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The Boelter Companies

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO, UNLIMITED JURISDICTION

RUSSELL BRIMER,
Plaintiff,
v.
THE BOELTER COMPANIES, et al.
Defendants.

Case No. CGC-05-440811

AMENDED STIPULATION AND
[PROPOSED] ORDER RE:
CONSENT JUDGMENT

ENDORSED
FILED
San Francisco County Superior Court

AUG 18 2005

GORDON PARK-LI, Clerk
BY: MARJORIE SCHWARTZ-SCOTT
Deputy Clerk

AMENDED STIPULATION AND [PROPOSED] ORDER RE: CONSENT JUDGMENT
SFSC CASE NO. CGC 05-440811

1 1. The following constitutes the knowing and voluntary election and stipulation of the
2 entity named below ("Company" or "Opt-In Defendant") to join as a Settling Defendant under
3 the Consent Judgment previously entered by the Court in *Brimer v. The Boelter Companies,*
4 *Inc.*, San Francisco Superior Court Case No. CGC 05 -440811 ("Action") and to be bound by
5 the terms of that Consent Judgment.

6 2. At any time during the one-year period prior to the filing of this Stipulation
7 ("Relevant Period"), the Company has employed ten (10) or more part-time or full-time
8 persons and has manufactured, distributed, offered for use or sold one or more items in each of
9 the following categories of Covered Products, as defined in the Consent Judgment (section 1.4)
10 (check all that apply):

- 11 Glassware Food/Beverage Products ("Category A Products")
12 Glassware Non-Food/Beverage Products ("Category C Products")
13 Ceramicware Food/Beverage Products ("Category B Products")
14 Ceramicware Non-Food/Beverage Products ("Category D Products")

15 3. The categories of products identified above are hereafter designated "Covered
16 Products" in the Action with respect to the Company.

17 4. At least one of the items in each of the categories checked above did not during the
18 Relevant Period or does not currently meet the Reformulation Standards set forth for that
19 category of Covered Products in section 2.3 of the Consent Judgment. The Company has not
20 provided compliant Proposition 65 warnings in conjunction with the sale or use of all such
21 Covered Products in California at all times during the Relevant Period.

22 5. The Company has not conducted a risk or exposure assessment for all Covered
23 Products within each separate category checked above firmly establishing that the use of such
24 Covered Products will result in an exposure in an amount less than that deemed permissible in
25 22 Cal. Code Regs. §12805(b) (i.e., less than 0.5 micrograms of lead per day and/or less than
26 4.1 micrograms of cadmium per day).

1 6. To the extent the Consent Judgment applies to the categories of Covered Products
 2 checked above, the Company agrees to be bound by the injunctive relief provisions of the
 3 Consent Judgment as it relates to each such category of Covered Products.

4 7. In conjunction with the execution of this Stipulation, the Company has provided the
 5 payments applicable to it as set forth in Table 14.4 of the Consent Judgment in the manner
 6 described in Exhibit E to the Consent Judgment. In this regard, the Company hereby
 7 represents and warrants that under the criteria set forth in subsections 14.4(a), (b), and (c) of
 8 the Consent Judgment, with respect to the Covered Products applicable to it pursuant to the
 9 categories checked in Paragraph 2 of this Stipulation, it is a (check only one)¹:

- 10 (a) Manufacturer with combined sales in California of less than 350,000
 11 consumer units in calendar year 2004
- 12 (a.1) Low Volume Manufacturer with combined sales in California of less
 13 than 10,000 consumer units in calendar year 2004
- 14 (b) Distributor and/or Importer with combined sales in California of less than
 15 350,000 consumer units in calendar year 2004
- 16 (b.1) Low Volume Distributor and/or Importer with combined sales in
 17 California of less than 10,000 consumer units in calendar year 2004
- 18 (c) Retailer and/or Amusement & Recreation Establishment
- 19 (d) Bar, Restaurant, Hotel, or Other Food/Beverage Service Defendant
- 20 (e) Opt-In Defendant with De Minimis Sales, i.e., combined sales in
 21 California of less than 500 consumer units in calendar year 2004 (attach to this
 22 Stipulation a list of the names of all product lines (by narrative description and
 23

24 _____

25 ¹ Any entity which has conducted activities which comprise more than one of the
 26 categories of business listed in (a)-(d) below shall be deemed to be a Manufacturer if 15% or
 27 more of its sales of Covered Products in California were the result of its Manufacturing of
 28 Covered Products; any entity otherwise in categories (c) or (d) shall be deemed to be a
 Distributor/Importer if 15% or more of its sales of Covered Products in California were the result
 of its Distributing/Importing of Covered Products.

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where available, UPC code) comprising these consumer units of Covered Products).

8. At least 65 days prior to the submissions of this Stipulation to the Court for entry, provided that it has been mailed to the address shown in Exhibit C attached hereto, the Company agrees to be deemed to have accepted service of a 60-day notice letter from Russell Brimer ("Brimer") alleging certain violations of Proposition 65 with respect to sales of the Covered Products identified herein.

9. The Company hereby stipulates to be deemed to have voluntarily accepted service of the summons and complaint in this Action upon the filing of this Stipulation and agrees to be subject to the jurisdiction of the Court for purposes of the Consent Judgment.

10. Future notices concerning this Stipulation and the Consent Judgment shall be provided to the Company at the address shown in Exhibit C as attached hereto. If the Company desires to change the individual and/or address designated to receive notice on its behalf, the Company shall provide notice to Brimer and Boelter's counsel at the addresses for them listed in Exhibit C to the Consent Judgment.

11. The undersigned have read, and the person and/or entity named below knowingly and voluntarily agree to be bound by, all terms and conditions of this Stipulation and the Consent Judgment as previously approved and entered by the San Francisco County Superior Court in this Action.

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12. The undersigned have full authority to make the written representations above and to enter into this Stipulation for the person/entity on behalf of which he/she is signing.

IT IS HEREBY STIPULATED AND AGREED TO:

By: [Signature]
(signature)

By: [Signature]
LARAEL S. PARAS

On Behalf of Plaintiff Russell Brimer

Steve Boone

Name (printed/typed)

President /CEO

Title (printed/typed)

On Behalf of:

SakeOne Corporation.

(Insert Company Name)

Opt-In Defendant

Dated: _____ Dated: 12-16-2005

OPT-IN PAYMENT INSTRUCTIONS

The instructions below outline the steps a company needs to take to participate in the Opt-In program and how to submit proper settlement payments as an Opt-In Defendant.

As a preliminary matter, in order to participate in the Opt-In program, if you are a Manufacturer, Distributor or Importer (as defined below), your company's sales of Covered Products destined for California in the calendar year 2004 must equal less than 350,000 consumer units. (This limitation does not apply to the entities covered in Class C or Class D below unless that entity is operating as a Manufacturer, Distributor, or Importer as defined below.) The meaning of "consumer unit" may be new to your company. A consumer unit reflects the individual product as marketed to the ultimate purchaser. For example, a boxed set of 4 glasses packaged to be sold as one unit or an individual mug may each be considered one "consumer unit."

STEP ONE: Determine the company's appropriate settlement classification. In order to determine the proper payment amount, you must determine which of the following categories describes your company's business in accordance with the definitions in the Consent Judgment.

A	<p>Manufacturer. A business entity that produces, packages, creates, or otherwise makes a Covered Product or contracts with an entity to produce, package, create or otherwise make a Covered Product. (Further information regarding Distributors, Importers, Retailers and other companies that are "Apparent Manufacturers" and may be included within this category on this basis is provided below.)</p>
B	<p>Distributor. A business, other than a Manufacturer or Importer, which supplies Covered Products to other distributors, retailers or other non-consumer entities.</p> <p>Importer. The first business entity with employees within the Customs Territory of the United States which receives Covered Products produced in other countries for the purpose of supplying them to distributors or purchasers within the United States.</p>
C	<p>Retailer / Amusement & Recreation establishment. These businesses are not specifically defined in the Consent Judgment, but include all retail sellers of Covered Products that do not qualify as Class A or Class B opt-in Defendants, as well as entities such as amusement/aquatic parks, professional/amateur sports organizations, theatrical and musical performance organizations and other similar establishments. Further information regarding retailers that may be deemed "Apparent Manufacturers" is provided below.</p>

D	<p>Bar & Restaurant, Hotel, Other Food/Beverage Service Defendant. These businesses also are not specifically defined in the Consent Judgment, but include all businesses and establishments that sell and/or serve food or drinks, as well as all lodging establishments that do not qualify as A, B or C opt-in Defendants.</p>
E	<p>Opt-In Defendant with De Minimus Sales. These are businesses in any of the categories listed in A through D above that attest under penalty of perjury that they have sold less than a combined total of 500 consumer units of Covered Products in California in calendar year 2004. Businesses seeking to fall within this category must attach to their Opt-In Stipulation, a list of the names of all product lines (by narrative description and, where available, UPC code) comprising these consumer units.</p>

Multiple Activities: If your company engages in more than one class of activity, such as the manufacture (Class A) and importation (Class B) of Covered Products, your company is properly qualified as a "Class A" Settling Defendant if 15% or more of your company's gross sales of Covered Products in California were the result of the manufacture of Covered Products.

If your company is not a Manufacturer or an Apparent Manufacturer, defined below, under the preceding criteria, your company shall be deemed to be a Class B Settling Defendant if 15% or more of its sales of Covered Products in California were the result of distribution or importation of Covered Products. Otherwise, your company will qualify as a "Class C" or "Class D" Settling Defendant, depending on the nature of the organization.

Apparent Manufacturers: Any Distributor, Importer, Retailer or other company that acquires, designs and/or markets Covered Products under its own brand name shall be deemed to be an "Apparent Manufacturer" pursuant to the terms of this Consent Judgment and shall be treated as a Manufacturer for all such Covered Products for purposes of the applicable 15% calculation above.

Low Volume Manufacturers Importers and Distributors: A "Low Volume Manufacturer" is a Manufacturer as defined above which can demonstrate that it sold less than a combined total of 10,000 consumer units of Covered Products in California in calendar year 2004. A "Low Volume Distributor" or "Low Volume Importer" is either a Distributor or Importer as defined above which can demonstrate that has sold less than a combined total of 10,000 consumer units of Covered Products in California in calendar year 2004.

Opt-In Settling Defendants with De Minimus Sales: An Opt-In Settling Defendant with De Minimus Sales must attest through completing the Opt-In Stipulation under penalty of perjury that they have sold less than a combined total of 500 consumer units of Covered Products in California in calendar year 2004 and they must also provide with their Opt-In Stipulation, a list of the names of all product lines (by narrative description and, where available, UPC code) comprising these consumer units. If your company qualifies as an Opt-In Settling Defendant with De Minimus Sales, it is exempted from and does not need to consider the "Multiple Activities" or "Apparent Manufacturer" factors described above.

STEP TWO: Determine the appropriate payment amount. Once your company has determined its appropriate settlement classification, it must then determine the appropriate settlement payment amount. Generally, the payments are set forth in Table 14.4 of the Consent Judgment and reproduced below. However, there are two exceptions that may increase the amount of your company's settlement payments:

(1) If Plaintiff has already issued a 60-Day Notice to your company related to Covered Products, your company is responsible for reimbursing a portion of Plaintiff's attorneys' fees and costs related to the 60-Day Notice. In this event, you would need to increase the amount shown for "Plaintiff's Attorneys' Fees" on Table 14.4 by an additional \$4,000. For example, a Manufacturer in this situation would pay \$49,000 (rather than \$45,000) in Plaintiff's Attorneys' Fees; however, its Civil Penalties and Settlement Related Cost payments would remain the same as shown on Table 14.4.

(2) If a Plaintiff has already filed a Complaint against your Company related to Covered Products (after the expiration of the sixty-day notice period), your company is responsible for reimbursing the Plaintiff's attorneys' fees and costs by an additional \$12,000 above the amount in Table 14.4. This supplemental amount includes the 60-Day Notice charge discussed in STEP TWO (1) above.

TABLE 14.4

TYPE OF ENTITY	MONETARY CONTRIBUTION
A. Manufacturers:	A total of \$95,000, consisting of:

(10,000 to 350,000 units sold in California in 2004)	(1) \$45,000 Civil Penalties (2) \$45,000 Plaintiff's Attorneys' Fees* and (3) \$ 5,000 Settlement Related Costs.
A.1 Low Volume Manufacturers: (less than 10,000 units sold in California in 2004)	A total of \$45,000, consisting of: (1) \$15,000 Civil Penalties; (2) \$25,000 Plaintiff's Attorneys' Fees*; and (3) \$ 5,000 Settlement Related Costs.
B. Distributors / Importers: (10,000 to 350,000 units sold in California in 2004)	A total of \$50,000, consisting of: (1) \$22,500 Civil Penalties; (2) \$22,500 Plaintiff's Attorneys' Fees*; and (3) \$ 5,000 Settlement Related Costs.
B.1 Low Volume Distributors and Importers: (less than 10,000 units sold in California in 2004)	A total of \$35,000, consisting of: (1) \$10,000 Civil Penalties; (2) \$20,000 Plaintiff's Attorneys' Fees*; and (3) \$ 5,000 Settlement Related Costs.
C. Retailers / Amusement & Recreation establishments:	A total of \$35,000, consisting of: (1) \$11,000 Civil Penalties (2) \$19,000 Plaintiff's Attorneys' Fees*; and (3) \$ 5,000 Settlement Related Costs.
D. Bars & Restaurants, Hotels, Other Food/Beverage Service Defendants:	A total of \$25,000, consisting of: (1) \$ 7,500 Civil Penalties; (2) \$12,500 Plaintiff's Attorneys' Fees*; and (3) \$ 5,000 Settlement Related Costs.
E. <u>Opt-In Defendants with De Minimus Sales</u>	<u>A total of \$18,500, consisting of:</u> <u>(1) \$ 1,000 Civil Penalties;</u> <u>(2) \$12,500 Plaintiff's Attorneys' Fees*; and</u> <u>(3) \$ 5,000 Settlement Related Costs.</u>

*Add \$4,000 if a 60-Day Notice has already been issued. Add \$12,000 if a Notice was issued and a Complaint has already been filed.

STEP THREE: Prepare and transmit the Opt-In Stipulation and the Settlement Payments.

Once you have determined the proper amount, the final step is to transmit the necessary documents and the checks constituting the settlement payments. The settlement payments must be

made by three (3) *separate* checks (described below) and must be accompanied by the Settling Defendant's *originally* executed Opt-In Stipulation.¹ All documents must be sent via Express Mail, Certified Mail / Return Receipt Requested or other trackable delivery service to:

GLASS/CERAMIC OPT-IN PROGRAM
c/o Morrison & Foerster LLP
425 Market Street, 35th Floor
San Francisco, California 94105
Attn: Susan Linden

Each Opt-In Defendant will receive written confirmation of receipt of its executed Opt-In Stipulation and checks either via electronic mail or by U.S. Mail.

Settlement Checks: Three *separate* checks will be required as described below. All drafts/checks must be issued in U.S. Dollars. For the "Civil Penalty" amount, the draft for the entire civil penalty amount should be made out to "THE CHANLER LAW GROUP IN TRUST FOR RUSSELL BRIMER."² For the "Plaintiff's Attorneys' Fees" amount, the draft for the entire attorneys' fees amount (including any relevant supplement if a 60-Day Notice was already issued or a Complaint already filed) should be made out to "THE CHANLER LAW GROUP." For the "Settlement Related Costs" amount, the five thousand dollar draft should be made out to "MORRISON & FOERSTER LLP." Please reference "Matter 591172" on this draft.

Tax identification information that can be used for purposes of drawing these checks will be provided upon request. (Completed W-9s will also be provided if you provide a self-addressed envelope, postage pre-paid, with your settlement checks and Opt-In Stipulation.)

¹ Note: The Stipulation will be presented to and entered by the San Francisco Superior Court, which could impose sanctions if untruthful statements are made.

² Upon court approval of the settlement, seventy-five percent (75%) of this payment will be forwarded by Plaintiff's counsel to the California Office of Environmental Health Hazard Assessment in accordance with Proposition 65. Plaintiffs Russell Brimer, Whitney R. Leeman, Ph.D. and Michael DiPirro have each sought to protect individuals in California from exposure to the Listed Chemicals from the Covered Products in this Consent Judgment. The twenty-five percent (25%) of civil penalties recovered from Opt-In Defendants which may be retained by Plaintiffs pursuant to the provisions of Proposition 65 shall be apportioned among these plaintiffs with 59% (of the 25%) going to Russell Brimer, 26% (of the 25%) going to Whitney R. Leeman, Ph.D. and 15% (of the 25%) going to Michael DiPirro.

*For further assistance with regard to these payment instructions, contact Miles Imwalle
(mimwalle@mofo.com, 415-268-6523, Sarah Schindler (sschindler@mofo.com, 415-268-7434) or
Susan Linden (slinden@mofo.com, 415-268-6101) at Morrison & Foerster LLP.*

Declaration of Steven Boone

I, Steven Boone, declare:

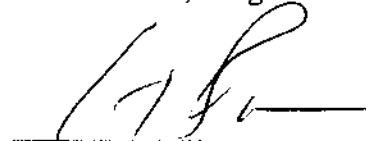
1. I am the President of SakeOne Corporation ("Sakeone") which has its principal and only place of business at 820 Elm Street, Forest Grove, Oregon. SakeOne is in the business of packaging (bottling) sake. The following facts are within my own personal knowledge and if called as a witness I could competently testify with respect thereto.

2. In calendar year 2004, SakeOne one bottled sake for Liquid International Premium Spirits Corporation, dba LIPs Import, under the label Napa-Saki Premium Sake, recently renamed NagaSaki - 750 ml (UPC Code 80172200666). LIPs Import confirms that during calendar year 2004, 56 cases (containing 6 bottlers each) of Napa-Saki Premium Sake now call NagaSaki were sold to California.

3. In 2005, the following flavors and sizes were added to LIPs Import's "NagaSaki" brand, all of which were: Napa-Saki, now known as Nagasaki - 375 ml (UPC 8017200999); Napa-Saki Clam Pack, now known as NagaSaki Clam Pack - 375 ml (UPC 8017200969); Rising Sun - 750 ml (UPC 8017200555); Rising Sun - 375 ml (UPC 8071200444); Mandarin Oriental - 750 ml (UPC 8017200222); Mandarin Oriental - 375 ml (UPC 8017200111); Geisha - 750 ml (UPC 8017200000); Geisha - 375 ml (UPC 8017200007); Black Orchid Plum - 750 ml (UPC 8017200456); and Black Orchid Plum - 375 ml (UPC 8017200123). LIPs Import confirms that these products have been made available for sale throughout the United States.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of November 2005 at Forest Grove, Oregon.



Steven Boone