

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHARITY GROUP, LLC and
SCOTT O. TALBOT,

Plaintiffs,

-against-

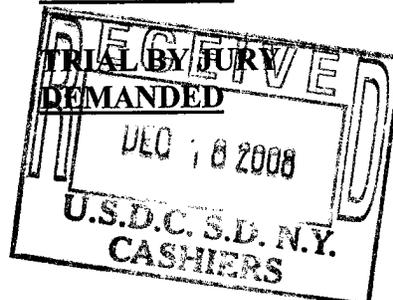
THE ABSOLUT SPIRITS COMPANY, LLC and
PERNOD RICARD USA, LLC,

Defendants.
-----X

08 CIV 11020

Civil Action No.:

COMPLAINT



Plaintiffs Charity Group, LLC (“Charity Group”) and Scott O. Talbot (“Talbot,” and together with Charity Group, the “Plaintiffs”), by and through their attorneys, for their complaint against defendants The Absolut Spirits Company, LLC (“Absolut”) and Pernod Ricard USA, LLC (“Pernod,” and together with Absolut, the “Defendants”), hereby allege as follows:

THE NATURE OF THIS ACTION

1. Charity Group was formed to create opportunities for charitable non-profit organizations to raise funds and gain visibility. It conceived and developed an original and valuable idea: a reality series called *Charity Mixology* in which leading bartenders would compete to develop new cocktails, with the winner earning a cash prize to be paid to a charity that he or she represented.

2. Charity Group approached and signed up many corporate sponsors for this project, including Absolut and Pernod, whose products were to be featured prominently in the show. In the fall of 2007, Absolut and Pernod signed written agreements in which they repeatedly and expressly acknowledged that Charity Group’s idea for *Charity Mixology* was original and confidential, promised not to use or disclose it for their own purposes and

committed unequivocally not to create or participate in any similar project.

3. Absolut and Pernod deliberately and flagrantly breached their unambiguous written contracts. They stole Charity Group's idea for *Charity Mixology*, and, in early November 2008, launched a reality series called "On The Rocks." The concept of that series is identical to the Charity Group concept that the Defendants were contractually prohibited from using, with one difference: no money will be raised for non-profits, thus disadvantaging charities across the country, including the public at large. The Defendants have, in essence, turned Charity Group's novel and creative philanthropic concept into an infomercial that profits only them.

4. Charity Group now brings this action to enforce its written contracts with the Defendants, to enjoin their continuing illegal activity, to recover the millions of dollars in damages that Charity Group has sustained as a result of the Defendants' theft of its ideas and to recover the illicit profits that the Defendants have received as a result of their illegal conduct.

5. In this complaint, Charity Group asserts claims for breach of contract, misappropriation of Charity Group's ideas and trade secrets, unfair competition, unjust enrichment and unfair and deceptive acts and practices in violation of New York General Business Law Section 349.

THE PARTIES

6. Plaintiff Charity Group, LLC is a limited liability company duly organized under the laws of the State of Delaware.

7. Plaintiff Scott Talbot is an individual, and a citizen and resident of Point Lonsdale, Victoria, Australia. Talbot is an independent entrepreneur and philanthropist, and is currently in the United States on an E-2 treaty investor visa. Talbot is the sole member of Charity Group, LLC.

8. Upon information and belief, defendant Pernod is a limited liability company duly organized under the laws of the State of Indiana with a place of business located at 100 Manhattanville Road, Purchase, New York 10577. Pernod is a beverage company and part of the international beverage conglomerate owned by the French holding company Pernod Ricard, S.A. (“Pernod France”). On information and belief, within the United States, Pernod controls and sells such alcoholic beverage brands as Jameson Irish Whiskey, Beefeater Gin, Perrier-Jouet Champagne, and Absolut Vodka.

9. Upon information and belief, defendant Absolut is a limited liability company duly organized under the laws of the State of Delaware having a place of business located at 100 Manhattanville Road, Purchase, New York 10577. Absolut is a beverage company that markets and sells Absolut Vodka within the United States. On information and belief, Absolut is an affiliate of Vin & Sprit (V&S) Group (“V&S”), a Swedish company, and of Pernod. On information and belief, Pernod France purchased V&S in or about July, 2008.

JURISDICTION AND VENUE

10. This Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1332. Talbot, the sole member of Charity Group, LLC, is a citizen of the country of Australia, a foreign state, and the Defendants are citizens of one or more states within the United States. Accordingly, there is complete diversity of citizenship for jurisdictional purposes within the meaning of 28 U.S.C. § 1332(a)(2). In addition, the damages sustained by Talbot and Charity Group are valued well in excess of \$75,000 within the meaning of 28 U.S.C. § 1332(b), exclusive of interest and costs, and without regard to set-off or counterclaims.

11. Defendants Pernod and Absolut are subject to the personal jurisdiction of this Court because they each maintain a place of business and may be found within this District, because they contract to supply goods and services and otherwise transact business in this

District, because the tortious acts alleged in this Complaint occurred within this District, and because they have caused harm to Charity Group and Talbot within this District.

BACKGROUND FACTS

CHARITY GROUP CREATES INNOVATIVE STRATEGIES FOR CHARITABLE ORGANIZATIONS

12. In early 2007, Talbot, an entrepreneur and philanthropist, conceived a business model to make money for himself and his company, while, at the same time, re-defining and energizing the non-profit business sector. That model is built around three principal components: (i) Charity Restaurants, featuring high-end restaurants throughout the United States designed to cater to the non-profit sector by providing a venue for philanthropic events; (ii) Charity Technology, to develop and provide tools and assistance to charitable organizations and charity event planners, including CharityConnect, a proprietary web-based event planning service, and CharityChex, a proprietary credit card processing enhancement for capturing payor-designated retail point-of-sale charitable contributions; and (iii) Charity Productions, to develop and produce various “reality” television programs aimed at publicizing and raising money to benefit the non-profit sector globally.

13. Talbot formed Charity Group to pursue these three strategies. He is currently the Chairman and Chief Executive Officer of Charity Group.

14. One of the television programs conceived by Talbot for Charity Group is *Charity Mixology*, a reality show in which leading bartenders across the United States compete at various venues in charity-sponsored events to find and ultimately select “America's Best Bartender.” Each episode of *Charity Mixology* is designed to feature and highlight a different non-profit organization, on whose behalf bartender competitors vie for a cash award.

15. As conceived by Charity Group, during each episode of *Charity Mixology*, the

competing bartenders will create exciting cocktails made with liquor products supplied by the corporate sponsors of the show, an innovative type of product placement synthesized for *Charity Mixology* called “brand-casting.” In Charity Group’s model, corporate sponsors would provide Charity Group with the capital necessary to produce the *Charity Mixology* program, and in exchange the sponsors’ products would be used prominently within the show itself. Talbot and Charity Group expected to receive significant revenues from advertising and product placement, in addition to the money to be received by the non-profits.

16. In furtherance of this model, Talbot, on behalf of Charity Group, recruited and hired leading business people, like-minded philanthropists, and legal advisors to create the Charity Group team. That team includes notable business figures, including a former managing director of Citigroup, a co-founder of FreshDirect, a former managing director of GE Equity, a director of POM Wonderful, the president of a leading political consulting firm, the founder and president of the Giving Back Fund, the former creative director of The Showtime Network, and a leading entertainment attorney. To protect Charity Group’s innovative and valuable business strategies, all of the members of this team executed comprehensive nondisclosure agreements.

17. The Charity Group team brought extensive business, finance, and legal knowledge and experience, as well as an extensive network of relationships in the philanthropic, entertainment, and business communities, including relationships within the liquor and beverage industry.

18. Having assembled a team, Charity Group began to implement and execute its strategies. It purchased and secured over 200 domain name registrations, including several dozen directly relevant to *Charity Mixology*. It drew on relationships and expertise in the television industry to begin developing the production strategy for *Charity Mixology*. It initiated outreach to the non-profit community by arranging for the publication of various articles in

leading business and philanthropic publications inviting non-profits from across the country to apply to participate.

19. As of today, Plaintiffs have screened and registered the participation of approximately 150 charitable organizations for participation in the various Charity Group television shows.

**ABSOLUT AND PERNOD AGREE TO PARTICIPATE
IN *CHARITY MIXOLOGY* AND SIGN AGREEMENTS
NOT TO DISCLOSE OR USE CHARITY GROUP'S IDEAS**

20. Charity Group invested enormous energy and resources in late 2007 and early 2008 preparing the many elements of the *Charity Mixology* show. To secure corporate sponsorship and product placement for the show, Talbot and Lou Petrucci, a director of POM Wonderful and one of the members of the Charity Group team, met with and made presentations to the senior management of at least two dozen liquor and beverage companies, including Svedka, Bacardi USA Inc, Brown Forman, Coors Brewing, Diageo North America, Empire Merchants, Ketel One Vodka, Manhattan Beer, Moet Hennessy USA, Nobelt Spirits, Ocean Spray, Remy Cointreau, Spirits Marque One, William Grant & Sons, Glaceau, Zico, Vitaminwater, Smartwater, Crystal Geyers, Coca Cola, as well as defendants Absolut and Pernod.

21. As a consistent practice, before making presentations or disclosing its ideas and strategies, Charity Group required and obtained executed non-disclosure agreements (the "Charity Group NDA") from the beverage companies, including Absolut and Pernod. In exchange for the opportunity to obtain information about the Charity Group and its programs, including Charity Restaurants, Charity Technology, and Charity Productions, and specifically including the concept and plan for *Charity Mixology* and other television programs (the "Confidential Information"), Absolut and Pernod expressly agreed (a) to keep the Confidential

Information strictly confidential and not to disclose it to any third parties, and (b) not to participate, directly or indirectly, for three years in any business or enterprise similar to the production of the cocktail or mixology television show presented by Charity Group. A true and accurate copy of the Charity Group NDA is annexed hereto and made a part hereof as Exhibit 1.

22. Numerous senior executives of Absolut and Pernod, acting on behalf of and with the authorization of Absolut and Pernod, expressly agreed to and executed the Charity Group NDA.

THE PERNOD AGREEMENTS

23. Jeff DeNicola (“DeNicola”), Director of Marketing for Southern Wines and Spirits, a division of Pernod, executed a Charity Group NDA on behalf of Pernod in connection with a presentation made by Petrucci on September 27, 2007. A true and accurate copy of that agreement is annexed hereto and made a part hereof as Exhibit 2.

24. Steve Walkerwicz (“Walkerwicz”), a senior executive with Pernod, executed a Charity Group NDA on behalf of Pernod on October 15, 2007. A true and accurate copy of that agreement is annexed hereto and made a part hereof as Exhibit 3. Importantly, Walkerwicz executed the Charity Group NDA after consulting with Pernod’s General Counsel, Penelope Barnett, and after both Walkerwicz and Barnett discussed the terms of the Charity Group NDA with Talbot.

25. On or about October 18, 2007, Walkerwicz delivered a letter (the “Walkerwicz Letter”) on behalf of Pernod to Plaintiffs, confirming the terms of the Charity Group NDA, stating that Pernod was interested in participating in the TV Show, and stating further that he believed that the *Charity Mixology* concept was unique, had huge national potential, and was an exciting philanthropic, advertising, product placement and television opportunity for Pernod. A copy of the Walkerwicz Letter is annexed hereto and made a part hereof as Exhibit 4.

26. On October 22, 2007, Plaintiffs sent a letter to Walkerwicz (the “Pernod Letter”) enclosing the fully executed Charity Group NDA, stating:

Please find attached a copy of Charity Productions' reality shows and projects underway by the Charity Group. We will be in touch in the near future with further detail regarding the product placement opportunity, network or cable conditions and estimated pricing. Attached is a copy of the executed Non Disclosure and Covenant Agreement signed by you on October 15, 2007 on behalf of Pernod. Accordingly, with the additional information enclosed, we remind you to maintain confidentiality and adhere to all the terms and conditions of the agreement. If you have any questions please do not hesitate to call me.

A true and accurate copy of the Pernod Letter is annexed hereto and made a part hereof as Exhibit 5.

THE ABSOLUT AGREEMENTS

27. On November 1, 2007, Charity Group met with senior executives from Absolut at Absolut’s offices at 401 Park Avenue South, New York City. The Absolut attendees included Simon Ford (Absolut’s Senior Vice President for Marketing), Tim Mister, Troy Gorczyca, Terry Wake, Sara Bessette, and Andrea Bearbover (collectively the “Absolut Executives”).

28. For this meeting, Charity Group had created large display panels and printed handouts that described its Confidential Information and the concept of *Charity Mixology* in detail, including the sponsorship and advertising opportunity it represented and the brand-casting product placement opportunities for featured liquor brands.

29. In order to preserve confidentiality, Talbot erected the display panels facing the board room window and away from the Absolut Executives, so that the Confidential Information was not visible. Talbot then distributed copies of the Charity Group NDA to each of the Absolut Executives, and requested that each of them read and execute their copy. The Absolut Executives took approximately ten minutes to review and execute the Charity Group

NDA copies. True and accurate copies of the executed Charity Group NDAs are annexed hereto and made a part hereof as Exhibit 6.

30. After the Absolut Executives had executed the Charity Group NDA, Talbot gave each of them a copy for their records. He then turned the display panels around to face the attendees, and made his presentation disclosing the Confidential Information, explaining his ongoing and proposed philanthropic and television endeavors through Charity Group, including a detailed description of the planned *Charity Mixology* series. Talbot and Petrucci then walked the Absolut Executives in particular detail through the brand-casting and philanthropic opportunities, and discussed the power of exposing the beverage industry and consumers to the demonstration, use, and endorsement of Absolut product through reality TV.

31. The Absolut Executives, who were impressed and intrigued by the presentation, asked a number of questions, including questions about estimated production costs for *Charity Mixology*, how long the show was planned to run, and how many episodes and seasons Charity Group planned for it to last. The Absolut Executives enthusiastically expressed interest in participating in *Charity Mixology* with Charity Group.

32. When the meeting at Absolut concluded, Ford walked Talbot and Petrucci to his office and then through a side door to the exit. The three had a conversation in which Ford told Talbot and Petrucci that he viewed the *Charity Mixology* series as a great opportunity for branding and promoting Absolut brand vodka through product placement. Ford described himself as Absolut's "Senior Mixologist" and offered to circulate invitations to other leading bartenders to assist Plaintiffs in the casting of *Charity Mixology*. Ford expressed his excitement that *Charity Mixology* could benefit both Absolut and non-profit organizations globally.

33. As a result of their meeting with the Absolut Executives and conversation with Ford, Talbot and Petrucci believed that Absolut would be the lead sponsor of *Charity Mixology*.

34. On November 7, 2007, Talbot wrote to Absolut (the "Absolut Letter"), enclosing the fully executed Charity Group NDAs. In the Absolut Letter, he stated as follows:

[p]lease find attached copy of Charity Productions reality shows and projects underway by the Charity Group. We will be in touch in the near future with further detail regarding the product placement opportunity, network or cable conditions and estimated pricing. Attached is a copy of the executed Non Disclosure and Covenant Agreement signed by you on November 1st on behalf of Absolut Vodka. Accordingly, with the additional information enclosed, we remind you to maintain confidentiality and adhere to all the terms and conditions of the agreement. If you have any questions please do not hesitate to call me.

A true and accurate copy of the Absolut Letter is annexed hereto and made a part hereof as Exhibit 7.

35. On a number of occasions following the meeting at Absolut's offices, Charity Group gave Ford progress updates on *Charity Mixology*. On occasion, Talbot emailed Ford updates of his successes, and Ford replied back with his congratulations or words to that effect.

**ABSOLUT AND PERNOD BREACH
THEIR AGREEMENTS AND MISAPPROPRIATE
CHARITY GROUP'S CONFIDENTIAL INFORMATION**

36. Over approximately the next eight months, Ford and Charity Group remained in communication. As a philanthropist, Talbot organizes many events for non-profits, for which Talbot solicits and obtains sponsorship from commercial for profit companies. Given Talbot's and Ford's friendly relationship at the time, Ford was Talbot's first preference to sponsor such events. Accordingly, Absolut, through Ford, sponsored a number of charity events organized by Charity Group, providing Charity Group with complimentary cases of Absolut vodka as recently as September 15, 2008.

37. At no point during these various communications with Talbot did Ford reveal that Absolut and Pernod were actually developing and producing a reality TV show based

entirely upon Charity Group's Confidential Information and concept for *Charity Mixology*.

38. In October 2008, Talbot was surprised to discover a link to a page on the Facebook social networking site in which Absolut was promoting, and indeed was ready to launch, via NBC Universal Local Media Division affiliate LXTV.com ("LXTV") a mixology show entitled *On The Rocks: The Search For America's Best Bartender* (the "Absolut Mixology Show").

39. The Absolut Mixology Show misappropriates the very concept and structure of *Charity Mixology* show: it is a reality show in which bartenders compete to create the best cocktails, and featuring brand-casted Absolut vodka products to make the cocktails featured in the competition.

40. The only difference between the concept for the Absolut Mixology Show and *Charity Mixology* is that the Absolut Mixology Show does not feature or showcase philanthropic organizations or in any way benefit any charity. A copy of Absolut's September 11, 2008 press release announcing and describing the Absolut Mixology Show is annexed hereto and made a part hereof as Exhibit 8.

41. Absolut has, in blunt terms, stolen Charity Group's Confidential Information, particularly the concept for *Charity Mixology*. It has taken and used that Confidential Information to create and participate in a near-identical reality show, in breach of the restrictive covenants of the Charity Group NDA, designed solely to benefit Absolut and its affiliated entities.

42. Charity Group and Talbot have since learned, and are informed and believe that Pernod purchased Absolut in early 2008 for approximately \$8.3 billion. Accordingly, on information and belief, Pernod has acted and is acting in concert with its affiliate Absolut to develop and produce the Absolut Mixology Show.

43. Charity Group and Talbot have been substantially, financially, and irreparably harmed by Absolut's and Pernod's breaches. Because the Absolut Mixology Show has been first to market, Absolut and Pernod have destroyed the value of Charity Group's Confidential Information; Charity Group can no longer pursue *Charity Mixology*.

44. In addition, Charity Group and Talbot have been harmed because, among other things, (a) charitable organizations, such as the organizations that registered to participate in *Charity Mixology* are and will be unlikely to work with Charity Group on other Charity Group ventures, and with respect to Charity Restaurants and Charity Technology, thereby reducing the potential value of Charity Group's endeavors; (b) beverage companies will not work with Charity Group on any mixology-themed television program, for which Charity Group has invested countless hours and substantial sums of money, because Absolut and Pernod were "first to market" with the concept; (c) television networks and cable companies will not work with Charity Group on *Charity Mixology* because Absolut and Pernod have already aired the Absolut Mixology Show; (d) Charity Group cannot use the *Charity Mixology* series as a means to drive marketing and fundraising for Charity Restaurants, Charity Technology, or any other Charity Group philanthropic endeavors; and (e) Charity Group and Talbot will not receive significant revenues from advertising and product placement that they would have otherwise received.

COUNT I

Breach of Contract

45. Plaintiffs reallege and incorporate by reference each and every allegation set forth in paragraphs 1 through 44.

46. By and through their authorized officers, executives, and employees, Pernod and Absolut executed and agreed to the terms of the written Charity Group NDAs, knowingly and intending to be bound.

47. Talbot executed the Charity Group NDAs on behalf of Charity Group.

48. The Charity Group NDAs are clear and definite in all of their material terms, supported by consideration, and constitute valid and binding contracts that are fully enforceable by Charity Group.

49. Charity Group and Talbot have fulfilled all of their obligations under the Charity Group NDAs, and there are no conditions precedent to Pernod's or Absolut's obligations that remain unsatisfied.

50. Pernod and Absolut materially breached their contracts with Charity Group, and Talbot, by, among other things, using and disclosing Charity Group's Confidential Information and by directly and indirectly participating in a business or enterprise, namely the Absolut Mixology Show, which is similar to the mixology television show presented by Charity Group.

51. Pernod's and Absolut's material breaches have caused Charity Group and Talbot to sustain significant monetary damages, in an amount not yet fully determined.

52. Pernod's and Absolut's material breaches have also caused irreparable harm and damage to Charity Group and Talbot, and those breaches will continue to cause irreparable harm. Charity Group and Talbot have no adequate remedy at law for Pernod's and Absolut's breaches, and the harm that Plaintiffs have sustained cannot be fully measured or valued entirely in terms of money damages.

53. Pernod's and Absolut's material breaches were willful, intentional and malicious, done with the specific intent and purpose of harming Plaintiffs and their interests, so that Plaintiffs are entitled to recover punitive and/or treble damages.

COUNT II

Breach Of Implied Covenant Of Good Faith And Fair Dealing

54. Plaintiffs reallege and incorporate by reference each and every allegation set

forth in paragraphs 1 through 53.

55. An implied covenant of good faith and fair dealing existed in connection with the Charity Group NDAs, which were, in exchange for the opportunity to obtain the Confidential Information relating to *Charity Mixology*, executed by Absolut and Pernod in or about the Fall of 2007. Pursuant to the Charity Group NDAs, Defendants acknowledged that the Confidential Information relating to *Charity Mixology* being disclosed to them was original and confidential and promised not to use or disclose the idea for Defendants' own purposes, and not to participate, directly or indirectly, in any similar project for a minimum of three years.

56. Defendants breached the covenant of good faith and fair dealing implied in the Charity Group NDAs by using the Confidential Information for the Defendants' own purposes, creating and participating in the Absolut Mixology Show, which is nearly identical to *Charity Mixology* and designed solely to benefit Absolut and its affiliates.

57. The actions and conduct of Defendants as set forth above caused Plaintiffs to sustain significant monetary damages, in an amount not yet fully determined.

COUNT III

Idea Misappropriation

58. Plaintiffs reallege and incorporate by reference each and every allegation set forth in paragraphs 1 through 57.

59. Plaintiffs submitted the Confidential Information, including their concept for *Charity Mixology*, under the restrictions of the Charity Group NDAs, with the specific understanding that Pernod and Absolut would compensate Plaintiffs for their agreement to brand-cast Pernod and Absolut products within episodes of *Charity Mixology*.

60. Plaintiffs' concept and idea for *Charity Mixology*, a bartender competition utilizing the show's sponsors' beverage brands, all to benefit featured philanthropic

organizations, constitutes a unique and novel idea under New York law.

61. The principal concept for the Absolut Mixology Show - a bartender cocktail-mixing competition featuring brand-casted Absolut Vodka products - is directly based upon, and is substantially identical to Plaintiffs' confidential, novel and unique *Charity Mixology* show concept.

62. Pernod and Absolut took and disclosed to third parties Plaintiffs' confidential, novel and unique *Charity Mixology* concept, for the specific purpose of developing and producing the Absolut Mixology Show.

63. By taking and using the *Charity Mixology* show concept without compensating Plaintiffs, in breach of their contractual obligations and duties of confidentiality, Pernod and Absolut have committed idea misappropriation under New York law, thereby entitling Plaintiffs to equitable relief and money damages, including recovery of profits that the Defendants obtained illicitly as a result of their misappropriations.

64. Pernod's and Absolut's misappropriations of Plaintiffs' novel, unique and valuable ideas have caused Plaintiffs to sustain significant monetary damages, in an amount not yet fully determined.

65. Pernod's and Absolut's misappropriations of Plaintiffs' novel, unique and valuable ideas have also caused irreparable harm and damage to Plaintiffs and will continue to cause irreparable harm to Plaintiffs. Plaintiffs have no adequate remedy at law for Pernod's and Absolut's misappropriation, and the harm that Plaintiffs have sustained cannot be fully measured or valued entirely in terms of money damages.

66. As a result of their misappropriations, Pernod and Absolut have been unjustly enriched and have obtained an unfair advantage by using the Confidential Information without having to incur the expense of obtaining a license from Plaintiffs or the time and expense of

independently developing the Confidential Information.

67. Pernod's and Absolut's misappropriations were willful, intentional and malicious, done with the specific intent and purpose of harming Plaintiffs and their interest, so that Plaintiffs are entitled to recover punitive and/or treble damages.

COUNT IV

Misappropriation of Trade Secrets

68. Plaintiffs reallege and incorporate by reference each and every allegation set forth in paragraphs 1 through 67.

69. Plaintiffs have spent a substantial investment of time, effort and money in creating and developing the Confidential Information, including but not limited to the *Charity Mixology* concept. Plaintiffs' Confidential Information comprises of information used in Plaintiffs' business that was not generally known and which gave Plaintiffs the opportunity to obtain an advantage over competitors who did not know or use the Confidential Information.

70. Plaintiffs' Confidential Information, including but not limited to the *Charity Mixology* concept, constitute trade secrets protectable under New York law.

71. Pernod and Absolut received Plaintiffs' Confidential Information under the restrictions of the Charity Group NDAs. Pernod and Absolut have misappropriated Plaintiffs' Confidential Information, by, among other things, breaching the confidential relationship and other improper means and using Plaintiffs' Confidential Information without authorization.

72. As a result of their misappropriations, Pernod and Absolut have been unjustly enriched and have obtained an unfair advantage by using the Confidential Information without having to incur the expense of obtaining a license from Plaintiffs or the time and expense of independently developing the Confidential Information.

73. Pernod and Absolut have misappropriated Plaintiffs' trade secrets in violation

of New York law, thereby entitling Plaintiffs to equitable and monetary relief, including recovery of profits that the Defendants obtained illicitly as a result of their misappropriations.

74. Pernod's and Absolut's misappropriations of Plaintiffs' Confidential Information have caused Plaintiffs to sustain significant monetary damages, in an amount not yet fully determined.

75. Pernod's and Absolut's misappropriations of Plaintiffs' Confidential Information have also caused, and will continue to cause, irreparable harm and damage to Plaintiffs. Plaintiffs have no adequate remedy at law for Pernod's and Absolut's misappropriations, and the harm that Plaintiffs have sustained cannot be fully measured or valued entirely in terms of money damages.

76. Pernod's and Absolut's misappropriations were willful, intentional and malicious, done with the specific intent and purpose of harming Plaintiffs and their interests, so that Plaintiffs are entitled to recover punitive and/or treble damages.

COUNT V

Unfair and Deceptive Acts and Practices In Violation of New York General Business Law § 349

77. Plaintiffs reallege and incorporate by reference each and every allegation set forth in paragraphs 1 through 76.

78. The actions of Pernod and Absolut as described above constitute unfair and deceptive acts and practices in violation of New York General Business Law Section 349(a).

79. Pernod's and Absolut's unfair and deceptive acts and practices have caused significant damages to the Plaintiffs and the public at large. The actions of Absolut and Pernod affect the public interest because, as a result of their actions, non-profit organizations are deprived of the opportunities for funds and visibility that would have otherwise been provided to

them, thus, disadvantaging numerous charities across the United States. Because the Absolut Mixology Show was the first to market, Plaintiffs can no longer pursue *Charity Mixology*, and, therefore, Defendants have deprived the charitable non-profit organizations of the funds and visibility they would have otherwise gained.

80. Pernod's and Absolut's unfair and deceptive acts and practices have caused Plaintiffs to sustain significant monetary damages, in an amount not yet fully determined.

81. Pernod's and Absolut's unfair and deceptive acts and practices have also caused, and will continue to cause, irreparable harm and damage to Plaintiffs and the public at large. Plaintiffs have no adequate remedy at law, and the harm that Plaintiffs and have sustained cannot be fully measured or valued entirely in terms of money damages.

82. Plaintiffs are entitled, pursuant to New York General Business Law Section 349(h), to injunctive relief and to recover their damages, trebled, on account of the Defendants' willful and knowing violations, and to recover their costs and attorneys' fees.

COUNT VI

Unjust Enrichment

83. Plaintiffs reallege and incorporate by reference each and every allegation set forth in paragraphs 1 through 82.

84. Defendants have been unjustly enriched because they misappropriated Plaintiffs' philanthropic concept, and turned it into an infomercial for Defendants' own profit, without incurring the expense of obtaining a license from Plaintiffs, or the time and expense of independently developing the concept for the Absolut Mixology Show.

85. As aforementioned, Defendants continue to illicitly obtain profits from the Absolut Mixology Show, created as a result of the misappropriation of Plaintiffs' Confidential Information and in breach of the Charity Group NDAs.

86. Plaintiffs have no adequate remedy at law.

COUNT VII

Unfair Competition

87. Plaintiffs reallege and incorporate by reference each and every allegation set forth in paragraphs 1 through 86.

88. Defendants engaged in unfair competition with Plaintiffs by deceptively obtaining the Confidential Information from Plaintiffs, misappropriating the Plaintiffs' concept for *Charity Mixology* and consequently creating and participating in the Absolut Mixology Show.

89. Defendants acted unfairly and unjustifiably to gain profit solely for themselves, and to exclude Plaintiffs and certain charitable organizations from sharing in the profit. Defendants acknowledged the uniqueness of the *Charity Mixology* concept, and expressly agreed to keep the Confidential Information strictly confidential, and not to participate, directly or indirectly, in any business or enterprise similar to the production of the show presented by Charity Group, thus inducing Plaintiffs to reveal the Confidential Information to Defendants.

90. In violation of the Charity Group NDAs, Defendants unfairly and unjustifiably misappropriated the fruits of Plaintiffs' time, labor, talent, skills and efforts, and used the Confidential Information to create and participate in the Absolut Mixology Show for the sole profit of Defendants. By misappropriating Plaintiffs ideas and confidential information, Defendants unfairly avoided any expenses that they would have incurred had they independently developed the idea for the Absolut Mixology Show.

91. As a result of the Defendants' unfair and unjustifiable misappropriations, Defendants have directly realized profited, to the detriment of Plaintiffs, by, *inter alia*, marketing the Absolut Mixology Show ahead of Plaintiffs so that Plaintiffs could no longer

pursue *Charity Mixology* and profit from their ideas, which they had created and dedicated significant amounts of time, labor, talent, efforts and skills.

92. As a result of the actions and conduct of Defendants as set forth above, Plaintiffs have sustained significant monetary damages, in an amount not yet fully determined.

WHEREFORE, Plaintiffs respectfully requests that the Court enter judgment in their favor and against Defendants as follows:

- (i) That Defendants have breached their contracts with Plaintiffs, and such breaches were intentional, willful and malicious;
- (ii) That Defendants have breached the covenant of good faith and fair dealing, and such breaches were intentional, willful and malicious;
- (iii) That Defendants have misappropriated Plaintiffs' ideas in violation of New York law, and such misappropriations were intentional, willful and malicious;
- (iv) That Defendants have misappropriated Plaintiffs' trade secrets in violation of New York law and such misappropriations were intentional, willful and malicious;
- (v) That Defendants have committed unfair and deceptive practices in violation of New York General Business Law Section 349(a) and such violations were knowing and willful;
- (vi) That Defendants have been unjustly enriched at the expense of Plaintiffs;
- (vii) That Defendants have acted unfairly and unjustifiably to gain profit solely for themselves;
- (viii) That Defendants and their agents, officers, directors, servants, employees, successors and assignees, and all others in active concert or participation

with Defendants, be preliminarily and permanently enjoined from using Plaintiffs' Confidential Information including, but not limited to, in connection with the Absolut Mixology Show and/or any other television, cable or online series;

- (ix) That Defendants and their agents, officers, directors, servants, employees, successors and assignees, and all others in active concert or participation with Defendants, be preliminarily and permanently enjoined from distributing, displaying or airing the Absolut Mixology Show;
- (x) That Defendants pay Plaintiffs the damages that they have sustained as a result of Defendants' wrongful conduct, in an amount to be determined at trial, plus prejudgment interest, the costs of this action and reasonable attorneys' fees;
- (xi) That Defendants pay Plaintiffs the illicit profits that they have received as a result of their misappropriations of Plaintiffs' protected ideas and trade secrets;
- (xii) That Defendants pay Plaintiffs the damages Plaintiffs have sustained as a result of Defendants' unfair and deceptive acts and practices, trebled on account of their knowing and willful violations of General Business Law Section 349(a), plus Plaintiffs' costs and reasonable attorneys' fees;
- (xii) That Defendants pay Plaintiffs punitive damages, on account of Defendants' intentional, willful and malicious conduct, or, alternatively, treble damages; and
- (xiv) That the Court grant such further relief as the Court may deem just and proper.

TRIAL BY JURY DEMANDED

Plaintiffs demand a jury trial of all issues so triable.

Dated: New York, New York
December 18, 2008

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