UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

MARLENE CUERTO IGLESIAS and MIRIAM IGLESIAS ALVAREZ, both individuals

Plaintiff,

vs.

Case No: 1:20-cv-20157

PERNOD RICARD, Public Societe Anonyme

Defendant.

_____/

FIRST AMENDED COMPLAINT FOR DAMAGES

Plaintiffs, MARLENE CUERTO IGLESIAS (Marlene) and MIRIAM IGLESIAS ALVAREZ (Miriam) (jointly, "Plaintiffs") hereby sues PERNOD RICARD (hereinafter "Defendant"), pursuant to the Cuban Liberty and Democratic Solidarity Act ("LIBERTAD Act"), for trafficking in Plaintiffs' confiscated property located in Cuba and alleges as follows:

PARTIES

1. Plaintiff, Marlene Cueto Iglesias, is an individual and resident of Manhattan Beach, Los Angeles County, California. At all times relevant to this action, Plaintiff, is and continues to be a citizen and resident of the United States.

2. Plaintiff, Miriam Iglesias Alvarez, is an individual and resident of Manhattan Beach, Los Angeles County, California. At all times relevant to this action, Plaintiff, is and continues to be a citizen and resident of the United States.

3. Plaintiffs became citizens on the same date, August 5, 1986.

4. Pernod is a French corporation organized under foreign law. Defendant Pernod's principal place of business is located at 12 Place des Etats-Unis, 75783 Paris Cedex 16, France. Pernod is a foreign publicly traded company that, through its subsidiaries (including but not limited to Pernod Ricard USA, LLC, a Delaware LLC) does business in the State of Florida, Pernod does not maintain a registered agent in the State of Florida.

5. Defendant Pernod has sufficient minimum contacts with the State of Florida, specifically, the Southern District of Florida, this includes but is not limited to the fact that the Defendant through its agents and subsidiaries distributes a portfolio of liquor products including Absolut Vodka, Jameson Irish Whiskey and others.

6. Defendant Pernod owns rights in the brand Havana Club, which was partially derived from Conac Cueto which is confiscated property owned by Plaintiff's family.

7. Pernod Ricard USA, LLC is a subsidiary that engages in substantial activity in the state through its subsidiary. Moreover, Pernod Ricard USA, LLC is merely an agent through which the parent company, Defendant, does business in a particular jurisdiction.

8. Specifically Defendant, Pernod Ricard, has 86 operational subsidiaries. The ones that do business in Florida is Pernod Ricard Marketing USA, LLC and Pernod Ricard USA, LLC. Important to this instant case is Pernod Ricard USA, LLC., which is registered to transact business in Florida.

9. Pernod Ricard USA, LLC produces, imports, and markets spirits and wines. The Company offers whiskey, liqueur, scotch, flavored rum, gin, vodka, tequila, and wines. Pernod Ricard USA supplies Defendant's products throughout United States and on information and belief does no other substantial business nor does it server as an agent for any other liquor companies. Pernod Ricard USA sells its product in Florida, and maintains an office in Florida at 200 N New River Dr E, Fort Lauderdale, FL 33301 Pernod Ricard banner, and not any other entity. The public record shows no time where Defendant has objected (for example via a lawsuit) to Pernon Ricard USA utilizing its intellectual property or affiliating itself as an alter-ego and agent of the Defendants.

10. Pernod Ricard USA supplies Defendant's products throughout United States. Moreover, looking at the Pernod Ricard USA website, https://www.pernod-ricard-usa.com, and scrolling to the bottom, one would see a link to Pernod Ricard Global, which redirects to the Pernod Ricard of France (i.e. Defendant), with the same logo as Pernod Ricard USA, LLC.

11. Finally, looking at Pernod Ricard financial reports is also extremely telling. "The Americas," Defendant Pernod Ricard writes in its report, is a reportable segment with their sales being over 10% of total Gross Sales. See Exhibit "A." In other words, the Defendants distribute their product throughout the Americas and as can be seen by the Affidavit filed in Defendant's Motion to Dismiss, they do not do so directly but through their alter-egos.

12. Defendant, Pernod Ricard, reported a very strong year, with 6% growth in FY 2018. A third of those sales came from the United States of America almost a third of their worldwide sales. See Exhibit "B"

13. All of this comports with the statement on Defendant's website, originally released on May 13, 2016, where Pernod Ricard stated that the point of Pernod Ricard USA, LLC is to focus more resources in the field, where it makes a difference, to accelerate decision-making and improve execution in the on- and off-premise.

14. Ultimately, there is no difference between Pernod Ricard USA and Defendant Pernod Ricard. To the extend that Defendant disputes this fact, Plaintiff expressly reserves the right to jurisdictional discovery.

INTRODUCTION REGARDING LIBERTAD ACT

15. The LIBERTAD Act was enacted to assist the Cuban people in regaining their freedom and prosperity, strengthen international sanctions against the communist Cuban Government, and to deter the exploitation of wrongfully confiscated property in Cuba belonging to United States nationals.

16. Although every U.S. President has suspended the right to bring an individual action under the LIBERTAD Act since its enactment in 1996, the Defendant has been on notice since 1996 that trafficking in property confiscated by the communist Cuban Government would subject it to liability under the LIBERTAD Act.

17. As of the date of filing this Complaint, the United States Government has ceased suspending the right to bring an action under the LIBERTAD Act, which therefore permits Plaintiff to seek damages for the Defendant's conduct in exploiting Plaintiff's wrongly confiscated property. Importantly, Title III of the Act provides a private cause of action for U.S. nationals against any person or entity that knowingly "traffics" in property expropriated by the Cuban government. The Act also provides exclusive jurisdiction for these claims in U.S. Federal Courts.

18. On or about April 17, 2019, U.S. Secretary of State Mike Pompeo announced the Trump administration will no longer suspend Title III: "[e]ffective May 2nd, the right to bring an action under Title III of the Libertad Act will be implemented in full." Secretary Pompeo went on to warn: "[t]hose doing business in Cuba should fully investigate whether they are connected to property stolen in service of a failed communist experiment."

19. Title III of the LIBERTAD Act creates civil liability for any individual or entity that traffics in property that was confiscated by the Cuban government on or after January 1, 1959. The Act authorizes claims by persons who were U.S. nationals at the time of expropriation and by persons who were Cuban nationals at the time but later became U.S. nationals.

20. Title III defines "trafficking" broadly by imposing liability on a person or entity that knowingly and intentionally sells, transfers, distributes, brokers, manages, or otherwise disposes of confiscated property, or that purchases, receives, holds, controls, manages, or holds an interest in confiscated property. Trafficking also includes engaging in a commercial activity using, or otherwise benefiting from, confiscated property.

CONAC CUETO CIA

21. Plaintiffs, U. S. nationals as defined by 22 U.S.C. § 6023(15), are the rightful owner of a 100% interest in certain property of Conac Cueto, C.I.A, a Cuban company, originally located at Avenue 25 #5401, Almendares, Buena Vista, Havana, Cuba (the "Subject Property", "Conac Cueto" or "Company").

22. Plaintiff's family were well known in the Havana area and owned various businesses and properties.

23. Specifically, Plaintiff's father, Fernando Tomas Cueto Sanchez, founded Conac Cueto in the early 1950s.

24. Conac Cueto produced and sold cognac and other spirits in the Republic of Cuba throughout the 1950s and until 1963 when the communist Cuban Government confiscated the Subject Property. The Conac Cueto product line included Conac Cueto Extra Viejo, Conac Cueto Anejo V.S., Conac Cueto Extra Dry, Champagne Conac Cueto, Aguardiente Cueto and others.

25. The Company's assets included intellectual property, oak barrels, bottles, labels, corks, tasters, meters and other assets the Company used in the production and sale of cognac. The Company employed a house chemist, a house taster, staff accountants, a general manager, and numerous employees and sales representatives.

26. The communist Cuban Government confiscated the Subject Property and forcefully took possession and control of all Company assets, the Company market segment and the Company intellectual property. In 1963, the communist government of Cuba gathered all Company assets and took them to the rum company of the Cuban government, "Cuban Government Rum Company," which was the result of the Cuban government nationalizing other spirit companies including the now infamous, Jose Arechabala S.A, who was the original owner of Havana Club brand. Similar to the fate of Jose Arechabala S.A and the Havana Club brand, the Company's brand Conac Cueto Extra-Viejo and all other assets were forcefully transferred to the Cuban Government Rum Company and eventually rebranded as Havana Club.

27. Marlene's Father/Miriam's Husband passed away on December 8, 1979. Because there were no "private" lawyers in Communist Cuba, the Cueto family never had the opportunity to have a will of any import[1] drafted. However, discussions in the family always held true that the family business would eventually pass to Plaintiff Marlene either through inheritance or gift. Plaintiff Marlene was led to believe that the Conac Cueto business, along with other businesses established by the Cueto family in Cuba, would eventually pass to Marlene through some legal mechanism.

[1] Put another way, no lawyer within the Cuban government would allow Mr. Cueto to draft a will leaving his stolen property to his wife or children as such lawyers were agents of the State and under orders that such theft was lawful as part of Castro's attempt to institute a communist regime in the former capitalist regime of Cuba.

In the event that this Court determines that Plaintiff Marlene has no interest in the property, Plaintiff Miriam is the individual who has inherited 100% of the business entity after the passing of her husband through intestate inheritance.

28. The communist Cuban Government maintains possession of the Subject Property and has not paid any compensation to Plaintiffs for its seizure. The Cuban Government has partnered with the Defendant to distribute the Havana Club brand as well as other ventures to be found in discovery.

29. The communist Cuban Government expropriated, and seized ownership and control of the Subject Property. The Subject Property has not been returned and adequate and effective compensation has not been provided. Further, the claim to the Subject Property has not been settled pursuant to an international claims settlement agreement or other settlement procedure.

30. More specifically, the communist Cuban Government seized ownership and control of the Subject Property since 1963 and used the rights in the Subject Property to produce and sell the Company's product lines and utilize the intellectual property of the Company under the name Havana Club without consent from or compensation paid to Plaintiff, a U.S. citizen.

31. Plaintiffs never abandoned her legitimate interest in the Subject Property.

32. Plaintiffs' interest in the Subject Property is based upon an uncertified claim, and Plaintiff did not have the ability to bring a claim under the Settlement of International Claims Act of 1949.

33. Upon information and belief, beginning on or about 1993 and continuing to today, the Defendants knowingly and intentionally commenced, conducted, promoted and distributed its Havana Club brand and line of products worldwide using the Subject Property by using the assets and intellectual property of the Subject Property without the authorization of Plaintiffs.

34. Upon information and belief, beginning on or about 1993 and continuing for at least a year thereafter, the Defendant also knowingly and intentionally participated in and profited from the communist Cuban Government's possession of the Subject Property without the authorization of Plaintiff.

35. The Defendants' knowing and intentional conduct with regard to the confiscated Subject Property is trafficking as defined in 22 U.S.C. § 6023(13)(A). Specifically, in Cuba, Law 890[2] was formally published in all newspapers noting confiscaition of various areas of private property, segmented into "Groupos" or groups. Group A contained businesses whose sugar cane fields were confiscated, which is what rum and some other alcoholic beverages are made from. Moreover, Group B included confiscations of various rum and alcoholic companies. When Pernod Ricard started to do business with the Cuban Government, they must have known or should have known had they done any form of reasonable due diligence that they were trafficking in seized goods, because it was well known that the Communist Cuban regime stole property by force. Pernod Ricard cannot claim to be ignorant of the US embargo on Cuba or the facts that led up to it.

36. Ultimately, Defendant had knowledge, or reason to know that it was trafficking in seized property that was owned by Cuban citizens, including Plaintiffs'. Other reasons that Pernod Ricard knew that it was trafficking in seized property because the barrels and other materials had Cognac Cueto markings and other signage that made the various materials unique. See Exhibit "D."

CUBAN GOVERNMENT UNDER FIDEL CASTRO

37. Fidel Castro was the fifteenth president of Cuba, and the First Secretary of the Central Committee of the Communist Party of Cuba. He rose to power and consolidated leadership between 1959 and 1960. In 1959, Fidel began nationalizing lands, commercial properties and real estate owned by American investors and wealthy Cubans under the laws 890, 891, 1071, Urban Reform and Agrarian Reform. One such commercial property landowner was Fernando Cueto, father of the Plaintiff. Mr. Cueto's land was seized by the communist Cuban Government. The property, market segment and intellectual properties that were seized have not been returned and compensation has not been paid.

[2] Conac Cueto was taken under another Cuban Law, not Law 890. It was likely confiscated under laws 820, 891, 1071 or 942.

CLAIM FOR DAMAGES UNDER TITLE III of the LIBERTAD ACT

38. Plaintiffs incorporate by reference all of the preceding paragraphs as if fully stated herein.

39. This claim is brought pursuant to Title III of the LIBERTAD Act, 22 U.S.C. § 6082.

40. As set forth in Title III and alleged above, the Defendant did traffic, as that term is defined in 22 U.S.C. § 6023(13)(A), in the property owned by the Cueto family, which was confiscated by the communist Cuban Government on or after January 1, 1959 and is therefore liable to Plaintiff, who owns the claim to the Subject Property, for money damages.

41. Plaintiff is entitled to all money damages allowable under 22 U.S.C. § 6082(a), including, but not limited to, those equal to the sum of:

    a. The amount greater of: (i) the amount certified by the Foreign Claims Settlement Commission, plus interest; (ii) the amount determined by a special master pursuant to 22 U.S.C. § 6083(a)(2); or (iii) the "fair market value" of the Subject Property, plus interest;

    b. Three times the amount determined above (treble damages); and

    c. Court costs and reasonable attorneys' fees.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff demands judgment against the Defendant as follows:

A. Ordering the Defendant to pay damages (including treble damages);

B. Ordering the Defendant to pay pre- and post-judgment interest on any amounts awarded;

C. Order the Defendant to pay attorneys' fees, costs, and expenses; and

D. Ordering such other relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues so triable, and a trial pursuant to Rule 39(c), Federal Rules of Civil Procedure, as to all matters not triable as of right by a jury.

Dated: April 6, 2020

Respectfully submitted,

By:

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/s/ Andre G. Raikhelson
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Bar Number: 123657

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on April 06, 2020, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the Service List with the Court in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: /s/ Andre G. Raikhelson, Esq.