln.



Center right: Aubrey with Baileys at Albertsons Military.



Far right: Forest Glen wines with Jimmy at Cornhusker.

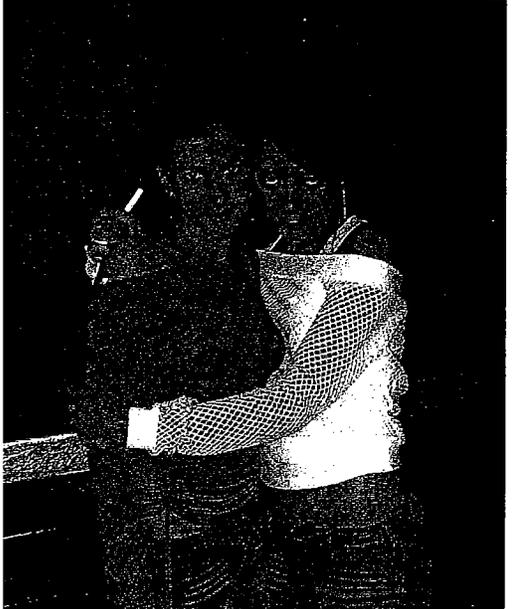
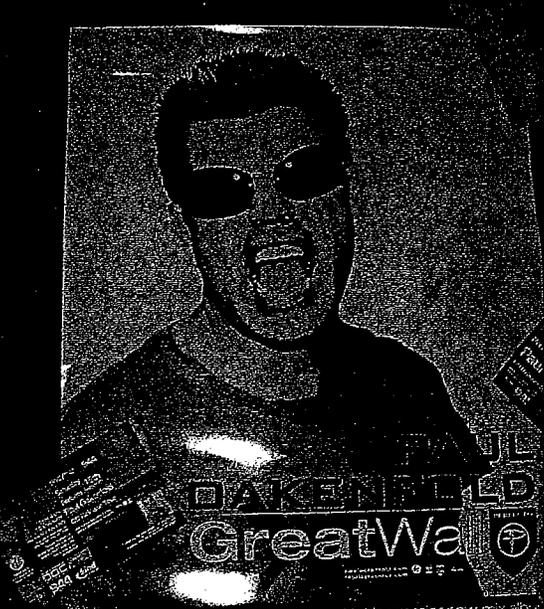
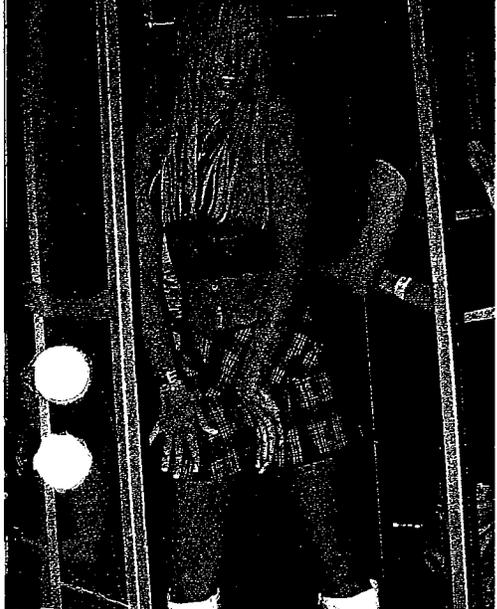
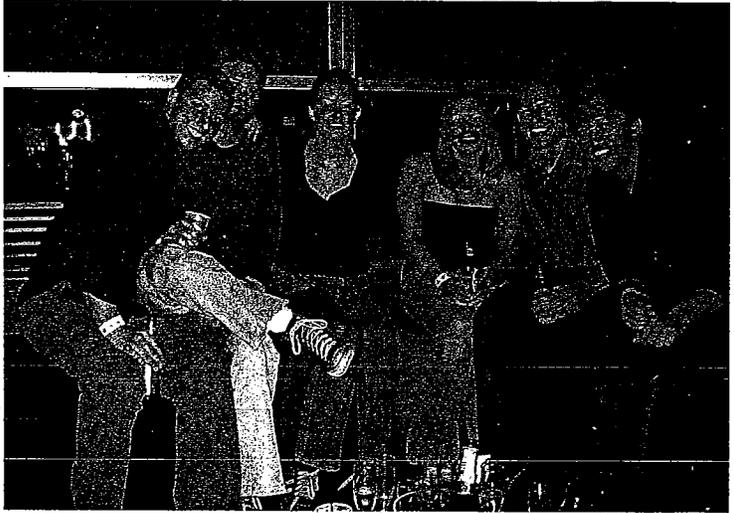




PAUL OAKENFOLD FIRE TEMPE



As the line outside Tempe hot spot, Club Freedom wrapped around the building, lucky party-goers inside got the ultimate dance-party experience. The world's top DJ, Paul Oakenfold spun killer tunes as the crowd danced the night away



LOWDOWN

E-MAIL: LGROVE@EDIT.NYDAILYNEWS.COM

WITH ELISA LIESKY-KARASZ

Star turns at Sundance

PARK CITY, Utah — Thousands of film buffs and hundreds of celebrities — led by That Couple, **Demi Moore** and **Ashton Kutcher**, along with the incorrigible **Paris Hilton** — have descended like ravenous locusts on this

fancy little resort. Plenty of low-budget indie movies are being shown and snapped up by major distributors — because that, ostensibly, is what **Robert Redford's** 20-year-old Sundance Film Festival is all about. That, and skiing in gorgeous weather on perfect, powdery snow.

But as a veteran Sundance attendee told Lowdown yesterday:

"Forget about the snow. Sundance is all about the free swag!"

Translation: Grab by celebs loading up on luxury freebies from the festival's official and unofficial corporate sponsors — everything from chauffeured Mercedes-Benz G Wagons ("Ooooh, silver! That's my favorite color!" Paris squealed)

to h'elec. at the Motorola boutique to rich body creams

at the Kiehl's emporium. There is also no shortage of entertaining behavior by the barbarians at the ski lift. Demi apparently snatching every bit of swag that catches her eye; Paris, Nicole Richie and pal

perched on a nightclub balcony to dump confetti, ice cubes and cigarette ash on the commoners below; a beefy bodyguard type breaking the nose of New York marketing man **Rob Stricker**; **Macy Gray** and posse passing a pungent-smelling, apparently hand-rolled cigarette at the Buddha Lounge after her Blender Sessions performance, and **Christina Applegate** stepping in to serve as an impromptu

ladies'-room attendant at the Motorola Lodge party. Here is Lowdown's exclusive report.



MACY'S PARADE Gray joined Park City pack.



GIVE & TAKE: Ashton Kutcher and Demi Moore kept Park City shopkeepers busy filling their "requests."

For Demi, Ashton: The freebie effect

Days before Demi and Ashton even hit town for Saturday's premiere of Kutcher's movie "The Butterfly Effect," their detailed "requests" had been transmitted to the corporate hospitality center on Main St., the Village at the Lift.

Before long, I'm told, the frantic Village concierge was rushing around town to outfit the couple in free skis, ski boots, apres-ski hoots, goggles, jackets, pants, long underwear and gloves. They were the only celebs who made such challenging requests.

Saturday afternoon, Ashton went snowboarding while Demi got a massage at the Fred Segal Beauty Spa. Next door, the Fred Segal boutique barred all other celebs so that Demi could enjoy splendid isolation as she stocked up on Le Mystere lingerie, including a

bra and a thong; Lee jeans; Silhouette sunglasses; and "a whole bunch of cashmere sweaters from Jones NY" for the three daughters she shares with ex-hubby **Bruce Willis**.

Fans crowded around the boutique clutching cameras and pens and paper waiting for her to emerge. That night at the no-press premiere party, Demi downed can after can of Red Bull.

On Sunday she strolled to the Motorola Lodge, raking in goodies from the Kiehl's room, even cadging a special bath gel on the display-only table. She received some bronzing at Mystic Tan. She spotted a copy of Star magazine — apparently not her favorite reading matter — and snatched it up (maybe so no one else could read it).

"Who could blame her?" asked her publicist, **Stephen Huvane**.

It always have Paris

When she landed Thursday night at the Salt Lake City airport, That Hilton Girl was met by a clutch of autograph seekers. The next day at the Village at the Lift, she was surrounded by a group of pre-teen girls.

"We love you, Paris!" they squealed innocently.

On the other hand, some older women were overheard muttering behind her back. "You're a slut, Hilton!" And several young men shouted, "We love you, Paris!" in a libidinous, hopeful tone.

If Paris heard all this commotion, she didn't let on, and kept her head held high.

Paris and her latest beau, erstwhile boy-band hunk **Nick Carter** — a beefy, pleasant-faced fellow with a dyed-blond mop — seemed stuck together like

bubblegum. At any rate, she seemed very attached to him.

"I'm waiting for my boyfriend," she kept announcing at public events. Or: "Where's my boyfriend? Where's my boyfriend?" Or, more desperately: "Where the f— is my boyfriend?"

Paris and Nick got into a tiff at Sunday's Motorola bash. Lowdown spotted her exchanging some apparently severe words with him. He was staring unhappily away. But 10 minutes later, she was clutching him and they were making out.

The micro-mini-wearing Paris also made the scene with her "Simple Life" pal, **Nicole Richie**. "Every time that Paris and Nicole leave or enter a building they have to have a camera crew," one party organizer confided. "They are obsessed with the camera. They won't go anywhere without it."



HER HUNK: Hilton and Carter

Between Roc & hard place

Sundance isn't all sweetness and light. **Rob Stricker**, 32-year-old owner of Manhattan's Strikeforce Marketing, came fist to nose with the festival's dark side.

I'm told that in the wee hours Saturday, Stricker decided to visit a condominium occupied by three teething young ladies who had been hired to promote **Hip Hop** pronounced "hypnotic" liqueur at the nightly Blender parties. But when he arrived, he found an unexpected guest with the three women — the well-muscled "Roc," a VIP host at the celeb-friendly Palms Casino & Resort in Las Vegas.

The two men — Stricker, a fit 6-footer, Roc a hulking 6-foot-5 — apparently had words. It ended with Stricker suffering a broken nose.

Stricker filed a report with the Park City police and is considering a lawsuit, I hear. A spokeswoman for the casino acknowledged that **Toy Roc** was involved in the incident. "His version of events is different," she told me.

At Sunday's Motorola party, **Christina Applegate** proved that she's committed to public service. Direct from the **Robert Blake** jury pool in Van Nuys, Calif., she took it upon herself to impose order on the chaotic upstairs ladies room, barking at the girls: "One in, one out!" But after 20 minutes, she abandoned her post. "My husband (actor **Jonathan Schaech**) is going to kill me!"

And then she returned to the swirl.

DAILY NEWS
Tuesday, January 20, 2004

Daily News - Queens (NY) Edition
Jan. 20, 2004

Tom & Jerry's is a keeper



RICARDO RAMIREZ BUJEDA/ORLANDO SENTINEL

...y belts one out for the crowd on karaoke night at Tom & Jerry's Lounge

ry's Lounge is wonderfully shadowy, with concentrated bright spots in just the right areas.

The only drawback is price. Cosmopolitans, the bar's most popular drink, cost \$6.50. A cheap pint of beer goes for \$3.50. This isn't a place for cost-cutters.

But it's a great place to take a date and act slick. Like you know this little secret spot that no one else has heard about.

Hard road to travel

I'll be honest. I'm still recovering from New Year's Eve. Thirty-six hours of partying from Miami to Jacksonville to Orlando can do that.

After seeing Phish ring in 2004 with a full marching band playing "Jungle Boogie" (amazing!), I wandered over to South Beach, where some clubs were charging \$50 cover charges at 3:30 in the morning. I mean, I know South Beach is expensive, but that's simply ridiculous.

Luckily, one gracious bouncer opened the rope for free at B.E.D. — a club lined with white beds and tipsy customers who have no problem laying down wads of cash to rent one of the mattresses. I didn't order any beds or drinks, but the groove was good and I ended up closing the spot.

To get right in the car for a six-hour drive up to Jacksonville to watch the Gator Bowl. Normally I would have slept, but the

age-old shotgun rules of staying awake with the driver applied.

Once there, we chugged Bloody Marys, watched Maryland trounce West Virginia and headed back to Orlando for the final leg of the trip — a journey made somewhat perilous by everyone's exhaustion.

It was a great time, save for one downer: (Enter a mea culpa to start the year anew.)

About a week ago, I wrote a story about Phish's New Year's Run in Miami that included a major mix-up about the band member who plays the vacuum cleaner.

The gaffe has not gone unnoticed.

Since the article's publication, legions of Phish fans have pointed out my mistake (and my lack of intelligence) in an avalanche of e-mails. **Jon Fishman** plays the vacuum cleaner; they say, not frontman **Trey Anastasio**.

So here's a genuine offer of penance.

For those still offended, I'll buy some water guns and a bottle of fish sauce to create a reconciliatory firing squad. Just send an e-mail with the subject line "phish firing squad" and I'll add you to the list.

Mark K. Matthews can be reached at all hours. E-mail him at mmatthews@orlandosentinel.com or call 407-420-5164.

SCANNING

● Looks like **Logan's Bistro** on Virginia Drive has become the center of an Orlando mini renaissance. On Tuesday, the café is set to begin a hard-core jazz night for people who compile jazz CDs like other people collect baseball cards. The jazz nights should run every other Tuesday; call 407-898-5688 for details.

● Next door to Logan's, a new coffeehouse and art gallery is set to open by the end of the month. Called **The Manor Gallery**, this house of culture is expected to include work from down-on-their-luck animation artists from Disney. "Due to recent layoffs and turmoil, a lot [of Disney artists] have been doing more work," says owner **Kathy Schoeppner**. But, she said, don't expect a lot of animation.

● **Jan Harrold** is leaving **The Club at Firestone** and, with his retirement, Orlando loses one of its more colorful characters.



HARROLD

During his 11 years running the club, there have been feuds with the city over drugs and spat with **The Parliament House** — Orlando's other prominent gay club — over clients. But he also turned the foam-party spot and hip-hip hangout into one of the area's hottest clubs, once offering to drop thousands of dollars on the dance floor if enough people showed up. A new management team will be taking over operations.

● If the weather holds up on Saturday, drop by **CityWalk** to see skateboard god and super self-promoter **Tony Hawk** perform two shows at the Universal campus. VIP tickets (\$25) and preferred seating spots (\$12) are available, but just showing up for standing room space is free (and smart). The shows are at 1 and 6 that afternoon.



HAWK

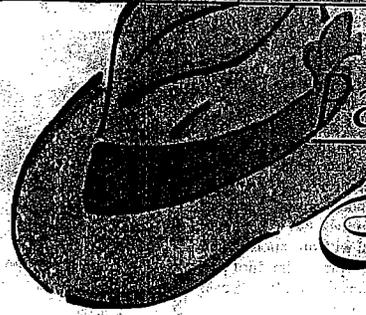
● **Hpnotiq** is spreading. The highly intoxicating blend of vodka, cognac and tropical fruit juices — still a club favorite — is now popping up in Hpnotiq martinis. Tonight, the drink finds a home at an upscale moonlight-and-martini party at the Marriott in the Lake Mary area, put on by the networking group **So Social**. Check www.sosocial.com for information and tickets.

Orlando (FL)
Sentinel

Jan 9, 2004

DataZone

WEEKLY ENTERTAINMENT



Party Pix: Big Pimpin



J.106
by Chiquita Simms

We may not all agree on serious issues such as religion, politics, or parenting; but one thing that we do agree on is that every once in a while we all need to stop off for a few cocktails and shake a tail feather. Whether it's sippin' erotic Hppnng at Joe's Cozy Corner or a sniffer of Henn in the Foundation Room, many of us would not possibly interact otherwise as social classes and cliques of choice wouldn't dare permit otherwise. Party Pix is for the URBAN (one who reside in the inner city, code word for ghetto) and the SUBURBAN (one who as arrived and now

who's gonna be there, what everyone will be drinking and wearing, of course. And if the party is really good, or really bad, we will give you an as how of the event and upcoming issues. To get your event listed in Party Pix, email me at Chiquita@datazone.com or dividend@bol.com.na

PIMPIN' AND PLAYIN' BEHIND SOMEBODY'S GOT TO DO IT
Oct. 30, 2003 - House of Blues, New Orleans - Easy, Big Easy, pimp these days. Even from the media glorifies it. It's everywhere I know, some of you bougie folk, not you of course. It's your friends and co-workers that are speaking of who emerge when young people come out

pimps from the 70's. You remember? Huggie Bear and The Mac? My dad has those movies on DVD even. They were jive-talking players in clown suits seen in the infamous Rocky Brown and Shaquille O'Neal's maintained a group of willing women who sold their bodies as prostitutes for the pimps' unabated gain.

Because this rowdies, some use it as a metaphor and pimping again among the young. Although we all wish, one young and trendy, but we seem to forget our origins, once we became parents, with influences by rap icons of today, such as 50 Cent, Jay-Z, Lil' Nas, and Snoop Dogg, the styles of Big Pimpin' have become a must from the ghetto streets to the executive suites. And of course, the leading ladies of today are teaming the title "pimpette." If you really watch closely, like TLC, Mia, Monica, and even of course J-Lo, have flipped the script and maintained an in-control image from the bedroom to the boardroom.

Relax, bougie! It's hip and cool now and days to be considered a pimp, and it has nothing to do with pimpin' the old. Believe it or not, it's a good thing, another recycled trend. As my 12 year old son DJ would say, "It's Throwback Ma, just with a hip hop twist."

Pimpin' per-

sonalities like Pimpin' Ken, who once bragged on having Pimpin' H** Degree; (PhD) have been featured in many documentaries on the subject, in music videos and recordings to add and poke fun at an industry that is pimpin' our best and brightest talents. House of Blues played host to the 1st Annual Pimp Juice - The Ultimate Players Party HallowEVE 2003. It was a celebration of professional success, extravagant nightlife, and high fashion. The event was hosted by the infamous Pimpin' Ken and included a HOT and STEAMY performance by Luther Campbell and his dancers. Did you know that Uncle Luke has a ladies fashion line? He's got college jersey dresses called Fergo. Look for the hot colors and even two piece sets. All the players dressed out and the girls showed out, need I say more? Although I'd like to, I can't, as this is a family paper. You just had to be there. Crowned by Pimpin' Ken for

their professional success was Baton Rouge, Aaron Brooks, Juvenile, Soulja Slim, fashion copartners, Gary Henderson, promoter, Jeff Williams, Kim Charbonnet, pr guru Nikki Carter, and Kemmit Ruffins just to name a few. Being Pimpin' Ken must be nice as he was seen around town making an appearance in Juvenile's new video and at the VooDoo Fest with 50 Cent, who was crowned PIMP by Pimpin' Ken in 50's video. Pimpin' ain't Easy. But Somebody's Got To Do It.

LAUGHING LOUD WITH LATHAM ENTERTAINMENT

THE CROWN ROYAL COMEDY SOUL TOUR STOPS IN NEW ORLEANS

Nov. 14, 2003 - New Orleans Arena

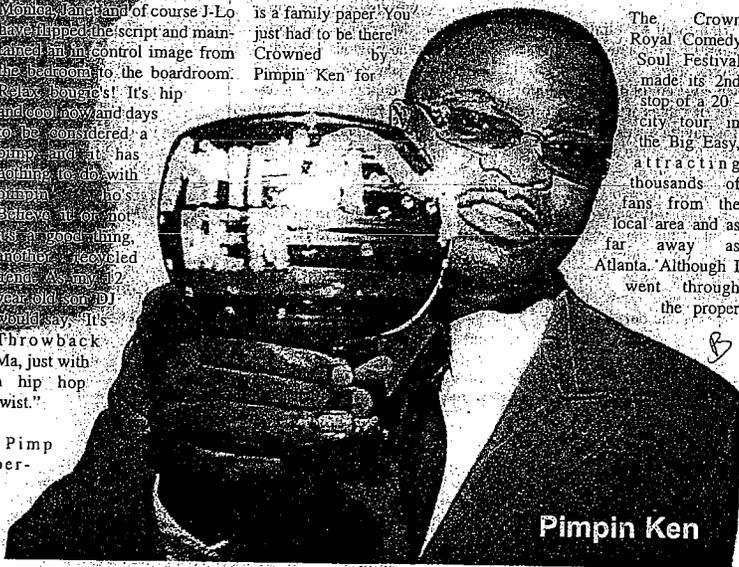
The Crown Royal Comedy Soul Festival made its 2nd stop of a 20-city tour in the Big Easy, attracting thousands of fans from the local area and as far away as Atlanta. Although I went through the proper



Party Pix's Chiquita Simms

resides in suburbia, code word for bougie), who both can appreciate backing that ass' up every now and again. Party Pix is the hottest new feature found ONLY in DATA NEWS WEEKLY that offers entertainment alternatives. Party Pix is the hottest resource to find out where the parties are,

lyrics that glamorize pimpin'. You have got to wonder, after all the struggle, why in the world would one want to associate themselves with a profession that glorifies the lowest form of degradation a man could inflict on a woman? We have all seen the ridiculous stereotypical



Pimpin' Ken

Data Newsweekly (New Orleans, LA)
Dec 6, 2003

channels to get credentials to cover this major event, I was almost unable to bring you a review of the show due to hateration! You know on staff of every event there is always one

Disease and performs as his health permits. It was exciting to watch them perform and actually meet Philip Bailey and Verdie, the more animated and hyper member of the group. Although I

with all his talent and good looks was once addicted to heroin, maintained a lifestyle of and around violent crime and served major prison time and he ain't even 30 yet! But during it all, Slim always expressed both his pain and ambition in his lyrics. Even in the midst of all the drama, when everyone was counting him out and after being held hostage by No Limit, Slim never stopped commanding attention to his talent. I guess that's why they call him Soulja. He's the next BIG thing to emerge from New Orleans streets.

His new cd, Years Later, now

Months After was recently released as Slim signed a national deal with KOCH Records. His first single, "I'll Pay For It," has all the ladies going crazy and remains at the top of the charts and a club favorite. After spending all day at the video shoot, I can assure you to expect nothing less from his second single, "Love Me or Love Me Not," that is already getting major airplay. "Love Me or Love Me Not" has real lyrics on a sexy Latino influenced track. For this single, producer on the project Daniel Castillo concocts a unique sound



Chiquita and comedian Bruce Bruce

person who wants to be in charge and desires to stop even the ChiQ Diva from achieving her mission. My first mind told me to bash the event in the Parly Pix review to teach them a lesson, but the ChiQ DIVA has class and has decided to take the high road and remain the bigger broad. So to the security guy who was hatin on the pretty girl with long legs, and you know who you are Whatever!

The Comedy Soul Tour was an ingenious concept by promoter Walter Latham. This is the kind of event that I crave: a unique blend of comedy and legendary R & B. I could not wait to get inside to check out the party. Host of the BET Comic Views New Orleans, the best Comic View ET history by the way, Mr. Bruce once again held it down and kept the evening rolling smoothly. Bruce is a cool guy that is very focused on his craft and high fashion. Comedians Adele Givens and Earthquake were on the bill also, but because of the drama I am unable to tell you first hand what their performance was like. I did meet Adele, and she was in high gear. Earthquake was a little more super cool and had an entourage of New Orleans Saints in his dressing room. After the show, I did interview a few people and overwhelmingly it was agreed that Rickey Smiley by far stole the show as best comedian. Omega Psi Phi - Stand Up!

When we arrived, the photographer and I, Earth Wind & Fire was getting the party rocking with an explosive performance. The performance by the elements was by far the crowd favorite although Maurice White was missed. White has been diagnosed with Parkinson's

have never met Michael Jackson, after meeting Verdie, I felt as though I had. Maybe it was his hair, make-up and outfit. The grand finale of an already awesome night of entertainment was the highly anticipated dramatics of Ron "Mr. Biggs" Isley and the Isley Brothers. This event was a definite to-do as all the local stars were out and beautiful as ever. Where were you?

THE NEXT BIG THING COMING FROM NEW ORLEANS STREETS SOULJA SLIM SHOOTS HIS FIRST VIDEO AT TIPITINA'S UPTOWN

Nov. 13, 2003 - Tipitina's Uptown

Big Ups to Mr. I'll Pay For It, Soulja Slim formally known as Magnolia Slim! I had the pleasure of covering my first "urban" video shoot and it was quite an experience! I met Soulja Slim at the Pimp Juice event on HallowEVE and found him to be a laid back cutie. He's tall, dark and handsome and has an attractive bad boy type swagger about him. He's confident and humble all at the same time. He wears his hair cut low and his clothes neat to compliment him. He's a real down brother who you can appreciate cause he's been through it. Soulja Slim is a success story from the New Orleans streets who refused to allow his circumstances to predict his destiny. His endurance is admirable and makes me want to cheer him on to success. You Go Boy!

It's no secret that our young black men are raised up in environments where the nigger choice is popular, familiar, often inherited. Growing up in Magnolia Projects, Soulja

Rest in Peace: Soulja Slim



It is unfortunate that the video shoot will forever remain in front of his home. No motive. No suspect. Slim was on his many shows scheduled through Bayou Classic Weekend.

The word spread like fire. Pimpin Ken himself called from rumors circulating among the industry there. Unfortunate answers he wanted. As I walked the streets uptown over bumping Soulja Slim anthems. But what everyone wants? Why? Jealousy? Industry beef? Random act of violence?

Slim leaves behind his beloved mother, younger sister, an Committee who were relying on Slim to take them to the n manager, his super producers Daniel Castillo and Bass He mourning fans that will forever remember our fallen angel

Services have been scheduled for Saturday Dec. 6, 2003 at Washington Avenue. Viewing of the body will be held for funeral will immediately follow. A memorial fund has been donations can be made in the name of James Tapp or So location. Support the legacy! Refuse the bootleg!

beverage aisle

November/December Issue
December 15, 2003 Vol. 12 No. 11

THE HEART & SOUL OF BEVERAGE RETAILING

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the BIRTH OF HIP-POP



music and culture spreads
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THE RIRTH OF HIP-POP

BY KEVIN O'ROURKE

AS THE APPEAL OF HIP-HOP MUSIC AND CULTURE SPREADS, SO DOES ITS INFLUENCE ON BEVERAGE MARKETERS.

The first bottles of Crystal Champagne were made exclusively for Czar Alexander II of Russia in 1876 and it wasn't available to the general public until the Czar and his entire family were executed. Even now, a bottle of Crystal Rose sells for over \$1,200 a bottle, and at least one bottle can be found in the private stock of every major hip-hop artist. If you don't believe me, watch MTV's *Cribs* sometime.

Whether they are guzzling the Crystal or pouring it on the floor to make a

point about their status, hip-hop artists have done more to solidify the status of Crystal as an icon of the good life than Alexander II ever did.

Influencing the public's perception of \$1,200 champagne is just a hint of the power the hip-hop community can have on a brand. Marketers have been hip to the power of the hip-hop world for a couple of years, and it's time retailers began to take note.

Once upon a time retailers sold hip-hop artists CDs. Now they are selling those

artists' DVDs, clothing lines, sneakers, video games, and yes, beverages.

HIP-HOP IS EVERYWHERE

On any given week, *Billboard's* Hot-Rap Tracks chart is filled with songs that serve as lyrical consumer reports for what are, or will be, the trendiest fashion, automobile, and even beverage brands.

"We are the best brand-building com-

munity in the world," says Russell Simmons, often called the "godfather of hip-hop." He founded a multi-million-dollar record company, Def Jam Records, and jump-started the careers of some of the recording industry's biggest artists. Simmons recently introduced DefCon3—what he calls "energy soda"—and Dallas-based convenience store giant 7-Eleven signed up as a distribution partner launching the product at all 5,000 of its US chain stores.

"The hip-hop community is important for the same reason that any consumer dynamic that is growing is important," explains Debbie Wildrick, 7-Eleven's category manager for non-carbonated beverages. "Another growing sector is the Hispanic consumer base. It is becoming one of the biggest growth segments. Any time there is some segment of society that is showing more growth and a move toward the consumer mainstream it is important to us.

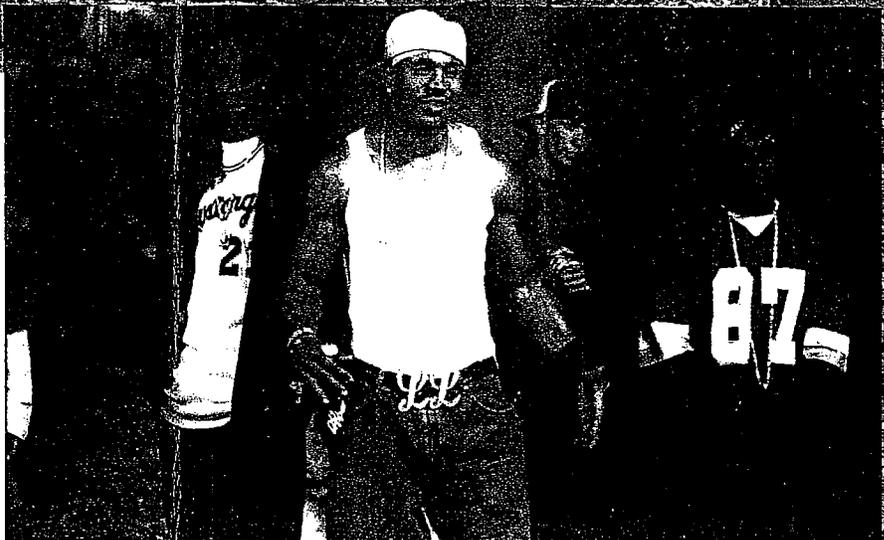
"This consumer has been coming into our stores," continues Wildrick. "Convenience probably has a heavier base of this consumer than other outlets. Retailers have got to continue to try to understand what the taste profiles are and stock what people are looking for."

For 7-Eleven, DefCon3 is a unique product that offers added value by appealing, in name, taste and package perspective, to the hip-hop consumer.

"Russell Simmons is what really attracted us to DefCon3," admits Wildrick. "DefCon3 came to me it came with Russell Simmons. He has a strong voice in the hip-hop community and has become mainstream."

Simmons is sure that DefCon3 will be accepted by the public. "If the we [hip-hop community] decide that Tommy Hilfiger is hot, he gets hot," says Simmons. "If we decide to walk away from Tommy, he gets ice cold."

"There hasn't been any beverage that has really developed an organic, true, emotional relationship with the hip-hop community," says Jennifer Louie, marketing vice president at Russell Simmons Beverage Co. To separate his product from the competition, Simmons uses a best-of-both-worlds approach. He devel-



L.L. COOL J PAID HOMAGE TO HIP-HOP PIONEERS RUN-DMC IN A DR PEPPER COMMERCIAL.

oped the concept of the "smart" energy soda, a combination of energy drink and soda.

Like many of Simmons' commercial endeavors, DefCon3 aims to give back to those who purchase it.

"I made a commitment the first \$5 million we earn will be put back into the community," says the hip-hop impresario, "and then 30 percent of our profits from then on forever. It makes it important and relevant that we have a product that helps support the community."

STRAIGHT PIMPIN'

If there is one group that understands the power of hip-hop to sell, it is the artists themselves. And these savvy marketers have turned their considerable entrepreneurial skills to the beverage aisle. Along with Simmons, rapper/actor Ice-T has introduced Liquid Ice, rapper Nelly has introduced Pimp Juice, and Jay-Z and his business partner/producer Dame Dash have purchased the distribution rights to Armadale Vodka.

Ice-T launched Liquid Ice with his partner, Multimedia Inc., in August. Featuring two flavors—Electric Blue and Frosted Chrome—Liquid Ice is available in 8.3-ounce cans. "I believe I can make anything better than anyone," says Ice-T.

Ice-T's follow-up to the release of Liquid Ice is Royal Ice malt liquor.

Meanwhile Nelly's Pimp Juice has run into some controversy, thanks to its less-than-wholesome name, which comes from one of the rapper's songs. According to MTV News, many urban groups,

including Project Islamic Hope, the National Alliance for Positive Action and the National Black Anti-Defamation League, have united to keep Pimp Juice off store shelves in Los Angeles.

Basically, "Pimp Juice is anything that attracts the opposite sex," says Nelly, a St. Louis native. "It could be money, fame, or straight intellect."

While energy drinks are often mixed with vodka, Jay-Z and fellow Roc-A-Fella Record Co. execs Dash and Kareem "Biggs" Burke, have purchased a vodka company, Armadale.

According to a recent report on *BET.com*, Roc-A-Fella, better known for its music label and fashion line, decided to venture into the beverage business because, "in songs, they often mentioned other brands, but were not getting compensation."

"You always hear about us talking about the [vodka] in the song so, like with the clothing and the music industry, we were like, 'Why are we still making money for everyone else?' We just acquired the company and said, 'Let's do it ourselves,'" said Burke.

THE TAKEOVER

Jay-Z has done more than just rap about the brands he loves—he has gotten paid by them. Heineken acknowledged the power of hip-hop when it turned to Brooklyn-born rapper to star in a commercial last year.

"Hip-hop is pop culture today," explains Scott Hunter Smith, marketing manager for White Plains, NY-based Heineken USA. "It's

a matter of relevance. Seventy percent of hip-hop music is bought by white Americans. It's the Beatles music of today, so to speak. It's what's hot, what's relevant. This is what kids are listening to—it's a lifestyle more than just music. Hip-hop is the dress, the clothes, the fashion and so forth."

Of course, it's one thing for rappers to extol the virtues of their favorite brands in their music, but another thing entirely for established brands to enlist the help of artists to pitch their brands. Hip-hop is a cultural phenomenon that came from the streets—and we're not talking Wall Street here.

"It is true that some of the producers and performers come from struggle and poverty," says Simmons. "They are purveyors of the coolest part of American culture, as were those that performed blues, jazz and rock 'n' roll."

Often, artists must struggle just to show that they haven't forgotten where they've come from. They must maintain their "street credibility." But street credibility can be a double-edged sword.

cial unless he felt it's right."

One example of pushing the street envelope is the well-publicized split between Pepsi and Def Jam Records recording artist Ludacris. Pepsi took flack from parent groups that were offended by some of Ludacris' lyrics. As a result, Pepsi met with a number of members of the hip-hop community, and according to Pepsi spokesperson Nicole Bradley, agreed toward a common goal.

Together with members of the hip-hop community Pepsi formed the Pepsi-Cola/Hip-Hop Summit Partnership. "The goal of the organization is to create a community-based marketing and philanthropy initiative for the benefit of urban youth. We hope to encourage, educate and motivate young people to express themselves through visual and performing arts, including hip-hop," says Bradley.

Heineken involved Jay-Z in the making of *The Takeover* commercial early on. "He told us that if the commercial is not right, the deal is off," explains Hunter Smith. "It's about creating the right image with the right brand because it says something about him as well. It has to be credible. Consumers can smell a rat when it's a rat. Consumers see truth when it's truth. Jay-Z and Heineken make sense."

Heineken isn't the only major beverage company to look to hip-hop artists to help move a few extra cases. Pepsi signed Beyonce Knowles to appear in television spots, Coca-Cola looked to Missy Elliot when it introduced Vanilla Coke, and Coors Light has a commercial featuring Dr. Dre.

Also, this summer, the Silver Bullet celebrated its silver anniversary with a tribute to hip-hop. Coors Light hit the shelves with one-of-a-kind collectors' cans and title sponsorship of Nelly's summer tour.

"Many of today's artists have been influenced by the hip-hop movement, which has never been more popular than



◀ JAY-Z'S TAKEOVER OF ARMADALE VODKA TURNED HEADS.

it is now," notes Tom Dixon, assistant brand manager for Coors Light. "Coors Light not only wants to recognize hip-hop's widespread popularity, but also aims to celebrate the freedom of expression that it stands for—and has stood for—during the past 25 years."

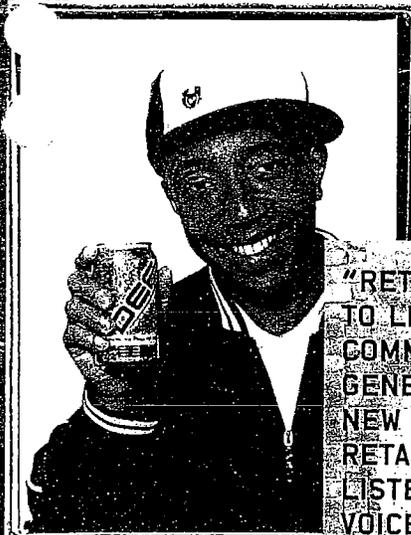
Dr Pepper has looked to musical artists from different genres to tell their story of uniqueness in a cola-driven world. The whole point of Dr Pepper's ad campaign, which began 2002, is uniqueness. The tagline is "Be You" and the spots talk about originality and being an individual.

"We believe that hip-hop has entered the mainstream of music," says John Clark, chief advertising officer with Dr Pepper/Seven Up. "It is much more broadly based, and it has a particular skew towards the younger demographic and that is prime soft drink territory. However, as a subset of that, it is highly populated with African-Americans, who represent an important and growing segment of consumer products in general."

According to Clark, Dr Pepper tries to find artists that are originals, i.e., those who have accomplished something a little different, to set them apart from others in their genre. For the hip-hop community, DPSU enlisted two major names in RUN-DMC and LL Cool J.

"In that commercial, we look at RUN-

Continued on Page 28



"RETAILERS HAVE TO LISTEN TO THE COMMUNITY. NEW GENERATIONS HAVE NEW VOICES AND RETAILERS HAVE TO LISTEN TO THOSE VOICES."

—RUSSELL SIMMONS

"You have to be careful of which artist you associate yourself with, because gaining street credibility can hurt you," cautions Hunter Smith. "But it is important for the artist, because he doesn't want to be seen as selling out. Jay-Z is probably one of the most credible artists and businessmen in hip hop culture today. He will only endorse certain products that he feels are right; he won't do a commer-



RAW DAWG COURTS ALSO URBAN CONSUMERS.

Continued from Page 24

DMC as one of the pioneers of hip-hop music," explains Clark. "They are really the focal point of celebration. We brought in LL Cool J, as a more contemporary artist to pay tribute to RUN-DMC as originals in their field of music.

"The structure of our commercial is more than a rap artist singing a jingle. We hope that each of the commercial executions we put together will have broad appeal. That is, we hope it will appeal to the entire demographic."

Smaller beverage companies are also looking to hip-hop artists for support. James Robinson, co-CEO of Pacoima, CA-based Hip Hop Beverage Corp., maker of Pit Bull energy drink, is close to signing rapper DMX as a spokesman.

"Hip-hop is all about the truth and the social conscious of the generation, and DMX is the pit bull of hip-hop," says Robinson.

NO SELL-OUT

Marketers have become adept at capitalizing on the exposure their products get via usage by high-visibility members of the hip-hop community. Some have implemented marketing executions to strengthen the connection with their consumers. Allied Domecq successfully refurbished the staid image of Courvoisier with a campaign that included ads in urban magazines like *Essence* and *Vibe*.

According to S. Madison Bedard, brand manager for Courvoisier, "Courvoisier is successful, in large part, because we have been embraced by hip-hop culture. About four years ago, we developed a strategy based on the proposition that hip-hop

influences—and is influenced by—fashion trends. So what we did was position Courvoisier as a fashion accessory."

Allied Domecq also got hooked up with a free "phat" marketing coup after rapper Busta Rhymes released his song *Pass the Courvoisier* in tribute to the cognac. Allied Domecq insists that Rhymes isn't on the payroll, but admits the song has certainly helped Courvoisier gain momentum throughout hip-hop nation.

"Busta Rhymes embraced us because we established that credibility through our strategy," says Bedard. "That the product is a relevant part of his lifestyle—it is not different from the way other artists have embraced other brands. It's about whether it's credible, and whether it's relevant. And whether it's done in a way that doesn't patronize the community."

Other new brands that are courting urban consumers include Raw Dawg energy drink, which contains horny goat weed, as well as liquors such as ENVY, a sophisticated liqueur that combines cognac and vodka with passionfruit and guava. And just try watching BET without hearing a shout out to HpnotiQ Liqueur, another blend of French vodka, cognac and tropical fruit juices.

TRANSCENDING ETHNICITY

OK, so hip-hop is here to stay and it is spreading like wildfire, but how can retailers be ready when hip-hop nation gets thirsty and goes shopping?

"The whole hip-hop craze is so new to most of us in retail," says 7-Eleven's Wildrick, "and we can learn more from the consumer who is using these products. As a retailer, I would like to do some focus groups to better understand this group of consumers specifically, because we don't know them as well as we should. We know that the consumer demographic is young, so hip-hop is going to cross over different taste profiles, and that younger demographic likes new, innovative, and sweeter beverages."

"Retailers must understand that hip-hop is not black, not Hispanic; often it is white," explains Heineken's Hunter Smith.



ICE-T'S PIMPS LIQUID ICE AND ROYAL ICE MALT LIQUOR.

"Embrace the culture. First, marketers must create the right merchandising and POS so that retailers can make them inclusive, rather than as a separate section. Then, retailers must display those products which will appeal to the hip-hop community in a way that consumers will know that this is a store that speaks to them."

Hip Hop Beverage Corp.'s Robinson suggests that retailers wake up and smell the coffee. "They must attract new younger consumer into their stores," he explains. "Kmart's whole new apparel line was developed to attract the urban hip-hop consumer, because they understand that they need that new consumer.

"Retailers must understand what products will attract the hip hop audience to their stores, because the hip hop audience will spend money."

"Hip-hop consumers are going to respond to a person who they've actually seen drinking that product," offers Wildrick. "One of the things that attracted me to DefCon3 was their ability to get the product into the hands of those urban tastemakers so that consumers would see them using it."

Simmons compares today's hip-hop artists to Shakespeare.

"Just as it was with Shakespeare and the poets and playwrights before him, today's artists are the voice of the people," says Simmons. "He spoke to the people, and the people spoke through him. Young people don't want to be part of the mainstream. An alternative voice often rises from struggle and that voice is hip-hop.

"Retailers have to listen to the community. New generations have new voices and retailers have to listen to those voices."

SOURCE: Olympian (WA)

DATE: 01-01-2004

ACCOUNT: J.106

HEADLINE: Fab drinks rock your party right

Source Website: <http://www.theolympian.com/home/news/20031231/living/3511.shtml>

Viking Lounge bartender Danielle Leuenger mixes the Zebra Killer, one of many cool drinks available to start off your New Year's Eve party.

Steve Bloom/The Olympian

The Zebra Killer features two rums, along with pineapple and cranberry.

MOLLY GILMORE-BALDWIN FOR THE OLYMPIAN

ZEBRA KILLER

Ice

1 ounce Captain Morgan spiced *rum*

1 ounce Parrot Bay coconut-flavored *rum*

Pineapple juice

Cranberry juice

1 tablespoon 151-proof *rum*

Orange or lemon slices and cherries for garnish

Fill a tall glass with ice and pour in spiced *rum* and coconut- flavored *rum*. Then fill almost all the way with equal parts pineapple juice and cranberry juice.

Gently pour on 151-proof *rum* so it floats atop the drink. Garnish with a lemon or orange slice and cherries for a festive touch.

Source: Dick Megiveron, co-owner, Viking Lounge

MOJITO

2 teaspoons sugar

Mint

Soda water

1 lime

2-3 ounces light *rum*

Ice

Place sugar, a large pinch (small handful) of mint and a splash of soda water in a pint glass. Use a spoon to crush mint and dissolve sugar until mixture smells of spearmint gum. Squeeze both halves of lime into glass, leaving one hull in mixture. Add *rum*, stir and fill with ice. Top with soda water and garnish with mint sprig.

Source: hotwired.wired.com/cocktail

When pondering beverages for New Year's Eve, most people think champagne. And if you're hosting a party tonight, you'll need some for the midnight toast.

But as South Sound bartenders attest, most people aren't drinking champagne all night long.

"At all the bars that I've worked at, we've offered a champagne toast at midnight but haven't really served champagne all night," said Jennifer Hukee, 33, a bartender and manager at The Brotherhood Lounge in downtown Olympia. "It's not the best drink to be drinking all night long."

Indeed, overconsumption of champagne is known to induce particularly bad hangovers because bubbles in the drink increase the body's absorption of alcohol.

So which libations are you going to pour? Beer, wine and the punch you learned how to make in college are all very well, but it's even better to serve your friends the kinds of beverages they might sip when they go out on the town.

The classics

And that's not all that hard to do. Many of the most popular beverages right now are classics, anyway.

"I've probably had more cosmopolitan orders in the last couple of weeks -- and martinis," said Hukee, of Olympia. "*Gin* and tonic also seems to be popular around the holiday season."

At The Mark in downtown Olympia, the clean cosmopolitan is very popular, said bartender Nathan Seymour, 22, of Olympia. "It has fewer ingredients, and it's made with cranberry *vodka*," he said. "It's really stripped-down and simple."

Another simple drink from The Mark is the *vodka* citrus -- there are just two ingredients. Personalize it with a creative or humorous garnish, suggested owner and chef Lisa Owen.

But the mojito reigns supreme. "That's probably one of our biggest sellers, even in the winter," Owen said. "It's a summer-type drink with crushed mint and fresh lime."

Tonight, she plans to revive the classic champagne cocktail. "You just put a sugar cube in a martini glass and pour champagne over it," she said. "I just saw it in 'An Affair to Remember.'"

"We're going to do it for New Year's and maybe keep it on the menu because it's just so cute."

Into the blue

Looking for something totally untraditional? More than one bar is serving blue beverages -- a trend that's making its way to South Sound.

At the Viking Lounge, Hpnotiq is a new offering. This pale-blue liqueur is made from *vodka*, cognac and tropical fruit juices.

"They really sell a lot of it in some fancy clubs in Seattle," said Dick Megiveron, 57, co-owner of the Viking Lounge in Lacey. "They're a few years ahead of Lacey."

Owen also serves something blue at The Mark. "Our Vegas has a liqueur that's blue in it, and that's really exciting to people," she said.

A fun idea for a party would be creating your own colorful concoction, she suggested.

Wild things

Of course, those nontraditional drinks need colorful names, too. Take the Zebra Killer, a potent concoction made with three kinds of *rum*.

"They drink a lot of those around here," said Megiveron of Olympia.

For a party, he suggested garnishing with orange or lemon slices and cherries but added that regular imbibers don't bother.

"Most of the people that drink 'em on a regular basis skip the fruit part," he said. "How much of that fruit can you eat?"

Hot stuff

If cold concoctions sound too chilling for a winter's night, don't worry. Unlike cocktail dresses, party drinks can easily be both warm and festive.

Brotherhood's coffee nudge, made with Kahlua liqueur and *brandy*, is popular in cold weather.

Hot in a different way is the spicy Goldschlager, a cinnamon schnapps with flakes of 24-karat gold.

"It's full of these gold flakes," Megiveron said. "You turn the bottle upside down and they float around like in one of those snow-scene things."

COSMOPOLITAN

2 ounces *vodka*

1/2 ounce Cointreau orange liqueur

1/2 ounce freshly squeezed lime juice

Simple syrup*

Cranberry juice

Ice

Lime wedge

Combine *vodka*, orange liqueur and lime juice with a splash of simple syrup and a splash of cranberry juice. Shake with ice and then strain the mixture into a martini glass.

Garnish with lime wedge.

*To make simple syrup, combine equal parts sugar and warm water and stir to dissolve sugar crystals.

Source: Jennifer Hukee, bartender/manager, The Brotherhood Lounge

VODKA CITRUS

1 ounce premium *vodka*

3 ounces freshly squeezed citrus juice

Ice

Shake *vodka* and juice with ice until mixture is cold and then strain into a chilled martini glass.

Source: Lisa Owen, owner/chef, The Mark

CHAMPAGNE COCKTAIL

Sugar cube

Champagne

Place sugar cube into a martini glass, then fill with champagne.

Variations: Skip sugar and add a careful splash of fresh juice or raspberry liqueur to the champagne.

Source: Lisa Owen

COFFEE NUDGE

1 ounce *brandy*

1 ounce Kahlua coffee liqueur

1/2 ounce creme de cacao

Freshly brewed coffee

Whipped cream (optional)

Pour *brandy*, coffee liqueur and creme de cacao into an Irish coffee glass or mug and fill with coffee. Top with whipped cream.

Source: Jennifer Hukee

INCREDIBLE HULK

2 ounces *Hpnotiq liqueur**

2 ounces cognac

Ice

Layer liqueur and cognac over ice. Stir to combine, turning the mixture green.

*Hpnotiq is a pale blue mixture of *vodka*, cognac and tropical fruit juices.

Source: Dick Megiveron

(c)2003 The Olympian Return to Living section

Highlights: rum, Gin, vodka, brandy, VODKA, Hpnotiq liqueur

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PRESS CLIPPINGS

YOU MADE THE CALL

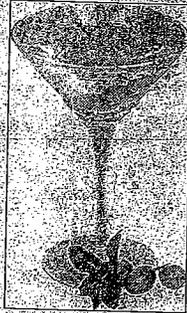


WE ASKED OUR ONLINE readers to choose who had the best answer to this week's question about life in metro Atlanta.

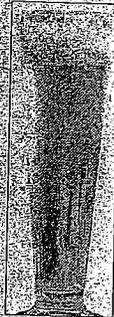
Weary though you might be after all the seasonal partying, which of these kinds of drinks do you like the best?



1. Something new and pretty, like Hpnotiq.



2. A classic: martini, or Scotch and water, or



3. Beer, beer and more beer.

WHO'S RIGHT? Turn to **Page 37** to see your choice.

AND MORE BEER, with 38 percent of the vote as of Tuesday morning. Cheers!

Citrus Bliss

The Beau Rivage second annual signature drink contest yielded this winner from bartender Alisha Slay.

1 oz. Grey Goose L'Orange
1 oz. Cointreau
Juice of half of a lime,
freshly squeezed
1 oz. fresh squeezed Orange Juice
Splash of Champagne
Orange spiral

In a shaker, combine all ingredients with ice except the champagne. Shake 30-60 seconds. Strain into a chilled Martini glass and add splash champagne. Garnish with orange spiral.

Sienna

Julie Reiner, barstar and co-owner of NYC's Flatiron Lounge, offers the following recipes as part of her "Italian Flight."

2 oz. Absolut Mandrin
1 oz. peach purée
1/2 oz. simple syrup
Splash prosecco
or champagne
Shake first three ingredients over ice and strain into a Martini glass. Top with sparkling wine and garnish with orange slice.

Limonata

2 oz. Absolut Citron
1/2 oz. Limoncé Lemoncello
1 oz. fresh lemon juice
3/4 oz. simple syrup
Shake all ingredients over ice and strain into a Martini glass. Garnish with a lemon peel.

StarBanger

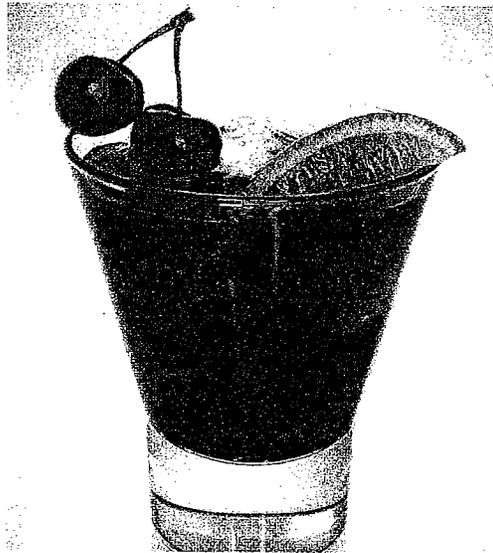
From Stavros Hatzikostas, The Parthenon, Branford, CT.

1/2 oz. Absolut
1/2 oz. Stoli Razberi
1/4 oz. Goldschlager
1/4 oz. cranberry juice
splash grenadine
Shake all over ice and serve as shot.

Queen Nefertiti

We don't know who submitted this recipe from the Luxor Hotel in Las Vegas; perhaps it was the Queen herself.

1 1/2 oz. Absolut Kurant
1 oz. Tuaca
3 oz. fresh sour mix
1/4 oz. grenadine
Pour all over ice in a shaker cup, shake and strain into a 12 oz. double Old Fashioned glass over ice. Garnish with lemon wedge and cherry.



Mulberry Pop

One from our friend Bill Davis, Aqua Bar at the Gibraltar, Lancaster, PA.

3/4 oz. Absolut Mandrin
1/2 oz. Vox Raspberry
1/4 oz. amaretto
splash Maraschino cherry juice
splash 7-Up
splash sour mix.
Build drink in a tall glass filled with ice. Stir and serve garnished with cherries and lime round.

Oregon Chai Goldfinger

Assistant gm Shannon Jones created the following, which has become a best-selling hot drink at the W Hotel, Seattle.

2 oz. Stoli Vanil

splash Goldschlager
splash cream
5 oz. Oregon Chai liquid concentrate
Steam together, top with whipped cream and dust with gold crystals,

Mionetto Passion

Dale DeGross whipped up a few cocktails for Mionetto prosecco; here's one.

1/2 oz. Hpnotiq
1/2 oz. vodka
1 oz. fresh orange juice
Mionetto IL Prosecco
Chill the first three ingredients with ice and strain into a chilled Martini glass. Top with cold Mionetto IL Prosecco. Garnish with a flaming orange peel. (To flame, hold peel three inches above glass with rind facing into the drink. In the other hand, hold a lit match between peel and drink. Sharply squeeze peel, spraying orange oil through lit match onto surface of drink. Drop peel into drink.)

Basilica

Ocean Spray White Cranberry Juice Drink is making a splash at bars. Here are two recipes from the company.

1 1/2 oz. vodka
1/2 oz. Chartreuse
1/2 oz. lime juice
4 oz. Ocean Spray
White Cranberry
Shake all ingredients over ice. Strain into chilled cocktail glass, garnish with basil sprig.

Mary Anne and Ginger

2 oz. spiced rum
4 oz. Ocean Spray
White Cranberry
4 oz. ginger beer
Combine in order in a tall ice-filled glass; garnish with candied ginger.

Cheers welcomes original drink ideas. Please send the recipe to:

Cheers, Drinks Department,
17 High St. 2nd Floor
Norwalk, CT 06851

Ames Affidavit

Exhibit 5

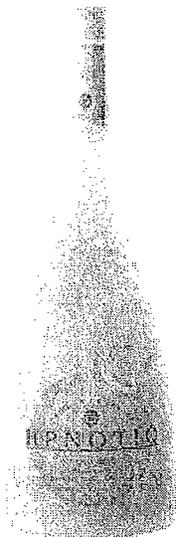
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APR 1, 2004



Tech News [04-01-2004] [more news](#)

*HPNOTIQ Liqueur & INgrooves Join Forces To Serve-Up
The Best In Digital Music And Lifestyle*



March 2004 (Newstream) -- Heaven Hill Distilleries, producers of HPNOTIQ Liqueur, on March 31 announced an innovative music marketing partnership with INgrooves, a premier digital music label with a vast catalogue of Dance & Electronic content. The partnership aims to establish the HPNOTIQ brand with the trend-setting digital music culture.

Under the arrangement, the hottest brand in the distilled spirits industry and most innovative digital music provider will deliver digital music from featured INgrooves artists to

Mi2N - Music Industry News Network

HPNOTIQ consumers via a customized music downloading interface on www.HPNOTIQ.com and at national and co-sponsored major Dance & Electronic music events.

"INgrooves artists and musicians are masters of inspiring emotion through music," said David Salmon, HPNOTIQ brand director of sales. "The HPNOTIQ/INgrooves partnership captures the five senses -- sight, sound, taste, touch and smell -- and is a great match for the brand's fun and approachable lifestyle."

"The HPNOTIQ and INgrooves partnership provides our collective audience with an interactive experience by fully integrating digital music and lifestyle," said Robb McDaniels, chairman & CEO of INgrooves. "We look forward to delivering the best in music and entertainment during 2004."

The HPNOTIQ/INgrooves partnership premiered at the Winter Music Conference in Miami from March 6-10. Consumers will be offered the opportunity to receive a complimentary HPNOTIQ/INgrooves music download in major nightclub venues throughout the nation during 2004.

SOURCE: CBS Marketwatch (NY)

DATE: 03-31-2004

ACCOUNT: J.106

HEADLINE: Kicked-Off Partnership

Source Website: <http://cbs.marketwatch.com/news/newsfinder/newsArticles.asp?guid=%7BD81FAB8B%2DFBF6%2D4A2E%2D829C%2DB647F540BA92%7D&siteID=mktw&scid=2&doctype=2007&property=&value=&categories=&>

BARDSTOWN, Ky., Mar 31, 2004 (BUSINESS WIRE) -- *Heaven Hill Distilleries*, producers of *HPNOTIQ Liqueur*, today announced an innovative music marketing partnership with INgrooves, a premier digital music label with a vast catalogue of Dance & Electronic content. The partnership aims to establish the HPNOTIQ brand with the trend-setting digital music culture.

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About *Heaven Hill*

Heaven Hill Distilleries, Inc., founded in 1935 and based out of Bardstown, Kentucky is the nation's largest, independent, family-owned producer and marketer of distilled spirits. The company has the second largest holding of Kentucky *whiskey* in the world aging in its facilities. Among *Heaven Hill's* diversified portfolio are *HPNOTIQ Liqueur*, *Whalers Rum*, *Christian Brothers Brandy*, and *Evan Williams Kentucky Straight Bourbon Whiskey*. For more information about Heaven Hill products and *HPNOTIQ Liqueur*, visit www.heaven-hill.com and www.hpnotiq.com

About INgrooves

Privately held INgrooves is a leading digital music content owner and marketer. Central to INgrooves' successful operations is the marketing and promotion of its artists through its INtegrated Digital Music (TM) marketing campaigns, TV and film licensing, streaming radio programming and other high impression media. For more information about INgrooves, visit www.ingrooves.com

MULTimedia AVAILABLE: <http://www.businesswire.com/cgi-bin/mmg.cgi?eid=4605042>

HPNOTIQ Mark Gundersen, 202-270-3540 mgundersen@hpnotiq.com Customize your Business Wire news & multimedia to match your needs. Get breaking news from companies and organizations worldwide. Logon for FREE today at www.BusinessWire.com.

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Highlights: HPNOTIQ Liqueur, Heaven Hill Distilleries, Heaven Hill, Heaven Hill Distilleries, whiskey, HPNOTIQ Liqueur, Whalers, Rum, Christian Brothers, Brandy, Evan Williams, Kentucky Straight Bourbon Whiskey, Heaven Hill, heaven-hill

SOURCE: CNNMoney (NY,NY)

DATE: 04-20-2004

ACCOUNT: J.106

HEADLINE: HPNOTIQ Liqueur & INgrooves Join Forces to Serve-Up
the Best in Digital Music and Lifestyle; Winter Music
Conference in Miami Kicked-Off Partnership

Source Website: http://cnniw.yellowbrix.com/pages/cnniw/Story.nsp?story_id=50023006&ID=cnniw&scategory=Entertainment%3AMusic&

Heaven Hill Distilleries, producers of *HPNOTIQ Liqueur*, today announced an innovative music marketing partnership with INgrooves, a premier digital music label with a vast catalogue of Dance & Electronic content. The partnership aims to establish the HPNOTIQ brand with the trend-setting digital music culture. ¶ Under the arrangement, the hottest brand in the distilled spirits industry and most innovative digital music provider will deliver digital music from featured INgrooves artists to HPNOTIQ consumers via a customized music downloading interface on www.HPNOTIQ.com and at national and co-sponsored major Dance & Electronic music events. ¶ "INgrooves artists and musicians are masters of inspiring emotion through music," said David Salmon, HPNOTIQ Brand Director of Sales. "The HPNOTIQ/INgrooves partnership captures the five senses - sight, sound, taste, touch and smell - and is a great match for the brand's fun and approachable lifestyle." ¶ "The HPNOTIQ and INgrooves partnership provides our collective audience with an interactive experience by fully integrating digital music and lifestyle." said Robb McDaniels, Chairman & CEO of INgrooves. "We look forward to delivering the best in music and entertainment during 2004." ¶ The HPNOTIQ/INgrooves partnership premiered at the Winter Music Conference in Miami from March 6-10. Consumers will be offered the opportunity to receive a complimentary HPNOTIQ/INgrooves music download in major nightclub venues throughout the nation during 2004.

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Ames Affidavit

Exhibit 6



GUER

GUERRILLA DRINKS

Spirits marketers are turning to less conventional techniques to gain customer awareness • by Michelle Paolillo

At a typical happy hour gathering, you are pleasantly surprised that a specialty Martini made with a vodka brand you've never heard of is on the house. Or perhaps you enter a bar on a Friday night and find a number of models wearing the logo of a new flavored rum and handing out samples of the spirit. Or while checking out the newest club in your city's hottest area, you notice a couple has ordered a bottle of a spirit that you do not recognize. Caught looking, you are invited to sample the new quaff. Or you just can't understand how that bus wrapped in the logo of your new favorite spirit is everywhere. • While everyone has seen it and some consumers are starting to expect it, this form of marketing is still considered guerrilla. That's right guerrilla, as in guerrilla warfare, only friendlier—Guerrilla Marketing.



LEFT: Diageo North America's Cuervo Nation campaign included Major League Baseball player Aaron Boone and a \$1 million bid to put a Cuervo Nation sign next to the Hollywood sign in Los Angeles. ABOVE: Allied Domecq Spirits North America's non-traditional marketing has Fonzworth Bentley touring as Courvoisier's "Arbiter of Good Taste."

ple display posters of the ads in their homes and offices for all their friends to see," he says. "And they are consistent."

Absolut Spirits Co. Inc. has recently taken on some new guerrilla tactics with the launch of its new superpremium Level Vodka. The company sponsored various events and award programs. "We were the exclusive vodka at the Oscar's party at SoHo House [in Manhattan], among others," says Lorne Fisher, the company's director of public relations and events. "The idea was to get the brand in front of people without them being exposed to any kind of promotion. Seeing it at an exclusive party would drive and build the image of the brand."

In addition, Fisher notes that the company uses guerrilla-like marketing for other brands, including Plymouth Gin. For example, the company runs promotions daring bar customers to sample the gin in their drinks of choice.

Meanwhile, at Heaven Hill Distilleries Inc., Kate Latts, director of marketing strategy, notes, "Hpnotiq was built on a grassroots model." The company used a trial strategy on key influential people, getting the product into gift bags and parties where "people we wanted to drink the brand would be," she says. "[These A-list celebrities] then became champions of the brand and spokespeople for the brand."

But the marketing campaign didn't stop there. The com-

pany continued to market the brand in venues "where the target audience would be inspired by the product and become early adopters of the product," Latts explains. Heaven Hill sponsored Hpnotiq nights at bars and clubs that aimed to create a "Hpnotiq experience," featuring Hpnotiq girls handing out samples of the mini Signature Martinis with glowsticks. A key to these nights was to get the DJ behind the brand and mentioning it throughout the night, she explains. "It wasn't about giving away lots of free stuff—it was about getting the product out there." The company also found success in getting its product placed in music videos, movies and television shows.

PATIENCE IS A MARKETING VIRTUE

As author Levinson (who is also chairman of Guerrilla Marketing International, a San Rafael, California-based consulting firm he founded) explains, the key to guerrilla marketing success is patience. He cites his work on the "Marlboro Man" campaign as the perfect example of a company's commitment to and patience with a brand. "We came up with the idea of the Marlboro Man, cowboys and Marlboro country and began a marketing campaign," he remembers. "A year and \$18 million later, nothing changed. The brand's popularity had not risen. However, the chairman at the time had patience and another year later, the marketing had paid off."

"Guerrilla marketing is going after conventional goals, such as profits, using unconventional, usually low-cost, means."

Jay Conrad Levinson, Guerrilla Marketing International, San Rafael, California

Small marketers agree. At Sovereign Brands LLC, Heather Schneider, marketing manager, says the company has taken a slow approach to building its 3 Vodka brand. "The techniques that we use are very different because we are so small and very few people have heard of us," she explains. "We are competing with the Absolut of the world."

The company takes its relationships with accounts to the next level, Schneider says. "We can sell the vodka to any venue and it will sit on the shelf," she notes. "But once we sell the product, we stand behind the product." One way Sovereign Brands has gotten consumer attention is by keeping up with the fashion trends for their giveaways. "We try to stay on top of fashion styles and hand out things that people aren't just going to use for that night," Schneider explains. For example, the company developed "trucker hats" featuring the company logo, when actor Aston Kutcher spawned the trend.

One of the more stealth tactics the company has used was giving coupons for free drinks at local bars throughout Chicago. "We hired models to canvas the city, giving out coupons for a free 3 Vodka drink at three clubs owned by a large account," Schneider says. The coupons drove business to the account and encouraged trial, she adds.

WE INTERRUPT THIS EVENING FOR...

Some of the most effective guerrilla marketing techniques definitely catch consumers by surprise. Recently, Brown-Forman ran a "Refresh with Burlesque" promotion for Finlandia Vodka in bars and clubs in major cities around the country. The campaign featured three commercials, each three minutes in length, which "interrupted" the partying at the venues. The three acts each

focused on a specific drink and then samples were given out. "Models stayed around to mingle and explain what had just happened," explains Shimain Rivera, metro New York Finlandia brand ambassador. "The people were surprised. They said they had never seen sampling like this before. The giveaways kept with the burlesque theme, including feather boas."

On the West Coast, Finlandia ran a similar promotion. "We look for the right account and demographic, trying to meet as many people as possible," says Valerie Kelly, Finlandia's West Coast on-premise market manager. In addition, the company has an English-style double-decker bus that is wrapped in Finlandia logos. "It is something that we have driving up and down Sunset Boulevard," explains Kelly. "We also do promotions in it."

Alizé's Gam notes that the company also has a wrapped bus in about 10 to 15 major markets. However, he says, "We do not sample out of the vehicles."

At Allied Domecq Spirits North America, many of the brands have been known to use guerrilla marketing techniques. Most recently, the company's Fonzworth Bentley campaign for Courvoisier has the official "Arbiter of Good Taste" making local market appearances as part of the "Most Exclusive Courvoisier VSOP Gentleman's Tour" that began in May. Also, the company's Kahlúa Shaker Program features a cocktail shaker that is distributed at national restaurant chains and during happy hour at regional on-premise accounts. The program aims to increase the trial of Kahlúa Black and White Russians, while offering simple recipes for convenient, at-home consumption, according to the company.

"Non-traditional marketing—like the Courvoisier campaign with Fonzworth Bentley or the Midori 'It Girl' Tour—is becoming more common at Allied Domecq, because it creates a competitive advantage by reaching consumers of our premium brands in unexpected way," says David Karraker, vice president of communications at Allied Domecq.

NOT ONE FOR ALL

Not all brands are made for guerrilla marketing techniques and not all spirits marketers are game for such covert operations.

At Jim Beam Brands Co., marketing outside of traditional advertisements and merchandising includes "experiential marketing," says Aaron Brost, senior public relations manager. "In other words, programs that educate, encourage trial and stimulate brand awareness." He does note that these are all in partnership with on- and off-premise retailers and are not unexpected by the company's trade partners or consumers. "Stealth or guerrilla techniques do not allow us to educate consumers on the quality of our portfolio and, for many of our brands, are not part of our overall



ABOVE: Heaven Hill Distilleries Inc. creates a "HpnotiQ experience" at bars and clubs with samples of signature Martinis, served with blue glow sticks.

“Generally most states would prohibit any type of marketing program that encourages the consumption of alcohol.”

Vincent O'Brien, Nixon Peabody LLP, New York

marketing plan,” Brost explains.

However, the spirits executive does note that there are some opportunities where guerrilla techniques can be effective. For example, on August 15th, marking the start of the 2004 football season, the company launched the “Jim Beam Game Day Blitz,” which features on-premise Blitz Girls and a Game Day Blitz Motor Coach. This program combines on-premise event marketing with an off-premise sweepstakes to drive consumer call, increase brand relevance and provide a fun forum for product education, Brost says. The national promotion runs through November 15th.

At Diageo North America, guerrilla tactics are only used when it fits with the desired brand image. For example, the company has recently run two guerrilla campaigns for Captain Morgan—Captain for Governor (during the recall election in California last year) and Captain for

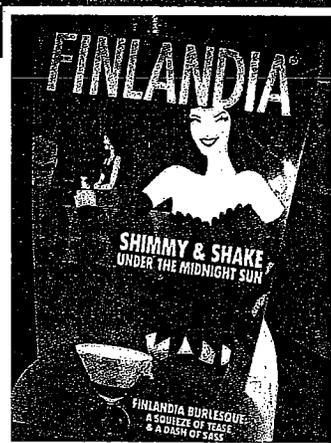
President (featured at both the Democratic and Republic National Conventions). The promotions were started in a grassroots way, with what appeared to be write-in votes for the Captain.

For Jose Cuervo Tequila, Diageo put in a \$1 million bid to the City of Los Angeles to put up a Cuervo Nation sign next to the Hollywood sign. While the request was denied, “It was something that enabled us to get coverage for the brand,” says Zsoka McDonald, director of media relations at Diageo North America. “We were willing to pay the \$1 million, though.”

The company does not use such techniques on the Baileys brand. “I think this marketing has to go with the personality of the brand,” explains McDonald. “Captain and Cuervo are outgoing, fun-loving brands. Baileys is more mellow. The brand persona is not the kind of go out and party persona, it is a sitting down with friends to have a quiet, good time.”



ABOVE, MIDDLE AND RIGHT: For this year's Sundance Film Festival, Skyy Spirits LLC created the SKYY View Lounge to provide networking opportunities, host parties and, of course, link the brand with celebrities and filmmakers; pictured are the SKYY View Lounge DJ (center) and actresses Jennifer Tilly (above) and Christina Applegate (right).



ABOVE AND IMMEDIATE RIGHT: Brown-Forman's "Refresh with Burlesque" promotion for Finlandia Vodka featured three-minute commercials for cocktails made with the spirit. FAR RIGHT: Kobrand Corp. got Alizé in the hands of tastemakers by sponsoring the official after party at the BET Awards in Los Angeles; pictured are Usher (bottom) and Denise Richards and Fergie from the band the Black Eyed Peas (top).

SEEMINGLY SATURATED

With so many companies—big and small—jumping on the guerrilla marketing bandwagon, does this leave the market too saturated and consumers numb to its effects? Most spirits marketers give a resounding "No."

"The reality is that if done tastefully, it is a natural extension of the brand," says Absolut's Fisher. "If you are a smart brand, you can be successful. Advertising is not as effective as it once was, and that is where this type of marketing comes in to play."

Heaven Hill's Latts notes that there is potential for saturation with sponsorships. But adds, "If a promotion is done in the right way and you have a unique product, people are going to remember."

And Finlandia's Kelly concurs that guerrilla marketing done correctly works. "The market is saturated," she says. "But it is saturated because it is working."

Allied Domecq's Karraker notes, "Overall, having the right marketing mix is key. By understanding the consumers you can reach them at various touch points during their days—on the way to work, at the gym, after work, at night at a bar. This is where non-traditional and creative thinking becomes our best asset."

TREADING CAREFULLY

While guerrilla marketing techniques are getting more

and more mainstream and consumers are truly beginning to expect them, in the spirits world, marketers have to be careful not to overstep the legal limitations on the beverage. In fact, each state has its own legal hurdles that marketers must overcome to run certain promotions and marketing campaigns.

"Generally most states would prohibit any type of marketing program that encourages the consumption of alcohol as part of it," says Vincent O'Brien, senior counsel who specializes in beverage alcohol law at the New York-based law firm Nixon Peabody LLP. "If it is designed to promote consumption of a certain product over someone else's, that is okay. These campaigns are not about increasing consumption, they are about shifting market share."

O'Brien notes that while each state does have distinct, albeit often archaic laws, there are usually ways to curb a promotion slightly to fit within the legal realm. In fact, he says that oftentimes the laws and policies of the states are so outdated, they do not even account for the technologically advanced marketing and advertising campaigns many companies are running. And it is often a matter of interpretation of the existing regulations.

In all, O'Brien does not think spirits marketers should shy away from guerrilla techniques. "Just because something is unconventional doesn't mean it is illegal," he notes. "There is always room for creativity and a new way to do things." ❖

Ames Affidavit

Exhibit 7

SONGS AND VIDEOS CONTAINING REFERENCES TO HPNOTIQ LIQUEUR

<u>Artist</u>	<u>Song</u>	<u>HQ Placement</u>	<u>Chart</u>
Usher	Bad Girl	Song	Over 4 million sold
Lloyd Banks	I'm so fly	Video	50 Cent protégé/platinum artist
Fat Joe	Lean Back	Video	#1 video on B.E.T./MTV/Billboard charts
Juvenile	Slow Motion	Song	#3 on Billboard charts
R.Kelly feat. Big Tigger	Snake	Song/Video	#1 Peak Position on Billboard Charts in '04
R. Kelly	Happy People	Video	Peak #7 Billboard charts
R.Kelly	Ignition	Video	Over 4 million sold
R.Kelly	Thong Thong	Video	
Chingy feat. Jermaine Dupree	Right Thurr	Video/Song	Over 3 million sold
Missy Elliott feat. Ludacris	Rumors	Video	Platinum CD
Missy Elliott	Pass the Dutch	Song	Platinum Artist
Fabulous feat. P. Diddy	Trade It All	Video	Millions sold on Barbershop Sdtrk.
Fabulous	Its My Party	Video/Song	Over 2 Million copies sold
Joe Budden	Pump It Up	Song	Platinum Artist
Nick Cannon	Gigolo	Song/Video	Gold Artist
Lil Kim	Came For You	Song	Platinum Artist
Marcus Houston	In The Club	Song	Video B.E.T.
Twista feat. R. Kelly	So Sexy	Video	Peak #11 on Billboard Charts
Elephant Man	Pond Da River	Video	Top Reggae Artist '03/'04
Beenie Man feat. Twista	Jook Y'all	Song	Top Reggae Artist '03/'04
David Banner	Like a Pimp	Song	Top Southern Artist
Memphis Bleek feat. Jay-Z	Hipnotic	Song	Jay-Z Protégé/Gold Artist
Big Tymers feat. R.Kelly	Gangsta Girl	Song	Platinum Artist
Ice Cube feat. Westside Connection	Gangsta Nation	Song	Platinum Artist
Romie feat. B2K	After Party	Song	New Artist
Mobb Deep	Twisted (Remix)	Song	Platinum Artist

Ames Affidavit

Exhibit 8

HPNOTIQ

May 2004 - April 2005 Consumer Schedule

Revision #14 11/11/04

PUBLICATIONS	Circ.	2005												Total	
		May	June	July	August	September	October	November	December	January	February	March	April		
AFFLUENT / NICHE PUBLICATIONS															
VANITY FAIR <i>Top Markets</i> (Monthly)	644,752			HPNOTIQ #1 HQ04-1 4/28 5/3 6/12						Music HPNOTIQ #1 HQ04-1 8/29 9/04 10/14			Oscars HPNOTIQ #2 HQ04-2 1/2 1/2 2/10		
SKI (8 Times per Year)	455,793							Travel Guide HPNOTIQ #1 HQ04-1 7/19 7/21 9/15							
W (Monthly)	467,758	W Hit for Fall HPNOTIQ #1 HQ04-1 3/10 3/24 Ext. 4/11	Jewelry HPNOTIQ #1 HQ04-1 4/5 4/13 5/7					What's Sexy HPNOTIQ #2 HQ04-2 8/9 8/17 9/10	What's Hot HPNOTIQ #2 HQ04-2 9/6 9/14 10/8			Hollywood-Celebrity A HPNOTIQ #3 HQ04-3 12/9 12/12 1/10			
WINE ENTHUSIAST (14 Times per Year)	102,615	Cover 4 Irresistibly... HQ03 3/11 Ext. 3/17 4/13						HPNOTIQ #1 HQ04-1 7/30 8/9 8/27					HPNOTIQ #2 HQ04-2 11/27 12/4 1/30		
WINE SPECTATOR (17 Times per Year)	361,781	5/31		Summer Guide w/Advertorial HPNOTIQ #1 HQ04-1 5/4 5/11 7/1										Holiday Guide w/Advertorial HPNOTIQ #2 HQ04-2 10/18 10/25 12/1	

HPNOTIQ

May 2004 - April 2005 Consumer Schedule

Revision #14 11/11/04

PUBLICATIONS	Circ.	2005													
		May	June	July	August	September	October	November	December	January	February	March	April	Total	
ARCHITECTURAL DIGEST (Monthly)	828,730		HPNOTIQ #1 HQ04-1 3/19 4/1 Ext 5/11	HPNOTIQ #1 HQ04-1 4/20 4/20 6/13						HPNOTIQ #2 HQ04-2 8/20 8/20 10/11					
FOOD & WINE (Monthly)	964,206		HPNOTIQ #1 HQ04-1 3/27 3/29 5/15	HPNOTIQ #1 HQ04-1 4/26 4/29 6/15						HPNOTIQ #2 HQ04-2 9/29 10/2 11/18		HPNOTIQ #3 HQ04-3 12/19 12/21 2/18			
INTERVIEW (Monthly)	200,010	Irrisistibly... HQ03 2/20 3/5 4/27	HPNOTIQ #1 HQ04-1 3/19 4/1 5/25		HPNOTIQ #1 HQ04-1 6/17 7/1 8/24						HPNOTIQ #2 HQ04-2 11/20 12/4 1/20				
SURFACE (8 Times per Year)	121,000		HPNOTIQ #1 HQ04-1 3/15 4/26 Ext 6/1	HPNOTIQ #1 HQ04-1 3/30 4/15 7/1								HPNOTIQ #2 HQ04-2 12/30 1/15 3/1			
ZINK (10 Times)	200,010												HPNOTIQ #1 HQ04-1 11/5 11/5 11/28		

HPNOTIQ

May 2004 - April 2005 Consumer Schedule

Revision #14 11/11/04

PUBLICATIONS	Circ.	2004		August	September	October	November	2005		April	Total
		May	June					July	January			February	March
VARIETY V LIFE MAGAZINE <i>(7 Times per Year)</i>	34,828	Apr/May Issue Oscar Wrap-Up HPNOTIQ #1 HQ04-1 3/8 3/26 Ext 4/15	Summer Issue	(No Issue)	Envy HPNOTIQ #1 HQ04-1 7/5 7/26 7/17	Fall Fashion HPNOTIQ #2 HQ04-2 8/23 9/13 10/15	Dec/Jan Issue Oscar+Holiday HPNOTIQ #2 HQ04-2 10/25 11/12 12/16	Collectors Issue HPNOTIQ #3 HQ04-3 12/29 1/19 1/22	Oscar Wrap-Up HPNOTIQ #3 HQ04-3 2/23 3/15 4/15		
PRIVATE CLUBS <i>(Bi-Monthly)</i>	211,293	HPNOTIQ #1 HQ04-1 3/24 3/31 4/19	HPNOTIQ #1 HQ04-1 5/19 5/19	HPNOTIQ #1 HQ04-1 9/22 9/22	HPNOTIQ #2 HQ04-2 9/22 9/22	HPNOTIQ #2 HQ04-2 8/30 9/6	HPNOTIQ #3 HQ04-3 11/3 11/10	HPNOTIQ #3 HQ04-3 1/20 1/20			
ELITE TRAVELER <i>(Bi-Monthly)</i>	131,428	HPNOTIQ #1 HQ04-1 3/8 Ext 3/30 Ext	HPNOTIQ #1 HQ04-1 5/1 5/8								
Grace Ormonde Wedding Style <i>(Annual)</i>	400,000							HQ BRIDE HQ04-Bride 7/1 8/16 January			
InStyle WEDDINGS <i>(Semi-Annual)</i>	250,000		HQ BRIDE HQ04-Bride 4/5 4/19 Ext 6/8					HQ BRIDE HQ04-Bride 10/20 10/27 12/30			

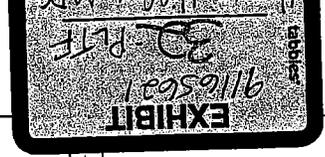
HPNOTIQ

May 2005 - April 2006 Consumer Schedule

Revision #19

09/19/05

PUBLICATIONS MAINSTREAM/REGIONALS New York	Circ.	2006													
		May	June	July	August	September	October	November	December	January	February	March	April	Total	
GOTHAM Ad Name: Ad Code: Space Close: Materials Close: On-Sale Date:	62,000		Summer HPNOTIQ #4 HQ05-4 4/14 4/22 5/28-8/26	No issue	No issue	HPNOTIQ #1 HQ04-1 7/14 7/22 8/27-9/23	Gift Guide HPNOTIQ #2 HQ04-2 9/15 9/29 10/29-11/25	Holiday Issue/Best of Yr HPNOTIQ #3 HQ04-3 10/13 10/21 11/26-12/30			HPNOTIQ #4 HQ05-4 1/15 1/22 2/27-3/25				
			Issue 2 Swimsuits/Fashion HPNOTIQ #4 HQ05-4 5/12 5/20 June 3-9	Issue 9 Luxury Issue HPNOTIQ #2 HQ04-2 6/30 6/9 July 22-28	Issue 12 Travel & Rest's HPNOTIQ #3 HP04-3 7/21 7/29 Aug 12-18										
			Issue 5 HPNOTIQ #1 HQ04-1 HQ04-2 \$10,589 6/2 6/10 June 24-30		Issue 14 Fall Fashion HPNOTIQ #4 HQ05-4 \$10,589 8/4 8/12 Aug 26-Sep 1										
			HPNOTIQ #4 HQ05-4 3/14 4/1 Ext	HPNOTIQ #1 HQ04-1 5/13 5/20	HPNOTIQ #2 HQ04-2 7/11 7/18	HPNOTIQ #3 HQ04-3 8/11 8/22	HPNOTIQ #4 HQ05-4 10/10 10/17	HPNOTIQ #1 HQ04-1 11/12 11/16	HPNOTIQ #2 HQ04-2 12/13 12/20	HPNOTIQ #3 HQ04-3 1/12 1/16					
HAMPTONS Ad Name: Ad Code: Space Close: Materials Close: On-Sale Date:	37,179														
			HPNOTIQ #4 HQ05-4 4/23 4/23	2nd Anniversary HPNOTIQ #1 HQ04-1 5/21 5/21											
			HPNOTIQ #4 HQ05-4 4/23 4/23	HPNOTIQ #1 HQ04-1 5/21 5/21											
			HPNOTIQ #4 HQ05-4 4/23 4/23	HPNOTIQ #1 HQ04-1 5/21 5/21											
OCEAN DRIVE Wine & Food Festival Edition Ad Name: Ad Code: Space Close: Materials Close: On-Sale Date:	48,413 415,000		HPNOTIQ #4 HQ05-4 3/14 4/1 Ext	HPNOTIQ #1 HQ04-1 5/13 5/20	HPNOTIQ #2 HQ04-2 7/11 7/18	HPNOTIQ #3 HQ04-3 8/11 8/22	HPNOTIQ #4 HQ05-4 10/10 10/17	HPNOTIQ #1 HQ04-1 11/12 11/16	HPNOTIQ #2 HQ04-2 12/13 12/20	HPNOTIQ #3 HQ04-3 1/12 1/16					
			HPNOTIQ #4 HQ05-4 4/23 4/23	2nd Anniversary HPNOTIQ #1 HQ04-1 5/21 5/21											
			HPNOTIQ #4 HQ05-4 4/23 4/23	HPNOTIQ #1 HQ04-1 5/21 5/21											
			HPNOTIQ #4 HQ05-4 4/23 4/23	HPNOTIQ #1 HQ04-1 5/21 5/21											
VEGAS Las Vegas Ad Name: Ad Code: Space Close: Materials Close: On-Sale Date:	80,000														
			HPNOTIQ #4 HQ05-4 4/23 4/23	HPNOTIQ #1 HQ04-1 5/21 5/21											
			HPNOTIQ #4 HQ05-4 4/23 4/23	HPNOTIQ #1 HQ04-1 5/21 5/21											
			HPNOTIQ #4 HQ05-4 4/23 4/23	HPNOTIQ #1 HQ04-1 5/21 5/21											



HPNOTIQ

May 2005 - April 2006 Consumer Schedule

Revision #19

09/19/05

PUBLICATIONS		Circ.	2005 May	June	July	August	September	October	November	December	2006 January	February	March	April	Total
AFFLUENT / NICHE PUBLICATIONS															
CONTEMPORARY CULTURE / LIFESTYLE															
INTERVIEW <i>(Monthly)</i>	Ad Name:	200,010	HPNOTIQ #4	HPNOTIQ #1							Bonus 1/3-Page/Advertorial HPNOTIQ #2				
	Ad Code:		HQ05-4	HQ04-1							HQ04-2				
	Space Close:		2/20	3/18							9/21				
	Materials Close:		3/5	4/1							10/5				
On-Sale Date:		4/27	5/17							11/22					
SURFACE <i>(6 Times per Year)</i>	Ad Name:	121,000	Summer - Luxury & Travel												
	Ad Code:		HPNOTIQ #4												
	Space Close:		HQ05-4	4/15											
	Materials Close:			5/1											
On-Sale Date:			6/15												
TANGO <i>(Quarterly)</i>	Ad Name:	100,000	Summer												
	Ad Code:		HPNOTIQ #2												
	Space Close:		HQ04-2	6/10											
	Materials Close:			6/17 (8/2 Ext.)											
On-Sale Date:			9/13												
VANITY FAIR (Top Markets) <i>(Monthly)</i>	Ad Name:	644,752													
	Ad Code:		HPNOTIQ #4												
	Space Close:		HQ05-4	4/28											
	Materials Close:			5/3											
On-Sale Date:			6/12												
ZINK <i>(10 Times per Year)</i>	Ad Name:	125,000													
	Ad Code:		HPNOTIQ #1												
	Space Close:		HQ04-1	6/4											
	Materials Close:			6/4											
On-Sale Date:			6/25												
ENTERTAINMENT															
V-LIFE		100,000													

First Issue on Newsstand

HPNOTIQ

May 2005 - April 2006 Consumer Schedule

Revision # 19 09/19/05

PUBLICATIONS (6 Times Per Year)	Circ.	2006												Total
		May	June	July	August	September	October	November	December	January	February	March	April	
Space Close: Materials Close: On-Sale Date:			4/6 4/18 5/31		6/7 6/19 8/2	8/10 8/22 10/1					12/3 12/15 2/3			
KING Ad Name: Ad Code:	227,323	Spring Fashion HQ SMOOTH HQ05-Smooth		Summer Sizzles HQ BLUEPRINT HQ04-Blueprint					Holiday Gift Guide-Bonus 1/2-Page HQ SMOOTH HQ05-Smooth		1/3-Pg Bonus HQ BLUEPRINT HQ04-Blueprint			
Space Close: Materials Close: On-Sale Date:		1/18 2/1 3/15		5/3 5/17 6/28					9/13 9/27 11/18		11/15 11/29 1/10			
VIBE Ad Name: Ad Code:	650,186		HQ SMOOTH HQ05-Smooth		HQ BLUEPRINT HQ04-Blueprint					HQ SMOOTH HQ05-Smooth				
Space Close: Materials Close: On-Sale Date:			3/28 3/30 4/15		6/27 6/29 8/12					10/18 10/20 12/3				

HPNOTIQ

May 2006 - April 2007 Consumer Schedule

Revision #7 04/06/06

PUBLICATIONS		Circ.	2006 May	June	July	August	September	October	November	December	2007 January	February	March	April	Total
REGIONALS															
New York															
GOTHAM		57,936		Summer Rum HQ06-RU 4/13 4/21 5/26	(No issue)	(No issue)	Fall Fashion Rocks HQV06-RO 7/11 7/28 8/26		Holiday Gift Guide Champagne HQ06-CH 9/12 9/22 10/28	Dec/Jan Issue	(Jan Yearbook)				
(10 Times per Year)															
Miami															
OCEAN DRIVE		47,292	(Summer Coolers)	Rocks HQV06-RO 4/6 4/13			Rum HQ06-RU 7/13 7/20	(Recipe & Photo) Martini HQV06-M 8/10 8/17		Champagne HQ06-CH 10/5 10/13	Tequila HQ06-TQ 11/9 11/16	Champagne HQ06-CH 12/7 12/14	Rum HQ06-RU 1/11 1/18		
(11 Times per Year)															
Atlanta															
ATLANTA PEACH		50,000	Summer Issue (Note: Rate of \$4,118 per issue under separate P.O.)	Rum HQ06-RU 5/25 5/31		Fall Issue Rocks HQV06-RO 8/25 8/31		Holiday Issue Champagne HQ06-CH 10/19 10/25							
(Quarterly 2006 Bi-monthly 2007)															
MAINSTREAM															
GQ-Gentlemen's Quarterly		800,000		Rum HQ06-RU 3/19 3/19 5/27		Fashion Tequila To It HQ06-TQ 6/19 6/19 8/26			Rocks HQV06-RO 8/21 8/21 10/24	Champagne HQ06-CH 9/19 9/19 11/25			Martini HQV06-M 12/19 12/19 2/25		
(Monthly)															
HOLLYWOOD LIFE		270,975	Young Hollywood		Best of Summer & YH Awards		Fall Fashion/Hollywood Style			Luxury Issue					
(NFI)															



HPNOTIQ May 2006 - April 2007 Consumer Schedule

Revision 87 04/06/06

PUBLICATIONS <small>(By-Monthly)</small>	Circ.	2006	May	June	July	August	September	October	November	December	2007	January	February	March	April	Total
		Space Close: Materials Close: On-Sale Date:	3/16 3/23 5/2	Tequila HQ06-TQ 3/29 3/29 5/28	5/11 5/18 6/27	Emmys Run HQ06-RU 8/17 8/17 7/14	Fall Fashion Rocks HQV06-RO 6/23 6/23 8/20	7/6 7/13 8/22	Holiday Gift Guide Rocks HQV06-RO 8/21 8/21 10/20	Champagne HQ06-CH 9/20 9/20 11/17	Winter Spring Champagne HQ06-CH 1/24 1/31 3/29					
INSTYLE <small>(Monthly)</small>	1,700,000															
Ad Name: Ad Code:																
Space Close: Materials Close: On-Sale Date:																
InStyle WEDDINGS <small>(Quarterly)</small>	250,000				Summer											
Ad Name: Ad Code:																
Space Close: Materials Close: On-Sale Date:																
ROLLING STONE <small>(24 Times per Year)</small>	1,268,999		5/18 Issue				9/7 Issue			12/28-1/11 Issue						
Ad Name: Ad Code:			1,000th Issue Tequila HQ06-TQ 4/14 4/14 5/5				Fall Fashion Rocks HQV06-RO 8/4 8/4 8/25			Artist of the Year Martini HQV06-M 11/24 11/24 12/15						
Space Close: Materials Close: On-Sale Date:																
US WEEKLY <small>(Weekly)</small>	1,674,267				7/17 Issue		9/25 Issue	10/2 Issue	11/27 Issue	12/4 Issue						
Ad Name: Ad Code:					Weddings Champagne HQ06-CH 6/19 6/19 7/7		Emmys Run HQ06-RU 8/28 8/28 9/15	Fall Fashion- Beauty Tequila HQ06-TQ 9/2 9/2 9/22	Winter Movies Martini HQV06-M 10/30 10/30 11/17	Champagne HQ06-CH 11/6 11/6 11/24						
Space Close: Materials Close: On-Sale Date:																
URBAN ESSENCE <small>(Weekly)</small>	1,063,645				Cur Guide Run Urban											
Ad Name:																

Ames Affidavit

Exhibit 9

HPNOTIQ

May 2007 - April 2008 Consumer Schedule

Mainstream - Primary: Adults 21-34, 70/30 F/M, HHI > \$75K Urban - Adults 21-34, HHI > \$50K Budget: \$2,763,794 Sweepstakes: June, July, August and September 2007. Revision #: 02/15/07

PUBLICATIONS	2007					2008					Total		
	Circ.	May	June	July	August	September	October	November	December	January		February	March	April
MAINSTREAM													
COSMOPOLITAN	2,932,554												
Ad Name:		Pct+1/3-Mixability Ad											
Ad Code:													
Space Close:													
Materials Close:													
On-Sale Date:													
COSMOPOLITAN.COM (Hot Spot)	800,000												
Ad Name:													
Ad Code:													
Space Close:													
Materials Close:													
On-Sale Date:													
HOLLYWOOD LIFE	270,975												
Ad Name:													
Ad Code:													
Space Close:													
Materials Close:													
On-Sale Date:													
INSTYLE	1,700,000												
Ad Name:													
Ad Code:													
Rate:													
Space Close:													
Materials Close:													
On-Sale Date:													
Instyle.com	1.6 Million												
Average Unique Visitors per Month:													
Ad Name:													

HPNOTIQ

May 2007 - April 2008 Consumer Schedule

Sweepstakes: June, July, August and September 2007.

Mainstream - Primary: Adults 21-34, 70/30 F/M, HHI >\$75K Urban - Adults 21-34, HHI >\$50K

Budget: \$2,763,794

Revision #: 02/15/07

PUBLICATIONS	Circ.	2008												Total			
		May	June	July	August	September	October	November	December	January	February	March	April				
Ad Code: Space Close: Materials Close: On-Sale Date:	1,432,816	5/31 Issue	6/28 Issue 1/4 Pg. Sweeps Ad														
Ad Name: Ad Code: Space Close: Materials Close: On-Sale Date:		Tequila HQ06-TQ 4/27 4/27 5/18	Rocks HQV06-RO 5/25 5/25 6/15					9/6 Issue Fall Fashion 1/4 Pg. Mixability Ad									
ROLLING STONE NETWORK: RollingStone.com Rhapsody.com Real Guide/Real Player Monthly unique audience: 38+ Million																	

(Approx. 2-Month Program) Program will be optimized through the three sites - depending on weekly best results).

Music news on the Web.

The #1 music subscription service available.

Highest quality of video and audio content brought together - through computers.

HPNOTIQ May 2007 - April 2008 Consumer Schedule

Sweepstakes: June, July, August and September 2007.
Budget: \$2,763,794 Revision #: 02/15/07

Mainstream - Primary: Adults 21-34, 70/30 F/M, HHI >\$75K Urban - Adults 21-34, HHI >\$50K

PUBLICATIONS	Circ.	2008												Total			
		May	June	July	August	September	October	November	December	January	February	March	April				
REGIONALS																	
Miami																	
OCEAN DRIVE	47,292	(Recipe & Photo)	Martini HQY06-M 4/6 4/13			Rum HQ06-RU 7/13 7/20	(Recipe & Photo) Martini HQY06-M 8/10 8/17			Champagne HQ06-CH 10/5 10/13	Tequila HQ06-TQ 11/9 11/16	Champagne HQ06-CH 12/7 12/14	Rum HQ06-RU 1/11 1/18				
Atlanta																	
ATLANTA PEACH	59,701	(Note: Rate of \$4,118 per issue under separate P.O.)	Summer Getaways X			Fall Issue Tequila HQ06-TQ 7/12 7/19	X			Holiday Issue Champagne HQ06-CH 10/11 10/18		Swimwear/Travel/Bridal					
TOTAL REGIONALS			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
URBAN																	
ESSENCE	1,063,645					Car Guide Rum Urban HQUR06-RU 4/21 4/21 6/20				Power Issue Rocks Urban HQUR06-RO 7/21 7/21 9/20		Men's Issue Champagne Urban HQUR06-CH 8/25 8/25 10/24					
VIBE (Subscribers Only)	708,737					Top 100 Rocks Urban HQUR06-RO 6/15 6/15 8/7											
TOTAL URBAN			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Over/Under:

Ad Designations...
HQ-Champagne: Bubbles 'n Blue
HQ-Rum: Breeze
HQ-Tequila: Hpno-Rita
HQV-Martini: Hpno-Tini

HQUR-Champagne: Bubbles 'n Blue
HQUR-Rocks: Blue Storm
HQUR-Rum: Breeze

HPNOTIQ

May 2007 - April 2008 Consumer Schedule

Sweepstakes: June, July, August and September 2007.

Mainstream - Primary: Adults 21-34, 70/30 F/M, HHI >\$75K		Urban - Adults 21-34, HHI >\$50K		Budget: \$2,763,794		Revision #: 02/15/07								
PUBLICATIONS	2007	May	June	July	August	September	October	November	December	January	February	March	April	Total

HQV-Rocks: Blue Storm

APPROVED BY: Max Shapira, President Date: 2/06/07

P.O. #: 42216

HPNOTIQ May 2007 - April 2008 Consumer Schedule

Sweepstakes: June, July, August and September 2007.
Budget: \$2,763,794

Urban - Adults 21-34, HHI >\$50K

2007

2008

Revision #: 02/15/07

PUBLICATIONS	Circ.	2007												TOTAL
		May	June	July	August	September	October	November	December	January	February	March	April	
(Minimum Programs per site)														
	TOTAL IMPRESSIONS	Ad Sizes to Test												
ELLE.COM	195,000	336 x 600	Half Pg	ROS	Run of Site	Runway Shows, Fashion, Shopping								
		300 x 250	Big Box	ROS										
		728 x 90	Leaderboard	ROS										
		160 x 600	Skyscraper	ROS										
STYLE.COM	100,000	300 x 250		ROS	Fashion, People & Parties Slideshow									
	100,000	728 x 90		ROS										
	100,000	160 x 600		ROS										
PEOPLE.COM	350,000	728 x 90		ROS	News, Insider, Photo Gallery channels									
	300,000	300 x 250		ROS	News, Insider, Photo Gallery channels									
	393,340	300 x 250		ROS	Style Channel (What's on Sale and Off The Rack blog pages)									
MEN.STYLE.COM	100,000	300 x 250		ROS	Fashion, Gadgets, News									
	100,000	728 x 90		ROS										
ASKMEN.COM	500,000	300 X 250		ROS	Top 99, Fashion & Lifestyle, Entertainment & Reviews									
EVITE.COM	100,000	300 x 250		ROS	Planning Ideas - Party Planning Stages, Share Party Ideas, Gifts									
		728 x 90		ROS										
TOTAL ONLINE TEST:	2,338,340													\$0

Note: Cosmopolitan.com is currently launching a stand-alone site - away from ivillage.com - and Hpnottiq may want to consider it at a later date. Some rates are estimated, subject to change without notice... and are subject to barter process.

Test: Cost per Click Thru; Cost per Impressions
Creative: Various size ads; Static and Rich Media backgrounds per each size unit
Product: Martini

APPROVED BY: Max Shapira, President
Date: 2/06/07

P.O. #: 42216

Exhibit B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HEAVEN HILL DISTILLERIES, INC.,)		
)		
Opposer,	)	Opposition No.	91183753
)		
v.)		
	)	Serial No.	77/266,196
DIALLO YASSINN PATRICE,	)	Mark:	HYPNOTIZER
	)	Intl Class:	033
Respondent.)		

AFFIDAVIT OF MATTHEW WILLIAMS

Comes now the Affiant, Matthew Williams, after first having been duly sworn, and hereby states as follows:

1. I am over 18 years of age, and I have personal knowledge of the matters described in this declaration and in the attached affidavits.
2. I am submitting this Affidavit in support of the Memorandum in Support of Opposer's Motion for Summary Judgment that is being filed in the above-captioned proceeding.
3. I am an attorney with Wyatt, Tarrant & Combs, LLP in Louisville, Kentucky.
4. On February 18, 2005, Diallo applied for a French trademark registration to use the HYPNOTIZER mark in connection with "beers; mineral waters; alcoholic beverages; wines; and spirits." This application resulted in French registration number 053342166 for the mark HYPNOTIZER in international class 033.
5. Heaven Hill owns French trademark registration 023143392 for HPNOTIQ in connection with "liqueurs" in international class 033.
6. On July 10, 2005, the International Bureau granted an international registration, 873089, to Diallo based on the aforementioned French registration under the provisions of the Madrid Protocol. Under the Madrid Protocol, Diallo sought to have protection of his

HYPNOTIZER mark extended to the U.S. under Section 66(a) of the Trademark Act (Application Serial No. 79/019547).

7. Heaven Hill opposed the registration of Diallo's HYPNOTIZER mark in France and the French NIPO found Diallo's mark to be confusingly similar to Heaven Hill's HPNOTIQ mark. The French NIPO cancelled Diallo's registration for use of the mark with any type of alcoholic beverage, including beer.

8. Diallo appealed this decision to the Court of Appeals of Paris which upheld the French NIPO's decision and cancelled Diallo's French registration insofar as it extended to alcoholic beverages, including beer. A true and accurate copy of the decision of the Court of Appeals of Paris is attached hereto as Exhibit 1 and a true and accurate translation of said decision is attached hereto as Exhibit 2.

9. Since Diallo's international registration under the Madrid Protocol, once the decision of the Court of Appeals of Paris became final, the International Bureau cancelled Diallo's registration to the extent that it provided protection for the use of HYPNOTIZER in connection with alcoholic beverages, including beer.

10. Following the cancellation of the underlying international registration and Diallo's failure to transform Application Serial No. 79/019547 into a U.S. national application in a timely manner, the USPTO cancelled Application Serial No. 79/019547, which was also being opposed by Heaven Hill in Opposition No. 91173767.

Williams Affidavit

Exhibit 1

Grosses délivrées
aux parties le :

**REPUBLIQUE FRANCAISE
AU NOM DU PEUPLE FRANCAIS**

COUR D'APPEL DE PARIS

4ème Chambre - Section A

ARRET DU 10 MAI 2006

(n° , 5 pages)

Numéro d'inscription au répertoire général : 05/24489

Décision déferée à la Cour : Décision du 25 Novembre 2005 -Institut National de la
Propriété Industrielle de PARIS - RG n° 05/1410cbn

DEMANDEUR AU RECOURS

Monsieur Yassinn Patrice DIALLO
demeurant 2 square Tribord
91080 COURCOURONNES

assisté de Me Dieu-Donné ASSOGBA, avocat au barreau de Benin, toque : E 522

Monsieur le Directeur de l'INPI
26 BIS rue de Saint Pétersbourg
75008 PARIS

représenté par Madame GUILLOT-MINGANT

AUTRE PARTIE :

HEAVEN HILL DISTILLERIES inc
ayant son siège 1064 Loretto Road
PO BOX 729 - 4004 BARDSTOWN - KENTUCKY
ETATS UNIS D'AMERIQUE DU NORD

représentée par la SCP DUBOSCQ - PELLERIN, avoués à la Cour
assistée de Me DE BELENET, avocat au barreau de PARIS, toque : T03, plaidant pour la
SCP GIDE-LOYRETTE-NOUEL

COMPOSITION DE LA COUR :

L'affaire a été débattue le 04 Avril 2006, en audience publique, devant la Cour
composée de :

Monsieur Alain CARRE-PIERRAT, Président
Madame Marie-Gabrielle MAGUEUR, Conseiller
Madame Dominique ROSENTHAL-ROLLAND, Conseiller
qui en ont délibéré



GREFFIER, lors des débats : Mme Jacqueline VIGNAL

MINISTERE PUBLIC à qui le dossier a été préalablement soumis et représenté à l'audience par Madame GIZARDIN, substitut du Procureur Général, qui a présenté des observations orales

ARRET : CONTRADICTOIRE

- prononcé publiquement par Monsieur Alain CARRE-PIERRAT, Président
- signé par Monsieur Alain CARRE-PIERRAT, président et par Mme Jacqueline VIGNAL, greffier présent lors du prononcé.

LA COUR

Vu la décision du directeur de l'Institut National de la Propriété Industrielle du 25 novembre 2005 qui, statuant sur l'opposition n° 05-1410 formée le 25 mai 2005 par la société HEAVEN HILL DISTILLERIES, titulaire de la marque verbale "HPNOTIQ" déposée le 24 janvier 2002 et enregistrée sous le n° 02 3 143 392 pour désigner les produits suivants : "liqueurs", à l'encontre de la demande d'enregistrement n° 05 3 342 166, déposée le 18 février 2005 par Yassinn DIALLO, portant sur la dénomination "HYPNOTIZER", pour désigner les produits suivants : "bières ; eaux minérales ; boissons alcooliques ; vins ; spiritueux", l'a reconnue justifiée et, en conséquence a rejeté la demande d'enregistrement ;

Vu le recours formé à l'encontre de cette décision le 26 décembre 2005, et les mémoires du 23 janvier 2006 ainsi que celui du 13 mars 2006 par lesquels Yassinn DIALLO demande à la Cour de déclarer illégale la présence du directeur de l'Institut National de la Propriété Industrielle dans le cadre de la présente instance, l'enregistrement du signe "HYPNOTIZER" pour les produits cités ci-dessus et la condamnation de la société HEAVEN HILL DISTILLERIES au versement des sommes de 1200 euros et de 2.500 euros sur le fondement de l'article 700 du nouveau Code de Procédure Civile ;

Vu les observations du 15 mars 2006 par lesquelles le directeur de l'Institut National de la Propriété Industrielle conclut au rejet du recours ;

Vu les observations du 15 mars 2006 par lesquelles la société HEAVEN HILL DISTILLERIES demande, d'une part, la confirmation de la décision attaquée ayant retenu le risque de confusion entre les deux signes et ayant considéré que les produits "liqueurs, bières, boissons alcooliques, vins et spiritueux" étaient soit identiques, soit similaires, et d'autre part, l'annulation partielle de la décision précitée ayant refusé d'admettre la similarité des "liqueurs" et "eaux minérales" ainsi que la condamnation de Yassinn DIALLO au versement de la somme de 12.000 euros sur le fondement de l'article 700 du nouveau Code de Procédure Civile ;

Le Ministère Public ayant été entendu en ses observations orales ;

Cour d'Appel de Paris
4ème Chambre, section A

ARRET DU 10 MAI 2006
RG n° 2005/24489 - 2ème page

SUR QUOI,

o A titre préliminaire

Considérant que contrairement à ce que soutient le requérant, la présence du directeur de l'Institut National de la Propriété Industrielle dans le cadre de la présente procédure n'est pas "illégal" ;

Qu'en effet la participation du directeur de l'Institut National de la Propriété Industrielle aux débats suivis devant une cour d'appel saisie d'un recours contre une décision qu'il a rendue résulte de l'article L.411-4 du Code de la Propriété Industrielle ; que Yassinn DIALLO n'est donc pas recevable à invoquer l'article 6 de la Convention Européenne des Droits de l'Homme ;

o Sur la comparaison des produits

Considérant que la marque antérieure invoquée "HPNOTIQ" désigne des "Liqueurs" ;

Que la demande d'enregistrement litigieuse "HYPNOTIZER" porte sur les "Bières ; eaux minérales ; boissons alcooliques ; vins ; spiritueux" ;

Considérant que les "eaux minérales", n'étant pas des boissons alcooliques, ne présentent pas de lien étroit de similarité avec les "liqueurs" ;

Mais considérant que les "boissons alcooliques ; spiritueux" incluent nécessairement les "liqueurs" de la marque antérieure, ces dernières appartenant à la catégorie générale constituée par les "boissons alcooliques ; spiritueux" ; que les "bières et vins", boissons alcooliques, et les "liqueurs", sont fréquemment distribués par les mêmes réseaux et placés à peu de distance les uns des autres sur les rayons des magasins ; que l'ensemble de ces produits s'adressent à un public consommateur de boissons alcoolisées ;

que ces produits présentent un lien étroit et obligatoire, de telle manière que le consommateur sera enclin à leur attribuer une origine économique commune ;

Qu'il s'ensuit que les produits de la demande d'enregistrement- à l'exception des "eaux minérales"-sont identiques ou, à tout le moins, similaires à ceux de la marque antérieure ;

o Sur la comparaison des signes

Considérant que la marque antérieure invoquée porte sur la dénomination "HPNOTIQ" ;

Que la demande d'enregistrement litigieuse porte sur le signe verbal "HYPNOTIZER" ;

Considérant que le signe critiqué ne constituant pas la reproduction à l'identique de la marque première qui lui est opposée, il convient de rechercher s'il existe entre les deux dénominations un risque de confusion, lequel doit s'apprécier globalement, en tenant compte de tous les facteurs pertinents du cas d'espèce ; que cette appréciation globale doit, en ce qui concerne la similitude visuelle, phonétique ou conceptuelle des marques en cause, être fondée sur l'impression d'ensemble produite par celles-ci en tenant compte de leurs éléments distinctifs et dominants ;

Considérant que visuellement et phonétiquement, les dénominations en cause ont en commun six lettres placées dans le même ordre (H,P,N,O,T,I), la lettre H étant située en attaque et suivie de la séquence centrale PNOTI, ce qui leur confère une physionomie et une sonorité proches ;

Qu'intellectuellement, les deux dénominations évoquent la même référence au domaine de l'hypnose ;

Qu'il s'ensuit que l'adjonction de la lettre Y et la substitution en final du groupe de lettres ZER à la lettre Q au sein du signe contesté ne sont pas déterminantes dans l'impression d'ensemble conférée par les deux signes, la forte évocation intellectuelle restant identique ;

Qu'en effet, le consommateur, désormais familiarisé aux raccourcis du langage écrit dans l'usage des moyens de télécommunications électroniques, percevra la marque HPNOTIQ -fortement distinctive au regard des produits visés - comme renvoyant au terme HYPNOTIQUE ;

Considérant qu'il ressort de l'ensemble de ces constatations qu'il existe un risque de confusion entre les signes en cause, eu égard à l'impression d'ensemble très proche qu'elles suscitent et à la proximité des produits qu'elles désignent ;

Que par conséquent, le recours doit être rejeté ;

Considérant, selon l'article 421-20 du Code de Propriété Intellectuelle, que "le délai de recours formé devant la cour d'appel contre les décisions du directeur de l'Institut National de la Propriété Industrielle est d'un mois"; que le recours incident de la société HEAVEN HILL DISTILLERIES tendant à l'annulation partielle de la décision du directeur de l'Institut National de la Propriété Industrielle, faute d'avoir été formulé dans le délai imparté, est irrecevable ;

Considérant qu'il n'y a pas lieu de faire application de l'article 700 du nouveau Code de Procédure Civile ;

PAR CES MOTIFS

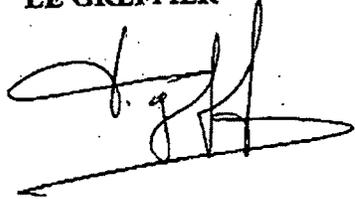
Rejette le recours formé par Yassinn DIALLO,

Déclare le recours incident de la société HEAVEN HILL DISTILLERIES irrecevable,

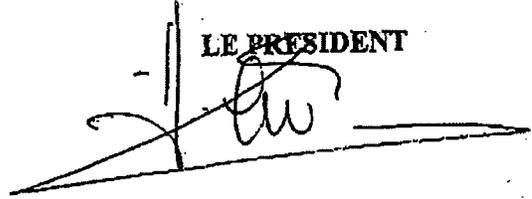
Dit n'y avoir lieu à application de l'article 700 du nouveau Code de Procédure Civile,

Dit que la présente décision sera notifiée par les soins du greffier, par lettre recommandée avec demande d'avis de réception aux parties et au directeur de l'Institut National de la Propriété Industrielle.

LE GREFFIER



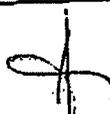
LE PRÉSIDENT



Cour d'Appel de Paris
4ème Chambre, section A



ARRET DU 10 MAI 2006
RG n°2005/24489 - 5ème page



Williams Affidavit

Exhibit 2

Engrossment issued
to the parties on:

FRENCH REPUBLIC
IN THE NAME OF THE FRENCH PEOPLE

COURT OF APPEAL OF PARIS

4th Appellate Division – Section A

JUDGEMENT OF MAY 10th, 2006

(No. , 5 pages)

Registration Number in the Corporate Directory: **05/24489**

Decision referred at the Court: Decision of November 25th, 2005 – National Industrial Property
Office of PARIS – G.R. No. 5/1410cbn

APPEAL BY PLAINTIFF

Mr. Yassinn Patrice DIALLO
2 square Tribors
91080 COURCOURONNES

assisted by Dieu-Donné ASSOGBA Esq., attorney registered at the Bar of Benin, toque: E 522

Mr. Director of the National Industrial Property Office (INPI)

26 BIS rue de Saint Petersburg
75008 PARIS

represented by Mrs GUILLOT-MINGANT

OTHER PARTY

HEAVEN HILL DISTILLERIES, Inc

With Corporate Headquarters in 1064 Loretto Road
PO BOX 729 – 4004 BARDSTOWN – KENTUCKY
UNITED STATES OF AMERICA

represented by the professional civil company DUBOSCQ – PELLERIN, attorney-at-law
assisted by DE BELENET Esq., attorney registered at the Bar of PARIS, toque: T03, pleading for
SCP GIDE-LOYRETTE-NOUEL

COMPOSITION OF THE COURT:

The case was debated on April 4th, 2006, in a public hearing, in front of the Court, composed
of:

Mr. Alain CARRE-PIERRAT, President
Mrs. Marie-Gabrielle MAGUEUR, Advocate
Mrs. Dominique OSENTHAL-ROLLAND, Advocate

who considered the verdict

COURT REGISTRAR, during the hearings: Mrs Jacqueline VIGNAL

PUBLIC PROSECUTOR'S OFFICE, to whom the record has been previously submitted and represented during the hearing by Mrs. GIZARDIN, Attorney General substitute, who presented oral arguments

JUDGEMENT: AFTER TRIAL

- read publicly by Mr. Alain CARRE PIERRAT, President
- signed by Mr. Alain CARRE-PIERRAT, President and by Mrs. Jacqueline VIGNAL, Court Registrar, present during the pronouncement.

THE COURT

In the matter of the decision of the Director of the National Industrial Property Office dated November 25, 2005 that, disposing the objection No. 05-1410 lodged on May 25, 2005 by the Company HEAVEN HILL DISTILLERIES, trademark owner of “**HPNOTIQ**”, registered on January 24th, 2002 and registered trademark under No. 02 3 143 392 to refer to the following Products: “*liqueurs*”, opposing the application for registration No. 05 3 342 166, registered on February 18, 2005 by Yassinn DIALLO, denominated “**HYPNOTIZER**”, to refer to the following products: “*beers; mineral waters; alcoholic beverages; wines; spirits*”, recognized the objection as justified and, consequently rejected the application for registration;

In the matter of the appeal made opposing this decision on December 26th, 2005, and the pleadings of January 23rd, 2006 and moreover the pleading of March 13th, 2006 by which Yassinn DIALLO applies to the Court to declare unlawful the presence of the Director of the National Industrial Property Office in this case, the registration of the sign “**HYPNOTIZER**” for the products mentioned above and the obligation of the Company **HEAVEN HILL DISTILLERIES** to pay the amounts of 1,200 euros and 2,500 euros in accordance with article 700 of the new Code of Civil Procedures;

In the matters of the observations of March 15th, 2006 by which the Director of the National Industrial Property Office concludes the dismissal of the Appeal;

In the matters of the observations of March 15th, 2006 by which the company HEAVEN HILL DISTILLERIES claims, on one hand, the confirmation of the contested decision, and having admitted the risk of confusion between the two signs and having considered that the products “*liqueurs, beers, alcoholic beverages, wines, spirits*” were either identical, either similar and, on the other hand, the partial annulment of the aforesaid decision, having refused to admit the similarity between “*liqueurs*” and “*mineral waters*” as well as Yassinn DIALLO’s obligation to pay 12,000 euros in accordance with article 700 of the new Code of Civil Procedures;

The Public Prosecutor’s Office having been heard in its oral arguments;

WHEREAS,

Preliminarily

Considering that contrary to what the claimant is pleading, the presence of the Director of the National Industrial Property Office in the present proceedings is not “illegal”;

That in fact the participation of the Director of the National Industrial Property Office to the hearings before the Court of Appeal filed by a petition against a decision he has determined is in accordance with article L.411-4 of the Industrial Property Code; that Yassinn DIALLO is therefore not entitled to proceed with the claim to appeal to article 6 of the European Convention on Human Rights;

About Comparison of the products

Considering that the previous invocated trademark “**HPNOTIQ**” indicates “*Liqueurs*”;

That the application for dispute registration “**HYPNOTIZER**” involves “*Beers; mineral waters; alcoholic beverages; wines; spirits*”;

Considering that “*mineral waters*” are not alcoholic beverages, and are not similar in any way with “*liqueurs*”;

But considering that “*alcoholic beverages*”; *spirits*” include necessarily the “*liqueurs*” from the previous trademark, those liqueurs belonging to the general category constituted by the “*alcoholic beverages; spirits*”; that the “*beers and wines*”, alcoholic beverages, and the “*liqueurs*” are often distributed by the same commercial systems and are placed near to each other on the shelves in the stores; that jointly, these products apply to a public consumer of alcoholic beverages;

That these products show a binding and close relationship, in order to be attributed a common origin by the consumer;

That, consequently, the products of the application of registering, exclusive of the “*mineral waters*”, are identical or, at least, similar to the ones of the previous trademark;

About Comparison of the signs

Considering that the previous trademark referred to bears the item name of “**HPNOTIQ**”;

That the application for dispute registration bears the verbal sign “**HYPNOTIZER**”;

Considering that the criticized sign does not contrite the identical reproduction of the first trademark that is in opposition to the criticized sign, it is necessary to research if there is a risk of confusion between these two item names, which must be globally considered, taking into account all the relevant factors of the particular case; that this total consideration must be, as long as visual, phonetic or conceptual similarity of the item brands go, founded on the general impression created by these taking into account their dominant and distinctive elements;

Considering that visually and phonetically, the implicated corporate names have in common six letters placed in the same order (H, P, N, O, T, I), the letter H being situated in the leading position, followed by the central sequence PNOTI, conferring them a close sonority and aspect;

That intellectually, the two corporate names call to mind the same reference to the field of hypnosis;

That, accordingly, the addition of the letter Y, and the substitution at the end of the group of letters ZED to the letter Q in the middle of the contested sign, are not a deciding factor in the total impression given by these two signs, the strong intellectual evocation remains identical;

In fact, the consumer, from now on familiar with the shortcuts of the written language used in electronic telecommunications, will perceive the trademark HPNOTIQ- strongly characteristic when compared to the target products – as referring to the term HYPNOTIQUE;

Considering that it emerges from the entirety of these observations that there is a risk of confusion between the involved signs, as they give rise to a very close overall impression and concern products that are extremely similar;

That, consequently, the claim must be rejected;

Considering, according to the article 421-20 of the Code of Intellectual Property, that “*the delay of the action brought in front of the Court of Appeal against the decisions of the director of the National Industrial Property Office go back one month*”; that the incident of the HEAVEN HILL DISTILLERIES corporation tending to the partial annulment of the Director of the National Industrial Property Office’s decision, being lodged after the expiration of the period prescribed, is inadmissible;

Considering that applying to article 700 of the new Code of Civil Procedure is not necessary;

ON THESE GROUNDS

The appeal formulated by Yassinn DIALLO is rejected,

It is declared that the claim made by HEAVEN HILL DISTILLERIES Corporation is inadmissible,

It is asserted that it doesn’t apply to article 700 of the new Code of Civil Procedure,

It is asserted that the present decision will be notified to the Registrar **by** registered letter with advice of delivery to the parties and to de Director of the National Industrial Property Office.

THE REGISTRAR

Signature

THE PRESIDENT

Signature

Exhibit C

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 2,642,855

Registered Oct. 29, 2002

**TRADEMARK
PRINCIPAL REGISTER**

HPNOTIQ

**GLOBAL PERSPECTIVES, INC. (NEW YORK
CORPORATION)
108-50 62ND DRIVE
FOREST HILLS, QUEENS, NY 11375**

FIRST USE 9-0-2001; IN COMMERCE 9-0-2001.

SER. NO. 76-372,289, FILED 2-20-2002.

**FOR: LIQUEUR, IN CLASS 33 (U.S. CLS. 47 AND
49).**

YSA DEJESUS, EXAMINING ATTORNEY

Exhibit D

Int. Cl.: 33

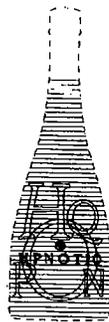
Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Reg. No. 2,822,475

Registered Mar. 16, 2004

**TRADEMARK
PRINCIPAL REGISTER**



HEAVEN HILL DISTILLERIES, INC. (KEN-
TUCKY CORPORATION)
1064 LORETTO ROAD
P.O. BOX 729
BARDSTOWN, KY 40004, BY ASSIGNMENT GLO-
BAL PERSPECTIVES, INC. (NEW YORK COR-
PORATION) FOREST HILLS, NY 11375

FOR: LIQUEUR, IN CLASS 33 (U.S. CLS. 47 AND
49).

FIRST USE 9-0-2001; IN COMMERCE 9-0-2001.

OWNER OF U.S. REG. NO. 2,642,855.

THE DRAWING IS LINED FOR THE COLOR
BLUE.

THE DOTTED LINES IN THE DRAWING INDI-
CATE THE PLACEMENT OF THE MARK ON THE
CONTAINER FOR THE GOODS.

SEC. 2(F).

SER. NO. 76-463,356, FILED 10-31-2002.

ZACHARY BELLO, EXAMINING ATTORNEY

Exhibit E

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 2,834,130

Registered Apr. 20, 2004

**TRADEMARK
PRINCIPAL REGISTER**

HPNOTIQ

HEAVEN HILL DISTILLERIES, INC. (KEN-
TUCKY CORPORATION)
1064 LORETTO ROAD
P.O. BOX 729
BARDSTOWN, KY 40004

FOR: CLOTHING, NAMELY, SHIRTS, IN CLASS
25 (U.S. CLS. 22 AND 39).

FIRST USE 2-7-2003; IN COMMERCE 2-7-2003.

OWNER OF U.S. REG. NO. 2,642,855.

SER. NO. 76-519,684, FILED 5-19-2003.

CAROLINE WOOD, EXAMINING ATTORNEY

Exhibit F

Int. Cls.: 4 and 21

Prior U.S. Cls.: 1, 2, 6, 13, 15, 23, 29, 30, 33, 40 and 50

Reg. No. 2,834,133

United States Patent and Trademark Office

Registered Apr. 20, 2004

**TRADEMARK
PRINCIPAL REGISTER**

HPNOTIQ

HEAVEN HILL DISTILLERIES, INC. (KEN-
TUCKY CORPORATION)
1064 LORETTO ROAD, P.O. BOX 729
BARDSTOWN, KY 40004

FOR: CANDLES, IN CLASS 4 (U.S. CLS. 1, 6 AND
15).

FIRST USE 5-2-2003; IN COMMERCE 5-2-2003.

FOR: BEVERAGE GLASSWARE , IN CLASS 21
(U.S. CLS. 2, 13, 23, 29, 30, 33, 40 AND 50).

FIRST USE 3-23-2003; IN COMMERCE 3-23-2003.

OWNER OF U.S. REG. NO. 2,642,855.

SER. NO. 76-519,929, FILED 5-23-2003.

CAROLINE WOOD, EXAMINING ATTORNEY

Exhibit G

September 24, 2007

Letter of Protest
ATTN: Trademark Administrator
 United States Patent & Trademark Office
 600 Dulany Street MDE-4B89
 Alexandria, VA 22314-5793

Re: Letter of Protest
Application Serial No.: 77/266,196
Filing Date: August 28, 2007
Mark: HYPNOTIZER
Int'l Class: 33

Dear Sir or Madam:

This Letter of Protest is submitted against the application of Yassini Patrice Diallo ("Diallo") to register HYPNOTIZER for use in International Class 33 with various alcoholic beverages, Serial No. 77/266,196, on behalf of Heaven Hill Distilleries, Inc. ("Heaven Hill"). A copy of the TARR printout for Diallo's application is enclosed as Exhibit A.

Heaven Hill is the owner of the U.S. Trademark Registrations listed below for the mark HPNOTIQ (copies of the registration certificates are enclosed as Exhibit B).

Mark	Registration No.	Goods	First use of mark in commerce
HPNOTIQ	2642855	Liqueur, in IC 033	September, 2001
HPNOTIQ HQOPN (& bottle design)	2822475	Liqueur, in IC 033	September, 2001
HPNOTIQ	2834133	Candles, in IC 004	May 2, 2003
		Beverage glassware, in IC 021	March 23, 2003
HPNOTIQ	2834130	Clothing, namely shirts, in IC 025	February 7, 2003

Letter of Protest
September 24, 2007
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Heaven Hill believes that its registrations provide prima facie evidence supporting a refusal of registration on the basis of a likelihood of confusion because two of its registrations are for alcoholic beverages in International Class 33 and because of the similarity of the marks. See TMEP § 1715. Therefore, Heaven Hill's Letter of Protest should be granted.

As further background, Heaven Hill notes that this is Diallo's second attempt to register HYPNOTIZER in international class 33 for the same goods. His first attempt, Application Serial No. 79/019,547, was a 66A application that was cancelled after his underlying French registration was cancelled for all alcoholic beverages. The TARR and TESS printouts for this application are attached hereto as Exhibit C.

This cancellation occurred as a result of an opposition prosecuted by Heaven Hill in France. The decision of the Court of Appeals of Paris, and an English translation thereof, upholding the finding of the French Industrial Property Office that HYPNOTIZER, when used in connection with alcoholic beverages and beer, created a likelihood of confusion with Heaven Hill's HPNOTIQ mark is attached as Exhibit D. Before this cancellation occurred, Heaven Hill had actively opposed Application Serial No. 79/019,547 in Opposition No. 91173767.

While the conclusions of the French Industrial Property Office and the French Court's are not dispositive, they certainly support Heaven Hill's position that its registrations for HPNOTIQ in connection with liqueur present prima facie evidence supporting a refusal to register Diallo's HYPNOTIZER mark on the basis of a likelihood of confusion.

Moreover, the prosecution history in Serial No. 79/019,547 demonstrates that the Examining Attorney may not independently identify Heaven Hill's registrations despite the similarity of the marks and the goods. This is illustrated by the summary of the XSearch performed during the examination of Serial No. 79/019,547, which is attached as Exhibit E. A review of this summary reveals that the search did not identify any marks having a "h" followed directly by a "p" as it occurs in Heaven Hill's HPNOTIQ mark. Rather, as illustrated by the inquiries in lines 01 and 02, the search methodology only identified marks having an "i," "y," or "e" between an "h" and a "p." Similarly, the inquiry in line 03 did not identify Heaven Hill's HPNOTIQ registrations because it identifies only marks having a "t" followed by an "i," "e," or "y" followed by a "c," "s," or "z." The remaining inquiries, lines 04-07, are simply combinations of 01-03 or inquiries 01, 02, or 03

Letter of Protest
September 24, 2007
Page 3

with an additional limitation. Thus, the search failed to identify Heaven Hill's HPNOTIQ registrations.

Rather than forcing it to wait until Diallo's new application is published for opposition and forcing it to again endure the burden of prosecuting an opposition, Heaven Hill respectfully requests that its Letter of Protest be granted. This will ensure that the Examining Attorney has the opportunity to consider the likelihood of confusion that Diallo's applied for mark creates with Heaven Hill's pre-existing registrations.

If we can provide you with any additional information to assist you in deciding to grant this Letter of Protest, please do not hesitate in calling me at 502-562-7378.

Very truly yours,

WYATT, TARRANT & COMBS, LLP



Matthew A. Williams

MAW/dkl
Enclosures

cc: Mr. Max L. Shapira
William H. Hollander, Esq.
(both w/out encls.)