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21 UNITED STATES DISTRICT COURT
22 SOUTHERN DISTRICT OF CALIFORNIA

23 UNITED BRANDS COMPANY, INC.,

24 Plaintiff,

25 v.

26 ANHEUSER-BUSCH, INC.,

27 Defendant.
28

CASE NO. 10-cv-02281-AJB-KSC

**STIPULATED PROTECTIVE ORDER
REGARDING CONFIDENTIAL AND
TRADE SECRET INFORMATION**

Courtroom: F
Judge: Hon. Karen S. Crawford

1 1. PURPOSES AND LIMITATIONS

2 The parties and the Court recognize that at least some of the documents and information
3 (“materials”) being sought through discovery in the above-captioned action may be proprietary,
4 trade secret, or other confidential information, as is contemplated by Federal Rule of Civil
5 Procedure 26(c) for which special protection from public disclosure and from use for any purpose
6 other than prosecuting this litigation may be warranted. The parties also recognize that they are
7 actual competitors with each other in the marketplace and that the value of certain materials may
8 be extremely high, but difficult to quantify. Accordingly, the parties hereby stipulate to and
9 petition the Court to enter the following Stipulated Protective Order (“Order”) in this action. The
10 purpose of this Order is to protect the confidentiality of such materials as much as practicable
11 during the litigation. The parties acknowledge that this Order does not confer blanket protections
12 on all disclosures or responses to discovery and that the protection it affords from public
13 disclosure and use extends only to the limited information or items that are entitled to confidential
14 treatment under the applicable legal principles.

15 The parties further acknowledge, as set forth in Paragraph 6.5 below, that this Order
16 creates no entitlement to file confidential information under seal. Nothing shall be filed under
17 seal, and the Court shall not be required to take any action, without separate prior order by the
18 Judge before whom the hearing or proceeding will take place, after application by the affected
19 party with appropriate notice to opposing counsel. The parties shall follow and abide by
20 applicable law, including Civ. L.R. 79.2, ECF Administrative Policies and Procedures, Section
21 II.j, and the chambers’ rules, with respect to filing documents under seal.

22 The Court may modify the protective order in the interests of justice or for public policy
23 reasons.

24 2. DEFINITIONS

25 2.1 The term “Challenging Party” shall mean a Party that challenges the designation of
26 information or items under this Order.

27 2.2 The term “CONFIDENTIAL” Information or items shall mean and include
28 information contained or disclosed in any materials, regardless of how generated, stored, or

1 maintained, including documents, portions of documents, answers to interrogatories, responses to
2 requests for admissions, testimony from previous trials, deposition testimony, transcripts of
3 depositions, and trial transcripts from previous trials, including data, summaries, and compilations
4 derived therefrom that qualify for protection under Federal Rule of Civil Procedure 26(c), as
5 identified in Paragraph 5.4, below.

6 2.3 The term "counsel" shall mean Outside Counsel and paralegals who are assisting
7 in the conduct of the action, as well as any other counsel and support personnel (*e.g.* secretaries,
8 clerks, assistants, investigators) of such counsel who may be assisting counsel of record for the
9 Parties in defense of the action who are operating under the supervision of such attorneys or
10 paralegals. The term "counsel," as applied in this Order, shall also include the Parties' In-House
11 Counsel (*i.e.* licensed attorneys who are employed by Parties to work within the Party's legal
12 group).

13 2.4 The term "Designating Party" shall mean a Party or Non-Party that designates
14 information or items that it produces in disclosures or in responses to discovery as "Protected
15 Material," as defined herein.

16 2.5 The term "Disclosure" or "Discovery Material" shall mean all items or
17 information, regardless of the medium or manner in which it is generated, stored, or maintained
18 (including, among other things, testimony, transcripts, and tangible things), that are produced or
19 generated in disclosures or responses to discovery in this matter.

20 2.6 The term "Expert" shall mean a person with specialized knowledge or experience
21 in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an
22 expert witness or as a consultant in this action.

23 2.7 The term "materials" shall include, but shall not be limited to: documents;
24 correspondence; memoranda; bulletins; blueprints; specifications; minutes; letters; statements;
25 cancelled checks; contracts; invoices; drafts; books of account; worksheets; notes of
26 conversations; desk diaries; appointment books; expense accounts; recordings; photographs;
27 motion pictures; compilations from which information can be obtained and translated into
28 reasonably usable form through detection devices; sketches; drawings; notes (including

1 laboratory notebooks and records); reports; instructions; disclosures; other writings; models and
2 prototypes and other physical objects.

3 2.8 The term "Non-Party" shall mean any natural person, partnership, corporation,
4 association, or other legal entity not named as a Party to this action.

5 2.9 The term "Party" shall mean any party to this action, including all of its officers,
6 directors, employees, consultants, retained experts, and Outside Counsel of Record (and their
7 support staff).

8 2.10 The term "Producing Party" shall mean a Party or Non-Party that produces
9 Disclosure or Discovery Material in this action.

10 2.11 The term "Professional Vendors" shall mean persons or entities that provide
11 litigation support services (e.g. photocopying, videotaping, translating, preparing exhibits or
12 demonstrations, and organizing, storing, or retrieving data in any form or medium) and their
13 employees and subcontractors.

14 2.12 The term "Protected Material" shall mean any Disclosure or Discovery Material
15 that is designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – FOR COUNSEL'S
16 EYES ONLY."

17 2.13 The term "Receiving Party" shall mean a Party that receives Disclosure or
18 Discovery Material from a Producing Party.

19 3. SCOPE

20 The protections conferred by this Order cover not only Protected Material (as defined
21 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
22 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations,
23 or presentations by Parties or their Counsel that might reveal Protected Material. However, the
24 protections conferred by this Order do not cover the following information: (a) any information
25 that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the
26 public domain after its disclosure to a Receiving Party as a result of publication not involving a
27 violation of this Order, including becoming part of the public record through trial or otherwise;
28 and (b) any information known to the Receiving Party prior to the disclosure or obtained by the

1 Receiving Party after the disclosure from a source who obtained the information lawfully and
2 under no obligation of confidentiality to the Designating Party.

3 4. DURATION

4 Even after final disposition of this litigation, the confidentiality obligations imposed by
5 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
6 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
7 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
8 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
9 including the time limits for filing any motions or applications for extension of time pursuant to
10 applicable law.

11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
13 or Non-Party that designates information or items for protection under this Order must take care
14 to limit any such designation to specific material that qualifies under the appropriate standards.

15 5.2 Mass, indiscriminate, or routinized designations are prohibited.

16 5.3 If it comes to a Designating Party's attention that information or items that it
17 designated for protection do not qualify for protection, that Designating Party must promptly
18 notify all other Parties that it is withdrawing the mistaken designation.

19 5.4 Manner and Timing of Designations. Each Party or Non-Party to this litigation
20 that produces or discloses any Discovery Materials that the Producing Party believes should be
21 subject to this Protective Order may designate the same as "CONFIDENTIAL" or "HIGHLY
22 CONFIDENTIAL - FOR COUNSEL'S EYES ONLY."

- 23 a. Designation as "CONFIDENTIAL": Any Party or Non-Party may designate
24 information as "CONFIDENTIAL" if, in the good faith belief of such party and its
25 counsel, the unrestricted disclosure of such information could be potentially
26 prejudicial to the business or operations of such party and qualifies for protection
27 under Federal Rule of Civil Procedure 26(c). The following categories of
28 documents, as well as potentially other Discovery Materials, may be designated as

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“CONFIDENTIAL”:

1. Sketches or mock-ups of designs
2. Business agreements and contracts
3. Licensing negotiations and agreements
4. Communications with customers
5. Communications with suppliers, wholesalers, or retailers
6. Marketing plans or strategies
7. Third-party information covered by an obligation of confidentiality

b. Designation as “HIGHLY CONFIDENTIAL - FOR COUNSEL’S EYES ONLY”:

Any Party or Non-Party may designate information as “HIGHLY CONFIDENTIAL - FOR COUNSEL’S EYES ONLY” if, in the good faith belief of such Producing Party and its counsel, the information qualifies for protection under Federal Rule of Civil Procedure 26(c) or the Uniform Trade Secrets Act, thereby rendering said information so commercially sensitive that disclosure of such information to anyone other than counsel could potentially be prejudicial to the Producing Party. The following categories of documents, as well as potentially other Discovery Materials, may be designated as “HIGHLY CONFIDENTIAL – FOR COUNSEL’S EYES ONLY”:

1. Sales data, including but not limited to documents showing number and amount of products sold, product volume, product pricing, revenue, profit, cost, and margins
2. Costs of doing business
3. Customer lists
4. Trade secrets
5. Future marketing plans
6. Future business plans
7. Product design and development

5.5 The designation of information as either “CONFIDENTIAL” or “HIGHLY

1 CONFIDENTIAL - FOR COUNSEL'S EYES ONLY" shall be made by affixing a legend to each
2 page thereof indicating that information contained within or disclosed on the page of the
3 document is "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - FOR COUNSEL'S EYES
4 ONLY," as the case may be.

5 5.6 In the event the Producing Party elects to produce materials for inspection, the
6 Producing Party need not designate them for protection until after the inspecting Party has
7 indicated which material it would like copied and produced. For purposes of the initial
8 inspection, all materials produced shall be considered as "HIGHLY CONFIDENTIAL - FOR
9 COUNSEL'S EYES ONLY," and shall be treated as such pursuant to the terms of this Order.
10 After the inspecting Party has identified the documents it wants copied and produced, the
11 Producing Party must determine which documents qualify for protection under this Order.
12 Thereafter, the Producing Party shall, within a reasonable time prior to producing those materials
13 to the Receiving Party, mark the copies of those materials that contain Protected Material with the
14 appropriate confidentiality marking.

15 5.7 Whenever a deposition taken on behalf of any party involves a disclosure of
16 Protected Material of any party:

17 a. Said deposition or portions thereof shall be designated as containing Protected
18 Material subject to the provisions of this Order; such designation shall be made on
19 the record whenever possible, but a party may designate portions of depositions as
20 containing Protected Material after transcription of the proceedings; a party shall
21 have until fifteen (15) days after receipt of the deposition transcript to inform the
22 other party or parties to the action of the portions of the transcript designated
23 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - FOR COUNSEL'S EYES
24 ONLY;"

25 b. The Producing Party shall have the right to exclude from attendance at said
26 deposition, during such time as the Protected Material is to be disclosed, any
27 person other than the deponent, counsel (including their staff and associates), the
28 court reporter, and the person(s) agreed upon pursuant to Paragraph 6.3 below; and

1 c. The originals of said deposition transcripts and all copies thereof shall bear the
2 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - FOR COUNSEL'S
3 EYES ONLY," as appropriate, and the original or any copy ultimately presented to
4 a court for filing shall not be filed unless it can be accomplished under seal,
5 identified as being subject to this Order, and protected from being opened except
6 by order of this Court. Filing deposition transcripts under seal with the Court,
7 however, does not affect how Protected Material is treated at trial. Specifically,
8 deposition testimony offered in lieu of trial testimony need not necessarily be
9 sealed simply because the deposition transcript was filed under seal. Rather, it is
10 up to the discretion of the Court how Protected Material is treated at trial. See
11 Paragraph 8.5.

12 5.8 The Parties recognize and agree that the wrongful disclosure of any
13 CONFIDENTIAL or HIGHLY CONFIDENTIAL, especially given the fact that some of the
14 parties are direct competitors with each other, would be extremely prejudicial to the impacted
15 party's interest, and thus specifically agree that the Court should have and exercise full authority
16 to sanction any person who violates this Protective Order.

17 6. ACCESS TO AND USE OF PROTECTED MATERIAL

18 6.1 All Protected Material designated as "CONFIDENTIAL" or "HIGHLY
19 CONFIDENTIAL - FOR COUNSEL'S EYES ONLY" shall not be disclosed by the Receiving
20 Party to anyone other than those persons designated herein and shall be handled in the manner set
21 forth below and, in any event, shall not be used for any purpose other than in connection with this
22 litigation, unless and until such designation is removed either by agreement of the parties, or by
23 order of the Court.

24 6.2 Information designated "HIGHLY CONFIDENTIAL - FOR COUNSEL'S EYES
25 ONLY" may be viewed only by:

26 a) Outside Counsel (as defined in Paragraph 2.3) of the Receiving Party and In-
27 House Counsel with direct involvement in the supervision of this litigation;

28 b) The Court and its supporting personnel;

1 c) The author or recipient of a document containing the information or a custodian or
2 other person who otherwise possessed or knew the information;

3 d) Anyone so authorized by prior written consent of the party designating the
4 material as Protected Material.

5 e) Independent experts of the Receiving Party to whom disclosure is reasonably
6 necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be
7 Bound" (Exhibit A); and

8 f) Court reporters and their staff, professional jury or trial consultants, and
9 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
10 signed the "Acknowledgement and Agreement to Be Bound" (Exhibit A).

11 Notwithstanding the foregoing, under no circumstances shall Confidential Information be
12 disclosed to an expert, advisor or consultant who is an employee, officer, director, agent,
13 contractor, subcontractor or consultant of any entity that is engaged in the research, development,
14 manufacture or sale of any competitive products, or in any other way is a competitor of either
15 party, without prior approval and consent of the Designating Party.

16 6.3 Information designated "CONFIDENTIAL" may be viewed only by counsel (as
17 defined in Paragraph 2.3) of the Receiving Party, independent experts (pursuant to the terms of
18 Paragraph 6.2), the Court and its supporting personnel and by the additional individuals listed
19 below, provided each such individual has read this Order in advance of disclosure and has agreed
20 in writing to be bound by its terms:

21 a) Individual parties to this action;

22 b) Executives who are required to participate in policy decisions with reference to this
23 action;

24 c) Technical personnel of the parties with whom counsel for the parties find it necessary
25 to consult, in the discretion of such counsel, in preparation for trial of this action;

26 d) Court reporters and their staff, professional jury or trial consultants, and Professional
27 Vendors to whom disclosure is reasonably necessary for this litigation and who have
28 signed the "Acknowledgement and Agreement to Be Bound" (Exhibit A);

- 1 e) During their depositions, witnesses in the action to whom disclosure is reasonably
2 necessary and who have signed the "Acknowledgement and Agreement to Be Bound"
3 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court.
4 Pages of transcribed deposition testimony or exhibits to depositions that reveal
5 Protected Material must be separately bound by the court reporter and may not be
6 disclosed to anyone except as permitted under this Order.
- 7 f) The author or recipient of a document containing the information or a custodian or
8 other person who otherwise possessed or knew the information;
- 9 g) Anyone so authorized by prior written consent of the party designating the material as
10 Protected Material; and
- 11 h) Stenographic and clerical employees associated with the individuals identified above.

12 6.4 All information which has been designated as "CONFIDENTIAL" or "HIGHLY
13 CONFIDENTIAL - FOR COUNSEL'S EYES ONLY" by the Producing Party, and any and all
14 reproductions thereof, shall be retained in the custody of the counsel for the Receiving Party
15 identified in Paragraph 2.3, except that independent experts authorized to view such information
16 under the terms of this Order may retain custody of copies such as are necessary for their
17 participation in this litigation.

18 6.5 Before any materials produced in discovery, answers to interrogatories, responses
19 to requests for admissions, deposition transcripts, or other documents which are designated as
20 Protected Material are filed with the Court for any purpose, the party seeking to file such material
21 shall seek permission of the Court to file said material under seal.

22 7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 7.1 Nothing in this Order shall be construed in any manner as an admission or
24 concession by any party that the information designated hereunder is, in fact, confidential,
25 proprietary, trade secret, medical, or otherwise protectable.

26 7.2 Timing of Challenges. At any stage of these proceedings, any Party may challenge
27 a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's
28 confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary

1 economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its
2 right to challenge a confidentiality designation by electing not to mount a challenge promptly
3 after the original designation is disclosed.

4 7.3 Judicial Intervention. Before seeking Court intervention in any discovery matter
5 the parties must strictly comply with Local Rules and Judge Crawford's Chambers Rules. The
6 materials at issue shall be treated as Confidential Information, as designated by the designating
7 party, until the Court has ruled on the objection or the matter has been otherwise resolved.

8 8. ACCESS TO AND USE OF PROTECTED MATERIAL

9 8.1 All Protected Material shall be held in confidence by those inspecting or receiving
10 it, and shall be used only for purposes of this action. The party receiving Protected Material shall
11 not under any circumstances sell, offer for sale, advertise, or publicize Protected Material or any
12 information contained therein. Counsel for each party, and each person receiving Protected
13 Material, shall take reasonable precautions to prevent the unauthorized or inadvertent disclosure
14 of such information. If Protected Material is disclosed to any person other than a person
15 authorized by this Order, the party responsible for the unauthorized disclosure must immediately
16 bring all pertinent facts relating to the unauthorized disclosure to the attention of the other parties
17 and, without prejudice to any rights and remedies of the other parties, make every effort to
18 prevent further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

19 8.2 No party shall be responsible to another party for disclosure of Protected Material
20 under this Order if the information in question is not labeled or otherwise identified as such in
21 accordance with this Order.

22 8.3 If a Producing Party, through inadvertence, produces any Protected Material
23 without labeling or marking or otherwise designating it as such in accordance with this Order, the
24 Producing Party may give written notice to the Receiving Party that the document or thing
25 produced is deemed Protected Material, and that the document or thing produced should be
26 treated as such in accordance with that designation under this Order. The Receiving Party must
27 treat the materials as Protected Material, once the Producing Party so notifies the Receiving Party.
28 If the Receiving Party has disclosed the materials before receiving the designation, the Receiving

1 Party must notify the Producing Party in writing of each such disclosure. Counsel for the parties
2 shall agree on a mutually acceptable manner of labeling or marking the inadvertently produced
3 materials as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - FOR COUNSEL'S EYES
4 ONLY" subject to this Order.

5 8.4 Production of Privileged or Protected Documents.

6 (a) Inadvertent Production or other disclosure of documents subject to work-
7 product immunity, the attorney-client privilege or other legal privilege that protects information
8 from discovery shall not constitute a waiver of the immunity, privilege, or other protection,
9 provided that the Producing Party notifies the party receiving the information ("Receiving Party")
10 in writing reasonably promptly after it confirms such inadvertent production.

11 (b) Copies of such inadvertently produced privileged and/or protected
12 document(s) shall be returned to the Producing Party or destroyed immediately upon notice of
13 privilege and any information regarding the content of the document(s) shall be deleted from any
14 litigation support or other database and is forbidden from disclosure and forbidden from use in
15 this action or for any other reason at all. The Party or individual having received the
16 inadvertently-produced privileged or protected information shall notify the Producing Party in
17 writing when all such copies have been returned, destroyed or deleted. Any Party or individual
18 having received the inadvertently-produced privileged or protected information need not wait for
19 notice from the Producing Party before complying with the above and is expected to comply with
20 the requirements of this Paragraph as soon as it is known or should be known, that the document
21 and information contained therein is privileged and/or protected. No use shall be made of such
22 inadvertently-produced privileged or protected information during deposition or at trial or
23 otherwise, nor shall the information be shown to anyone who was not given access to them prior
24 to the request to return or destroy them.

25 (c) The Parties shall have the benefit of all limitations on waiver afforded by
26 Federal Rules of Evidence 502. In addition, the Parties agree that the disclosure (whether
27 intentional or non-intentional) of documents that are found by the Court, after such disclosure, to
28 be subject to work-product immunity, the attorney-client privilege or other legal privilege that

1 protects information from discovery (“Court-Ordered Protected Documents”) shall not constitute
2 a waiver of any such privilege or protection with respect to any non-disclosed documents of the
3 same subject matter. Any inadvertent or non-intentional disclosure of privileged or protected
4 information shall not operate as a waiver in any other federal, state or administrative proceeding,
5 and the Parties’ agreement regarding the effect of inadvertent or non-intentional disclosure of
6 privileged or protected information shall be binding on non-parties. Any disclosure of Court-
7 Ordered Protected Documents as provided herein shall not operate as a waiver with respect to any
8 non-disclosed documents of the same subject matter in any other federal, state or administrative
9 proceeding, and the Parties’ agreement regarding the effect of disclosure of Court-Ordered
10 Protected Documents shall be binding on non-parties.

11 8.5 The Court shall determine at the time of trial how Protected Material shall be
12 handled at trial, consistent with the purposes of this Order.

13 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
14 OTHER LITIGATION

15 9.1 Nothing herein shall be construed to prevent disclosure of Protected Material if
16 such disclosure is required by law or by order of the Court.

17 9.2 If a Party or counsel is served a subpoena or a court order issued in other litigation
18 that compels disclosure of any information or items designated in this action as
19 CONFIDENTIAL, that Party or counsel must:

- 20 (a) Promptly notify in writing the Designating Party. Such notification shall include a
21 copy of the subpoena or court order;
- 22 (b) Promptly notify in writing the party who caused the subpoena or order to issue in the
23 other litigation that some or all of the material covered by the subpoena or order is
24 subject to this Order. Such notification shall include a copy of this Order; and
- 25 (c) Cooperate with respect to all reasonable procedures sought to be pursued by the
26 Designating Party whose Protected Material may be affected to protect the Protected
27 Material from disclosure.

28 9.3 If the Designating Party timely seeks a protective order, the Party or counsel

1 served with the subpoena or court order shall not produce any information designated in this
2 action as Protected Material before a determination by the court from which the subpoena or
3 order issued, unless the Party or counsel has obtained the Designating Party's permission. The
4 Designating Party shall bear the burden and expense of seeking protection in that court of its
5 Protected Material – and nothing in these provisions should be construed as authorizing or
6 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

7 9.4 No Party or counsel who has received Protected Material subject to this Order
8 shall aid or encourage a party to another litigation to subpoena or otherwise seek to obtain
9 Protected Material subject to this Order.

10 10. INFORMATION, DOCUMENTS AND/OR TESTIMONY PROVIDED BY
11 THIRD PARTIES

12 10.1 Preliminary Designation of Documents Produced by Non-Parties. In order to
13 provide the parties an adequate opportunity to designate Discovery Materials as Protected
14 Materials, all Discovery Materials produced in this case by third parties shall be deemed
15 "HIGHLY CONFIDENTIAL - FOR COUNSEL'S EYES ONLY," whether or not stamped with
16 that legend, for a period of fifteen (15) days following production to each Party. During the
17 fifteen day period, a Party having a legitimate confidentiality interest in such Discovery Materials
18 can re-designate such Non-Party Discovery Materials as set forth in the Order, including no
19 designation at all, by providing written notice to the other Party. Upon receipt of notice of such a
20 re-designation, the noticed Party may challenge the re-designation as set forth in this Order.

21
22 10.2 Third parties who provide information, documents and/or testimony can become
23 parties to this Order without a separate court application by agreeing to be bound by its terms in
24 writing by signing the "Non-Disclosure Agreement" in the form of Exhibit B.

25 11. FINAL DISPOSITION

26 11.1 After termination of this litigation, the provisions of this Order shall continue to be
27 binding, except with respect to those documents and information that become a matter of public
28 record. This Court retains and shall have continuing jurisdiction over the parties and recipients of

1 Protected Material for enforcement of the provisions of this Order following termination of this
2 litigation.

3 11.2 Within 60 days after the final disposition of this litigation as defined in Paragraph
4 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such
5 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
6 compilations, summaries, and any other format reproducing or capturing any of the Protected
7 Material. Any returned Protected Material should be sent to counsel for the Producing Party. If
8 any of the Protected Materials are destroyed, counsel for the Receiving Party shall provide a
9 certificate of destruction to the Producing Party. Protected Material stored electronically (e.g.,
10 document productions) shall be deleted; provided, however, this obligation shall be satisfied so
11 long as reasonable measures have been taken in good faith to delete the electronically-stored
12 Protected Material. Counsel for the Receiving Party shall provide a certificate of deletion to the
13 Producing Party. Notwithstanding this provision, counsel for the parties are entitled to retain an
14 archival copy of discovery responses, pleadings, motion papers, transcripts, legal memoranda,
15 correspondence or attorney work product, even if such materials contain Protected Material.
16 Any such archival copies that contain or constitute Protected Material remain subject to this
17 Order as set forth in Paragraph 4. Document management systems and backup tapes need not be
18 purged to eliminate Protected Material. This Paragraph applies to any Protected Material
19 circulated to independent experts described in Paragraph 6.2 above, and counsel for the party or
20 parties receiving Protected Material shall obtain written confirmation from such independent
21 experts to whom they have circulated Protected Material that all such Protected Material and all
22 copies thereof have been returned to such counsel or destroyed, and that reasonable measures
23 have been taken in good faith to delete all such Protected Material stored electronically, as
24 provided for in this Paragraph.

25 12. MISCELLANEOUS

26 12.1 Nothing herein shall prejudice the right of any party to object to the production of
27 any discovery material on the grounds that the material is protected as privileged or as attorney
28 work product.

1 12.2 Nothing in this Order shall bar counsel from rendering advice to their clients with
2 respect to this litigation and, in the course thereof, relying upon any information designated as
3 Protected Material, provided that the contents of the information shall not be disclosed except as
4 is permitted by this Order.

5 12.3 This Order shall be without prejudice to the right of any party to oppose
6 production of any information for lack of relevance or any other ground other than the mere
7 presence of Protected Material. The existence of this Order shall not be used by either party as a
8 basis for discovery that is otherwise improper under the Federal Rules of Civil Procedure.

9 12.4 Nothing herein shall be construed to affect in any manner the admissibility at trial
10 of any document, testimony or other evidence or the right of any party to be present throughout
11 the trial.

12 12.5 The restrictions and obligations set forth herein shall not apply to any information
13 that: (a) the parties agree should not be designated Protected Material; (b) the parties agree, or the
14 Court rules, is already public knowledge; (c) the parties agree, or the Court rules, has become
15 public knowledge other than as a result of disclosure by the Receiving Party, its employees, or its
16 agents in violation of this Order; or (d) has come or shall come into the Receiving Party's
17 legitimate knowledge independently of the production by the Producing Party. Prior knowledge
18 must be established by preproduction documentation.

19 12.6 The restrictions and obligations herein shall not be deemed to prohibit discussions
20 of any Protected Material with anyone if that person already has or obtains legitimate possession
21 thereof.

22 12.7 Transmission by email or facsimile is acceptable for all notification purposes
23 herein.

24 12.8 This Order may be modified by written agreement of the parties, subject to
25 approval by the Court.


26 12.9 The Court may modify the terms and conditions of this Order for good cause, or in
27 the interest of justice, or on its own order at any time in these proceedings. The parties prefer that
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the Court provide them with notice of the Court's intent to modify the Order and the content of those modifications, prior to entry of such an order.

IT IS SO ORDERED.

DATED: 4/30/12


KAREN S. CRAWFORD
UNITED STATES MAGISTRATE JUDGE

Dated: April 23, 2012

DLA PIPER LLP (US)

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By: /s/ Marcus D. Peterson
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ANHEUSER-BUSCH, INC.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED BRANDS COMPANY, INC.,

Plaintiff,

v.

ANHEUSER-BUSCH, INC.

Defendant

CASE NO. 10-CV-02281-AJB-KSC

**STIPULATED PROTECTIVE ORDER
REGARDING CONFIDENTIAL AND
TRADE SECRET INFORMATION**

Courtroom: F
Judge: Karen S. Crawford

**EXHIBIT A
NON-DISCLOSURE AGREEMENT**

I, the undersigned, hereby declare that I have read the attached Stipulated Protective Order Regarding Confidential and Trade Secret Information ("Order") entered in the above-captioned case. I understand the terms of the Order. I also understand that my execution of this Non-Disclosure Agreement, indicating my agreement to be bound by the Order, is a prerequisite to my review of any information or documents designated as "Confidential" pursuant to the Order.

I will comply with and agree to be bound by all of the provisions of the Order. I agree and attest to my understanding that, if I fail to abide by the terms of the Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the United States District Court, Southern District of California, for the purposes of any proceedings relating to the enforcement of the Order and this Non-Disclosure Agreement.

DATED: _____

Signature

Print Name

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED BRANDS COMPANY, INC.,

Plaintiff,

v.

ANHEUSER-BUSCH, INC.

Defendant

CASE NO. 10-CV-02281-AJB-KSC

**STIPULATED PROTECTIVE ORDER
REGARDING CONFIDENTIAL AND
TRADE SECRET INFORMATION**

Courtroom: F
Judge: Karen S. Crawford

**EXHIBIT B
NON-DISCLOSURE AGREEMENT**

I, the undersigned, hereby declare that I have read the attached Stipulated Protective Order Regarding Confidential and Trade Secret Information (“Order”) entered in the above-captioned case. I understand the terms of the Order. I am executing this Non-Disclosure Agreement, indicating my agreement to be bound by the Order, in connection with providing information, documents and/or testimony designated as “Confidential” pursuant to the Order.

I will comply with and agree to be bound by all of the provisions of the Order. I agree and attest to my understanding that, if I fail to abide by the terms of the Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the United States District Court, Southern District of California, for the purposes of any proceedings relating to the enforcement of the Order and this Non-Disclosure Agreement.

DATED: _____

Signature