

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

UNILEVER, N.V., UNILEVER PLC,  
CONOPCO, INC., and  
ALBERTO-CULVER CO.,

*Defendants.*

CASE NO.

JUDGE:

**HOLD SEPARATE STIPULATION AND ORDER**

The undersigned parties hereby stipulate and agree, subject to approval and entry by the Court, that:

**I. DEFINITIONS**

As used in this Hold Separate Stipulation and Order:

A. “Acquirer” means the person, persons, entity or entities to whom Defendants divest all or some of the Divestiture Assets.

B. “Alberto Culver” means defendant Alberto-Culver Company, a Delaware corporation with its headquarters in Melrose Park, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Alberto VO5 Brand Name” means Alberto VO5 and any other name that uses, incorporates, or references the Alberto VO5 name in the United States, including but not limited to Alberto VO5 Extra Body Shampoo and Conditioner, Alberto VO5 Normal Shampoo and

Conditioner, Alberto VO5 Repair and Protect Shampoo and Conditioner, Alberto VO5 2-in-1 Shampoo and Conditioner, Alberto VO5 Split Ends Shampoo and Conditioner, Alberto VO5 Moisture Milks Shampoo and Conditioner, Alberto VO5 Herbal Escapes Shampoo and Conditioner, Alberto VO5 Tea Therapy Shampoo and Conditioner, Alberto VO5 Silky Experiences Shampoo and Conditioner, Alberto VO5 Perfect Hold Aerosol Hairspray, Alberto VO5 Perfect Hold Non-Aerosol Hairspray, Alberto VO5 Perfect Hold Styling Mousse, Alberto VO5 Perfect Hold Styling Gel, Alberto VO5 Hair Spray Regular, Alberto VO5 Hair Spray Super, Alberto VO5 Hair Spray Brush Out, Alberto VO5 Hair Spray Extra Body, Alberto VO5 Hair Spray Unscented, Alberto VO5 Conditioning Hairdressing, Alberto VO5 Sheer Hairdressing Conditioning Cream, Alberto VO5 Hot Oil Shower Works Conditioning Treatment, Alberto VO5 Hot Oil Moisturizing Conditioning Treatment, Alberto VO5 Detangle and Shine Leave-in Conditioner, Alberto VO5 Total Hair Recovery Conditioning Treatment, and any extensions of any one or more of such products.

D. “Alberto VO5 Business” means Alberto Culver’s business engaged in the research, development, licensing (as licensor or as licensee), production, marketing, servicing or sale of any Alberto VO5 Product, including:

(i) All tangible assets used primarily in the research, development, marketing, or sale of any Alberto VO5 Product including but not limited to licenses, permits or authorizations issued by any governmental organization; contracts, teaming arrangements, agreements, leases commitments, certifications and understandings, including agreements with suppliers, distributors, wholesalers, retailers, marketers, or advertisers; customer lists; accounts, credit record, and related customer information; product inventory; packaging and artwork relating to such packaging; molds and silk

screens; and all performance records and all other records. Provided, however, that Unilever may retain the portions of such tangible assets that relate to products other than any Alberto VO5 Product where such asset reasonably can be divided;

(ii) At the option of the Acquirer, all tangible assets used primarily in the manufacturing of any Alberto VO5 Product, including manufacturing equipment, materials and supplies. Provided, however, that Defendants have no obligation to divest any real property as part of the Alberto VO5 Business;

(iii) All legal rights to the Alberto VO5 Brand Name for use in the United States;

(iv) All intellectual property used primarily in the research, development, production, marketing, servicing, distribution or sale of any Alberto VO5 Product, including but not limited to all legal rights associated with the products, including patents, licenses, and sublicenses, copyrights, Licensed Marks, Trade Dress, and other intellectual property, for use in the United States; and a non-exclusive, transferable, royalty-free right to all other intellectual property used in the research, development, production, marketing, servicing distribution or sale of any Alberto VO5 Product for the purpose of the research, development, production, marketing, servicing, distribution or sale in the United States of any Alberto VO5 Product. Provided, however that with respect to any intellectual property divested pursuant to this subsection (iv) that Defendants have used in products not being divested, the Acquirer shall provide to Defendants a worldwide, non-exclusive, transferable, royalty-free right to use such intellectual property in the research, development, production, marketing, servicing, distribution or sale of any product not being divested; and

(v) All intangible assets, other than intangible assets set forth in subsection (iv) above, used in the research, development, production, marketing, servicing, distribution or sale of any Alberto VO5 Product in the United States for use in the United States, including all trade secrets; all technical information, computer software and related documentation, know-how, and Formulas, including information relating to plans for, improvement to, or line extensions of, the products under the Alberto VO5 Brand Name; all research, packaging, sales marketing, advertising and distribution know-how and documentation, including plan-o-grams, marketing and sales data, packaging designs, quality assurance and control procedures; all manuals and technical information Alberto Culver provides to its own employees, customers, suppliers, agents or licensees; and all research data concerning historic and current research and development efforts, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments. Provided, that with respect to any intangible assets that, prior to the merger, were being used in the research, development, production, marketing, servicing, distribution or sale of any Alberto VO5 Product and any product not being divested, Defendants may utilize and retain the portions of such intangible assets that relate solely to products other than any Alberto VO5 Product where such assets reasonably can be divided, and may utilize and retain copies of such intangible assets that relate to both any Alberto VO5 Product and any other product not being divested.

E. "Albert VO5 Product" means any product that Alberto Culver sold, sells, or has plans to sell under the Alberto VO5 Brand Name in the United States.

F. "Defendants" mean Unilever and Alberto Culver.

G. "Divestiture Assets" mean the Alberto VO5 Business and the Rave Business.

H. "Formulas" mean all Defendants' formulas, processes, and specifications used by the Defendants in connection with the production and packaging associated with the goods manufactured, distributed, marketed, and sold under a brand name, including, without limitation, Defendants' ingredients, manufacturing processes, equipment and material specifications, trade and manufacturing secrets, know-how, and scientific and technical information.

I. "Licensed Marks" mean all trademarks, service marks, or trade names belonging or licensed to Defendants (whether registered or unregistered, or whether the subject of a pending application) associated with the goods manufactured, distributed, marketed, and sold under a brand name.

J. "Rave Brand Name" means Rave and any other name that uses, incorporates, or references the Rave name, including but not limited to Rave 4x Mega Scented Aerosol Hairspray, Rave 4x Mega Scented Non-Aerosol Hairspray, Rave 4x Mega Unscented Aerosol Hairspray, Rave 4x Mega Unscented Non-Aerosol Hairspray, Rave 2x Low Control Bodifying Mousse, Rave 2x Extra Bodifying Mousse, and any extensions of any one or more of such products.

K. "Rave Business" means Unilever's business engaged in the research, development, licensing (as licensor or as licensee), production, marketing, servicing or sale of any Rave Product, including:

(i) All tangible assets used primarily in the research, development, marketing, or sale of any Rave Product including but not limited to licenses, permits or authorizations issued by any governmental organization; contracts, teaming arrangements, agreements, leases commitments, certifications and understandings,

including agreements with suppliers, distributors, wholesalers, retailers, marketers, or advertisers; customer lists; accounts, credit record, and related customer information; product inventory; packaging and artwork relating to such packaging; molds and silk screens; and all performance records and all other records. Provided, however, that Unilever may retain the portions of such tangible assets that relate to products other than any Rave Product where such asset reasonably can be divided;

(ii) At the option of the Acquirer, all tangible assets used primarily in the manufacturing of any Rave Product, including manufacturing equipment, materials and supplies. Provided, however, that Defendants have no obligation to divest any real property as part of the Rave Business;

(iii) All legal rights to the Rave Brand Name. Provided, however, that Defendants shall not be required to give the Acquirer rights to use the terms “Unilever” or “Suave,” or any derivative of the terms “Unilever” or “Suave;”

(iv) All intellectual property used primarily in the research, development, production, marketing, servicing, distribution or sale of any Rave Product, including but not limited to all legal rights associated with the products, including patents, licenses, and sublicenses, copyrights, Licensed Marks, Trade Dress, and other intellectual property; and a non-exclusive, transferable, royalty-free right to all other intellectual property used in the research, development, production, marketing, servicing distribution or sale of any Rave Product for the purpose of the research, development, production, marketing, servicing, distribution or sale of any Rave Product. Provided, however that with respect to any intellectual property divested pursuant to this subsection (iv) that Defendants have used in products not being divested, the Acquirer shall provide to Defendants a

worldwide, non-exclusive, transferable, royalty-free right to use such intellectual property in the research, development, production, marketing, servicing, distribution or sale of any product not being divested; and

(v) All intangible assets, other than intangible assets set forth in subsection (iv) above, used in the research, development, production, marketing, servicing, distribution or sale of any Rave Product, including all trade secrets; all technical information, computer software and related documentation, know-how, and Formulas, including information relating to plans for, improvement to, or line extensions of, the products under the Rave Brand Name; all research, packaging, sales marketing, advertising and distribution know-how and documentation, including plan-o-grams, marketing and sales data, packaging designs, quality assurance and control procedures; all manuals and technical information Unilever provides to its own employees, customers, suppliers, agents or licensees; and all research data concerning historic and current research and development efforts, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments. Provided, that with respect to any intangible assets that, prior to the merger, were being used in the research, development, production, marketing, servicing, distribution or sale of any Rave Product and any product not being divested, Defendants may utilize and retain the portions of such intangible assets that relate solely to products other than any Rave Product where such assets reasonably can be divided, and may utilize and retain copies of such intangible assets that relate to both any Rave Product and any other product not being divested.

L. "Rave Product" means any product that Unilever sold, sells, or has plans to sell

under the Rave Brand Name anywhere in the world.

M. “Trade Dress” means the print, style, color, labels, and other elements of trade dress currently used by Defendants and/or their subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures in association with the goods manufactured, distributed, marketed, and sold under a brand name.

N. “Unilever” means defendants Unilever, N.V. and Unilever PLC, corporations respectively organized under the laws of the Netherlands and England, with headquarters in Rotterdam and London, and their successors and assigns, their subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their respective directors, officers, managers, agents, and employees. Unilever includes Conopco, Inc., a New York corporation, a wholly owned subsidiary of Unilever, N.V. and Unilever PLC.

## **II. OBJECTIVES**

The proposed Final Judgment filed in this case is meant to ensure Defendants’ prompt divestiture of the Divestiture Assets for the purpose of maintaining competition in markets for the sale of value shampoo, value conditioner, and hairspray sold in retail stores in the United States in order to remedy the anticompetitive effects that the United States alleges would otherwise result from Unilever’s acquisition of Alberto Culver. This Hold Separate Stipulation and Order ensures that until the divestitures required by the proposed Final Judgment have been accomplished, the Divestiture Assets remain independent, economically viable, competitive, and ongoing business concerns, and that competition is maintained during the pendency of the ordered divestitures.



### **III. JURISDICTION AND VENUE**

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, Defendants waive service of summons on the Complaint, and venue of this action is proper in the United States District Court for the District of Columbia.

### **IV. COMPLIANCE WITH AND ENTRY OF PROPOSED FINAL JUDGMENT**

A. The parties stipulate that a proposed Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendants and by filing that notice with the Court. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA. The publication shall be arranged no later than five (5) calendar days after Defendants' receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made. Defendants shall promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper within which the notice was published.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the proposed Final Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Hold Separate Stipulation and Order by the parties, comply

with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Hold Separate Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Hold Separate Stipulation and Order, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Hold Separate Stipulation and Order, and the making of this Hold Separate Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that Defendants will later raise no claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

#### **V. HOLD SEPARATE AND PRESERVATION OF DIVESTITURE ASSETS**

Until the divestitures required by the proposed Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and operate the Divestiture Assets as an independent, ongoing, and economically viable competitor, with management, sales, and

operation of such assets held entirely separate, distinct, and apart from those of Defendants' other operations. Defendants shall not coordinate the marketing of, or sales by, the Divestiture Assets with their other operations. Within twenty (20) days after the filing of the Hold Separate Stipulation and Order, Defendants will inform the United States of the steps Defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Divestiture Assets will be maintained and operated as an independent, economically viable, and active competitor in the hair care industry; (2) the management of the Divestiture Assets will be conducted by designated personnel and will not be influenced by Defendants; and (3) the books, records, competitively sensitive sales, marketing, promotion and pricing information, and decision-making concerning research, development, production, distribution, marketing, promotion or sales of the Divestiture Assets will be kept separate and apart from Defendants' other operations.

C. Defendants shall use all reasonable efforts to maintain the research, development, sales, revenues, marketing, promotion, shelf-space, advertising, and distribution of the Divestiture Assets, and shall maintain at fiscal year 2010 or previously approved levels for fiscal year 2011, whichever are higher, all research, development, product improvement, promotional, advertising, sales, distribution, marketing and merchandising support for those products. Defendants shall also ensure that all plans and efforts to improve current products sold or to introduce new products in the Divestiture Assets are continued.

D. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the viability and competitiveness of the Divestiture Assets consistent with the requirements of Section V(A) and (B) above.

E. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Divestiture Assets.

F. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Divestiture Assets.

G. Defendants' employees with primary responsibilities for the research, development, marketing, promotion, production, operation, distribution, or sale of the Divestiture Assets, shall not be transferred or reassigned to other areas within Defendants' business, except for transfer bids initiated by employees pursuant to Defendants' regular, established job posting policy. Defendants shall provide the United States with ten (10) calendar days' notice of any such transfer.

H. Subject to the approval of the United States, Defendants shall appoint a person or persons to oversee the Divestiture Assets, and who will be responsible for Defendants' compliance with this section. This person shall have complete managerial responsibility for the Divestiture Assets, subject to the provisions of the proposed Final Judgment and shall make all decisions relating to pricing, promotion, discounting, marketing and sales independent of Defendants. In the event such person is unable to perform his duties, Defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should Defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

I. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the proposed Final Judgment to complete the divestitures pursuant to the proposed Final Judgment to an Acquirer acceptable to the United States.

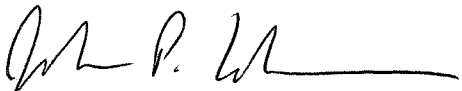
**VI. DURATION OF HOLD SEPARATE AND ASSET PRESERVATION OBLIGATIONS**

Defendants' obligations under Section V of this Hold Separate Stipulation and Order remain in effect until (1) consummation of the divestiture required by the proposed Final Judgment or (2) until further order of the Court. If the United States voluntarily dismisses the Complaint in this matter, Defendants are released from all further obligations under this Hold Separate Stipulation and Order.

Dated: May 6, 2011

Respectfully submitted,

**FOR PLAINTIFF  
UNITED STATES OF AMERICA**



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**FOR DEFENDANTS UNILEVER N.V.,  
UNILEVER PLC, and CONOPCO, INC.**

*Deborah L. Feinstein*

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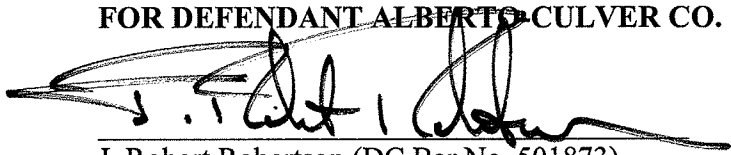
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**FOR DEFENDANT ALBERTO CULVER CO.**

A handwritten signature in black ink, appearing to read "J. Robert Robertson", is written over a horizontal line. The signature is stylized and cursive.

J. Robert Robertson (DC Bar No. 501873)

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ORDER

IT IS SO ORDERED by the Court, this \_\_\_\_ day of \_\_\_\_\_, 2011.

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United States District Judge