

POWER BRANDS

General Background

A dispute has arisen between two of the world's largest alcoholic beverage companies – one Russian, the other American. The Russian company, Wonderbrandski A/O, operates mainly in Russia but has aspirations to develop abroad. The American company, Alcopops Inc., operates almost everywhere that alcoholic beverages may legally be sold, except the lucrative Russian market, where it intends to develop a business.

The Parties

Wonderbrandski A/O

Wonderbrandski A/O is a leading vodka production and marketing company in Russia. It owns several of the best and most highly regarded vodka brands in Russia, including ZENITSKAYA, SPARTAKSKAYA and DYNAMOSKAYA, all of which are grain vodkas. Each of these brands leads a different price category, with ZENITSKAYA dominating luxury vodkas, SPARTAKSKAYA leading the super-premium segment and DYNAMOSKAYA being the brand leader in the premium category. Wonderbrandski has no credible position in the standard vodka category, though it does market PICO BELLO, the only potato-based vodka in the company's portfolio. PICO BELLO is presented in a standard round bottle with a black label. Each brand is marketed in flavoured and unflavoured versions. The company has a modern distillery with substantial capacity and has an advanced distribution capability across Russia. For the past seven years, Wonderbrandski has owned in Russia, but over the years has never used, the registered trademark OCTAVE. Wonderbrandski is one-third owned by a Russian Government agency. Until now, the company has survived relatively unscathed from foreign competition – most of the foreign brands occupy the standard price category, in which Wonderbrandski does not try to compete too seriously because the margins are low. Wonderbrandski's President is the entrepreneur Peter Tchaikovsky. He is young, self-confident and wealthy and enjoys a high profile in Russia as a successful business leader.

Alcopops Inc

Alcopops Inc. is a leading Chicago-based international beverage alcohol marketing company. Its only vodka brand is KYK (pronounced – "KICK"), a triple-charcoal-distilled rye vodka. KYK is sold all over the Americas, Western Europe, South Africa and Asia Pacific, and KYK is now the world's fourth largest-selling spirit brand. KYK vodka is sold internationally as three main variants – HIGH OCTANE (42 proof), OCTANE (40 proof) and CLASSIC (38 proof). All variants are sold in a distinctive 8-sided bottle, and the registered three-dimensional trademark is owned by Alcopops. The KYK label features two-tone black and maroon vertical stripes. The word KYK is registered as a trademark in Alcopops' name globally, including in Russia. The label design, and the words CLASSIC, OCTANE and HIGH OCTANE, are registered as trademarks in many countries, though not in Russia. Until recently, Alcopops had no presence whatsoever in Russia except in Moscow Airport Duty Free shops, where small quantities of the US-distilled KYK CLASSIC variant had been available for several years. As from March 20th, Alcopops started adding KYK OCTANE to the range in the Moscow Duty Free shops. Alcopops' President is DD Kruze, a business leader well-known in the US and internationally.

Background to the parties and the dispute

The Bottle Design Issue

KYK vodka has always been marketed in an 8-sided bottle. The company long ago obtained design / three-dimensional trademark registrations in most countries, including Russia. In 1992, when Alcopops was a much smaller company run by different management, Alcopops granted Wonderbrandski a non-exclusive, royalty-free license to use its 8-sided bottle threedimensional trademark / design in Russia on any alcoholic beverages. This license, granted by a brief exchange of letters, provided for no limitation on Wonderbrandski to use the bottle for a particular brand, no restriction on sub-licensing, no performance obligations, no requirement to buy the bottles from Alcopops and no term or termination provisions. Wonderbrandski never made any actual use of the license because 8-sided bottles were very costly to produce. This license was related only to the bottle shape and did not include colours or labels (design). No attempt was ever made by Alcopops to terminate the license and everyone in Chicago had forgotten (or had no idea) about its existence.

The New Year's Party

At the last New Year's Eve Party hosted by the Russian Beverage Association in Moscow, a visiting brand manager from Alcopops proposed a toast to his companions proclaiming "*an exciting future over the next few months for KYK in the home of vodka*". The remark was overheard by an executive from Wonderbrandski and interpreted to mean that Alcopops was about to launch KYK in the Russian domestic market. Depending on the price category at which KYK would be introduced, these plans threatened to erode Wonderbrandski's share of the local premium or super premium market.

Preparations for the launch of KYK

On March 10th Alcopops met Vladivod, a leading formerly State-run distillery based in the Russian Far East, with a view to appointing them as Russian distributor of all three variants of KYK vodka. A distribution agreement was agreed verbally and in principle, but not signed pending preparation of the paperwork by lawyers. This deal remains unsigned.

The PICO BELLO Re-launch

At 5:00 p.m. on March 15th, suspecting that KYK was soon to appear locally, Wonderbrandski held a "re-launch event" for its PICO BELLO brand vodka in a Moscow hotel. With much fanfare, Mr. Tchaikovsky introduced to the trade and media a re-designed PICO BELLO bottle. It was 8-sided in shape, thus more upmarket in appearance, with a label comprising horizontal black and maroon stripes. A logo was introduced depicting seven musical notes alongside the prominent new secondary trademark OCTAVE. The proof of the re-launched brand was increased to 40. The consumer price was pitched in the low end of the premium segment of the market, but the alcohol was still potato-based. PICO BELLO OCTAVE: "Real Russian Vodka for the Connoisseur" was the caption on the press release, and this claim also appeared on the back of the new bottle.



(Left to right: Alcopops' KYK OCTANE, Wonderbrandski's re-launched PICO BELLO OCTAVE, Wonderbrandski's original PICO BELLO)

Alcopops' complaint

Within a few hours of the PICO BELLO re-launch, details were sent by email to DD Kruze in Chicago. She reacted furiously, and dictated an email to Peter Tchaikovsky, whom she had never met, complaining bitterly about Wonderbrandski's strategy in flagrantly copying and anticipating the arrangement of the world-famous international KYK brand and demanding an immediate withdrawal of the new version on PICO BELLO OCTAVE in its proposed trade dress. DD Kruze's General Counsel simultaneously instructed Alcopops' lawyers in Moscow to file a complaint with the Russian Anti-Monopoly Committee claiming unfair competition by Wonderbrandski. By April 1st, there was no response from Peter Tchaikovsky, so Alcopops' local law firm in Moscow served the Anti-Monopoly complaint maintaining that the KYK label and bottle comprised a well-known trademark and as such deserved the protection of the Paris Convention. It is not expected that the Anti-Monopoly hearing will be scheduled before the end of June.

Wonderbrandski's response

Peter Tchaikovsky eventually responded to DD Kruze by email on April 10th politely saying that the situation was not quite as straightforward as Alcopops had made out. He said that Wonderbrandski owned the trademark OCTAVE in Russia and that Wonderbrandski considered that Alcopops' recent use of OCTANE in Russian Duty Free shops constituted a violation of Wonderbrandski's Russian trademark rights. He also said that Wonderbrandski had a valid license to use the 8-sided bottle – a license granted to it by none other than Alcopops -- and he attached a copy of the license to the e-mail. Tchaikovsky concluded by saying he had no alternative but to sue Alcopops for infringement and he attached a copy of the claim (which he had even had translated into English for Kruze's convenience).

Proposal to mediate

On May 1st, DD Kruze phoned Peter Tchaikovsky. She suggested that legal action could last for years. She suggested that together they consider an alternative approach. Peter Tchaikovsky agreed. DD Kruze sounded sincere and he figured that because the mediation was non-binding and confidential, he had nothing to lose and could walk away at any time. On May 5th the parties selected a mediator. On May 8th both parties signed an agreement to share the costs of the mediation, to maintain confidences, and to bar referral by either party to the discussions that would take place in the mediation in the event of subsequent legal proceedings. The mediation takes place in a Munich hotel in late May. Peter Tchaikovsky and DD Kruze are present in person, accompanied by their respective outside lawyers: Alex Pushkin for Wonderbrandski and Mush Striver for Alcopops.