

18-02711-FOIA

August 3, 2018

U.S. Securities and Exchange Commission
Office of FOIA Services
100 F Street, NE Mail Stop 2745
Washington, DC 20549-5100



Dear FOIA Office:

Under the Freedom of Information Act (FOIA), we are requesting a copy of the following:

BEAM INC comment letters.
DOC_DATE: 1/1/2001 to 12/31/2006
CIK_NUM: 0000789073

Process this request up to our education-use entitlements.

Thank You,

Dr. Amy Hutton
Boston College
Carroll School of Management,
Chestnut Hill, Massachusetts 02467





UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

August 09, 2018

Dr. Amy P. Hutton
Boston College
Carroll School of Management
Chestnut Hill, MA 02467

RE: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **18-02711-FOIA**

Dear Dr. Hutton:

This letter is in response to your request, dated and received in this office on August 03, 2018, for SEC comment letters for the time period January 1, 2001 to December 31, 2006 that were issued to Beam Inc.

The search for responsive records has resulted in the retrieval of the enclosed comment letters dated September, 12, 2002, October 7, 2002, and January 4, 2004 (totaling 11 pages). Further, additional comment letters have been made publicly available. You may view the correspondence from our website. The internet address is www.sec.gov. The instructions are as follows:

1. In the "EDGAR" Company Filings search box on the homepage, type the company name and hit return,
2. In the box labeled "Filing Type:" enter "UPLOAD," and click "SEARCH."
 - "UPLOAD" are letters to the company from the SEC.

If you have any questions, please contact me at hallr@sec.gov or (202) 551-8353. You may also contact me at foiapa@sec.gov or (202) 551-7900. You also have the right to seek assistance from Jeffery Oval as a FOIA Public Liaison or contact the Office of Government Information Services (OGIS) for dispute resolution services. OGIS can be reached at 1-877-684-6448 or Archives.gov or via e-mail at ogis@nara.gov.

Sincerely,

A handwritten signature in cursive script that reads "Ronnye L. Hall".

Ronnye L. Hall
FOIA Research Specialist

Enclosure

Mail Stop 0404

September 12, 2002

Craig P. Omtvedt
Senior Vice President and
Chief Financial Officer
300 Tower Parkway
Lincolnshire, Illinois 60069-3640

RE: Fortune Brands, Inc.
Form 10-K for the fiscal year ended December 31, 2001
Filed March 29, 2002

2002 Forms 10-Q for the quarters ended March 31 and June 30,
File No. 001-09076

Dear Mr. Omtvedt:

We have reviewed your filings and have the following comments. We have limited our review to only your financial statements and related disclosures and will make no further review of your documents. Where indicated, we think you should revise your disclosures in future filings in response to these comments. If you disagree, we will consider your explanation as to why our comment is inapplicable or a revision is unnecessary. Please be as detailed as necessary in your explanation. In some of our comments, we may ask you to provide us with supplemental information so we may better understand your disclosure. After reviewing this information, we may or may not raise additional comments.

Please understand that the purpose of our review process is to assist you in your compliance with the applicable disclosure requirements and to enhance the overall disclosure in your filing. We look forward to working with you in these respects. We welcome any questions you may have about our comments or on any other aspect of our review. Feel free to call us at the telephone numbers listed at the end of this letter.

Annual Report to Shareholders

Diluted EPS

1. We note your unqualified statement in the first bullet point on page 1 of your annual report to shareholders "Diluted EPS up 5% in 2001". We note your reference to Diluted EPS relates to earnings per common share before one-time items. We believe it very misleading to present an earnings measure that is defined by generally accepted accounting principles but not calculated in accordance with the specific authoritative literature. Do not present this information. This comment also applies to your Financial Highlights on page 7 of your Annual Report to Shareholders and Form 8-K's filed on May 2 and July 31, 2002.

December 31, 2001 Form 10-K

EBITDA, Earnings Before One-Time Charges, Operating Company
Contribution and Free Cash Flow

2. We have the following comments on your presentation of non-GAAP

measures in Financial Highlights, (EBITDA, earnings before one-time items and consolidated operating company contribution) Selected Financial Data, Management's Discussion and Analysis (operating company contribution, income from operations before one-time items and free cash flow) and Quarterly Financial Information (operating company contribution).

* Revise the accompanying disclosures to (1) identify those factors that should be considered by investors in evaluating each of these non-GAAP measures, (2) describe how management interprets the trends they depict and (3) explain that such measures may be inconsistent with similar measures presented by other companies.

* Explain that earnings before one-time items, operating company contribution and free cash flow are not measures under generally accepted accounting principles.

* Include a reconciliation of operating company contribution to net income.

* You indicate that EBITDA is included as a measure of operating performance. If this is the case, we do not believe it is meaningful to eliminate or smooth items characterized as one-time items. Different unusual items are likely to occur every period, and the company and investors may differ as to what types of events warrant adjustment. Trends may be distorted and disclosure unbalanced if only certain items are adjusted while the effects of other infrequent events or transactions (whether favorable or unfavorable) are not considered or highlighted. Do not eliminate one-time charges in future filings.

* If you continue to adjust EBITDA for items other than the one-time charges referred to above, revise your acronym to clarify this fact.

* You have not indicated why you are presenting earnings before one-time items and operating company contribution. If they are intended as measures of operating performance, it is unclear why nonrecurring, infrequent or unusual items have been eliminated. If they are intended as measures of cash flow, it is unclear why you have eliminated any items that represent current or future cash expenditures. Revise your presentation accordingly.

* Present all non-GAAP measures under headings that do not intimate such measures are calculated in accordance with GAAP. For instance, Operating company contribution as presented in Financial Highlights should not be situated between Net Sales and Net Income and Operating company contribution as presented in Selected Financial Data should be presented in heading such as Other Data rather than Operating Data.

* If your non-GAAP measures are intended to be a measure of liquidity, precede their disclosure with additional disclosure of cash flows from operating, investing and financing activities under a separate heading "Cash Flow Data".

* Do not present any non-GAAP measures such as earnings per common share before one-time items on a per share basis. Refer to FRC 202.4.

Management's Discussion and Analysis - Consolidated

3. Revise your discussion of consolidated results of operations to address each line item reflected in your statement of operations and how changes in each of these line items impacted your income from operations and net income presented in accordance with GAAP. Refer

to Item 303(a) of Regulation S-K.

4. Revise your discussion of the 2000 and 2001 restructuring charges and other non-recurring charges to discuss the events and decisions giving rise to the restructuring charges and the expected impact of the restructuring. Refer to SAB Topic 5: P question 15.

5. Describe the components of the \$56 million other income, net recognized in 2001 and the reasons for the material changes in this caption from year to year.

Management's Discussion and Analysis - Spirits and Wine 2001 Compared to 2000

6. Clarify what you mean by net sales increased as a result of Absolut vodka revenues recorded by the spirits and wine business on an interim basis until Vin and Spirit's U.S. subsidiary is fully operational. Tell us more about the terms of distribution agreement and your basis under generally accepted accounting principles for recording the Absolut vodka revenues.

Accrued Customer Programs

7. Disclose the composition of accrued customer programs and how you determine what types of customer program costs are reflected in net sales or advertising, selling and general and administrative costs.

Note 1 - Significant Accounting Policies: Advertising Costs

8. In future filings clarify what capitalized advertising costs are amortized in proportion to.

Note 3 - Acquisitions, Disposals and Joint Ventures

9. We note that you have deferred the recognition of the \$270 million gain on the sale of 49% of Future Brands LLC "due to certain continuing obligations of JBB Co." Tell us what consideration you gave to reflecting these commitments within your Contractual Obligations and Other Commercial Commitments schedule presented on page 32. If applicable, provide us with a revised schedule including such commitments.

10. Tell us, and disclose in future filings, the basis for the 10-year period over which you will recognize the gain on the sale of the 49% interest in the LLC.

11. We note that JBBW owns 51% of LLC. Tell us why it is appropriate to account for your interest in LLC using the equity method.

Note 14 - Restructuring and Other Non-recurring Charges

12. Describe the employee groups to be terminated as part of a restructuring plan as required by EITF 94-3.

Note 15 - Information on Business Segments

13. We note that certain segment information (e.g. Operating company contribution by segment and segment assets) required by paragraph 25b of SFAS 131 has been provided within the Information on Business Segments Schedule on page 56. This information does not appear to be covered by the audit opinion. Ensure that such disclosure is included in the audited financial statements.

Note 18 - Related Party Transactions

14. Disclose your related party sales, accounts receivables and other related party amounts separately on the face of your financial statements. Refer to Rule 4-08(k) of Regulation S-X.

Note 19 - Pending Litigation

15. Tell us more about your meritorious defenses to the pending tobacco litigation. Given the recent outcome of other product liability litigation (e.g. asbestos), tell us how strong your defense that the Company never made or sold tobacco is.

16. Tell us more about your Indemnitors. Do they have the financial ability to comply with the terms of the indemnity agreement? Provide for us, on an audited basis, the Indemnitors' total assets, liabilities, net sales, income from continuing operations and cash flows from operating activities for the last three years. Also, tell us the amount of probable losses the Indemnitors have accrued in accordance with SFAS 5 as well as their estimated loss or range of reasonably possible losses in excess of amounts accrued.

17. Confirm to us that your Indemnitors have complied with the terms of the indemnity agreement to date and that nothing has come to your attention to indicate that they will not continue to comply in the future.

* * * *

As appropriate, please respond to these comments within 10 business days or tell us when you will provide us with a response. Please furnish a cover letter with your response that keys your responses to our comments and provides any requested supplemental information. Detailed cover letters greatly facilitate our review. Please file your cover letter on EDGAR. Please understand that we may have additional comments after reviewing your responses to our comments.

You may contact Scott Watkinson, Staff Accountant, at (202) 942-2926 or Jeanne Baker, Assistant Chief Accountant, at (202) 942-1835, or me at (202) 942-1798 with any questions.

Sincerely,

John Hartz
Senior Assistant Chief

Accountant

Craig P. Omtvedt
Fortune Brands, Inc.
September 12, 2002
Page 1 of 6

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D. C. 20549-0404

DIVISION OF
CORPORATION FINANCE

Mail Stop 0404

October 7, 2002

Craig P. Omtvedt
Senior Vice President and
Chief Financial Officer
300 Tower Parkway
Lincolnshire, Illinois 60069-3640

RE: Fortune Brands, Inc.
Form 10-K for the fiscal year ended December 31, 2001
Filed March 29, 2002

2002 Forms 10-Q for the quarters ended March 31 and June 30,
File No. 001-09076

Dear Mr. Omtvedt:

We have reviewed your responses to our comments and have the following additional comments.

EBITDA, Earnings Before One-Time Charges, Operating Company Contribution and Free Cash Flow

1. We note your response to prior comment 2 and have the following additional comments with regard to your presentation of adjusted EBITDA, earnings before one-time charges and operating company performance.

a. We do not believe that any non-GAAP measure that eliminates or smoothes earnings can provide a meaningful "...measure of underlying Company performance..." We reiterate our belief that it is not meaningful to eliminate or smooth items characterized as one-time items. As we previously indicated, different unusual items are likely to occur every period, and the Company and its investors may differ as to what types of events warrant adjustment. Trends may be distorted and disclosure unbalanced if only certain items are adjusted while the effects of other infrequent events or transactions (whether favorable or unfavorable) are not considered or highlighted. We therefore reiterate our previous comment to not eliminate one-time charges in future filings if you are using adjusted EBITDA, earnings before one-time charges and operating company performance as measures of your operating performance.

b. Your sample disclosure (FN 1) indicates that net income from operations before one-time items has been provided to "...provide a more meaningful measure to investors seeking to evaluate the Company's underlying financial performance from year to year". For the reasons cited in our above comment, we believe it is inappropriate to tell investors that any non-GAAP measure is a more meaningful indicator of your financial performance than GAAP measures. Your sample disclosures should be appropriately revised.

c. Your sample disclosure (FN 2) defines Operating Company Contribution "OCC" and indicates that this non-GAAP measure "is the key measure by which we gauge the underlying operating performance of our business segments." Notwithstanding the Company's use of this measure to evaluate your individual business segments, we do not believe it is appropriate to aggregate each segment's OCC and provide a total OCC. Our belief is based on the reasons cited above

regarding the elimination of one-time items for any measure of the Company's operating performance as well as the fact that it is unreasonable to exclude corporate administrative services expenses in any measure that attempts to depict your Company's operating performance. Your sample disclosures should be appropriately revised.

d. Your sample disclosure (FN 3) indicates that EBITDA (before one-time items) is a measure of liquidity. As we indicated in our prior comment, it is not appropriate to eliminate one-time items that represent current or future cash expenditures of the Company in any measure of liquidity. You also tell investors "one-time items that impact the Company's liquidity and performance have been excluded to provide a more meaningful measure to investors seeking to evaluate the Company's liquidity from year to year." We believe it is inappropriate to tell investors that any non-GAAP measure is a more meaningful indicator of your Company's liquidity and performance than GAAP measures. Your sample disclosures should be appropriately revised.

e. We note your sample disclosure regarding free cash flow. Since you indicate that free cash flow is a liquidity measure, we reiterate that it is not appropriate to eliminate any one-time items that represent current or future cash expenditures of the Company. Redefine your non-GAAP measure as appropriate.

Note 3 - Acquisitions, Disposals and Joint Ventures

2. We note your response to prior comment 11. In future filings, disclose your basis for not consolidating JBBW (i.e. the minority shareholder has substantive participating rights).

Note 19 - Pending Litigation

3. We note your response to prior comment 15. Tell us how many cases are pending against the Company. Provide us a rollforward of the claims activity since 1994. We may have further comment after we review this information.

4. We note that you have couched your assessment of whether any of the pending actions will have a material adverse effect upon the results of operations, cash flows or financial condition of the Company "...as long as the Indemnitors continue to fulfill their obligations to indemnify the Company under the aforementioned indemnification agreement". We note that similar to insurance recoveries, your assessment of whether any of the pending actions will have a material adverse effect on the Company should only take into account the impact of the indemnification agreement if management has made the determination that it is probable that the Indemnitors will continue to have the ability and intent to fulfill their obligations under the indemnification agreement. Confirm our understanding and revise your disclosure in future filings to clarify this point.

* * * *

As appropriate, please respond to these comments within 10 business days or tell us when you will provide us with a response. Please furnish a cover letter with your response that keys your responses to our comments and provides any requested supplemental information. Detailed cover letters greatly facilitate our review. Please file your cover letter on EDGAR. Please understand that we may have additional comments after reviewing your responses to our comments.

You may contact Scott Watkinson, Staff Accountant, at (202) 942-2926 or Jeanne Baker, Assistant Chief Accountant, at (202) 942-1835, or me at (202) 942-1798 with any questions.

Sincerely,

John Hartz
Senior Assistant Chief

Accountant

Craig P. Omtvedt
Fortune Brands, Inc.
October 7, 2002
Page 1 of 3

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D. C. 20549-0404

DIVISION OF
CORPORATION FINANCE

Mail Stop 0404

January 7, 2004

Craig P. Omtvedt
Senior Vice President and
Chief Financial Officer
300 Tower Parkway
Lincolnshire, Illinois 60069-3640

RE: Fortune Brands, Inc.
Form 10-K for the fiscal year ended December 31, 2002
Filed March 12, 2003

Forms 10-Q for the quarters ended March 31, June 30, and September
30, 2003

File No. 001-09076

Dear Mr. Omtvedt:

We have reviewed your filings and have the following comments. We have limited our review to only your financial statements and related disclosures and will make no further review of your documents. Where indicated, we think you should revise your disclosures in future filings in response to these comments. If you disagree, we will consider your explanation as to why our comment is inapplicable or a revision is unnecessary. Please be as detailed as necessary in your explanation. In some of our comments, we may ask you to provide us with supplemental information so we may better understand your disclosure. After reviewing this information, we may or may not raise additional comments.

Please understand that the purpose of our review process is to assist you in your compliance with the applicable disclosure requirements and to enhance the overall disclosure in your filing. We look forward to working with you in these respects. We welcome any questions you may have about our comments or on any other aspect of our review. Feel free to call us at the telephone numbers listed at the end of this letter.

2002 Annual Report

1. We note your use of non-GAAP measures such as Free Cash Flow, EBITDA, ROE and RONTA. Ensure that any future use of these and other non-GAAP measures fully complies with Regulation G.

December 31, 2002 Form 10-K

Critical Accounting Policies

2. We note that your discussion of certain of your critical accounting policies is merely a reiteration of the significant accounting policies you present in Note 1. FR 60 encourages a full explanation of the judgments and uncertainties affecting the application of the policies you have identified as critical and the likelihood that materially different amounts would be reported under different conditions or using different assumptions.

3. To the extent material, expand your discussion of Employee Benefit Plans to address a 25 basis point change in your expected long-term rate of return on plan assets.

Contractual Obligations and Other Commercial Commitments

4. Please include your interest payments within your summary of contractual obligations table.

Note 1 - Significant Accounting Policies: Intangibles

5. Supplementally address the consideration you gave to each of the factors listed in paragraph 11 of SFAS 142 in your determination that certain of your tradenames were indefinite-lived. Your response should identify each tradename you have designated as indefinite-lived.

6. Tell us supplementally and disclose in future filings how you assess your indefinite-lived intangibles, other than goodwill, for impairment.

Note 1 - Warranty Reserves

7. Present the changes to your reserves for warranties for each period presented. Refer to paragraph 14b of FIN 45.

Note 1 - Significant Accounting Policies: Stock-Based Compensation

8. In future filings provide the information required by paragraph 45 of SFAS 123, as amended by SFAS 148, in the Significant Accounting Policies note.

Note 4 - Acquisitions, Disposals and Joint Ventures

9. Disclose how you account for the redemption feature of the JBBW convertible preferred stock. It is unclear to us whether you are recording this redeemable security at its fair market value (i.e. its redemption price) as of each balance sheet date. Please address for us the appropriateness of your accounting.

Note 16 - Information on Business Segments

10. As previously agreed to in your September 26, 2002 letter to us, revise future filings to disclose assets by segment in the notes to the financial statements.

Note 21 - Pending Litigation - Other Litigation

11. You conclude that the pending actions related to asbestos-related personal injury will not have a material adverse effect upon the results of operations, cash flows or financial condition of the Company. We assume based on this conclusion that you believe it is not reasonably possible that a loss, that would be material to a decision to buy or sell your securities, exceeding amounts already recognized may have been incurred. If this is not the case, you must either (a) disclose the estimated additional loss, or range of loss, that is reasonably possible, or (b) state that such an estimate cannot be made. Refer to Question #5 to SAB Topic 5Y. We also remind you that if it is reasonably possible that additional material losses may be incurred, the disclosures set forth in Question #6 to SAB Topic 5Y should be provided.

Form 10-Q for the Quarter Ended September 30, 2003

Note 10 - Stock Plans

12. In future interim financial statements, more prominently provide the disclosures required by paragraph 3 of SFAS 148. In this regard, we do not believe that disclosure in note 10 satisfies the requirement of prominent disclosure.

Form 8-K dated October 16, 2003 - Exhibit 99

EPS Before Charges/Gains

13. We note your statement that "Excluding special item in both years, diluted earnings per share were \$1.00..." We also note a reconciliation in the exhibit of a measure referred to as EPS before charges/gains. We assume these two items are referring to the same non-GAAP measure. In future filings refer to non-GAAP measures presented using a consistent description.

Management's Discussion & Analysis

14. In future filings quantify each component discussed as a reason for the overall increase or decrease in a line item, such as cost of goods sold and selling, general and administrative expenses.

* * * *

As appropriate, please respond to these comments within 10 business days or tell us when you will provide us with a response. Please furnish a cover letter with your response that keys your responses to our comments and provides any requested supplemental information. Detailed cover letters greatly facilitate our review. Please file your cover letter on EDGAR. Please understand that we may have additional comments after reviewing your responses to our comments.

You may contact Scott Watkinson, Staff Accountant, at (202) 942-2926 or Jeanne Baker, Assistant Chief Accountant, at (202) 942-1835, or me at (202) 942-1798 with any questions.

Sincerely,

John Hartz
Senior Assistant Chief

Accountant

Craig P. Omtvedt
Fortune Brands, Inc.
January 7, 2004
Page 1 of 4

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D. C. 20549-0404

DIVISION OF
CORPORATION FINANCE

