

1 I'm going to have you scoot up to that microphone.

2 Will you state and spell your name for the record.

3 THE WITNESS: Sure. David Ozgo, D-A-V-I-D, O-Z-G-O.

4 THE COURTROOM DEPUTY: Thank you, sir.

5 MR. CAMPBELL: Your Honor, before we get started with
6 this witness, this individual was added on a witness and
7 exhibit list at 10:30 last night. We've had no opportunity to
8 review anything as to this particular witness. He got added
9 12 hours ago. So I'm going to object to his testimony in
10 totality.

11 MS. LIGGINS: Likewise, Your Honor.

12 THE COURT: Okay.

13 MS. LIGGINS: He was not on the witness list. He's
14 not on the exhibit list. We have not received any information
15 about him, who he is, what he is going to be called to
16 testify. We know nothing.

17 MR. COLLINS: If I can speak, Your Honor.

18 So Mr. Nielsen -- or excuse me. Mr. Ozgo, he is going to
19 testify about the Nielsen data. And basically we didn't even
20 know we had an issue of the Nielsen data until we got the
21 answers. He's a rebuttal witness. We don't -- I don't
22 think --

23 THE COURT: Rebuttal to what?

24 MR. COLLINS: He's a rebuttal to the fact that they
25 are diminishing the implications of the Nielsen data. So he's

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1 basically here to support that the Nielsen data is the
2 valid --

3 THE COURT: I'm going to allow it. We'll give him a
4 little bit of latitude on this.

5 But look, let's keep it to what we've already heard about
6 Nielsen data, although I think I understand how that works and
7 we've heard plenty on it. They'll be able to cross-examine
8 him. But let's go on.

9 MR. COLLINS: Very good.

10 DAVID OZGO,
11 having been first duly sworn, was examined and testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. COLLINS:

15 Q Can you give me a little bit of your background, please?

16 A Certainly. I've been an economist for over 30 years.
17 Twenty-two years of that, I was the chief economist and a
18 senior vice president at the Distilled Spirits Council of the
19 United States.

20 Now, in that role, obviously, I analyzed trends in the
21 industry and had the opportunity to work with virtually all
22 the data sources across the industry. We -- one of the things
23 I did is I developed a dataset called the Market Segmentation
24 Database, which is today used for marketing and planning
25 purposes by a lot of the distilleries for marketing and

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1 planning.

2 Q Now what's your educational background?

3 A Sure. I have bachelor's and master's degrees in
4 economics from George Mason University.

5 Q Okay. And you mentioned DISCUS?

6 A Yes.

7 Q Can you explain exactly what DISCUS is.

8 A Yes. DISCUS stands for the Distilled Spirits Council of
9 the United States. It's a trade association that represents
10 the distillers and importers of spirits in the U.S. At
11 various times, they've represented between 60 to 70-some-odd
12 percent of the entire industry. Like most trade associations,
13 the primary purpose is for public policy, so, i.e., we have a
14 lot of lobbyists, work with a lot of regulators.

15 In addition to, however, we also provided a service to
16 our member companies of something called Brand Data. Brand
17 Data was a data sharing program amongst our member companies
18 that allowed them to look at shipments, i.e., movements from
19 the distillery to the distributor, which gave everybody a
20 very, very good overview of what was going on within the
21 marketplace.

22 Q And in terms of your involvement with DISCUS, how do you
23 guys use -- well, explain the Nielsen data and how you guys
24 use it, please.

25 A Yeah. For probably ten years or so, we were not a direct

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1 Nielsen client. However, Nielsen, since all of my members
2 were Nielsen clients, they would give me a report on a monthly
3 basis where I was able to look at the data from a retail
4 perspective and look at which categories were growing, which
5 brands were growing, potentially what kind of volume was being
6 done, and just what exactly sales were.

7 Q Okay. And in terms of your knowledge of how your members
8 view Nielsen, how important are those numbers to the members
9 of DISCUS?

10 A Yeah, they were very important, and people had a lot of
11 confidence in the data that they saw. When you -- it was
12 previously mentioned that, well, Nielsen does not cover the
13 on-premise, on-premise trade. Well, that is certainly true,
14 but on-premise at this point is only about 20 percent of the
15 total market. So the Nielsen data covers a segment that
16 accounts for 80 percent of all sales.

17 Now, obviously Nielsen doesn't necessarily cover all 80
18 percent. They have about half of that. So A.C. Nielsen
19 covers about 40 percent of the total spirits market, 40
20 percent of everything that's sold.

21 Now, 40 percent doesn't necessarily sound like a lot if
22 this were an accounting exercise. Certainly you wouldn't want
23 to try to balance your checkbook with only 40 percent of the
24 entries. But this is really more of a survey. And if you
25 were doing a survey, if you were doing a poll and you covered

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1 40 percent of your target audience, assuming that's a randomly
2 distributed survey, that's going to give you extraordinarily
3 accurate information.

4 It was my experience, over the 22 years that I worked at
5 DISCUS, that when I would compare Brand Data -- now, Brand
6 Data was the only source in the country where I knew that I
7 had 100 percent of the volume being shipped by a member
8 company. So if Bacardi was a member, I can tell you exactly
9 how many cases of Bacardi rum were being shipped into, say,
10 Texas in one-liter bottles. It was that detailed.

11 When I would look at the trend that I would see in Brand
12 Data, particularly over a 12-month rolling period, it's always
13 very, very consistent when I would look at the 12-month trends
14 in A.C. Nielsen. So from that perspective it told me, okay,
15 when I have a 100-percent view of the marketplace, it's very,
16 very consistent then with what we see in A.C. Nielsen.

17 Q And in terms of the issue of -- I believe in the
18 affidavit of the receiver, he indicates that it isn't valid
19 for independent brands. Would you consider that to be
20 applicable in this particular instance?

21 A Certainly not in this instance. Even though Uncle
22 Nearest is an independent brand, it's an independent brand
23 that has national coverage. They're in all 50 states. I
24 believe they're in thousands of accounts. So, as a result,
25 they're going to be picked up by A.C. Nielsen, and the trends

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1 are going to be very, very accurate.

2 MR. COLLINS: If we could show the receiver's
3 affidavit, that is Exhibit A, I believe.

4 Okay. And if you scroll down, yeah.

5 BY MR. COLLINS:

6 Q So, and you've -- did you read this paragraph from --

7 A Yes, I did.

8 Q In terms of, again, in terms of how Uncle Nearest is
9 maybe different than other independents in terms of its
10 50-state scope?

11 A Yeah. Well, there are a lot of independents out there
12 that just aren't all that large. Many of them aren't even
13 regional brands. They're almost local brands. But with Uncle
14 Nearest being a national brand in all 50 states, with, you
15 know, depending upon which number you're looking at, 25 to 41
16 million dollars in sales, well, they're a national brand, and
17 national brands are very, very well covered by A.C. Nielsen.

18 Q And, in fact, on the Nielsen chart that we've already
19 seen, they're on the first page of it?

20 A Yes.

21 Q I mean, they're one of the larger --

22 A That's correct. I've never looked at that entire chart
23 because I know you end up with several hundred brands on it.
24 To be in the top 30 means that you are very, very, very well
25 represented across the A.C. Nielsen collection points.

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1 Q And so when you talk -- and the reason they use the term
2 "independent brand," what does that mean when you say
3 "independent brand"?

4 A Sure. I mean, there are a lot of brands out there.
5 Larger companies like Jim Beam or Brown-Forman are going to
6 own dozens or even hundreds of brands, whereas A.C. -- or, I'm
7 sorry, whereas Uncle Nearest, it's one brand with, I don't
8 know, seven or eight SKUs, depending upon what products they
9 have in the market at any given time.

10 Q And so when you generally talk, when people generally
11 talk about an independent brand, they're usually referring to
12 that lower set of very small --

13 A That's correct.

14 Q -- distillers?

15 A Yes.

16 Q But once you get to be a big distiller, even though
17 you're independent, you're really a different type of entity
18 then?

19 A You're a different type of entity, exactly.

20 Q Okay. In terms of what you've seen -- and you've had an
21 opportunity to review the Nielsen data --

22 A Yes, I have.

23 Q -- for this company. In terms of the change -- pull
24 up --

25 A Yeah. I was able to look at the data, and what I

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1 found -- and it's already been shown. And we won't go month
2 to month. You already saw an exhibit. But essentially from
3 January 2025 through August of 2025, Uncle Nearest was
4 outperforming the market by ten points.

5 Well, then beginning from September 2025 through January
6 2026, the last month for which we have data, they are
7 underperforming the market by 10 points. So that's a very,
8 very dramatic turnaround in a short time.

9 Q Is that something that, in your experience with DISCUS
10 and kind of reviewing this data, that you've seen kind of
11 before, such a dramatic shift?

12 A That certainly would not be the norm. Yes, there were
13 certainly times when brands lost market share and declined,
14 but that would typically happen over time, not that quickly,
15 not over basically a three-month period.

16 Q And in terms of your experience, could that decline be
17 just explained by the market, by --

18 A Well, no. Since we're comparing Uncle Nearest to the
19 market in general, we see that previously they had been
20 outperforming the market and fairly substantially. To go from
21 outperforming the market to underperforming the market in such
22 a quick time indicates something dramatic happened. There is
23 nothing -- yes, I know there are headwinds in the marketplace
24 right now for all bourbons, for all spirits, for all beverage
25 alcohol generally. But those, those headwinds are impacting

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1 all brands, and it would not impact Uncle Nearest's
2 performance versus the marketplace generally.

3 Q So would it be fair to say that if Uncle Nearest -- in
4 the absence of a change of circumstances, if Uncle Nearest
5 were outperforming the market while the market was up, it
6 would still outperform the market, the general market, even if
7 it was down, barring any other circumstances?

8 A Yes. I see no reason that they would have had
9 this dramatic -- barring a change of circumstances, I see no
10 reason why their trajectory would have changed.

11 MR. COLLINS: I think that's all I have for this
12 witness, Your Honor.

13 THE COURT: All right. Thank you.

14 Any cross?

15 CROSS EXAMINATION

16 BY MR. CAMPBELL:

17 Q Good afternoon, Mr. Ozgo. Are you still with DISCUS?

18 A No. I left at the end of 2022.

19 Q The end of 2022. Okay. What did you do after you left
20 DISCUS in 2022?

21 A I was the president of the Cigar Association of America
22 for two and a half years, roughly, and now I'm an independent
23 consultant.

24 Q Okay. In what space for independent consulting?

25 A I -- my firm is Advocacy Analytics. I do a lot of public

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1 policy work. I also do work advising, I don't know,
2 investment firms on political risk. I still do some work
3 within the alcohol space. I have one client that I do a
4 lot -- that's in the spirits, beer, and wine space that I do
5 work for. So really I have a number of clients.

6 Q One client in the spirits industry. So is it safe to say
7 that since 2022 you haven't really had your finger on the
8 pulse of what the alcohol and beverage market would be?

9 A Not necessarily. I have had to do some work with -- as I
10 said, I do have a client still in the beverage alcohol
11 industry who does have spirits, so I've had to do some work.
12 I also advise informally the current chief economist for
13 DISCUS, even though they're not paying me. The gentleman
14 worked for me for 22 years, so he gets the benefit of my
15 experience. So I'm still -- I still have a hand in the
16 industry.

17 Q And I want to touch on a point that was in the affidavit
18 that Mr. Collins kept coming back to. The line in the
19 affidavit reads "independent stores." I think Mr. Collins has
20 referred to independent brands. Does Nielsen cover
21 independent stores, independent liquor stores?

22 A They have some independent liquor stores, but it's not
23 what they specialize in. They do tend to -- they are -- they
24 have the best coverage in larger chains and in larger liquor
25 stores, yes.

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1 Q So most independent stores are not covered in those
2 numbers is what you're saying?

3 A Yes, that's correct. However, it's been my experience
4 that, particularly over a 12-month period, if something gets
5 hot in an independent liquor store, trust me, the big guys
6 aren't going to sit on their hands for very long. So, you
7 know, they will pick up the brand fairly readily. So the
8 trends, they're not perfectly correlated, but they're very,
9 very consistent.

10 Q And I think, if I remember your testimony correctly, you
11 said that the Nielsen data covers approximately 40 percent of
12 the sales; is that correct?

13 A That's correct, which is very high if you are looking at
14 something as a survey instrument, which a lot of people
15 consider it.

16 Q Sure. And I understand you said that if it was a random
17 survey -- forgive me, my stats. You've got plenty more stats
18 information than I do. But if it's 40 percent of everything
19 but all the independent stores are not included, then it's not
20 really a random sample, correct?

21 A Well, you're making the assumption that the trends in the
22 independent stores would be dramatically different from the
23 trends in the major stores, and that's just not the case. You
24 know, if something happens in a major store, the smaller
25 stores are going to want to pick up on it because, hey, they

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1 all like to make money. The same with the independent stores.
2 So while there will be some differences for a major brand like
3 Uncle Nearest, you're going to look -- you're going to have
4 fairly consistent trends.

5 Q And if I may ask, when were you asked to come here today?

6 A I was -- Friday.

7 Q And were you paid to come here today?

8 A Yes, I am being paid. I am being compensated.

9 MR. CAMPBELL: No further questions.

10 THE COURT: Thank you.

11 CROSS EXAMINATION

12 BY MS. LIGGINS:

13 Q Just a few questions. Did you prepare this exhibit
14 that's up?

15 A No. That was prepared by Uncle Nearest. I did, however,
16 review the background material.

17 Q Okay. What was the background material?

18 A The background material is A.C. Nielsen reports, which I
19 also did, in fact, get from Uncle Nearest. However, they
20 comport to the reports that I've seen on dozens of occasions
21 that come from A.C. Nielsen, so I was confident that these, in
22 fact, were legitimate A.C. Nielsen reports.

23 Q When you were analyzing the Nielsen data, did you analyze
24 other brands that were in receivership?

25 A I'm not aware of any other brands that were in

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1 receivership on the list. No, I didn't.

2 Q Have you ever analyzed Nielsen data with a company that's
3 in receivership?

4 A No, I have not.

5 Q What about that's in litigation?

6 A You know, there were -- yes. Patron Tequila was in
7 litigation for a long, long time over some ownership question.
8 We oftentimes looked at Patron data. And so, yes, I have.

9 Q And you saw a downward trend with that data too?

10 A That's not actually what I recall. Patron was up and
11 down. You know, I don't remember any particular downward
12 trend. You know, it could have been a difference in -- it was
13 a question of ownership. Everybody wanted to see the brand
14 succeed, so, you know, you continued operating as if it was --
15 you know, there was no legal question.

16 MS. LIGGINS: Okay. No further questions.

17 Thank you, Your Honor.

18 THE COURT: All right. Thank you.

19 Thank you, sir.

20 THE WITNESS: Thank you.

21 THE COURT: Anything else, Mr. Collins?

22 MR. COLLINS: Call Kevin Larin.

23 THE COURT: Who?

24 MR. COLLINS: Kevin Larin, Your Honor.

25 THE COURT: Okay.