



*Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
95 Fourth Street, Suite 3  
Chelsea, Massachusetts 02150*

**Jean M. Lorizio, Esq.**  
*Chairman*

**NO. 25E-1331  
RUBY WINES, INC.,  
Petitioner,**

**v.**

**SANTA MARGHERITA USA, INC.,  
Respondent.  
HEARD: 8/12/2020**

**MEMORANDUM AND ORDER ON  
PETITIONER'S MOTION FOR SANCTIONS  
AND RESPONDENTS' CROSS-MOTION FOR PROTECTIVE ORDER**

The Alcoholic Beverages Control Commission ("Commission") hereby issues this Memorandum and Order in response to Ruby Wines' Motion for Sanctions against Santa Margherita USA, Inc. and Santa Margherita USA's Cross-Motions for Protective Order.

**PROCEDURAL BACKGROUND**

This case arises under M.G.L. c. 138, § 25E. Petitioner, Ruby Wines, Inc. ("Petitioner" or "Ruby") is a Massachusetts wholesaler aggrieved at the refusal of Terlato Wines ("Terlato")<sup>1</sup> and Santa Margherita USA, Inc. ("SMUSA") to make sales of Santa Margherita brand wines (the "Brand Items"). The Petitioner filed its petition with the Commission on April 19, 2016. On May 6, 2016, pursuant to the mandate in § 25E, the Commission issued an order to Terlato and SMUSA to make sales of the Brand Items to Ruby pending the Commission's determination of the petition on the merits. The Commission also authorized discovery to take place. The discovery deadline was extended several times and has since expired, except with regard to the issues that are the subject of this Order.

On December 19, 2017, Ruby filed its Motion to Compel Further Discovery from Terlato and from SMUSA. In its motion, Ruby claimed that Terlato failed to respond to Ruby's request for production of documents and interrogatories and that SMUSA's responses to the requests and interrogatories were incomplete.

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<sup>1</sup> The correct name of the entity is Paterno Imports, Ltd. d/b/a Terlato Wines International. Terlato is no longer a party to this petition per the ABCC Order of 10/9/2018.

On January 5, 2018, Terlato filed its Opposition to Ruby's Motion to Compel Further Discovery and a Cross-Motion for Protective Order. On January 12, 2018, SMUSA filed its Opposition to Ruby's Motion to Compel Further Discovery, and then on February 5, 2018, SMUSA filed its Motion for a Protective Order against Ruby. The Commission held a hearing on these motions on May 15, 2018. The day after the hearing, Petitioner filed a post-hearing letter to the Commission, and the following day, May 17, 2018, SMUSA filed a post-hearing supplemental memorandum of law.<sup>2</sup>

On October 9, 2018, the Commission issued a Memorandum and Order on Petitioner's Motion to Compel Discovery and Respondents' Cross-Motions for Protective Orders and Amended Scheduling Order (the "Order"). The Order allowed Terlato's Motion for a Protective Order and determined the outcome of the discovery disputes and set upcoming deadlines.

On June 20, 2019, SMUSA filed its Supplemental Responses to Petitioner's Request for Production of Documents.

On June 21, 2019, SMUSA filed its Motion for Reconsideration of the ABCC Order of October 9, 2018. Ruby filed an Opposition on July 2, 2019. The Commission held a hearing on this matter on July 26, 2019 and DENIED the Motion for Reconsideration in its Memorandum and Order of September 26, 2019.

On December 20, 2019, SMUSA filed its Second Supplemental Responses to Ruby's Request for Production of Documents.

SMUSA's Motion for Summary Decision was filed January 4, 2020.

On January 14, 2020, Ruby filed its Motion for Sanctions. SMUSA filed a 2<sup>nd</sup> Motion for Protective Order and its Opposition to Ruby's Motion for Sanctions. Ruby filed its Opposition to SMUSA's 2<sup>nd</sup> Motion for Protective Order. The Commission held a hearing on these motions on August 12, 2020.

### FACTUAL BACKGROUND

Santa Margherita, S.p.A. ("Santa Margherita") is a supplier of wine in Italy and for years sold its product to importer Terlato for distribution in the United States. (Exhibit A to SMUSA's Opposition to Ruby's Motion to Compel) Terlato would then sell the Brand Items to wholesaler Ruby. (Exhibit C to SMUSA's Opposition to Ruby's Motion to Compel, at Answer 5(d)) The relationship between Santa Margherita and Terlato broke down, and on June 27, 2011, Santa Margherita informed Terlato that effective December 31, 2015, their agreement would terminate. (Exhibit B to SMUSA's Opposition to Ruby's Motion to Compel) In 2014, Santa Margherita created a subsidiary, SMUSA, in the United States and appointed it as the exclusive importer/distributor of the Brand Items effective January 1, 2016. (Exhibit C to SMUSA's Opposition to Ruby's Motion to Compel, at Answers 19, 23) In April 2016, SMUSA informed Ruby that it would not voluntarily sell the Brand Items to it. (Exhibit C to SMUSA's Opposition to Ruby's Motion to Compel, at Answer 5(d))

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<sup>2</sup> None of the parties objected to either of the post-hearing filings.

### Applicable Discovery Rules

The Commission operates under the Informal “Fair Hearing” Rules promulgated under 801 C.M.R. 1.02 in matters arising under M.G.L. c. 138, § 25E. Under these Rules, “Parties to an Adjudicatory Proceeding are encouraged to engage in voluntary discovery.” 801 C.M.R. 1.02(8)(a). Because § 25E matters are complex and usually include voluminous discovery, the Commission generally tracks the discovery protocol as laid out in the Formal Rules under 801 C.M.R. 1.01(8) and cites to the Massachusetts Rules of Civil Procedure in order to provide helpful guidance and to promote regularity and efficiency when it grants discovery requests. See Alexander Cella and Gerald McDonough, *Massachusetts Practice: Administrative Law & Practice* § 548 (2014) (“it would appear that the full panoply of discovery techniques, including depositions and interrogatories, available under the Formal Rules may be made available to a party under the Informal/Fair Hearing Rules as a matter of discretion under appropriate circumstances”).

### DISCUSSION

#### Parties’ Arguments

Ruby seeks an order for sanctions alleging SMUSA has failed to comply with the Commission Order of October 9, 2018 requiring limited supplemental discovery responses.

The Commission Order of October 9, 2018 instructed SMUSA to produce:

- a) Any wind-up agreements (or arrangements) between and/or among Santa Margherita, Terlato and/or Santa Margherita between the time period of January 1, 2015 through January 1, 2017, one year prior to the effective date of the “Transaction” through one year following the effective date of the “Transaction”;
- b) Any communications concerning such wind-up agreements in the same time period; and
- c) Emails and other correspondence to/from the two people at each of SMUSA and Santa Margherita with the most knowledge of the “Transaction” to/from their two counterparts at Terlato on the issue of the “Transaction,” again in the same time period.

Ruby contends SMUSA failed to produce any wind-up agreements, only provided documents up to June 17, 2015 and alleges the documents that were produced refer to other communications which were not included, including letters dated May 21, May 23 and June 8. Ruby states while the Commission Order calls for communications between the two people from each entity with the most knowledge of the transaction, what was produced includes emails between only one person from each entity, namely Bill Terlato and Ettore Nicoletto. Finally, Ruby contends an email of May 11<sup>th</sup> was produced with said email indicating it consists of five (5) pages but only two (2) were provided.

SMUSA asserts it has complied with the Commission Order and seeks a protective order. In support of said protective order, SMUSA offers the following:

The only “wind-up agreement” in existence is within the distribution agreement which Ruby has had in its possession since November of 2017.

The Brand Owner's search for emails dated after June 17, 2015 and prior to December 31, 2015 did not identify any such emails. It was further explained that the relationship between Terlato and the Brand Owner was completely terminated and wrapped up by December 31, 2015, resulting in there being no reason for communications to exist past December 31, 2015.

SMUSA contends the letters of May 21, 23 and June 8 are described in the email production but, in any event, are not relevant to the matter before the Commission. SMUSA acknowledges only emails between Bill Terlato and Ettore Nicoletto were produced but explains they were the only individuals with decision making authority pertaining to the conclusion of the relationship. SMUSA states there are no other individuals at SMUSA or the Brand Owner who engaged in such communications.

Finally, with regard to the email of May 11, 2015 cited by Ruby, SMUSA is unsure to which email it refers. In attempting to identify said email, SMUSA believes Ruby has referred to a document the first page of which is Bates stamped No. SM00080. This document is an email chain which contains a May 11, 2015 email. The email string is 12 pages long and all 12 pages were produced.

While the Informal Fair Hearing Rules do not specifically address protective orders, the Formal Rules provide that "the Presiding Officer may make any order which justice requires to protect a Party or Person from annoyance, embarrassment, oppression, or undue burden or expense." 801 CMR 1.01(8)(a).

The Commission, in its order of October 9, 2018, determined Ruby's requests in question were calculated to lead to the discovery of admissible evidence and ordered the discovery responses be produced. The Commission ordered that SMUSA's search shall include a search of the emails/correspondence in the possession of its parent, Santa Margherita, under the terms set forth within the order, namely the time frame within which to search. The remaining question for the Commission is whether SMUSA has complied with the October 9, 2018 order.

With regard to the Motion for Protective Order, the Commission **ALLOWS THE MOTION IN PART, AND DENIES IT IN PART** as follows:

The Commission **ALLOWS** SMUSA's Motion for Protective Order regarding wind-up agreements for the reasons set forth in the motion. SMUSA asserts the Agreement of December 18, 2007 (Exhibit 1 to SMUSA's Motion for Protective Order) between Santa Margherita S.p.A. and Paterno Imports, Ltd., d/b/a Terlato Wines International is the only wind-up agreement between the parties. As explained in said Motion, the December 18, 2007 agreement addresses how Terlato and the Brand Owner would conclude their relationship in the event of termination, sets forth procedure for termination and includes a section entitled "Obligations Following Expiration or Terminations" detailing the rights of the parties following the conclusion of the relationship.

Bolstering SMUSA's assertion is the language of Santa Margherita's letter of termination to Terlato, dated June 27, 2011, wherein Mr. Nicoletto states, "after due deliberation and pursuant to that certain Agreement between us dated the 18<sup>th</sup> of December 2007 (the "Agreement"), Santa Margherita S.p.A. pursuant to Paragraph 2 of the Agreement hereby gives notice of termination of the Agreement ("Paragraph 2 Notice", as defined therein). As provided in sub-paragraph 2.b. of the Agreement, pursuant to this Paragraph 2 Notice, the Agreement will terminate at the close of

business the 31<sup>st</sup> of December 2015. We look forward to the continuation of our mutually beneficial cooperation.” (Exhibit B to SMUSA’s Opposition to Petitioner Ruby Wines, Inc.’s Motion to Compel Further Discovery) Santa Margherita references the December 18, 2007 agreement as the sole document governing the dissolution of said agreement.

Finally, in the Affidavit of Ettore Nicoletto, Mr. Nicoletto states the Agreement of December 18, 2007 “set forth the entirety of the relationship between Santa Margherita S.p.A. and Terlato regarding the Brand.” (Exhibit C to SMUSA’s Motion for Reconsideration of Order dated October 9, 2018)

The above ruling allowing SMUSA’s Motion for Protective Order as to wind-up agreements makes moot the request for communications regarding wind-up agreements.

SMUSA’s Motion for Protective Order is otherwise DENIED. As was ordered by the Commission SMUSA shall produce emails and other correspondence to/from the two people at each of SMUSA and Santa Margherita with the most knowledge of the “Transaction” on the issue of the “Transaction,” within the period of January 1, 2015 through January 1, 2017. The Commission ordered a search for such documents and specified that SMUSA’s search shall include a search of email/correspondence in the possession of its parent, Santa Margherita.

SMUSA submitted a Second Supplemental Response to Petitioner’s Request for Production of Documents and included a series of emails between only William Terlato, President and CEO of Terlato Wines International and Ettore Nicoletto, CEO of Santa Margherita S.p.A.

SMUSA represented that Messrs. Terlato and Nicoletto were the only individuals involved in such communications and as a result SMUSA is unable to produce emails involving any other people. However, Mr. Nicoletto in his Affidavit stated “(s)ince December 31, 2015, there has been no further relationship between Terlato and Santa Margherita S.p.A. other than closing the relationship and addressing transfer of the inventory and a use-up letter.” In addition, he spoke of “senior executives who were the primary individuals who communicated with Terlato.” (Exhibit C to SMUSA’s Motion for Reconsideration of Order dated October 9, 2018) The emails produced did not include any emails dated after June 17, 2015.

Ruby in its Motion for Sanctions alleges documents which were mentioned in the emails were not produced, specifically letters dated May 21, May 23 and June 8. SMUSA did not dispute these letters were not included but rather argued they were described within the emails and in any event irrelevant. SMUSA shall produce the missing letters.

Other than as detailed herein, discovery is closed.

SMUSA’s Motion for Protective Order is **ALLOWED IN PART** and **DENIED IN PART**.

Ruby’s Request for Sanctions against SMUSA is **DENIED WITH PREJUDICE**.

#### CONCLUSION

For the foregoing reasons, Santa Margherita USA’s Cross-Motion for Protective Order is **ALLOWED IN PART AND DENIED IN PART**. Ruby Wines’ Motion for Sanctions against from Santa Margherita USA, Inc. is **DENIED WITH PREJUDICE**.

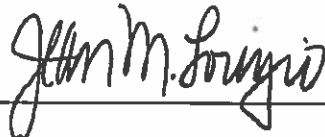
Santa Margherita USA is ordered to produce the documents as outlined above by December 2, 2021. All documents shall be produced in their un-redacted form.

AMENDED SCHEDULING ORDER

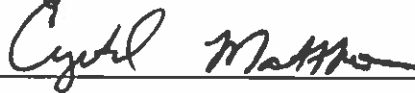
- a) Discovery responses as set forth above shall be due on or before December 2, 2021
- b) Any and all Motions for Summary Decision shall be due by December 16, 2021, and any and all oppositions or responses due by December 30, 2021.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



Dated: November 18, 2021

You have the right to appeal this decision to the Superior Court under the provisions of Chapter 30A of the Massachusetts General Laws within thirty days of receipt of this decision.

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